

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

APRIL 4, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JABER) *JAS*
DIVISION OF WATER & WASTEWATER (BETHEA, RIEGER) *ER*

RE: DOCKET NO. 960381-WS - BETMAR UTILITIES, INC. - REQUEST
FOR AN EVIDENTIARY HEARING REGARDING BACKFLOW PREVENTION
DEVICE PROGRAMS AND POLICIES BY BETMAR UTILITIES, INC.
COUNTY: PASCO

AGENDA: APRIL 16, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960381WS.RCM

CASE BACKGROUND

On September 17, 1991, Betmar Utilities, Inc., (Betmar or utility) filed a limited proceeding pursuant to Section 367.0822, Florida Statutes, to increase its rates to recover the cost of maintaining and testing backflow prevention devices (Docket No. 910963-WU. By Order No. PSC-92-0408-POF-WU, issued June 9, 1992, the Commission proposed to allow the utility to recover \$23,486 on an annual basis for the cost of refurbishing 50 percent of the dual check valve devices. On June 30, 1992, the utility filed a timely protest to that Order. The utility subsequently filed an offer of settlement on November 16, 1992, which was accepted by the Commission and memorialized in Order No. PSC-92-1467-AS-WU. Betmar Acres Club, Inc., (BAC) timely filed a protest to Order No. PSC-92-1467-AS-WU, issued December 17, 1992.

A Section 120.57, Florida Statutes, administrative hearing was held August 4, 1993, in Zephyrhills, Florida. By Order No. PSC-93-1719-POF-WU, issued November 30, 1993, the Commission denied Betmar's request to recover the cost of testing the devices. In doing so the Commission found that Betmar did not prove that the dual check valve devices or any backflow prevention devices should be installed on all connections. The Commission further found that the Department of Environmental Protection's (DEP) rules do not require a device on all connections. Order at pp. 8 and 10. Prior

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to the Commission's decision in that docket, DEP issued a final order on a petition for declaratory statement filed by Betmar. The Commission took official recognition of DEP's order which contained the following conclusions of law:

1. Rule 17-555.360(2), Florida Administrative Code, does apply to Betmar as a community water system, even though there are no reclaimed water systems operating within Betmar's service territory;
2. Implementation of a cross-connection control program is mandatory;
3. Betmar's installation of residential dual check valves is not an acceptable component of a routine cross-connection control program designed to detect and prevent cross-connections that create or may create an imminent and substantial danger to public health;
4. The cross-connections in Betmar's service territory do constitute prohibited cross-connections as defined in Rule 17-555.360(3), Florida Administrative Code;
5. DEP is convening meetings and workshops to address the entire issue of cross-connection control. Whether DEP would begin enforcement of Rule 17-555.360, Florida Administrative Code, is a decision to be evaluated later; and
6. Maintenance of the devices is required and annual testing is consistent.

Finally, during the course of the August, 1993, hearing, the Commission directed Staff to open a separate investigation docket for the purpose of addressing the Office of Public Counsel's belief that Betmar sent notices to its customers regarding backflow prevention devices which contained certain misrepresentations. By Order No. PSC-94-0437-FOF-WU, issued April 12, 1994, the Commission ordered Betmar to show cause why it should not be fined \$7,460 for misrepresenting to its customers that the installation and testing of the devices was required. In these notices, Betmar also threatened to disconnect service for customers refusing to install a device. By Order No. PSC-94-0991-FOF-WU, issued August 16, 1994, the Commission did find that the notices sent by Betmar were misleading, but after reviewing the pleadings and the documents, the Commission stated that the utility did not deliberately mislead its customers. The notices were sent before the Commission's

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decision on this matter. As for the threat to disconnect service for failure to install a device, the Commission stated that:

We believe that there was a sincere effort on the part of the utility to do what it believed to be correct; however, we do agree that the method undertaken by the utility was inappropriate, and had the appearance of a scare-tactic. Given that, Betmar is hereby put on notice that such behavior will not be tolerated in the future under any circumstances.

In January, 1996, Commission Staff began receiving phone calls from Betmar customers, Thomas McAlvanah, Esq., and Representative Littlefield informing Staff that Betmar was threatening to disconnect service for any customer refusing to install a backflow prevention device. Mr. Turco, Betmar's manager, allegedly told these customers that after running tests, he discovered "prohibited cross-connections" which warranted the installation of a backflow prevention device. Staff first referred some calls to DEP for verification of whether a prohibited cross-connection did in fact exist. On January 3, 1996, the customers were granted a temporary injunction against Betmar by Circuit Court Judge Swanson. By letter dated January 11, 1996 (Attachment A), DEP, after consulting with the Department of Health and Rehabilitative Services (HRS), informed Mr. Turco that the situation he described did "not constitute a change in the classification of its low hazard status." By letter dated January 22, 1996 (Attachment B), Staff, after consulting with DEP, informed Mr. Turco that disconnection of service for the alleged cross connection was not appropriate pursuant to the Commission's rules. By letter dated February 13, 1996 (Attachment C), Betmar requested an official interpretation by the Commission and an evidentiary hearing on the entire matter.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Betmar Utilities, Inc.'s request for a hearing?

RECOMMENDATION: No. Betmar Utilities, Inc.'s request for a hearing should be denied. (JABER, BETHEA, RIEGER)

STAFF ANALYSIS: As stated in the case background, it was brought to Staff's attention that Mr. Turco, on behalf of Betmar, threatened to disconnect service to Betmar customers upon their refusal to install a backflow prevention device after he allegedly "discovered" a cross-connection. The customers asserted that Mr. Turco was creating the cross-connection at the customers' meters by his own actions.

By letter dated January 22, 1996, Staff informed Mr. Turco that such action was not supported by Rule 25-30.320(2)(a), Florida Administrative Code, which provides that a utility may refuse service or discontinue service for "noncompliance with or violation of any state or municipal law or regulation governing such utility service." It was Betmar's assertion that DEP's rules require a cross-connection program and disconnection of service if a prohibited cross connection is discovered and not eliminated. Therefore, it was also Betmar's assertion that the Commission's rules would also support disconnection for violation of DEP's regulations. Staff consulted with DEP about this situation and waited for DEP's response to Mr. Turco's actions before sending the January 22, 1996, letter.

By letter dated January 11, 1996, DEP does state and Staff recognizes that DEP requires all drinking water facilities to have cross-connection control programs. In its letter, DEP also states that Chapter 62-555, Florida Administrative Code, "dictates prudent application of the industry standards and recognizes that protective public health measures are needed on residential premises that have developed auxiliary water supplies (e.g. private wells or pumps withdrawing surface waters), employ wastewater reuse, or have underground sprinkler systems" (emphasis added). DEP goes on to state that "Typical residential single family premises do not pose public health implications sufficient to warrant the application of the rule to require all such connections to install a device to meet the requirements of the State rule." Maybe most importantly, DEP's letter also states that: "Simulation by a utility representative of a backflow event from the resident side of the meter does not constitute a change in the classification of its low hazard status" (emphasis added).

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After several telephone conversations between Mr. Turco, his attorney, and Commission Staff, Betmar, by letter dated February 13, 1996, requested that the Commission hold a hearing on this matter "to establish a coherent policy on cross-connection control which addresses not only the minimum requirements of the [DEP's] rule, but the risk of catastrophic injury due to residential backflow." In its letter, Betmar asserts that:

1. it acted within all rules and within the direct approval of Order No. PSC-95-0737-FOF-WS; and
2. Staff has misconstrued DEP's position on cross-connection control as set forth in DEP's declaratory statement.

By memorandum dated March 20, 1996 from HRS to DEP (Attachment D), HRS officially informed DEP that after reviewing the Betmar situation, it was HRS's opinion that:

a normal single family residential connection does not present a substantial threat to the integrity of the suppliers water system, and therefore it would not mandate the requirement of a backflow prevention device at the water meter. In the case of Betmar Utilities, it is apparent that the utility is creating a backflow at the meter through their own actions. This of course, is a natural hydraulic response to the severing of the service line to replace the water meter. Additionally, the presence of warm water in a service line is not viewed by this department as a source of contamination and a threat to public health. This is not viewed as a cross connection, and hence, does not pose a threat to the quality of the water supply and mandate corrective action.

In the last three years, Staff has had numerous meetings with DEP on the Betmar situations in the past and on DEP's policies concerning cross-connection control programs. Staff is well aware that DEP mandates a cross-connection control program for drinking water utilities. That is certainly within DEP's purview as an agency responsible for environmental concerns. The Commission has the responsibility of determining the economic impact, if any, for utilities and customers when such programs are implemented. Staff has also worked with DEP over the last three years in attempting to determine whether Mr. Turco's actions in implementing his cross-connection control program are appropriate. DEP's position has

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always been that it cannot tell a drinking water facility that backflow prevention devices are not appropriate. From a public health standpoint, that would be awkward for DEP. However, DEP can state what situations appear to be low hazard versus high hazard. In this instance, both DEP and HRS have done exactly that.

The situation described by Mr. Turco and the Betmar customers has lead DEP to the opinion that the situation, although a cross-connection, deserves a "low hazard" classification not requiring a backflow prevention device. As stated earlier, HRS does not view this particular situation as a cross connection, and hence, does not believe that there is a threat to the quality of the water supply nor a need for corrective action.

Betmar has cited to Order No. PSC-95-0737-POF-WS, issued June 20, 1995, in Locket No. 950533-WS for approval of its actions. By that Order, the Commission dismissed customer complaints after finding that DEP, not the Commission must determine the necessity for installing a backflow prevention device and the acceptability of a particular type of device in each single circumstance. In the complaint, the customers requested that the Commission order Betmar to "cease and desist" the threats to disconnect service. The Commission's dismissal of the complaint in no way condoned Betmar's action, but stated that DEP had to make the determination. As stated previously, DEP has made the determination required here.

Betmar's assertion that DEP's formal policy is set forth in the declaratory statement is not accurate. DEP responded to a hypothetical situation set forth by Betmar in a petition for a declaratory statement. Staff has discussed the declaratory statement with DEP and they agree that the declaratory statement answers the situation as described to them and DEP also agrees that this is currently a different situation in that Mr. Turco has himself created the cross-connection and that it is low hazard. The staff of DEP has represented to us that "discovery" of a cross-connection does not mean that you simulate a cross-connection crisis. They further have represented to us that "normal" residences do not pose high hazards.

As for the utility's request for a hearing, Section 120.57, Florida Statutes, provides in part that the provisions of that section apply in all proceedings in which the substantial interest of a party are determined by an agency. Staff recognizes that the Commission could hold an evidentiary hearing to determine whether the factual allegations are true and whether such facts warrant disconnection of service. The Commission, with DEP's guidance could probably even determine when disconnection of service is appropriate. However, the Commission cannot determine "the risk of

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catastrophic injury due to backflow." At this time, however, Staff believes that an evidentiary hearing on all of these matters is not necessary. The two agencies with the primary responsibility of determining public health concerns have called Betmar's current situation a low hazard situation. The DEP, whose rules should control in this matter, has stated that backflow prevention devices are not required in this situation. Moreover, the HRS does not even believe the current situation can be called a cross-connection. Accordingly, Staff believes that Betmar's request for an evidentiary hearing should be denied.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket should be closed. (JABER)

STAFF ANALYSIS: After the protest period expires, if a timely protest is not received from a substantially affected person, this docket should be closed.



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

January 11, 1996

RECEIVED

JAN 17 1996

Mr. Joseph Turco
Betmar Utilities Inc.
Post Office Box 370
Port Richey, Florida 34673-0370

Florida Public Service Commission
Division of Water and Wastewater

Dear Mr. Turco:

The Florida Department of Environmental Protection recognizes the need for adequate cross-connection control programs for all drinking water utilities to ensure that a utility's distribution lines are protected against cross-connections and backflow incidents. Chapter 62-555, F.A.C., requires that utilities adopt and implement written cross-connection control programs in accordance with AWWA's Manual M-14, 1991 edition. This manual calls for most industrial and commercial service connections to employ approved backflow prevention assemblies.

This rule additionally dictates prudent application of the industry standards and recognizes that protective public health measures are needed on residential premises that have developed auxiliary water supplies (e.g. private wells or pumps withdrawing surface waters), employ wastewater reuse, or have underground sprinkler systems. Typical residential single family premises do not pose public health implications sufficient to warrant the application of the rule to require all such connections to install a device to meet the requirements of the State rule. However, while a requirement by the utility owner for a residential owner to install such a device is above minimum State rule requirements, such a requirement by the utility is not in violation of State rules nor deemed to be out of compliance with accepted cross-connection control practices.

In any event, as recommended by manual M-14, a utility should implement schedules for the installation of backflow assemblies on properties deemed to be the highest threats to its distribution system first. Typical residential service connections are considered "Non-health hazards" per Chapter 4, Table 4-1 of M-14.

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ATTACHMENT A
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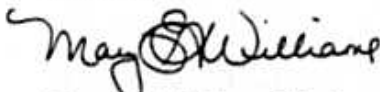
Mr. Joseph Turco
Page Two
January 11, 1996

Simulation by a utility representative of a backflow event from the resident side of the meter does not constitute a change in the classification of its low hazard status.

In consultation with representatives of the Department of Health and Rehabilitative Services, it is our understanding that they concur with our position on the degree of hazard and the low public health risk implications that such single family residences present to a public water system's distribution lines.

If you have any questions regarding our position on this specific type of connection feel free to call me or Van Hoofnagle at (904) 487- 1762.

Sincerely,



Mary E.S. Williams, Chief
Bureau of Drinking Water and Ground Water Resources

MESW/vrh/br

cc: Greg Shafer, Chief of Bureau of Special Assistance, PSC
Ray Collins, Chief of Environmental Health Services, HRS
Van Hoofnagle, P.E., Administrator, Drinking Water Program, DEP
Dan O'Lone, Engineer, Drinking Water Program, DEP
Mimi Drew, Director, Division of Water Facilities, DEP
Cynthia Christen, Attorney, Office of General Counsel, DEP

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ATTACHMENT B
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State of Florida

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

January 22, 1996

Mr. Joseph Turco
Betmar Utilities, Inc.
Post Office Box 370
Port Richey, FL 34673-0370

Dear Mr. Turco:

It has come to our attention that Betmar Utilities, Inc. recently attempted to disconnect water service to customers who refused to connect a backflow prevention device to their residences. We have contacted the Department of Environmental Protection (DEP) to verify whether the alleged cross connection exists. Pursuant to our conversations with DEP and DEP's letter to you dated January 11, 1996, we believe that disconnection is not appropriate. Rule 25-30.320(2)(a), Florida Administrative Code, provides that a utility may refuse service or discontinue service for "noncompliance with or violation of any state or municipal law or regulation governing such utility service."

In its January 11, 1996, letter, DEP states:

Typical residential single family premises do not pose public health implications sufficient to warrant the application of the rule to require all such connections to install a device to meet the requirements of the state rule.

The letter further states that "typical residential service connections are considered 'Non-health' hazards per Chapter 4, Table 4-1 of M-14."

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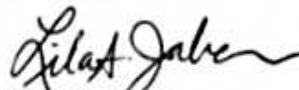
ATTACHMENT B
PAGE 2 OF 2

Continuation of Letter to:
Mr. Joseph Turco
January 22, 1996
Page 2

In consideration of the foregoing, staff believes that the utility's actual and attempted disconnections of service are in violation of Rule 25-30.320, Florida Administrative Code. Accordingly, please immediately refrain from disconnecting water service to any Betmar customer for failure to install a backflow prevention device. If you do not immediately cease these disconnections, staff will take a recommendation to the Commission to show cause Betmar why it should not be fined up to \$5,000 for each occurrence of violation of Rule 25-30.320, Florida Administrative Code.

Your cooperation is appreciated.

Sincerely,



Lila A. Jaber
Bureau Chief, Water & Wastewater
Division of Legal Services

LAJ/mw

cc: Division of Water & Wastewater (Hill, Shafer, Bethea)
Department of Environmental Protection
(Williams, Hoofnagle)
Representative Carl Littlefield
Thomas P. McAlvanah, Esquire
Steve Reilly, Office of Public Counsel

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ATTACHMENT C
PAGE 1 OF 2

GERALD T. BUHR, P.A.
ATTORNEY AT LAW
(813) 949-3681
(813) 949-3196 Fax/Data

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION

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MAIL ROOM

Utilities
Environment
Land Use

Northfork Professional Center
1519 Dale Mabry Highway, Suite 100
Post Office Box 1647
Lutz, FL 33549-1647

February 13, 1996

Ms. Lila Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Re: Betmar Utilities, Inc., Cross Connection Control Program

Dear Lila:

As discussed by phone, we have received your letter dated January 22, 1996 concerning your allegation that Betmar is acting outside the rules of the PSC in forcing installation of backflow preventers by threat of disconnection of water service. It is our contention that Betmar was not only acting within the rules, but within the direct approval of the Commission under Order 95-0737-FOF-WS. Furthermore, Betmar's actions were not only in compliance with DEP rules, but we contend that much of what Betmar requires in its cross-connection control program is mandated by DEP rules.

Based on the various rulings and correspondence by both the PSC and DEP, as well as various staff members from both agencies, there appears to be great confusion in those agencies as to what amounts to an appropriate cross-connection control program. Apparently, you have misconstrued DEP's position on cross-connection control. Although the miscellaneous correspondence from DEP on this matter tends to indicate that certain staff members do not agree with Betmar's position on backflow prevention, the only *official* interpretation of the cross-connection situation in Betmar Subdivision does support Betmar's position. If you review DEP's declaratory statement on this matter, I think that you will find that the conclusion made therein supports a finding that cross-connections exist in the subdivision, and involve residential homes. While I respect the DEP individuals involved, individual staff members' opinions expressed in this manner have no weight, are contrary to the DEP Declaratory Statement, and are otherwise unlawful exceedences of legislative delegation because they raise as DEP policy, opinions on matters which exceed the jurisdiction of the DEP.

Your letter leaves Betmar in the unenviable position of facing your threat of up to \$5,000 per incident fines, against the expense of installing the devices at Betmar's own expense, or being out of compliance with the DEP rules as well as facing possibility of catastrophic losses

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ATTACHMENT C
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Ms. Lila Jaber, Esquire
February 13, 1996
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due to personal injury claims. It appears that only an evidentiary hearing can eliminate the confusion on this issue. We ask that the Commission hold hearings on this matter to establish a coherent policy on cross-connection control which addresses not only the minimum requirements of the rule, but the risk of catastrophic injury due to residential backflow. Ad hoc decisions by the Commission and staff will only lead to further conflict and expense, and also leaves the customers open to injury due to cross-connections. If you can arrange for such a Commission hearing, I believe I can arrange for substantial participation from interested, and knowledgeable parties such as the Florida Rural Water Association, Florida Section AWWA, and the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California, and the University of Florida TREEO. The issues involved are far too important to remain in the condition in which they are left at present.

I look forward to discussing this matter with you further.

Sincerely,

GERALD T. BUHR, P.A.

By: 
Gerald T. Buhr

GTB/njs

cc: Mr. Joseph L. Turco
PSC Records & Reporting
Mr. Van Hoofnagle, DEP



STATE OF FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

MEMORANDUM

RECEIVED

MAR 22 1996

Florida Public Service Commission
Division of Water and Wastewater

DATE: March 20, 1996
TO: Van Hoofnagle, P.E.,
Drinking Water Program Administrator, DEP
FROM: Pepe Menendez, P.E.
Environmental Engineering Administrator, HRS
SUBJECT: Betmar Utilities

This memorandum will serve to officially inform you of HRS's position in the case of Betmar Utilities. After thoroughly reviewing this case with your department and the Florida Public Service Commission, it is the department's opinion that a normal single family residential connection does not present a substantial threat to the integrity of the suppliers water system, and therefore it would not mandate the requirement of a backflow prevention device at the water meter. In the case of Betmar Utilities, it is apparent that the utility is creating a backflow at the meter through their own actions. This of course, is a natural hydraulic response to the severing of the service line to replace the water meter. Additionally, the presence of warm water in a service line is not viewed by this department as a source of contamination and a threat to public health. This is not viewed as a cross connection, and hence, does not pose a threat to the quality of the water supply and mandate corrective action.

CC: Edward A. Bettinger, R.S., HRS
Neil Bethea, Florida PSC