

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate)	DOCKET NO. 900757-SU
increase in Collier County by)	ORDER NO. 24922
Naples Sewer Company d/b/a)	FILED: 8/16/91
Naples Industrial Park, Ltd.)	
<hr/>		

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
MICHAEL MCK. WILSON

ORDER DISMISSING APPLICATION FOR INCREASED RATES AND
REQUIRING REFUND OF INTERIM REVENUES

BY THE COMMISSION:

CASE BACKGROUND

Naples Sewer Company (NSC or utility) is a class "C" wastewater utility which has been providing service to an industrial park in Naples, Florida, since 1974. Upon granting NSC a grandfather certificate in 1986, this Commission approved NSC's then-existing rates. The instant proceeding is the utility's first rate case before this Commission.

NSC filed its application for increased rates on February 27, 1991. However, the information filed did not meet the minimum filing requirements (MFRs) established in Commission rules. After being informed of the deficiencies, the utility submitted revisions to its filing on April 23, 1991. The utility's filing was accepted as complete on April 23, 1991, and that date was established as the official date of filing for this proceeding.

The test year for final rates is the projected twelve-month period ended December 31, 1991; the projected period is based upon the historical year ended December 31, 1990. The utility requested final rates designed to generate a revenue requirement of \$292,079, an increase of 334%.

The utility requested interim wastewater rates designed to generate \$181,202 in annual revenues. This requested amount

DOCUMENT NUMBER-DATE

08321 AUG 16 1991

FPSC-RECORDS/REPORTING

ORDER NO. 24922
DOCKET NO. 900757-SU
PAGE 2

exceeded interim test year revenues by \$113,872, or 169%. By Order No. 24737, issued July 1, 1991, this Commission authorized NSC to collect interim wastewater rates designed to generate \$143,646 in annual revenues, revenues 113% higher than interim test year revenues.

The utility asked that its request for rate relief be considered at a formal administrative hearing, and not be processed either through the proposed agency action procedure provided for in Section 367.081(8), Florida Statutes, or the staff-assisted rate case procedure provided for in Section 367.0814, Florida Statutes. Therefore, a formal administrative hearing was scheduled for this case on September 5, 1991.

FAILURE TO GIVE PROPER NOTICE

Rule 25-22.0406(5), Florida Administrative Code, states, "Within 30 days after the rate case time schedule has been mailed to the utility, the utility shall begin sending a notice approved by the Commission or its staff to its customers" This Commission mailed the case schedule to the utility on May 9, 1991. Thus, noticing pursuant to the rule should have begun on June 8, 1991.

In this case, NSC did not even request approval of its notice until after thirty days had passed. The utility's letter requesting our staff's approval of its proposed customer notice is dated June 17, 1991, and was received on June 20, 1991. Our staff suggested changes to and gave verbal approval of the content of the utility's proposed notice on June 25, 1991. We do not know when after June 25, 1991, the notice was sent to the customers, but we do know that if sent, it was not sent in the time prescribed by Rule 25-22.0406(5), Florida Administrative Code.

In Order No. 23123, issued June 26, 1990, in Docket No. 891114-WS, Application of Sailfish Point Utility Corporation for a rate increase in Martin County, the Commission held that a utility's failure to comply with the noticing requirements of Rule 25-22.0406(5), Florida Administrative Code, denied due process to the customers and was enough, by itself, to dismiss the utility's rate case. The Commission stated that the utility's "failure to provide timely notice has denied its customers a timely point of entry into this proceeding and that failure constitutes a violation

ORDER NO. 24922
DOCKET NO. 900757-SU
PAGE 3

of their right of procedural due process." This, taken alone, was a "compelling reason" to dismiss the utility's application. Upon considering the other procedural flaw in the utility's case--the revised MFR schedules changing the revenue requirement that was attached to one witness's prefiled testimony--with the noticing error, the Commission dismissed the case.

The noticing rules serve the important purpose of providing parties and potential parties with procedural due process. Were NSC's customers to intervene, they would have had to prefile direct testimony on July 18, 1991. The customers may very well have received notice of the rate case proceeding just days before they were to file the testimony by which they must support their position.

Because NSC did not comply with Rule 25-22.0406(5), Florida Administrative Code, and, thus, denied its customers procedural due process, we hereby dismiss NSC's rate case. Any interim revenues collected by NSC shall be refunded to the customers with interest, and said refund shall be made in accordance with Rule 25-30.360, Florida Administrative Code.

In closing, we take this opportunity to admonish the utility to be more cooperative with our staff in the future. As evidenced by responses received to several staff interrogatories, NSC appears more interested in being argumentative, non-responsive, and uncooperative than in providing the information requested. Our staff has endeavored to work closely with NSC in this NSC's first rate case, but NSC appears more desirous of an adversarial approach to every aspect of its dealings with this Commission.

It is, therefore

ORDERED by the Florida Public Service Commission that the application of Naples Sewer Company for increased rates is hereby dismissed upon the Commission's own motion, for Naples Sewer Company's failure to comply with Rule 25-22.0406(5), Florida Administrative Code. It is further

ORDERED that Naples Sewer Company shall refund all interim revenues collected in excess of its originally authorized revenues, plus interest, in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDER NO. 24922
DOCKET NO. 900757-SU
PAGE 4

ORDERED that the docket shall remain open pending completion of the required refund, our staff's verification of the accuracy of said refund, Naples Sewer Company's filing revised tariff sheets, and staff's approval of said revised tariff sheets.

By ORDER of the Florida Public Service Commission, this
16th day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MF

by: Kay Flynn
Chief, Bureau of Records

ORDER NO. 24922
DOCKET NO. 900757-SU
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.