



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-

COMMISSION
CLERK

02 OCT - 3 AM 10:07

RECEIVED-FPSC

DATE: OCTOBER 3, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (RENDELL, SARGENT) *RS*
OFFICE OF THE GENERAL COUNSEL (C. KEATING) *CK* *JD* *JD*

RE: DOCKET NO. 020925-WU - REQUEST FOR APPROVAL OF BULK IRRIGATION CLASS OF SERVICE IN MARTIN COUNTY BY MILES GRANT WATER AND SEWER COMPANY.
COUNTY: MARTIN

AGENDA: 10/15/02 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: OCTOBER 27, 2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020925.RCM

CASE BACKGROUND

Miles Grant Water and Sewer Company (Miles Grant or utility) is a Class B utility providing water and wastewater service in Martin County. Based on its 2001 Annual Report, the utility serves approximately 1,274 water customers and 1,207 wastewater customers. Revenues for 2001 were reported as \$260,856 and \$315,738 for water and wastewater, respectively. Net operating income for 2001 was \$33,406 for water and \$97,838 for wastewater.

On July 2, 2002, Miles Grant filed an application for a 2002 Price Index rate adjustment for water and wastewater. During the review of the application, staff became aware of a "bulk irrigation" gallonage charge used in revenue calculations for which there was no Commission approved tariff on file.

DOCUMENT NUMBER-DATE
10661 OCT-3 02
FPSC-COMMISSION CLERK

DOCKET NO. 020925-WU
DATE: October 3, 2002

In a letter dated August 9, 2002, Miles Grant was notified of staff's findings and asked to provide details of the service, customers served, the date service began, and why the utility had not filed for a new class of service pursuant to Section 367.091 Florida Statutes. The utility was cooperative, stating that it had intended to get the bulk irrigation class of service approved when it began providing service, and was surprised that it had never been completed.

On August 28, 2002, Miles Grant filed for a new class of bulk irrigation service with the Commission. The utility provided the Commission with letters between the utility and Miles Grant Country Club outlining an agreement between the two parties, a new tariff sheet for bulk irrigation, and annual revenues produced by the bulk irrigation service since 1998. The rate of the new class of service, along with the timeliness of this filing, will be discussed in this recommendation.

The Commission has jurisdiction over this subject matter pursuant to Sections 367.081, 367.091, 367.121, and 367.161, Florida Statutes.

ISSUE 1: Should Miles Grant Water and Sewer Company's request for a new class of service for bulk irrigation be approved?

RECOMMENDATION: Yes, Miles Grant's request for a new class of service for bulk irrigation should be approved. The utility should be allowed to continue collection of the bulk irrigation rates currently being charged, and Tariff Sheet No. 18.1 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets. (SARGENT)

STAFF ANALYSIS: During the review of Miles Grant's application for a 2002 Price Index rate adjustment, staff became aware of a bulk irrigation service for which the utility had no Commission approved tariff on file. Once the utility was notified of staff's findings, the utility was cooperative in providing information to apply for a new class of service.

Rule 25-9.005(4), Florida Administrative Code, states:

Whenever a new or additional service classification or rate schedule is filed with the Commission, the information required by subsection (1) above need not be furnished. In lieu thereof, a statement shall be filed stating the purpose and reason for the new service classification or schedule and, if determinable, the estimated annual revenue to be derived therefrom and the estimated number of customers to be served thereby.

The utility informed staff that the bulk irrigation service was provided to one customer, Miles Grant Country Club, pursuant to an agreement between the two parties entered into August 1988. This service is provided at a mutually agreed upon price of \$0.50 per thousand gallons.

Under this 1988 agreement, Miles Grant is to provide bulk irrigation water for area ponds of Miles Grant Country Club. As water is drawn from the ponds for irrigation of the golf course, Miles Grant provides the country club with bulk water in order to maintain the ponds at levels of six inches above mean sea level as required by the Department of Environmental Protection (DEP). Miles Grant Country Club only requires this service when there is not enough readily available effluent to keep the area ponds at their required levels.

Miles Grant provided staff with letters between the utility and Miles Grant Country Club outlining the agreement, a new tariff sheet for bulk irrigation, and annual revenues produced by the bulk irrigation service since 1998. These revenues are as follows:

Year	Revenue
1998	\$ 0.00
1999	\$ 0.00
2000	\$ 253.70
2001	\$ 511.90
2002 (YTD)	\$ 268.40

However, the utility did not provide any cost justification or support for how the rate was derived, other than it was mutually agreed upon by the two parties.

Section 367.091(6), Florida Statutes, states:

An application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification.

While no cost justification was provided in the filing by the utility, staff believes that the rate of \$0.50 per thousand gallons is reasonable in this instance. In Order No. PSC-95-1417-FOF-WS, issued November 21, 1995, the Commission approved bulk irrigation rates for Aquarina Developments, Inc., of \$0.50 per thousand gallons. In Order No. PSC-96-0124-FOF-WU, issued January 24, 1996, the Commission approved bulk irrigation rates for Braden River Utilities, Inc., including a gallonage charge of \$0.47 per thousand gallons.

While the Braden River Utilities, Inc., rates also included a base facility charge, staff believes that a base facility/gallonage rate structure is not appropriate for Miles Grant's proposed new class of service. In Order No. PSC-95-1417-FOF-WS, the Commission approved a gallonage only rate for Aquarina Development, Inc., stating that a base facility/gallonage rate structure was not

DOCKET NO. 020925-WU
DATE: October 3, 2002

appropriate given the usage characteristics of that service. Because Miles Grant Country Club only requires this bulk irrigation service when there is not enough readily available effluent to keep area ponds at DEP required levels, staff believes that a gallonage-only rate is appropriate.

It is important to note, however, that the above Orders approve rates for raw, untreated water for the purposes of irrigation. Miles Grant provides this service utilizing potable water. Staff believes the rate is a reasonable wholesale potable water rate as compared to a bulk raw water rate. However, the appropriateness of this rate will be further evaluated in the utility's next rate proceeding.

Staff believes the requested bulk irrigation rate of \$0.50 per thousand gallons is a reasonable charge given the circumstances, and Miles Grant's request for a new class of service for bulk irrigation should be approved. The utility should be allowed to continue collection of the bulk irrigation rates currently being charged and Tariff Sheet No. 18.1 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets.

ISSUE 2: Should Miles Grant Water and Sewer Company be ordered to show cause why it should not be fined for collecting charges not approved by the Commission, in apparent violation of Section 367.091(4), Florida Statutes?

RECOMMENDATION: No, Miles Grant should not be ordered to show cause why it should not be fined for collecting charges not approved by the Commission, in apparent violation of Section 367.091(4), Florida Statutes? (KEATING, SARGENT)

STAFF ANALYSIS: Miles Grant initiated a new class of bulk irrigation service on or about December 1988, providing bulk water to Miles Grant Country Club for irrigation and pond level maintenance purposes as required by the DEP. In doing so, Miles Grant failed to comply with Sections 367.091(4) and 367.091(5), Florida Statutes.

Section 367.091(4), Florida Statutes, states:

A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved.

Section 367.091(5), Florida Statutes, states:

If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

Section 367.161, Florida Statutes, authorizes the 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

DOCKET NO. 020925-WU
DATE: October 3, 2002

'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 failure to file for a new class of service with this Commission in a timely manner, 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.

Although Miles Grant did not comply with Sections 367.091(4) and 367.091(5), Florida Statutes, staff believes that a show cause proceeding is not necessary or appropriate for the following reasons. First, because the revenue generated by providing bulk irrigation to only one customer is of an immaterial amount, (averaging less than \$250/yr.), staff believes pursuit of a show cause proceeding or fine by the Commission would be unnecessarily excessive. Second, staff notes that Miles Grant has been cooperative in providing the necessary information to apply for a new bulk irrigation class of service since it was notified of staff's findings. Finally, Miles Grant has assured staff that while no approved tariff was on file with the Commission, all revenues generated by providing bulk irrigation services have been included in each of the past fourteen years' annual reports, and appropriate Regulatory Assessment Fees have been remitted.

For the reasons mentioned above, staff believes that it is not necessary to order Miles Grant Water and Sewer Company to show cause why it should not be fined by this Commission for failure to apply for a new class of service in compliance with Section 367.091(4), Florida Statutes.

DOCKET NO. 020925-WU
DATE: October 3, 2002

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. If Issue 1 is approved, the new tariff should become effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with all bulk irrigation charges held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order. (KEATING, SARGENT)

STAFF ANALYSIS: Yes. If Issue 1 is approved, the new tariff should become effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with all bulk irrigation charges held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order.