



# 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:** August 5, 1999

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

**FROM:** DIVISION OF ELECTRIC AND GAS (KUMMER) *AK* *RT*  
DIVISION OF LEGAL SERVICES (COLLINS) *MC* *RUE*

**RE:** DOCKET NO. 990944-EM - PETITION BY THE KISSIMMEE UTILITIES AUTHORITY TO ADD A "DUE DILIGENCE" CLAUSE TO ITS GENERAL RULE AND REGULATIONS AND REVISE ITS CUSTOMER BILLING AND DEPOSIT PRACTICES.

**AGENDA:** 8/17/1999 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\EAG\WP\990944.RCM

RECEIVED - FPSC  
AUG - 5 AM 9:32  
RECORDS AND REPORTING

**ISSUE 1:** Should the Commission approve the "Due Diligence" clause proposed by the Kissimmee Utilities Authority (KUA)?

**RECOMMENDATION:** Yes. Similar language is found in the tariffs of investor-owned electric utilities and the intent of the language does not fall within the Commission's rate structure jurisdiction.

**STAFF ANALYSIS:** The proposed language appears to exempt the utility from liability if it exercises "due diligence" in the performance of its duties. The City of Vero Beach has also proposed the addition of such a liability clause. This is addressed in Docket No. 990943-EM. The proposed language on liability is virtually identical to that found in the "Continuity of Service" provisions for all four major Investor-owned utilities. The specific language was brought to the Commission's attention during discussions of damage claim handling in the Electric Service Quality and Reliability Report.

DOCUMENT NUMBER-DATE

09287 AUG-5 99

FPSC-RECORDS/REPORTING

The language found in the IOU tariffs was grandfathered when these utilities came under FPSC jurisdiction. Available records do not indicate that it was ever specifically approved by the Commission. These tariff provisions are often at issue in damage claims and other civil actions. The impetus for the adoption at this time of such language by municipal utilities appears to stem from passage of the Commerce Protection Act passed in the last legislative session. Staff believes that the Commerce Protection Act primarily limits liability of damages due to failures resulting from Y2K issues and that the proposed language goes significantly beyond the intent of the cited legislation. However, since this language applies equally to all customers, there does not appear to be a rate structure issue involved. Likewise, it addresses municipal electric service quality which has been considered beyond the jurisdiction of the PSC. In addition, similar language exists in approved IOU tariffs. Therefore, staff recommends approval of the language as proposed.

**ISSUE 2:** Should the remaining proposed changes to customer billing and deposits be approved.

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** The proposed changes to customer billing and deposits practices appear consistent with Commission policy and should be approved.

DOCKET NO. 990944-1

DATE: August 5, 1999

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

**RECOMMENDATION:** Yes, if no protest is filed within 21 days of the issuance of the order.

**STAFF ANALYSIS:** If a protest is filed within 21 days of the Commission order approving this tariff, the tariff should remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.