



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DEC 15 1998

DATE: December 15, 1998
 TO: BLANCA BAYO, DIRECTOR OF RECORDS AND REPORTING
 FROM: RICHARD C. BELLAK, DIVISION OF APPEALS *RCB*
 RE: DOCKET NO. 981071-WS

98-1728-FDF-WS

FILE NAME: 981071.ORD

Attached is an order to be issued as soon as possible.

RCB

Attachment

cc: Wanda Terrell

See 4

12/15/98 RCB

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Robert P. Crocetta, Sr. to Initiate Rulemaking to Amend Rule 25-30.360, F.A.C., Refunds.

DOCKET NO. 981071-WS
ORDER NO. PSC-98-1708-FOF-WS
ISSUED: December 17, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DENYING REQUEST BY ROBERT P. CROCETTA, SR.
FOR NEW RULINGS CONCERNING REFUNDS OR, IN THE ALTERNATIVE,
TO CHALLENGE RULE 25-30.360

BY THE COMMISSION:

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 PREPARED BY DATE

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ORDER NO. PSC-98-1708-FOF-WS
DOCKET NO. 981071-WS
PAGE 2

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 26, 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

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.

Moreover, the letter is not a properly filed rule challenge as to Rule 25-30.360. 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.

ORDER NO. PSC-98-1708-FOF-WS
DOCKET NO. 981071-WS
PAGE 3

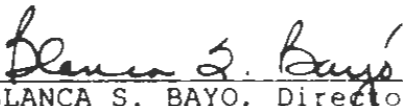
In view of the foregoing, it is

ORDERED by the Florida Public Service Commission that the request filed by Robert P. Crocetta, Sr. for new rulings concerning the refunds discussed in this order is denied. It is further

ORDERED that the request filed by Robert P. Crocetta, Sr. to file a rule challenge to Rule 25-30.360 is denied. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 17th day of December, 1998.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of

ORDER NO. PSC-98-1708-FOF-WS

DOCKET NO. 981071-WS

PAGE 4

this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/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 after the issuance of this order, 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.