



Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 17, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *ge*
DIVISION OF WATER AND WASTEWATER (WILLIS BUTTS, RENDELL) *W*

RE: DOCKET NO. 981825-SU - APPLICATION BY TRADEWINDS UTILITIES, INC. FOR APPROVAL OF A NEW CLASS OF SERVICE FOR WASTEWATER-ONLY FLAT RATES IN MARION COUNTY.

AGENDA: 06/29/99 - REGULAR AGENDA

CRITICAL DATES: NONE - THE EIGHT MONTH STATUTORY DEADLINE HAS BEEN WAIVED.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981825R2.RCM

CASE BACKGROUND

Tradewinds Utilities, Inc. (Tradewinds or utility) is a Class C water and wastewater utility located in Marion County. According to the utility's 1997 annual report, the utility provides water services to approximately 421 customers and wastewater service to approximately 257 customers. In its 1997 annual report, the utility reported water revenues in the amount of \$84,259 and wastewater revenues in the amount of \$132,456 with expenses of \$78,286 for water and \$120,302 for wastewater, resulting in net operating income of \$5,973 and \$12,154 respectively. The utility's service area is located in the St. John's River Water Management District.

By Order No. PSC-98-0484-FOF-WS, issued April 6, 1998, in Docket No. 971174-WS, the Commission amended the utility's certificated territory to include additional territory in Marion County. Residents in this additional territory currently have private wells and septic tanks; however, as a result of problems

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with contamination of wells and backing-up of septic tanks in this area, the Marion County Health Department requested that the utility extend its territory into this area.

On November 6, 1998, we received a complaint from a customer representative in the newly certificated territory that Tradewinds recently installed a private water/sewer system and was mandating that all property owners connect to this system. The representative stated that the utility neither notified customers prior to the installation nor provided any opportunity for customers to reject the proposal. We responded to the complaint on November 24, 1998, and explained that, pursuant to Section 367.045, Florida Statutes, the Commission had recently granted the utility's amendment application to serve the area. As part of its application, Tradewinds was required to submit proof that it provided adequate customer notice of the proposed amendment. The notice was published in the Starr-Banner Newspaper on January 28, 1998, and no protests were filed within the 30-day protest period set forth by Section 367.045(3), Florida Statutes. The customer representative was urged to contact the Marion County Health Department for further information regarding the requirement to connect to Tradewinds' system.

The additional territory includes customers requesting water and wastewater services, for which the utility has Commission approved metered rates, and customers requesting wastewater-only services, for which the utility does not have Commission approved rates. On December 8, 1998, pursuant to Section 367.091(4), Florida Statutes, Tradewinds filed an application to approve flat rates for a new class of service for wastewater-only customers in the newly certificated area. The utility proposed to serve an additional 32 equivalent residential connections consisting of an estimated 26 quadruplexes, and six light industrial buildings.

On January 14, 1999, in a telephone conversation, the utility's president, Mr. Charles de Menzes, stated that sixteen of the customers requesting water and wastewater service were already connected and being charged the Commission approved metered rates. However, those customers that are not metered by the utility for water cannot be charged the Commission approved base facility and gallonage charge for wastewater. Since some customers did not wish to accept water service, the utility requested flat rates for a new class of wastewater-only service for those customers. These customers are not connected as of this date.

By Order No. PSC-99-0382-FOF-SU, issued February 23, 1999, the Commission approved temporary rates, subject to refund, for a new

class of service for wastewater-only flat rates. By the Notice of Further Proceedings attached to this order, the Commission provided that "if a protest is filed within 21 days of issuance of this order, the tariff sheet shall remain in effect, with monies collected held subject to refund, pending resolution of the protest."

In accordance with this language a timely protest was filed by Mr. Charles Ruse, Jr. By letter dated March 12, 1999, Mr. Ruse stated that our approved temporary rate of \$261.55 for quadruplexes was outrageous. He also stated that requiring utilization of a two-inch meter was excessive, especially where a two-inch pipe would terminate into an existing one-inch pipe. According to Mr. Ruse, "this is some ploy by the utility company to maximize its income." Because we received a protest, the matter was set for hearing by Order No. PSC-99-0898-PCO-SU, issued May 5, 1999, Order Establishing Procedure.

Staff believes it was incorrect to include language providing for a protest period in the order approving temporary rates. The following will address staff's recommendation to correct the Notice of Further Proceedings attached to Order No. PSC-99-0382-FOF-SU, in this docket, by deleting the protest language, and to vacate the Order Establishing Procedure and cancel the hearing.

DISCUSSION OF ISSUES

ISSUE 1: Should the Notice of Further Proceedings attached to Order No. PSC-99-0382-FOF-SU, which allowed for a twenty-one day protest period, be corrected to delete the protest language, and should Order No. PSC-99-0898-PCO-SU, the Order Establishing Procedure, be vacated and the hearing be canceled?

RECOMMENDATION: Yes. The Notice of Further Proceedings attached to Order No. PSC-99-0382-FOF-SU allowing for the protest of the temporary rates should be corrected to delete the protest language, and the Order Establishing Procedure should be vacated and the hearing should be canceled. (Crossman)

STAFF ANALYSIS: As noted in the case background, some customers in the utility's newly-certificated territory did not wish to accept water service. Since the utility did not have a tariff on file with the Commission for wastewater-only rates, on December 8, 1998, it submitted an application in the form of a letter requesting a new class of service for wastewater-only flat rates. By Order No. PSC-99-0382-FOF-SU, issued February 23, 1999, in this docket, the Commission approved the implementation of wastewater-only flat rates on a temporary basis, subject to refund, pending further investigation by staff. Although these potential customers were not connected, staff believed that temporary rates were necessary in this instance because, given the health concerns associated with contamination of private wells and back-up of private septic tanks, there was a strong possibility that they would connect prior to the final rates being approved by the Commission. These potential customers are not currently being provided wastewater only service.

Section 367.091(4), Florida Statutes, provides that a utility may "furnish a new class of service and fix and charge just, reasonable, and compensatory rates or charges". By Order No. PSC-99-0382-FOF-SU, the Commission approved temporary rates and ordered the rates to remain in effect only until staff completed its investigation and the Commission determined whether to approve or deny the tariff filing. Additionally, since the temporary rates are held subject to refund, the customers are protected in the event the Commission determines the rates are excessive.

In Order No. PSC-99-0382-FOF-SU, approving temporary rates, the Commission provided that "if a protest is filed within 21 days

of issuance of this order, the tariff sheet shall remain in effect, with monies collected held subject to refund, pending resolution of the protest." This language is normally used in tariff decisions. It was erroneously included in the aforementioned order since this was a temporary tariff rate. To allow protests at this point would be premature because a point of entry for protests will be provided when the Commission issues its final tariff order on final rates. Additionally, since the temporary rates are held subject to refund, the customers are protected in the event the Commission determines that the rates are excessive.

Accordingly, staff believes it was incorrect to include language providing for a protest period in the order approving temporary rates. As a result, staff believes that it is appropriate to correct the Notice of Further Proceedings attached to Order No. PSC-99-0382-FOF-SU, which allowed for the protest of the temporary rates, by deleting the protest language and to vacate Order No. PSC-99-0898-PCO-SU setting the matter for hearing. Therefore, the prehearing and hearing scheduled to take place in this docket should be canceled. Staff also notes that to go to hearing on temporary rates would be an inefficient use of the Commission's and the parties' resources because all substantially affected persons will be given the opportunity to protest the Commission's decision to approve or deny the tariff filing.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending staff's investigation and recommendation on whether the tariff filing should be approved. (Crossman)

STAFF ANALYSIS: This docket should remain open in order for staff to conclude its investigation and the Commission to decide whether to approve the tariff filing.