

State of Florida



Public Service Commission

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EPSC

DATE: August 26, 1999

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

FROM: DIVISION OF ELECTRIC AND GAS (KUMMER) *AK*
DIVISION OF LEGAL SERVICES (COLLINS) *RC RVE JDT*

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: 9/7/1999 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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

RECOMMENDATION: No. The Commission should decline to take action on the proposed tariff on the basis that the subject matter does not require Commission approval. The tariff should remain on file with the Commission as part of the official tariff of the utility.

STAFF ANALYSIS: Tariff filing requirements for municipal and cooperative utilities have often fallen into grey areas. Although we recognize the limitations on our authority to review cost support and to pursue remedies when staff and the utility disagree, all utility documentation historically has been filed as a "tariff" and was formally approved by either staff or the Commission, whether or not the information directly concerned rates or charges. There is some question, however, on whether the term "rate

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structure" extends to non-rate areas such as general rules and regulations governing utility operation.

Limitations in 366.04(2), F.S. Chapter 366.04(2), Florida Statutes, lists four areas over which the Commission has jurisdiction for municipal and rural cooperative electric utilities: System of accounts, rate structure, grid participation, and territorial matters. Section 366.04(6), F.S., adds the enforcement of the National Electric Safety Code to that list. At issue is whether the proposed "due diligence" language falls under any of the categories subject to Commission review. Upon further review, Staff believes that this, and similar general operating rules, do not constitute rate structure and therefore do not require Commission approval. Such information is important to a complete understanding of a municipal utility's operation and should be filed as part of the utility's tariff, but does not require affirmative Commission action.

Procedural History. Municipal and rural cooperative utilities came under Commission jurisdiction by an act of the Florida Legislature in 1974. In 1977, these utilities filed tariffs detailing their rates and charges for retail service with the Commission. Subsequent to the initial filings, the PSC adopted Part IV of the Florida Administrative Code specifying how municipal and cooperative tariffs were to be filed. Over the years, the term "tariff" has been liberally construed to include not only rate structure but all rules and regulations, service charges, contracts and even billing formats applicable to retail service customers. Every change in any provision of a tariff currently must be filed and approved by the Commission or staff.

The vast majority of municipal and cooperative filings are approved administratively pursuant to Paragraph 2.07(C)(15)(j) of the FPSC Administrative Procedures Manual. Administrative approval is allowed if the filing improves or does not worsen rate structure, and is generally in conformance with similar filings previously approved by the Commission. If the changes cannot be approved administratively, a docket is opened and the matter brought before the Commission. After review and approval either by staff or by Commission vote, each tariff sheet is stamped with an authority code number and is transmitted to the utility with a letter stating that the sheet(s) have been approved by the Commission.

Unlike an investor-owned filing, the Commission does not have the option to deny a municipal or rural cooperative tariff prior to a full evidentiary hearing. To take issue with a municipal or

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cooperative tariff, the Commission must first issue a comment letter and consider the utility's response, then set the matter for hearing if the response is not satisfactory. The language in Chapter 366 pertaining to suspension or denial of tariffs applies only to public utilities or IOUs. In addition, the effective date of a municipal or rural cooperative tariff is set by those utilities and may be prior to formal consideration by either staff or the Commission.

Florida Administrative Code (F.A.C.) language. Rule 25-9.050, F.A.C., Application and Scope, states that the rules in Part IV apply only to municipal electric utilities and rural electric cooperatives and prescribe the procedure to be followed by these entities in submitting documentation of rate schedules and contracts and agreements. Rule 25-9.051, F.A.C., Definitions, defines "rate structure" as "the classification system used in justifying different rates and, more specifically, to the rate relationship between various customer classes, as well as the rate relationship between members of a customer class."

Subsequent rules in Part IV and V of Chapter 25-9, F.A.C., describe how rates will be evaluated, the order of the sections to be included and the formatting protocols of the tariffs. Rule 25-9.055, F.A.C., Electric Utility Documentation lists the sections to be included with the caveat "where appropriate." There does not appear to be a requirement for approval of general operating practices of the type suggested by the language at issue in this docket. In fact, the plain language of Rule 25-9.052(2), F.A.C., General Submittal Instructions, would appear to limit Commission review to rate issues. In describing the process by which changes to municipal tariff filings are handled by the Commission:

(2) All supplements, revisions, modifications or changes to the documentation shall be submitted to the Commission in quadruplicate and in the form prescribed herein at least 30 days prior to final adoption by the utility. All materials submitted to the Commission will be retained in the Commission's files. After review, **a letter indicating the Commission receipt of or comments on the utility's proposed rate structure** will be transmitted to the utility. The comment letter may contain a request for data or explanation of the basis for any change in the utility's rate structure. *[emphasis added]*

Significant variation exists today in the extent of, and topics covered by, municipal and cooperative tariffs. Some are quite detailed, some have little more than basic rate schedules.

Therefore staff maintains that while a utility may be required to file general policy statements such as the proposed language, there is no requirement or clear provision for the Commission to make an affirmative decision on it under the specific authority of Chapter 366.04(2), F.S., because it does not address rate structure. Since municipal and rural cooperative tariffs may go into effect without Commission approval, if the utility derives comfort from including this language in its tariff, it may do so without formal Commission approval.

Reference to Y2K. Staff notes that the submittal letter accompanying the KUA filing specifically referenced the recently passed Commerce Protection Act as the basis for adopting the proposed language. This legislation states that where a contract or tariff is in place, damages or liability arising from issues related to Y2K compliance will be controlled by that contract or tariff. Where there is no contract or tariff, the legislation provides for specific limited liability. Staff believes the language proposed in this filing goes significantly beyond protection against liability associated with Y2K issues. It would also presumably continue to exist after the need for Y2K protection had passed.

General Law of Limited Liability Clauses The general rule in most jurisdictions permits utilities to limit their tort liability for negligence through provisions in their contracts or tariffs filed with regulators. Limited liability provisions are common in the electric industry. However, a utility's limited liability is restricted to negligence and other causes of action beyond their control. Gross negligence or intentional torts are not within the ambit of limited liability protection.

Many courts have noted policy considerations for limited liability clauses. These include the risk of large damages, which may result in higher rates for consumers. The litigious nature of society and the potential for tedious and expensive litigation is another policy justification. Further, a utility's increase of insurance may also result in higher rates for the consumer.

Staff believes that the tariff's limited liability clause, while broad, is consistent with the general law.

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ISSUE 2: Should the Commission review the existing filing requirements and procedures for handling municipal and rural cooperative tariff rates to determine if the rules need clarification?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Part IV of the Florida Administrative Code has not changed significantly since its adoption in 1979. The existing rules were adopted based on limited experience of both staff and the utilities with the concept of limited regulation. While language often is specific to rate structure, some provisions are not. The term "Documentation" is used rather than the word "tariff" that is commonly used in Chapter 25-6, F.A.C., rules applying to IOU's.

"Documentation" is defined as "the assembled volume containing the rate schedules, contracts and agreements and other matter required by these rules." One of the sections listed under Rule 25-9.055, Electric Utility Documentation, is "Miscellaneous." "Miscellaneous" is defined in Rule 25-9.064, F.A.C., as "any information or data of a general nature which the utility believes pertinent or informative and which does not belong under any of the specified captioned sections." Rule 25-9.052, F.A.C., requires all supplements, revisions, modifications or changes to the documentation, including presumably any thing considered under "Miscellaneous," to be submitted to the Commission, yet the Commission is charged with reviewing and commenting only on proposed rate structure. The rule appears to be silent on the procedure for handling non-rate structure changes. With almost 20 years of experience with municipal and cooperative tariff filings, staff believes it is time to take a new look at the filing requirements and procedures to determine if improvements or at least clarifications can be made while maintaining Commission authority as stated in Chapter 366.04(2), F.S.

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ISSUE 3: Should the remaining proposed changes to billing and deposits be approved?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The remaining proposed changes conform to Commission rules and practices and should be approved.

ISSUE 4: 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.

Billing Cycle and Payment Schedule:

- A. Electric meters will be read at regular monthly intervals for billing purposes. The monthly reading dates will not be advanced or postponed for more than five (5) days without sufficient cause. When a meter cannot be read, the meter reading will be estimated using the monthly consumption average during the preceding twelve (12) months service.
- B. Bills shall be rendered monthly and as promptly as possible after the meter has been read. As a general rule, no more than ten (10) days shall elapse between the meter reading date and the date of the bill.
- C. When bills are produced, the delinquent date on the bill will be eighteen (18) days from the bill date.
- D. Bills are due and payable on the ~~due~~ bill date shown on the bill. If payment is not received within twenty-nine (29) days of the ~~due~~ bill date and after proper notice to the customer, utility services will be subject to termination.
- E. If payment is not received by the Utility by 4:30 p.m. on the delinquent date listed on the bill, the current bill amount will be subject to a 5% increase.

Kissimmee Utility Authority

Miscellaneous

Fourth ~~Third~~ Fifth Revised Sheet No. 5.0
Cancelling ~~Third Fourth~~ Revised Sheet No. 5.0

Deposits:

- A. All applicants for utility service are required to post a utility deposit prior to having service provided. The utility service deposit shall be determined as follows:
1. Residential Electric Deposit will be a minimum of One Hundred Twenty Five Dollars (\$125.00).
 - a. A residential customer who can provide a Letter of Credit from their previous electric, water or gas utility showing a satisfactory twelve (12) month payment history, as provided herein, ~~at any point within the past twenty-four (24) months, that is no more than (12) months old,~~ may have their deposit requirements waived.
 - b. A residential customer's deposit may be waived if a credit check initiated by the Utility reveals a satisfactory credit history as determined by the Utility. If the credit check reveals an unsatisfactory credit history, a high risk cash deposit of two times the normal residential deposit will be required and any amount over the minimum deposit may be billed on the customer's first utility bill.
 - c. Guarantee -- A customer may have their account guaranteed by another residential KUA customer of the same customer class with a satisfactory payment history (as provided herein).
 2. All Non-Residential Service ~~will be a calculated minimum of one hundred dollars (\$100.00).~~
 - a. Cash, Irrevocable Bank Letter of Credit or Assigned Certificate of Deposit or Surety Bonds - Two times the average monthly billing for service as calculated during the preceding twelve (12) months of active service. Without the required billing history, the deposit shall be estimated.
 - b. ~~Surety Bond Deposits -- Three (3) times the average monthly billing for service as calculated during the preceding twelve (12) months of active service. Without the required history, the deposit shall be estimated.~~ A non-residential customer may reinitiate service within twelve (12) months of termination without paying a deposit provided that the customers last twelve (12) months of active service prior to and including termination meets the satisfactory payment requirements. A commercial customer must also have had a minimum three (3) years of continuous service history.
 - c. ~~In any event, the minimum non-residential electric deposit shall be One Hundred Dollars (\$100.00).~~ Guarantee -- A customer may have their account guaranteed by another non-residential KUA customer with a satisfactory payment history (as provided herein).
 3. Deposit for Temporary Electric for Construction shall be:
 - a. Residential - Twenty Dollars (\$20.00)
 - b. Non-Residential - One Hundred Dollars (\$100.00)

Issued by: James C. Welsh
President & General Manager

Effective: July 1, 1990 September 1, 1999

- B. Additional deposits will be required of any class of utility customers whose utility service has had two (2) forced collections within a twelve (12) month period, or has a non-pay terminate with (2) delinquents in the prior six (6) month period, or has a previous unpaid balance. Notice of the requirement for an additional deposit must be given to the utility customer by first class mail, allowing thirty (30) days for payment from the date of mailing, except in the case of a former customer returning to the utility's system where the additional deposit must be made prior to receiving service. The additional deposit required shall not exceed two (2) times the average billing for service as calculated during the preceding twelve (12) months of active service. A Non-Residential Service Customer may post a Surety Bond equal to ~~three (3)~~ two (2) times the average billing or an Irrevocable Bank Letter of Credit or an assigned Certificate of Deposit equal to two (2) times the average billing for service during the preceding twelve (12) months of active service. In either case, the additional deposit amount will be estimated when there is an absence of the required billing history.
- C. A Residential Customer's deposit shall be eligible for refund after one (1) year as a credit to the thirteenth (13) bill provided that a satisfactory payment record exists. In addition, the deposit shall become refundable upon discontinuance of service, less such amounts as may be due from the customer entitled to the deposit. A General Service Customer's deposit will be eligible for refund as a credit on the 37th bill. General Service Deposits will be refunded provided a satisfactory payment record exists. In addition, the General Service Deposit shall be eligible for refund upon discontinuance of service, less such amounts as may be due from the customer entitled to the deposit.
- D. No customer depositor shall be entitled to receive interest on ~~his~~ their cash deposit until the deposit is refunded. Interest shall be calculated monthly and be refunded when the deposit is refunded as provided by this article or by check in the case of a credit balance when the account is terminated. Interest as calculated shall be considered as a part of the deposit for the purpose of application of deposits to unpaid bills. Interest will not be calculated or refunded unless the customer has provided the Utility with a ~~SSN~~ Social Security Number or Federal ID # Number.
- E. Interest shall be calculated and paid based on the moving average rate of the State Board of Administration (SBA) as of the last business day of the second month previous to the date of implementation. Interest shall be compounded monthly. Partial months interest shall be pro-rated based upon that months average interest rate.
- F. For a Residential Customer, a satisfactory payment record shall be defined as one in which during the previous twelve (12) months of active service, the customer has not been charged with more than two (2) notices of delinquency or for returned checks or similar instruments or any combination thereof, during the preceding twelve (12) months of active service and has had no forced collection of billings or terminations for non payment of bill: one (1) returned check and one (1) delinquent notice or two (2) delinquent notices, with no forced collections or non-pay terminations. The minimum period a residential customer's deposit will be held is one (1) year.
- G. For a General Service customer, a satisfactory payment record shall be defined as one in which during the previous twelve (12) months of active service, the customer has not been charged with more than two (2) notices of delinquency or for returned checks or similar instruments or any combinations thereof, during the preceding twelve (12) months of active service and has had no forced collection of billings or terminations for non payment of bill: one (1) returned check and one (1) delinquent notice or two (2) delinquent notices, with no forced collections or non-pay terminations. The minimum period a residential customer's deposit will be held is three (3) years.

Other Charges:

- A. Should the Utility order service disconnected for any reason other than an unsafe or hazardous condition, the following charges will be assessed to the Utility account:
1. Disconnection of service at the meter \$30.00
 2. Disconnection of service at the pole or transformer \$60.00
 3. Tampering (in addition to the disconnect charge) \$30.00
 4. Forced collection charge when meterman has been dispatched for service disconnection of meter \$10.00
 5. Damage to or replacement of utility equipment based on cost (Various).
- B. Meter Test - A charge of fifteen dollars (\$15.00) shall be made for all Utility meter tests requested by the utility customer, except that if there has not been a meter test during the preceding twelve (12) months or if the utility meter is found to be defective, no charge will be made.
- C. Transfer of Utility Services or Vacation Turn-On. A charge of seven dollars and fifty cents (\$7.50) shall be made for transferring utility service from one service location to another service location or reconnecting a meter previously placed on vacation status.
- D. Initiation of Service - A charge of seven dollars and fifty cents (\$7.50) shall be made for initiating utility services at a utility customer's request.
- E. Energy Conservation Energy Audit Charges:
1. Residential Energy Audit (Class A) \$15.00
 2. Alternate Walk-Through Audit N/C
- F. If a check or similar instrument fails to clear the institution on which it is drawn, regardless of the reason, a surcharge of ten dollars (\$10.00) or five (5%) of the total, whichever is the greater, will be assessed for the handling of the check or instrument.
- G. Method of Extending Electrical Service:

Where electric service facilities do not exist, within the service area of Kissimmee Utility Authority, the customer will be required to pay the utility at the execution of a contract, thirty-five (35) percent of the total estimated cost of said construction. Further, upon receipt of the equipment and construction materials and prior to actual construction, the customer shall contribute an additional thirty-five (35) percent of the total estimated cost of construction. Upon completion of the facility extension, a final settlement will be made based on seventy (70) percent of the total actual construction costs.

However, for a period up to three (3) years, if a subsequent customer(s) whose normal service requires the use of all or any portion of an extended facility which has been paid for as herein before set forth, the utility will rebate to the original customer the amount paid by the subsequent customer, provided the original customer remains active at the location to which the extension is made. The said amount to be charged to the subsequent customer(s) shall be an equal share in the cost of all or any portion of the original facilities which the subsequent customer(s) uses.

In no case shall subsequent customer(s) be required to share in the cost of facilities if the subsequent customers are on property which is part of a subdivision or development which the extended facilities were originally constructed to serve.

Due Diligence

The utility will use reasonable diligence at all times to provide continuous service at the agreed nominal voltage, and shall not be liable to the customer for complete or partial failure or interruption of service, or for fluctuations in voltage, resulting from causes beyond its control, or through the ordinary negligence of its employees, servants, or agents, nor shall the utility be liable for the direct or indirect consequences of interruptions or curtailments made in accordance with the provisions of its rate schedules for interruptible, curtailable, and load management service. The utility shall not be liable for any act or omission caused directly or indirectly by strikes, labor troubles, accidents, litigation, shutdowns or repairs or adjustments, interference by federal, state, or municipal governments, acts of God, or other causes beyond its control.