



Public Service Commission
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DATE: AUGUST 8, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF ECONOMIC REGULATION (FLETCHER, MERCHANT) & OFFICE OF THE GENERAL COUNSEL (HARRIS) *DBJ*
RE: DOCKET NO. 011073-WS - APPLICATION FOR RATE INCREASE IN BROWARD COUNTY BY FERNCREST UTILITIES, INC. COUNTY: BROWARD
AGENDA: 8/20/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 5-MONTH EFFECTIVE DATE: SEPTEMBER 1, 2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\011073.RCM

CASE BACKGROUND

Ferncrest Utilities, Inc. (Ferncrest or utility) is a Class B utility providing water and wastewater service for approximately 1,407 water and 1,351 wastewater customers in Broward County. Ferncrest's service territory is located within a Water Resource Caution Area within the South Florida Water Management District. For the year ended December 31, 2001, the utility reported water operating revenues of \$508,282 and a net operating loss of \$68,115. Wastewater operating revenues were \$643,843, with a net operating loss of \$33,164.

On January 11, 2002, the utility filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes. By letter dated January 31, 2002, staff informed Ferncrest of numerous minimum filing requirement (MFR) deficiencies and instructed the utility to correct these deficiencies no later than March 1, 2002. On

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February 14, 2002, Ferncrest corrected most of the deficiencies. However, the utility's MFRs remained deficient with respect to information regarding its related party transactions, pursuant to Rule 25-30.436(4)(h), Florida Administrative Code. On April 1, 2002, Ferncrest satisfied the MFRs, and this date was designated as the official filing date, pursuant to Section 367.083, Florida Statutes. The utility requested that the Commission process its case under proposed agency action (PAA) procedures, pursuant to Section 367.081(8), Florida Statutes.

The utility's last rate case was finalized by Order No. PSC-95-1399-FOF-WS, issued November 15, 1995, in Docket No. 940765-WS. In that order, rate base was set for the December 31, 1994, test year and an overall rate of return of 10.68% was approved. The utility implemented price index rate increases every year since the last rate case, including a 2000 price index effective June 15, 2001, and a 2001 price index effective November 3, 2001. Ferncrest also received four pass-through rate adjustments since the last rate case.

The utility requested that the test year for both interim and final purposes in this current proceeding be based on the year ended December 31, 2000. The final requested revenues are \$666,640 for water and \$772,433 for wastewater. This represents an increase of \$103,350 for water and \$38,900 for wastewater, or 18.35% and 5.30%, respectively.

A customer meeting was held on June 5, 2002 at the Deicke Auditorium in Plantation, Florida. Five customers provided testimony at this meeting. These customers expressed the following concerns: 1) poor customer service by utility management; 2) present rates are too high; 3) water shut-off without notice; 4) chlorine level in drinking water is too high; 5) no fire flow protection is provided.

By Order No. PSC-02-0879-PCO-WS, issued July 1, 2002, the Commission suspended the utility's final requested rates and approved the utility's requested interim rates. Ferncrest requested interim revenues of \$642,976 for water and \$754,569 for wastewater. This represents an increase of \$93,750 for water and \$35,460 for wastewater, or 17.07% and 4.93%, respectively. Based upon the Commission Approved tariff, the utility's interim rates were effective for service rendered on or after June 20, 2002.

On July 18, 2002, Ferncrest filed a petition to withdraw its application for a rate increase. This recommendation is being brought to the Commission for acknowledgment of the utility's petition to withdraw its application for a rate increase. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Ferncrest's petition to withdraw its application for a rate increase be acknowledged?

RECOMMENDATION: Yes. (FLETCHER, HARRIS)

STAFF ANALYSIS: On July 18, 2002, Ferncrest filed a petition to withdraw its application for a rate increase. In its withdrawal petition, the utility stated that it withdraws its rate increase request with prejudice because Ferncrest will not seek any further rate increase based upon the use of the test period approved in this proceeding. Further, the utility stated that any rate increase sought in the future will be an entirely new proceeding, based upon the law and rules and regulations in force at that time. Ferncrest's attorney informed staff by phone that the reason for the utility's withdrawal is that it is not in the best interest of the company or its customers to proceed with rate relief at this time. Further, staff notes that the utility did not request a refund of its filing fee for this proceeding.

The utility's tariff sheets were approved by staff for the implementation of interim rates for service rendered on or after June 20, 2002. Ferncrest stated that although interim rates have been approved, there have been no bills sent to customers at the approved higher interim rates. The utility states that the next date bills would have been sent to customers is on or about August 1, 2002. Further, Ferncrest will only bill customers the rates in effect prior to the approved interim rates. As a result, no refunds associated with the approved interim rates are required.

On July 18, 2002, Ferncrest submitted revised tariff sheets that contain the rates in effect prior to the approved interim rates. Rule 25-22.0407(10), Florida Administrative Code, requires notice to the customers no later than the same date of the first bill containing any revised rates. On July 29, 2002, the utility

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submitted a proposed customer notice. With a few modifications, staff approved the notice on the same day. On August 1, 2002, Ferncrest sent the notice to all of its customers and sent the customer bills out which charged the rates in effect prior to the Commission approved interim rates.

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Staff recommends that the Commission find Ferncrest's voluntary dismissal of its petition for a rate increase divests the Commission of further jurisdiction over this matter. The only additional action the Commission can take is to acknowledge Ferncrest's notice of voluntary dismissal with prejudice and close the docket.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, this docket should be closed because no further action is required. (HARRIS, FLETCHER)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, this docket should be closed because no further action is required.