

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
alleged improper billing by
Sanibel Bayous Utility
Corporation in Lee County in
violation of Section 367.091(4),
Florida Statutes.

DOCKET NO. 020331-SU
ORDER NO. PSC-02-1298-PAA-SU
ISSUED: September 23, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER CONSOLIDATING DOCKETS, APPROVING TEMPORARY RATES AND
CHARGES SUBJECT TO REFUND, AND DECLINING TO INITIATE SHOW CAUSE
PROCEEDINGS AT THIS TIME
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT OFFER AS MODIFIED

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action approving settlement offer as modified
herein is preliminary in nature and will become final unless a
person whose interests are substantially affected files a petition
for a formal proceeding, pursuant to Rule 25-22.029, Florida
Administrative Code.

BACKGROUND

Sanibel Bayous Utility Corporation (SBUC or utility) is a
Class C wastewater utility located in Lee County. The utility
provides wastewater service to approximately 258 residential
customers and 3 general service customers in Sanibel Bayous

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Subdivision, Heron's Landing Subdivision, the Ridge Subdivision and Blind Pass Condominiums on Sanibel Island. Water service is supplied by Island Water Association. Tariff rates were approved during the grandfather process on June 4, 1976.

The utility was granted Wastewater Certificate No. 207-S pursuant to Order No. 7402, issued August 24, 1976, in Docket No. 760364-S. The utility has never had a rate case or other proceeding before this Commission. The utility's 2001 Annual Report shows annual operating revenue of \$46,239, operating expenses of \$91,712 and a net operating loss of \$45,473.

According to annual reports filed with the Commission, SBUC was owned by Mr. William Broeder from 1976 until 1989. In 1990, the utility was jointly owned by Mr. Broeder (50%) and Mr. Gary Winrow (50%). Mr. Winrow has been actively involved in the management and day-to-day operations of the utility since 1994 as part of an arrangement to obtain wastewater service for his development of some real estate units. Although Mr. Winrow was able to compile billing information from 1988 to date, detailed records for earlier years were not available.

On September 5, 2001, our staff notified SBUC that it appeared, in reviewing its 2000 Annual Report, that the utility was in violation of Section 367.091(4), Florida Statutes, which specifies that a utility may only impose and collect those rates and charges approved by the Commission. Our staff requested that billing information be provided within 30 days of the date of the letter. On October 2, 2001, the utility's accountant provided part of the billing information requested in staff's September 5, 2001 letter.

Following a review of the information provided by the utility, on October 8, 2001, our staff notified SBUC that it appeared to be in violation of Section 367.091(4), Florida Statutes, and that it must immediately reduce customer charges to the authorized tariff rates and that the increase in rates must be refunded. In addition, our staff requested that, within 30 days of the letter, the utility provide additional billing information to calculate the amount of the customer refunds. Also, our staff provided a list of individuals who could assist the utility with the refund calculation and enclosed a staff assisted rate case (SARC)

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application along with a copy of Rule 25-30.455, Florida Administrative Code, which details the SARC process.

The utility failed to respond within the timeframe requested. On two subsequent occasions, staff telephoned the utility, inquiring as to the status of SBUC's response to staff's data requests. To the first inquiry, the utility indicated the information would be provided by November 30, 2001; to the second inquiry, SBUC stated it would file its response by December 21, 2001. On January 3, 2002, our staff attached a copy of the October 8, 2001, letter and requested that the utility respond or staff would recommend the initiation of a show cause proceeding. On January 14, 2002, the utility provided the requested information on the rates and charges collected by the utility.

In an effort to reach a resolution to this matter, on March 6, 2002, Mr. Winrow, Mr. John Guastella, the utility's consultant, and Mr. Mike Jenkins, of the Office of Public Counsel, met with our staff to discuss the improper increases in rates, possible refunds, and the possibility of the utility filing for a SARC. Mr. Winrow provided additional billing, plant and contributions in aid of construction (CIAC) information, and a pro forma income statement. The utility offered: to refund to residential customers the rate increase initiated in April 2000; to continue charging rates of \$12 and \$14 per month for multiple dwelling and single family residential customers and \$25 per month for general service customers, respectively; to record connection fees as CIAC; and to file a SARC. Mr. Winrow stated that the utility's method of refund was to provide free service to residential customers for the last quarter of 2001. He claimed that adjustment nearly offset all of the additional amounts collected under the \$2.67 monthly increase from April 2000 through September 2001.

Subsequent to the meeting on March 6, 2002, Mr. Guastella drafted a memorandum containing the above-noted proposed resolution, an outline of the events that have transpired since October 3, 2001, and informational schedules. Our staff received that memorandum on April 5, 2002. The utility proposed to: (1) maintain the \$12 and \$14 rates it claims that it has always charged residential customers; (2) maintain the \$25 rate charged to General Service customers; (3) treat connection fees as CIAC; and (4) seek a staff assisted rate case. In addition, the utility intends to

undertake substantial improvements to its system, estimated at \$47,000, in order to comply with anticipated Department of Environmental Protection (DEP) requests with respect to the utility's pending renewal of its Operating Permit. Finally, the memorandum described SBUC's refund of amounts collected under the \$2.67 increase from April 2000 through September 2001.

In a May 8, 2002 letter, our staff reminded the utility of the need to file its SARC prior to staff's filing a recommendation addressing the proposal. Applying for the SARC was an element of the proposal and demonstrated the utility's good faith effort to come into compliance with Florida Statutes. SBUC was also reminded to file its Annual Report and to pay its Regulatory Assessment Fee (RAF). Pursuant to Rule 25-30.455(8)(c) and (d), Florida Administrative Code, to qualify for a SARC, a current annual report must be on file with the Commission and the utility must be current in its payment of RAFs.

The utility applied for a SARC on May 16, 2002, and Docket No. 020439-SU was opened to address that application. This Order addresses the proposed resolution offered by SBUC. Our staff originally intended to rely on audit findings in the SARC docket in making a recommendation in this docket and to bring it to an earlier agenda. However, due to delays in obtaining requested information from the utility, the audit due date has been postponed. Because the importance of establishing temporary rates outweighs waiting for more accurate accounting information, several issues arising in this docket will be addressed and finalized in the SARC docket.

UTILITY'S OFFER, TEMPORARY RATES AND CHARGES, AND SARC FILING

Section 367.091(4), Florida Statutes, provides: "A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval." SBUC's Original Tariff Sheet No. 17.0, approved June 4, 1976, authorized a rate of \$12.00 per month for residential service and Original Tariff Sheet No. 17.1 authorized a rate of \$10 per month per unit for multiple-dwelling units. There are no tariffs authorizing general service or service availability charges. Based on data supplied by the utility on March 8, 2002, SBUC has charged

\$14 per month for residential service and \$12 per month for multiple dwelling service, \$25 per month for general service and \$2,625 for connection fees since 1976. The utility also improperly increased its residential rate to \$16.67 per month in April 2000. The multiple dwelling rate has never been changed. These two separate increases in rates and charging of general service rates and service availability charges were not approved by this Commission and are in apparent violation of Section 367.091(4), Florida Statutes. The following table shows the monthly rates and connection fees charged by SBUC and the proposed rates.

	COMMISSION APPROVED TARIFF RATES June 4, 1976	RATES CHARGED 1976 - 3/2000	RATES CHARGED 4/2000 - 9/2001	PROPOSED RATES
Residential	\$12	\$14	\$16.67	\$14
Multi dwelling	\$10	\$12	\$12	\$12
General Service		\$25	\$25	\$25
Connection Fee		\$2,625	\$2,625	\$2,625

Pursuant to a memorandum received by our staff on April 5, 2002, Mr. Guastella, on behalf of the utility, outlined the events that have transpired since October 3, 2001, proposed a resolution, and provided informational schedules. The utility's proposal is discussed below.

Refunds

SBUC's proposal states that upon notification by our staff that it appeared to be in violation of Florida Statutes, the utility on its own initiative, provided free service to the residential customers for the last quarter of 2001. According to SBUC, that action offset nearly all of the additional amounts collected under the \$2.67 increase from \$14 to \$16.67 to residential customers from April 2000 through September 2001. The utility asserts that the increase generated \$6,921 of additional

revenues through September 2001, and the amount refunded was \$6,258.

As previously described, the utility has charged unauthorized rates to customers since approximately 1976. We have estimated the amount of refund SBUC might be required to make under two scenarios. Should SBUC be required to make a total refund to residential, general service and multiple dwelling customers of all the revenues collected in apparent violation of its tariff from 1976 through December 31, 2001, the estimated refund would be approximately \$142,897. Should SBUC be required to refund the revenues collected from residential customers due to the rate increase from \$14 to \$16.67 in April 2000 through September 31, 2001, the estimated refund would be approximately \$6,921.

The overcollections from 1976 to March 2000 shall not be refunded at this time. We believe this would place an insurmountable burden on the utility. In determining any refund, we consider a utility's financial viability and ability to raise debt. Requiring a full refund would probably bankrupt the utility, and such a remedy would be too harsh given that the rates the utility was charging are not unreasonable. In addition, many of the customers from whom the charges were collected are probably no longer customers of the utility and a large refund will provide new customers an undeserved windfall. When possible, refunds should be given only to those customers who were overcharged. The appropriate amount of any further refunds shall be calculated in the utility's SARC, Docket No. 020439-SU. Therefore, we will make no decision on the refund at this time.

CIAC

SBUC estimated that it collected \$226,576 in connection fees from 1976 through 2001; the utility estimated \$69,490 in amortization, for a net amount of \$157,086. Our staff was unable to estimate CIAC because the audit report was delayed and our staff had intended to rely on the number of billing units identified in the audit report to estimate CIAC. The utility was not authorized by this Commission to collect these fees. In its proposal, SBUC agreed to record connection fees as CIAC, which is a reduction to rate base. This treatment will benefit customers by reducing rate base, thereby reducing the return the utility is allowed to earn on

its investment. In Orders Nos. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396-WS, and PSC-00-1676-PAA-SU, issued September 19, 2000, in Docket No. 000715-SU, we allowed Burkim Enterprises, Inc., and North Peninsula Utilities Corporation, respectively, to keep unauthorized CIAC collections from the developer, which benefitted the customers.

It appears that requiring a refund of CIAC would place SBUC in a bankruptcy situation, in that it does not appear that the utility has the financial ability to make such a large refund. In addition, many customers from whom the connection fees were collected may no longer be customers of SBUC.

The utility shall be allowed to continue collecting CIAC, as a temporary charge, subject to refund, pending the proper disposition and determination of the amount of the CIAC collection in the SARC.

Residential and General Service Rates

In its proposal, SBUC offers to continue charging residential rates of \$14 per month, multi-dwelling rates of \$12 per month, and general service rates of \$25 per month. The utility shall be allowed to charge these rates temporarily so that customers will not experience the confusion of multiple rate changes. Based on the utility's SARC application having been filed on May 16, 2002, new rates could become effective as early as the end of January 2003. By continuing the current rates, the customers will avoid frequent rate changes, and the utility will avoid the expense of changing its billing system several times.

Based on a review of the revenues and expenses reported in the utility's 2001 Annual Report, the utility appeared to have a net operating loss of \$45,473 for 2001. The utility should be allowed to recover reasonable costs of providing service. It appears that the utility's proposed rates and charges are not unreasonable given the cost of providing service. However, during the SARC, the utility's books and records will be audited and issues concerning the appropriate revenue requirement and rate structure will be addressed.

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For the above reasons, the utility shall continue charging residential rates of \$14 per month, multi-dwelling rates of \$12 per month, and general service rates of \$25 per month temporarily until a change in rates is approved by this Commission in a subsequent proceeding. The utility shall hold the difference between the proposed temporary rates and the tariff rates (\$14 - \$12 = \$2; \$12 - \$10 = \$2) subject to refund, during the pendency of the SARC, in Docket No. 020439-SU. SBUC shall keep an accurate and detailed account of the unauthorized rate increase from \$10 to \$12 and from \$12 to \$14 on a going forward basis until the resolution of the SARC. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. In addition, the utility shall file revised tariff sheets within 20 days of the date of the Consummating Order in this docket to reflect the Commission-approved temporary rates and staff shall administratively approve the tariff sheets upon verification that the tariffs are consistent with our decision.

In no instance should the maintenance and administrative costs associated with a refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility.

In the event of a protest to the proposed agency action portion of this Order, the utility shall be allowed to continue charging the delineated rates and charges as temporary rates and charges subject to refund, and shall file the appropriate tariffs.

Staff Assisted Rate Case

By telephone, Mr. Winrow advised our staff of the utility's many net losses over the years and of the need for SBUC to make \$47,000 in improvements this year in order to obtain a renewal of its DEP Operating Permit. Our staff discussed the utility's options and explained the regulatory impact to Mr. Winrow. As a result, the utility decided to seek rate relief through filing for a SARC.

The proposal submitted by the utility appears to be a reasonable resolution to this matter. The proposal shall be approved with the following modifications: (1) the proposed rates shall be approved temporarily, pending the decision in Docket No.

020439-SU; (2) the utility shall file revised tariff sheets within 20 days of the date of the Consummating Order in this docket to reflect our approved rates and our staff shall administratively approve the tariff sheets upon verification that the tariffs are consistent with our decision; (3) the utility shall hold the difference between the approved temporary rates and the originally approved current tariff rates (\$14 - \$12 = \$2; \$12 - \$10 = \$2) subject to refund, pursuant to Rule 25.30-360, Florida Administrative Code, during the pendency of the SARC, in Docket No. 020439-SU; (4) Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund; and (5) the amount of any additional refunds and the appropriate disposition and amount of CIAC shall be determined in the SARC.

Security for Temporary Rates

The approved temporary rates require that SBUC hold the difference between those temporary rates and the original tariffed rates subject to refund during the pendency of the SARC. Rule 25-30.360(6), Florida Administrative Code, requires that utilities provide security for money being collected subject to refund; the money shall be secured by a bond unless we specifically authorize some other type of security such as placing the money in escrow, a corporate undertaking, or provision of a letter of credit. The utility shall provide security in the form of a bond or letter of credit in the amount of \$4,283. Alternatively, the utility shall establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond shall contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission either approves the rates permanently or grants the utility a rate increase in the SARC; or
- 2) If the Commission denies any increase above the tariff rates, the utility shall refund the

difference between the temporary rates and the tariff rates.

If the utility chooses a letter of credit as a security, it shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until a final Commission order is rendered in the SARC, either approving or denying the temporary rates and/or approving or denying a rate increase.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the

purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

- 8) The Director of Commission Clerk and Administrative Services must be a signatory to the escrow agreement.

This account must specify by whom and on whose behalf such monies were paid.

SHOW CAUSE PROCEEDING

Section 367.091(4), Florida Statutes, provides that "A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval." It appears that SBUC has violated this statute.

Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Thus, any intentional act, such as the utility's collection of rates and charges not approved by the Commission would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

According to the utility, from 1976 until April 2000, SBUC charged the same rates, albeit in violation of its Commission authorized tariff. In April 2000, after twenty-four years, the utility increased its residential rates from \$14 to \$16.67 per month. The utility acknowledged its error in charging rates that were not authorized by the Commission and its ignorance of the regulatory requirements with respect to rate increases. The utility stated that rates have been too low to produce enough revenue to cover the cost of operations or generate any return on investment.

As discussed previously, the CIAC collected by SBUC is a reduction to the utility's investment and therefore a benefit to the customers. Also, as noted earlier, we allowed Burkim Enterprises, Inc., and North Peninsula Utilities Corporation to keep unauthorized CIAC collections from the developer, which benefitted the customers.

We will analyze data obtained in the SARC, i.e., the audit report, billing information, the refund analysis, and customer input to determine whether a show cause proceeding is warranted. However, we note that our staff has experienced problems and delays in obtaining the cooperation and records needed to audit this utility and to process its SARC. Also, it appears that the utility did not bill monthly as required by its tariffs. Therefore, while we will not initiate a show cause proceeding at this time, the utility shall be put on notice that if it does not bill properly in accordance with its tariffs, or if it does not cooperate and provide our staff and auditors with the information requested, a show cause proceeding will be initiated. The decision of whether to initiate a show cause proceeding will be decided in the SARC.

CONSOLIDATION OF DOCKETS

Rule 28-106.108, Florida Administrative Code, provides that:

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

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Docket Nos. 020331-SU and 020439-SU involve the same party, i.e., SBUC. Because of delays by the utility in providing requested information, several issues from this docket must be resolved in the SARC docket. Therefore the dockets involve the same or similar issues of fact, law and policy: the appropriate amount of any additional refund, the appropriate disposition and amount of CIAC, and whether SBUC should be ordered to show cause why it should not be fined for collecting rates and charges in apparent violation of Florida Statutes.

Consolidation of the dockets would promote the just, speedy and inexpensive resolution of both proceedings and would not unduly prejudice the rights of any party. Therefore, Docket No. 020331-SU shall be consolidated with Docket No. 020439-SU.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed resolution of Sanibel Bayous Utility Corporation is approved as modified in the body of this Order. It is further

ORDERED that the provisions of this Order approving this proposed resolution, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Sanibel Bayous Utility Corporation shall be allowed to charge temporary rates and charges subject to refund as set forth in the body of this Order, and shall continue charging residential rates of \$14 per month, multi-dwelling rates of \$12 per month, and general service rates of \$25 per month temporarily until a change in rates is approved by this Commission in a subsequent proceeding. The utility shall hold the difference between the proposed temporary rates and the tariff rates ($\$14 - \$12 = \$2$; $\$12 - \$10 = \$2$) subject to refund, during the pendency of the SARC, in Docket No. 020439-SU. It is further

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ORDERED that Sanibel Bayous Utility Corporation shall keep an accurate and detailed account of the unauthorized rate increase from \$10 to \$12 and from \$12 to \$14 on a going forward basis until the resolution of the SARC. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that Sanibel Bayous Utility Corporation shall file revised tariff sheets within 20 days of the date of the Consummating Order in this docket to reflect the Commission approved temporary rates and charges, and our staff shall administratively approve the tariff sheets upon verification that the tariffs are consistent with our decision. It is further

ORDERED that Sanibel Bayous Utility Corporation shall file the appropriate security as set forth in the body of this Order. It is further

ORDERED that Sanibel Bayous Utility Corporation shall be put on notice that if it does not bill properly in accordance with its tariffs, or if it does not cooperate and provide our staff and auditors with the information requested, a show cause proceeding will be initiated. It is further

ORDERED that Docket No. 020331-SU shall be consolidated with Docket No. 020439-SU. It is further

ORDERED that this docket shall remain open to allow for final resolution of the issues set forth in the body of this Order.

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By ORDER of the Florida Public Service Commission this 23rd
day of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action declining to initiate show cause proceeding in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of

appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the portion of the order approving temporary rates and charges subject to refund, which is non-final in nature, may request (1) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's procedural action consolidating the dockets in this matter may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

As identified in the body of this Order, our action approving settlement offer as modified is preliminary in nature. Any person whose substantial interests are affected by the action

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proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 14, 2002. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this Order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.