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# Public Service Commission

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COMMISSION  
CLERK

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

**DATE:** October 6, 2011

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Fletcher, Hudson, Maurey) *BF SH*  
Office of the General Counsel (Murphy) *ALM*  
*CRB* *[Signature]*

**RE:** Docket No. 110086-SU – Application for staff-assisted rate case in Highlands County by Francis I Utility, LLC.

**AGENDA:** 10/18/11 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** 09/04/12 (15-Month Effective Date (SARC))

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\110086.RCM.DOC

### Case Background

Francis I Utility, LLC (Francis I or Utility) is a Class C utility serving Francis Mobile Estates I and II, mobile home communities of approximately 612 residential and 7 general service wastewater customers in Highlands County. Water service is provided by the City of Sebring. The Utility is in the Highlands Ridge Water Use Caution Area of the Southwest Florida Water Management District.

On March 29, 2011, Francis I filed an application for a staff assisted rate case (SARC) and a docket was opened to process that application. This recommendation addresses a pattern of behavior on the part of the Utility which leads staff to request that the SARC be dismissed and this docket be closed. The Commission has jurisdiction pursuant to Section 367.0814, Florida Statutes (F.S.).

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### Discussion of Issues

**Issue 1:** Should this staff assisted rate case be dismissed and the docket closed?

**Recommendation:** Yes, the lack of cooperation demonstrated by the Utility has made it difficult, and at times impossible, for staff to effectively fulfill its duties pursuant to Section 367.0814, F.S. Therefore, this docket should be closed. (Fletcher, Murphy, Hudson)

**Staff Analysis:** Rule 25-30.455(5) through (8), Florida Administrative Code (F.A.C.), states, in pertinent part, the following:

(5) Within 30 days of receipt of the completed application, the committee shall evaluate the application and determine the petitioner's eligibility for staff assistance. . . .

(6) Upon reaching a decision to officially accept or deny the application, the Director of the Division of Economic Regulation shall notify the petitioner by letter and initiate staff assistance for the accepted applicant.

(7) The official date of filing will be 30 days after the date of the letter notifying the applicant of the official acceptance of the application by the Commission. . . .

(8) In arriving at a recommendation whether to grant or deny the petition, the following shall be considered: . . .

(c) Whether the petitioner has filed annual reports.

On March 24, 2011, the Utility requested a thirty-day extension making its 2010 Annual Report due on April 30, 2011. As stated in the case background, the Commission received the Utility's application for staff assistance on March 29, 2011.

On April 12, 2011, staff notified the Utility that its initial check dated March 20, 2011, for its \$1,000 filing fee was returned because the account the check was drawn on had been closed. On May 2, 2011, the Utility remitted another check for \$1,050 for the filing fee and a \$50 service charge related to the returned check. With the filing fee paid and the verbal assurance from Francis I that its 2010 Annual Report would be filed very soon, staff accepted the Utility's SARC application by letter dated May 3, 2011.

On May 3, 2011, staff informed the Utility that an audit would be conducted of Francis I's books and records. It typically takes about 60 to 70 days to complete an audit. However, during the last 5 months, staff has not been able to complete its audit of Francis I due to the Utility's lack of cooperation in responding to staff auditors. At present, the audit is substantially complete in that the audit requirements related to rate base, cost of capital, and operating revenues are done. An audit review of the Utility's operating expenses remains to be done and cannot be completed without the Utility's cooperation. Without an audit of the operating expenses, staff is unable to calculate a recommended revenue requirement for this Utility.

By letter dated May 19, 2011, staff informed Francis I that staff was planning an engineering field investigation for June 30, 2011, and needed utility-specific information in conjunction with that inspection. Receiving no response from the Utility, staff followed up with a letter dated June 8, 2011, which expressed the desire to conduct an engineering field investigation on June 30, 2011, and the need for utility-specific information in conjunction with that inspection. As of the filing of this recommendation, staff has not received a response from Francis I regarding an alternative date for the engineering inspection nor has staff received any of the information requested in the May 19<sup>th</sup> and June 8<sup>th</sup> letters.

By certified letters dated May 11, 2011 and June 7, 2011, staff informed Francis I that the Utility had failed to timely file its 2010 Annual Report. As of the filing of this recommendation, the Utility has not filed its 2010 Annual Report. Staff will be filing a subsequent recommendation to address the Utility's failure to timely file its 2010 Annual Report.

Although the Commission staff has denied several SARC applications for failure to file annual reports pursuant to Rule 25-30.455(8)(c), F.A.C., staff is only aware of one recommendation to dismiss a SARC after the acceptance of a utility's application.<sup>1</sup> Staff notes, that the Commission denied that recommendation and required that utility to provide staff any information required.<sup>2</sup> Staff believes the instant case is distinguishable from that case. In the other case, the utility personnel were consistently argumentative in dealings with staff and prohibited the assigned analyst from attending the audit exit interview between staff auditors and the utility personnel. In the instant case, Francis I is non-communicative towards staff's attempts to process the Utility's SARC.

Absent the Utility's cooperation, it is impossible for staff to meet the statutory deadlines applicable to SARCs in accordance with Section 367.0814, F.S. On June 29 2011, the Utility verbally stated that it would agree to a three-month waiver of the statutory time frame for the completion of a SARC based on the Utility's delays in this SARC. However, as of the filing of this recommendation, Francis I has yet to file its written waiver. Moreover, notwithstanding the time constraints, absent cooperation from the Utility, it is impossible for staff to complete the SARC process at all.

Due to the Utility's lack of cooperation in this docket, staff does not believe it is an appropriate use of resources to continue its attempts to process this SARC. Therefore, staff recommends this SARC be dismissed and the docket closed.

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<sup>1</sup> See Final Agency Action Recommendation, dated September 20, 1990, in Docket No. 900501-WS.

<sup>2</sup> See Order No. 23612, issued October 15, 1990, in Docket No. 900501, In re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities.