

State of Florida



# 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-

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REGISTRATION AND REPORTING

**DATE:** August 26, 1999

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

**FROM:** DIVISION OF ELECTRIC AND GAS (KUMMER) *RVE*  
DIVISION OF LEGAL SERVICES (COLLINS) *JDS*

**RE:** DOCKET NO. 990943-EM - PETITION BY THE CITY OF VERO BEACH TO DELETE ITS CURTAILABLE COMMERCIAL SERVICE RATE AND ITS QF TRANSMISSION RATE AND ADD A "DISCLAIMER OF LIABILITY" CLAUSE TO ITS GENERAL RULE AND REGULATIONS.

**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\990943.RCM

**ISSUE 1:** Should the Commission approve the "Disclaimer of Liability" clause proposed by the City of Vero Beach (the City)?

**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]*

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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.** The apparent reason for filing this language now is the Commerce Protection Act recently passed by the Florida Legislature. 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 Commission approve the changes proposed by The City to eliminate its Curtailable Service Rate and its Qualifying Facilities Transmission Rate Schedule?

**RECOMMENDATION:** Yes. No customers are being served under either rate and no customer will be affected by its closure.

**STAFF ANALYSIS:** The Curtailable Service Rate was first implemented in 1993 and the Qualifying Facility (QF) Transmission Tariff was implemented in 1986. No customers have requested service under either tariff since their adoption. The City believes both tariffs are out of date but have no basis for revising them since no customers have indicated interest in taking service under them. The Commission has not mandated that municipal utilities offer Curtailable or Interruptible service schedules, and federal regulations simply require that a utility develop a QF wheeling rate if one is requested. The City had indicated that, should a customer express interest in either a Curtailable rate or a QF transmission rate, the City will at that time develop an appropriate rate. Therefore the deletion of these two schedules 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.

VERO BEACH MUNICIPAL ELECTRIC SYSTEM

~~SIXTH FIFTH~~ REVISED SHEET NO. 4.0

CANCELING ~~FIFTH~~ ~~FOURTH~~ REVISED SHEET NO. 4.0

MISCELLANEOUS

STATE SALES TAX - State Sales Tax shall be applied to the total electric bill on all commercial and industrial accounts unless current state sales tax exemption certificate is on file with the Customer Service Department.

CITY UTILITY TAX - A City Utility Tax of ten percent (10%) shall be added to all rate schedules for service inside the city limits. The amount will not exceed the limitation established by Subsection 166.123, Florida Statutes.

OUTSIDE CITY SURCHARGE - A surcharge for service provided outside the corporate limits of the City shall be added to all rate schedules. The amount of the surcharge shall be equal to the utility tax imposed on service inside the City limits. The surcharge shall apply to the same base, at the same rate, in the same manner and to the same rate schedules as the utility tax, all as set forth in Rule 25-9.525 of the Florida Administrative Code.

TERMS OF PAYMENT - All bills are due when rendered and become delinquent ~~fifteen (15) twenty-one (21)~~ days from billing date. After ~~fifteen (15) twenty-one (21)~~ days, a delinquent notice is mailed allowing an additional ten (10) days. If not paid by date stated on delinquent notice, service may be discontinued without further notice.

At the option of the City, Electronic Payment of the customer's utility bill will be permitted.

COUNTY FEE-IN-LIEU-OF-FRANCHISE FEE - A six percent (6%) County fee-in-lieu-of-franchise fee shall be added to all rate schedules for electric, water, and/or sewer service provided to customers who reside in the unincorporated areas of Indian River County and receive service from the City and shall be applied to the total bill for such service pursuant to ordinance provisions of Indian River County.

STATE GROSS RECEIPTS TAX - A State Gross Receipts Tax ~~in the amount indicated below shall be added to all rate schedules effective on dates shown:~~

- a) ~~2% on all bills rendered on or after July 1, 1990~~
- b) ~~2.25% on all bills rendered on or after July 1, 1994~~
- c) ~~2.50% on all bills rendered on or after July 1, 1992~~

accordance with Section 203.01 of the Florida Statutes will be charged on electric sales at a factor of 2.5641percent.

DISCLAIMER OF LIABILITY - The City will use reasonable diligence at all times to provide continuous service at agreed normal 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 City 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 county government, acts of God, or other causes beyond its control.

Issued by: Rex Taylor John V. Little  
City Manager/Utilities Director

Approved: August 17, 1999 ~~July 1, 1990~~

VERO BEACH MUNICIPAL ELECTRIC SYSTEM

~~THIRD SECOND~~ REVISED SHEET NO. 4.1  
CANCELING ~~SECOND FIRST~~ REVISED SHEET NO. 4.1

MISCELLANEOUS

DEPOSITS

1) RESIDENTIAL -

- a) ~~All services (electric, water, sewer, garbage)~~ \$150.00  
Electric and additional service(s) (water, sewer, garbage)
- b) Electric Service only \$100.00
- c) Additional service(s) (water, sewer, garbage) Two times the  
average monthly  
bill-minimum of  
\$50.00

- 2) OTHER THAN (1) ABOVE - Two (2) times the average monthly bill.  
Minimum of \$50.00

Deposits in excess of \$500.00 may be made by Surety  
Bond or Irrevocable Letter of Credit issued by a bank.

INTEREST ON DEPOSITS - Six (6) percent per annum paid on cash deposits  
applied annually as a credit on July bill.

REFUND OF DEPOSITS

- 1) RESIDENTIAL - Deposits may be refunded (applied to the customer's account as a credit) after a period of three (3) years ~~providing~~ provided service has not been discontinued for non-payment and the customer has maintained a prompt payment record for the last twelve (12) months.
- 2) OTHER THAN (1) ABOVE - Deposits may be held by the City until final settlement of the customer's account, at which time such deposit shall be applied against any electric bill due the City for such service and any unused balance shall be refunded when such account is settled and closed.

TRANSFER OF DEPOSITS - Deposits may be transferred from one location to another providing the service remains in the same name.

Issued by: Rex Taylor John V. Little  
City Manager/Director of Utilities

Effective : August 17, 1999 ~~October 1, 1987~~