

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** January 6, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Merta, Rendell)  
Office of the General Counsel (Fleming)

**RE:** Docket No. 030601-SU – Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.

**AGENDA:** 01/18/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** Statutory Deadline for 2002 Price Index Waived

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\030601.RCM.DOC

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### Case Background

North Peninsula Utilities Corporation (North Peninsula or utility) is a Class C wastewater utility serving approximately 548 customers in Volusia County. According to its 2002 annual report, the utility reported operating revenues of \$187,899 and operating expenses of \$161,307. This resulted in a net operating income of \$26,592.

On August 1, 2002, the utility implemented a 1.56% price index increase. A review of North Peninsula's 2002 annual report indicated that the utility may have exceeded its authorized rate of return. Pursuant to Order No. PSC-03-1001-PCO-SU, issued September 5, 2003, in this docket, the Commission initiated an investigation of the rates and charges of North Peninsula. In that Order, the Commission found that there were potential overearnings on an annual basis of \$12,797, but that only \$10,073 should to be held subject to refund and protected by security. The difference in the amount held subject to refund and protected by a security arrangement is the 2002 price index increase. Pursuant to Section 367.081(4)(d), Florida Statutes, the revenues associated with a price index are already subject to refund and need not be protected by a security arrangement.

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After numerous discussions between representatives of the utility and staff, the utility offered a settlement by letter dated September 1, 2004. However, the utility sustained damage to its lift stations and treatment facilities from recent hurricanes. On September 9, 2004, the utility requested a delay of action on its proposal to allow the utility an opportunity to assess the damage to the system and its effect on the settlement proposal. By letter dated November 29, 2004, the utility offered an amended settlement, a copy of which is attached to this recommendation as Attachment A. Staff's recommendation addresses the amended settlement. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve North Peninsula's proposed settlement?

**Recommendation:** Yes, the Commission should approve North Peninsula's proposed settlement dated November 29, 2004. The utility should be required to file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates within 30 days of the Consummating Order. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The rates should not be implemented until staff has approved the proposed customer notice, and the notice has been received by the customers. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Staff also recommends that the utility treat any unclaimed refunds as Contributions in Aid of Construction (CIAC) pursuant to Rule 25-30.360(8), F.A.C. (Merta)

**Staff Analysis:** As discussed in the case background, pursuant to Order No. PSC-03-1001-PCO-SU, the Commission initiated an investigation into the rates and charges of the utility, found that there were potential overearnings, and held revenues subject to refund. By letter dated September 1, 2004, North Peninsula proposed a settlement. However, the utility sustained damage from hurricanes Frances and Charley which effected the settlement proposal. On November 12, 2004, the utility provided invoices for the repair of damages to its facilities caused by the hurricanes. The utility offered an amended settlement by letter dated November 29, 2004, in order to resolve all outstanding issues without incurring additional costs in potential litigation. The proposed settlement provides as follows:

1. Refund of 1.56% of all revenues collected from the implementation of the utility's last index in August of 2002 through September 5, 2003.
2. Refund 7.09% of revenues collected from September 5, 2003 through the date of implementation of the reduced rates outlined below.
3. Both of the above refunds will be made, with interest, in accordance with the requirements of Rule 25-30.360, F.A.C.
4. The utility will immediately reduce all categories of rates by 2.37% on a going-forward basis.

Staff has reviewed the amended settlement dated November 29, 2004, and believes it is fair, just, and reasonable and is in the public interest. In consideration of the foregoing, staff recommends that the Commission approve the proposed settlement.

The utility should be required to file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates within 30 days of the Consummating Order. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice, and the notice has been

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received by the customers. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Staff also recommends that the utility treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. This docket should remain open pending staff's verification that the utility has completed the required refunds at which time the docket should be closed administratively. (Fleming, Merta)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. This docket should remain open pending staff's verification that the utility has completed the required refunds at which time the docket should be closed administratively.

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MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD

November 29, 2004

VIA HAND DELIVERY

Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: North Peninsula Utilities Corporation  
Rate Investigation; PSC Docket No. 030601-SU  
Our File No. 26097.04

Dear Ms. Bayo:

As a follow up to my letter of September 1, 2004, North Peninsula Utilities agreed with the staff to delay action on our September 1, 2004 settlement proposal, in order to allow the Utility to accumulate information and to provide it to the Commission staff concerning the damage caused by several hurricanes this fall which damaged and destroyed property owned by the Utility. We asked to have that considered in any going-forward rate reduction under our September 1, 2004 settlement proposal.

The Utility has revised its proposal for settlement of this case in order to resolve the outstanding issues without incurred substantial additional monies and potential litigation. North Peninsula Utilities Corporation hereby submits the following revised proposal for refunds and rate reductions on a going-forward basis:

1. Refund of 1.56% of all revenues collected from the implementation of the Utility's last index in August of 2002 through September 5, 2003.
2. Refund 7.09% of revenues collected from September 5, 2003 through the date of implementation of the reduced rates outlined below.
3. Both of the above refunds will be made, with interest, in accordance with the requirements of Commission Rule 25-30.360.

Blanca S. Bayo, Director  
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4. The Utility will immediately reduce all categories of rates by 2.37% on a going-forward basis.

If this revised proposal for settlement is acceptable to the Commission and its staff, we would like to move forward with implementation immediately and closing of the above-referenced case.

If you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBROM & BENTLEY, LLP



F. Marshall Deterding  
For The Firm

FMD/tms

cc: Troy Rendell  
Bart Fletcher  
Sam Merta  
Robert Hillman  
Tyree Wilson  
Doug Martin