

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for water) DOCKET NO. 910792-WS
and sewer certificates in) ORDER NO. PSC-92-0730-FOF-WS
Highlands County by COUNTRY) ISSUED: 07/28/92
CLUB OF SEBRING)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING REFUND OF CERTAIN SERVICE
AVAILABILITY CHARGES AND METER INSTALLATION CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

By Order No. 25788, issued February 24, 1992, this Commission granted water and wastewater certificates to the Country Club of Sebring (CCS or utility). CCS provides water and wastewater services to the Country Club of Sebring, a residential development that will ultimately contain 623 homesites at build out. Prior to CCS receiving these certificates, the utility collected from various builders water and wastewater tap-on fees with an agreement that it would hold these fees subject to refund pending final approval of the Commission.

On September 5, 1991, by letter, five builders who had been charged service availability charges by the utility objected to CCS' application. Subsequently, four of the five builders withdrew their objections. On February 3, 1992, after negotiations with the utility, the remaining objector withdrew his protest. However, prior to this withdrawal, he alleged that the utility may be charging its customers for monthly service without this

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-92-0730-FOF-WS
DOCKET NO. 910792-WS
PAGE 2

Commission's approval. Therefore, we deferred this matter until we could investigate.

CCS SHALL REFUND A PORTION OF SERVICE AVAILABILITY CHARGES
COLLECTED PRIOR TO CERTIFICATION AND APPROVAL OF CHARGES

As part of our investigation, on March 25, 1992, we conducted an on-site audit of CCS' books and records. The audit reflected that the utility had collected service availability charges from six builders of \$9,775. By Order No. 25788, issued February 24, 1992, we approved plant capacity charges for the water and wastewater systems of \$425 and \$550, respectively as well as meter installation charges of \$110 for the 5/8" X 3/4" meter and \$200 for the 1" meter. If CCS had collected the service availability charges pursuant to those approved by Order No. 25788, it would have collected \$1,285 per lot or \$7,710, instead of \$9,775.

Ordinarily, because the utility has violated Sections 367.031 and 367.081, Florida Statutes, by collecting service availability charges prior to our granting of a certificate and approving those service availability charges, we would require that CCS refund the entire amount of service availability charges it has collected and we would also initiate a show cause proceeding. However, based on discussions CCS had with our staff, we believe CCS was acting in good faith under the mistaken impression that it had been granted permission in a meeting with our Staff to collect connection charges prior to receiving a certificate. This meeting with our Staff was held in February, 1991, to discuss the process for this Commission's approval of initial rates. In addition, CCS was very open with the builders when it collected the connection charges and advised them that the certificate application was pending and that a refund may be due if the charges collected were greater than those finally approved by this Commission. A statement signed by four builders verifies that CCS advised the builders that the Commission had not yet approved the certificate application and the charges were subject to refund. Based on the foregoing, we find that the utility shall refund \$2,065 to the builders, which is the difference between what it collected and the approved charges in Order No. 25788, including interest. The service availability charges and the refunds are reflected on Schedule A.

CCS SHALL REFUND ALL METER INSTALLATION CHARGE

In our investigation, we also learned that CCS had billed 41 residents in January 1992, for the installation of 1" water meters, which were installed for irrigation systems. CCS collected \$200 each from 29 of those residents, for a total of \$5,800. This action was taken prior to the certificates being issued and prior to the effective date of the charges approved by Order No. 25788. On June 23, 1992, by letter, the utility explained that it made a mistake by using the proposed effective date of the Order instead of the date of the actual certificate. In addition, the utility argued that it never issued any correspondence or bills stating that it had received its certificate prior to March 24, 1992. Further, the utility asserts that it stopped billing any further customers immediately for these charges after being informed by this Commission that the utility could not bill for meters prior to receiving its certificate. After reviewing the utility's response, we are not persuaded by its arguments. Because of the prior misunderstanding regarding collection of connection charges, we had conversations with the utility during the processing of this proceeding in which we stressed that CCS was not to begin charging without an approved tariff. Moreover, the utility billed these customers for meter installation charges before Order No. 25788 was issued. Therefore, the utility's argument that it made an error by using the proposed effective date of the Order instead of the date of the actual certificate is without merit.

Based on the foregoing, we find it appropriate to require that the utility refund the \$5,800, the entire amount of the meter installation charges the utility collected from 29 of its residents.

CONCLUSION

According to the utility's books and records, CCS did not charge monthly rates for service prior to the effective date of the rates. In addition, during our audit we talked with several residents who have resided in the utility's service territory for more than a year. These customers confirmed that they had never been billed for water or wastewater service. Therefore, a refund for monthly service rates for water and wastewater is not appropriate.

The \$2,065 refund to the six builders and the \$5,800 refund to the 29 residential customers produces an overall refund of \$7,865. The utility shall also refund any interest that has accrued or will accrue in the interim between the collection of the charges and the date of the refund. The amount of interest shall be calculated in accordance with Rule 25-30.360, Florida Administrative Code. Further, the utility shall complete the refund within thirty days of the effective date of this Order and the utility shall file refund reports pursuant to Rule 25-30.360, Florida Administrative Code. In the event these refunds are unclaimed, all unclaimed amounts shall be treated as cash contributions-in-aid-of-construction.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Country Club of Sebring shall refund the portion of the service availability charges it has collected as set forth in the body of this Order. It is further

ORDERED that Country Club of Sebring shall refund those meter installation charges collected from 29 residential customers as set forth in the body of this Order. It is further

ORDERED that Country Club of Sebring shall refund any interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, that has accrued or will accrue until the date of refund. The refund shall be accomplished within thirty days from the effective date of this Order. It is further

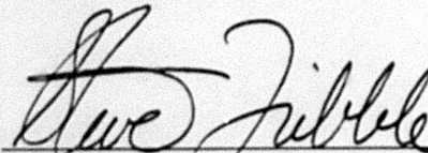
ORDERED that Country Club of Sebring shall file refund reports pursuant to Rule 25-30.360, Florida Administrative Code. In the event these refunds are unclaimed, all unclaimed amounts shall be treated as cash contributions-in-aid-of-construction. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida, 32300-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDER NO. PSC-92-0730-FOF-WS
DOCKET NO. 910792-WS
PAGE 5

ORDERED that this docket shall be closed if no timely protest is filed.

By ORDER of the Florida Public Service Commission this 28th day of July, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 18, 1992.

ORDER NO. PSC-92-0730-FOF-WS
DOCKET NO. 910792-WS
PAGE 6

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.

Schedule A

Service Availability Refund Schedule

<u>Name</u>	<u>Amount Collected</u>	<u>Amount To Be Refunded</u>
Will Randall	\$1,775	\$ 490 + Interest
Arehart	\$1,750	\$ 465 + Interest
Andy Dudas	\$1,500	\$ 215 + Interest
Owl Construction	\$1,750	\$ 465 + Interest
Jeff Futch	\$1,500	\$ 215 + Interest
Tom Fisher	<u>\$1,500</u>	<u>\$ 215 + Interest</u>
Total	<u>\$9,775</u> =====	<u>\$2,065 + Interest</u> =====