

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-

DATE: FEBRUARY 6, 2003

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

FROM: DIVISION OF ECONOMIC REGULATION (FITCH, DAVIS)
OFFICE OF THE GENERAL COUNSEL (JAEGER) *RF*

RE: DOCKET NO. 010869-WS - APPLICATION FOR STAFF-ASSISTED RATE
CASE IN MARION COUNTY BY EAST MARION SANITARY SYSTEMS,
INC.

AGENDA: 02/18/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION EXCEPT
ISSUES 3 AND 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\010869.RCM

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CASE BACKGROUND

East Marion Sanitary Systems, Inc. (East Marion or utility) is an existing Class "C" utility which provided water and wastewater service to approximately 41 residential customers during the test year ending December 31, 2000. On June 19, 2001, East Marion filed an application for a staff assisted rate case (SARC) and paid the appropriate filing fee on August 21, 2001. By Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, the Commission approved the utility's current rates, charges, and rate base. A portion of the rate base approved included an amount for pro forma fence replacements and other pro forma plant.

In the above-referenced order, the utility was ordered to complete the pro forma fence replacements within 90 days of the effective date of the order. The order became effective on September 18, 2002, with the issuance of Consumating Order No. PSC-02-1273-CO-WS. Therefore, the 90-day period ended

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December 18, 2002. The utility had made staff aware that it was having problems with completing the pro forma fence replacements by the due date and that it was attempting to find financing. The utility has provided staff with proof of insurance and posted contact numbers as required by the above referenced order. As of the date of this recommendation, the utility has not provided staff with a copy of a warranty deed or a long-term lease for the land on which its facilities are located. However, the deadline for the warranty deed or long-term lease to be submitted to the Commission is February 6, 2003..

By letter received January 3, 2003, the utility requested an extension of time to complete the fence replacements which are the final items of pro forma plant required. The utility owner contacted staff after having difficulty in securing funding for the fences. By letter received January 30, 2003, the utility withdrew its request for extension and acknowledged that the fence replacements would not be completed. The utility also acknowledged that a recommendation for rate reduction would follow. The Commission has jurisdiction pursuant to Section 367.0814, Florida Statutes.

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ISSUE 1: Should East Marion's rates be reduced to remove the rate impact of the fence replacements not completed by the utility?

RECOMMENDATION: Yes. Water rates should be reduced by 0.58% (\$126) annually and wastewater rates should be reduced by 4.47% (\$1,248) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates within seven days of the date of the consummating order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate water and wastewater rates are reflected on Schedule A. (FITCH)

STAFF ANALYSIS: As discussed in the case background, the utility was required to complete the pro forma fence replacements by Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, within 90 days of the effective date of the order. This 90-day period ended December 18, 2002. This order also specified that this docket remain open pending staff's verification that the utility has completed the pro forma replacement required.

Since the 90-day period expired, customers of the utility have informed staff that the fences have not been replaced. Staff planned an inspection to verify the fence replacements in mid-January. Staff received a letter from the utility on January 3, 2003, requesting an extension of time to complete the pro forma fence replacements.

Staff filed a recommendation for the February 4, 2003, Agenda, recommending that the utility be granted an extension. After the recommendation for extension was filed, the utility contacted staff with concerns about the ability to secure funding for the fence. Staff discussed the options with the utility including possible rate reduction if the fence was not completed. Staff received a letter from the utility on January 30, 2003, withdrawing the request for extension and acknowledging the potential for rate reduction.

At the beginning of the staff assisted rate case for this utility, the utility requested several pro forma items including the fence replacements and provided estimates of costs. The utility was not required by the Department of Environmental Protection (DEP) to replace the fence; however, the utility owner acknowledged a great deal of time being spent repairing the fence.

When staff inquired about a time-frame regarding completion of the fence replacement, the utility responded that it would not be done until DEP required the replacement. Staff did not believe that the fence replacements should be included in rates if the utility did not intend to complete the project. The fence replacements were not contained in staff's preliminary staff report that was discussed at the customer meeting.

After the customer meeting, the utility owner did not believe that enough hours were allocated for his services and provided staff with an hourly break down of the services he provided. A significant portion of these services were for repairing the existing fences. Staff evaluated the repair cost of the fence versus the fence replacement originally requested and believed that the fence replacement was the least cost alternative. The Commission approved the fence replacement as the least cost alternative in the above referenced order and required that the replacement be completed as discussed above.

Staff does not believe that customers should pay for items of plant that do not exist. Because the fence replacements are included in rates, and the replacements will not be completed, staff believes that rates should be reduced to remove the impact of the fence replacements.

The existing revenue requirement includes the fence replacements and the impact of retiring the old fences from rate base. Staff has calculated the revenue requirement associated with the fence replacement and retirement as \$298 for water and \$2,207 for wastewater. Applying the same methodology, staff has calculated the revenue requirement of the existing fence to be \$172 for water and \$959 for wastewater. The difference in revenue requirement (\$126 for water and \$1,248 for wastewater) represents the amount staff believes existing rates should be reduced by.

The Commission approved water and wastewater rates are designed to recover \$21,906 and \$27,910 respectively. Applying the reduction to revenue requirement of \$126 for water and \$1,248 for wastewater discussed above results in a 0.58% ($\$126 \div \$21,906$) and 4.47% ($\$1,249 \div \$27,910$) reduction in existing wastewater rates.

Several customers have contacted staff regarding possible refunds for the portion of the bills collected to date. However, the increase in rates approved in the above referenced order was

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not held subject to refund. The reason for this is that the utility needs the funds available to begin paying for the pro forma improvements required. Because these amounts were not held subject to refund and the utility was charging a Commission approved rate, staff does not believe that a refund can be ordered. Staff does not believe that the utility has benefitted from the collection of this rate since the fence replacements were the least cost alternative to the periodic repairs being performed. Because the utility has elected not to install the new fence, these repairs will continue.

Based on the above, staff recommends that water rates should be reduced by 0.58% (\$126) annually and wastewater rates should be reduced by 4.47% (\$1,248) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates within seven days of the date of the consummating order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate water and wastewater rates are reflected on Schedule A. The impact of revenue requirement discussed above can be found on Schedule B.

ISSUE 2: In the event of a protest of the PAA Order, what is the appropriate security to guarantee the amount subject to refund?

RECOMMENDATION: The security should be in the form of a bond or letter of credit in the amount of \$926. Alternatively, the utility could establish an escrow agreement with an independent financial institution. If security is provided through an escrow agreement, the utility should escrow 0.58% of its monthly water service revenues and 4.47% of its monthly wastewater services revenues as detailed in Issue No. 1. By no later than the twentieth day of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount held subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. (JAEGER, FITCH)

STAFF ANALYSIS: Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As recommended in Issue No. 1, the amount of the recommended rate reduction is \$126 for water and \$1,248 for wastewater on an annual basis. Assuming an eight-month time frame for staff to complete the hearing process, the potential refund amount would be \$926. Interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$10, making the total \$926, which should be collected under guarantee, subject to refund with interest.

The security should be in the form of a bond or letter of credit in the amount of \$926. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

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

- 1) The Commission denies the rate decrease; or
- 2) If the Commission approves the decrease, the utility shall refund the amount collected that is attributable to the decrease.

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If the utility chooses a letter of credit as security, it should 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 the final Commission order is rendered, and the amount of refund, if any, is determined.

If security is provided through an escrow agreement, the utility should escrow 0.58% of its monthly water service revenues and 4.47% of its monthly wastewater services revenues as detailed in Issue No. 1, and the following conditions should be part of the escrow agreement:

- 1) No funds in the escrow account may be withdrawn by the utility without the 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.

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

In no instance should the maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Also, by no later than the twentieth day of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

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ISSUE 3: Should East Marion Sanitary Systems, Inc., be ordered to show cause, in writing, within 21 days, why it should not be fined for its failure to complete the pro forma fence replacements in a timely manner as required by Order No. PSC-02-1168-PAA-WS?

RECOMMENDATION: No, show cause proceedings should not be initiated at this time. (JAEGER, FITCH)

STAFF ANALYSIS: Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, required East Marion to complete the pro forma fence replacement within 90 days of the effective date of that Order. That Order was made effective by Order No. PSC-02-1273-CO-WS, issued September 18, 2002. Therefore, the utility should have completed the replacement prior to December 18, 2002.

However, the utility had problems with obtaining financing, and, initially, on January 3, 2003, filed its request for extension of time to complete the pro forma replacement. Moreover, several customers advised staff that the pro forma fence replacement had not been accomplished as required by Order No. PSC-02-1168-PAA-WS. The utility should have filed any request for extension prior to December 18, 2002, and so this request was over 2-weeks late.

Staff had initially filed a recommendation that the utility be granted an extension. However, prior to this recommendation being considered by the Commission, the utility withdrew its request, indicating that it would not complete the pro forma replacement, and acknowledging that rates could be reduced. Therefore, staff withdrew its recommendation on granting an extension of time to complete the pro forma replacement, and filed this recommendation regarding the reduction in rates.

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 orders, 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 failure to complete the pro forma fence replacement in a timely manner, would

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meet the standard for a "willful violation." 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 regulated utilities are charged with knowledge of the Commission's orders, rules, and statutes, staff does not believe that this approximate two week delay in seeking an extension of time to complete the pro forma fence replacement rises to the level justifying the initiation of a show cause proceeding. Also, the revenues collected over the last couple of months for the fence replacement were less than annual repair expenditures the utility requested in the rate case for repairing the fence. Therefore, staff recommends that no show cause proceeding be initiated.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should not be closed. It should remain open pursuant to Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, in Docket No. 010869-WS. If the utility meets the land requirements pursuant to the above referenced order and if no timely protest is filed by a substantially affected person, the docket should be closed administratively upon staff's verification that Land requirements have been met. If a protest is filed within 21 days of the issuance of the Order, the tariffs should remain in effect with any increase held subject to refund pending resolution of the protest, and the docket should remain open. (FITCH, JAEGER)

STAFF ANALYSIS: This docket should remain open pursuant to Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, in Docket No. 010869-WS. If the utility meets the land requirements pursuant to the above referenced order and if no timely protest is filed by a substantially affected person, the docket should be closed administratively upon staff's verification that the Land requirements have been met. If a protest is filed within 21 days of the issuance of the Order, the tariffs should remain in effect with any increase held subject to refund pending resolution of the protest, and the docket should remain open.

RECOMMENDED RATE REDUCTION SCHEDULE

EAST MARION SANITARY SYSTEMS, INC.
 TEST YEAR ENDING 12/31/02

SCHEDULE NO. A-1
 DOCKET NO. 010869-WS

CALCULATION OF RATE REDUCTION AMOUNT
AND FOUR YEAR RATE REDUCTION

MONTHLY WATER RATES

<u>RESIDENTIAL AND GENERAL SERVICE</u>		<u>MONTHLY EXISTING RATES</u>	<u>MONTHLY RECOMMENDED RATES</u>
BASE FACILITY CHARGE:			
Meter Size:			
5/8"X3/4"	\$	9.40	9.35
3/4"		14.10	14.02
1"		23.50	23.36
1-1/2"		47.00	46.73
2"		75.21	74.78
3"		150.41	149.54
4"		235.02	233.67
6"		470.03	467.32

RESIDENTIAL GALLONAGE CHARGE

0-10,000 GALLONS	\$	1.96	1.95
ABOVE 10,000 GALLONS	\$	2.94	2.92
GENERAL SERVICE GALLONAGE CHARGE			
PER 1,000 GALLONS	\$	2.30	2.29

RECOMMENDED RATE REDUCTION SCHEDULE

EAST MARION SANITARY SYSTEMS, INC.
 TEST YEAR ENDING 12/31/02

SCHEDULE NO. A-2
 DOCKET NO. 010869-WS

CALCULATION OF RATE REDUCTION AMOUNT
AND FOUR YEAR RATE REDUCTION

MONTHLY WASTEWATER RATES

		<u>MONTHLY</u> <u>EXISTING</u> <u>RATES</u>	<u>MONTHLY</u> <u>RECOMMENDED</u> <u>RATES</u>
<u>RESIDENTIAL</u>			
BASE FACILITY CHARGE:			
Meter Size: All Meter Sizes	\$	14.55	13.90
GALLONAGE CHARGE:			
PER 1,000 GALLONS (10,000 gallon cap)	\$	4.44	4.24
<u>GENERAL SERVICE</u>			
BASE FACILITY CHARGE:			
Meter Size:			
5/8"X3/4"	\$	14.56	13.91
3/4"		21.83	20.85
1"		36.38	34.75
1-1/2"		72.77	69.52
2"		116.42	111.21
3"		232.85	222.44
4"		363.83	347.56
6"		727.65	695.11
GALLONAGE CHARGE:			
PER 1,000 GALLONS	\$	5.33	5.09

EAST MARION SANITARY SYSTEMS, INC.
TEST YEAR ENDING 12/31/02

SCHEDULE NO. B
DOCKET NO. 010869-WS

FENCE REPLACEMENT IMPACT ON WATER RATES

	<u>COMPLETED</u>	<u>NOT COMPLETED</u>	<u>DIFFERENCE</u>
Fence	2,138	1,738	
Accumulated Depreciation	986	(745)	
Averaging Adjustment	<u>(1,034)</u>	<u>31</u>	
Rate Base (Fence)	2,090	1,024	
Rate of Return	<u>10.00%</u>	<u>10.00%</u>	
Return on Fence	209	102	
Depreciation Expense	<u>76</u>	<u>62</u>	
Total	285	164	
true up (RAF)	<u>0.955</u>	<u>0.955</u>	
Impact	<u>\$298</u>	<u>\$172</u>	(\$126)

FENCE REPLACEMENT IMPACT ON WASTEATER RATES

	<u>COMPLETED</u>	<u>NOT COMPLETED</u>	<u>DIFFERENCE</u>
Fence	17,906	9,702	
Accumulated Depreciation	5,243	(4,308)	
Avg Adjustment	<u>(8,698)</u>	<u>179</u>	
Rate Base (Fence)	14,451	5,573	
Rate of Return	<u>10.00%</u>	<u>10.00%</u>	
Return on Fence	1,445	557	
Dep. Expense	<u>663</u>	<u>359</u>	
Total	2,108	916	
true up (RAF)	<u>0.955</u>	<u>0.955</u>	
Impact	<u>\$2,207</u>	<u>\$959</u>	(\$1,248)