

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of agreement with City of Fernandina Beach, which will revise tariff to allow for discontinuance of water service to any customer owing unpaid sewer bills to City pursuant to Section 159.18(2), F.S., by Florida Public Utilities Company (Fernandina Beach System).

DOCKET NO. 961529-WU
ORDER NO. PSC-97-1362-FOF-WU
ISSUED: October 28, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING TARIFF REVISION TO IMPLEMENT AGREEMENT
FOR DISCONTINUANCE OF WATER SERVICE

BY THE COMMISSION:

Florida Public Utilities Company (FPUC or utility) provides electric, gas and water service to various areas in Florida. The Fernandina Beach division in Nassau County, furnished electricity and water service to approximately 11,600 electric customers and 5,800 water customers as of December 31, 1996. In its 1996 annual report, the utility recorded operating revenues of \$1,854,192 for water service and net operating income of \$388,176. The Fernandina Beach division is the sole division within the company providing water service. We last established water rates for this utility by Order No. 17444, issued on April 20, 1987, in Docket No. 860662-WU.

Prior to December 24, 1996, FPUC negotiated a contract with the City of Fernandina Beach (City) whereby FPUC would perform the billing, collecting and accounting services for the City's sewer and sanitation services. This contract contained a provision by which FPUC would request Commission approval to discontinue the utility's water service for nonpayment of the City's sewer service

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charges. As a result thereof, on December 24, 1996, FPUC filed, with this Commission, a tariff revision and requested approval to enter into an agreement with the City to discontinue water service to any customer who does not pay its sewer bills to the City.

Rule 25-30.320(2)(g), Florida Administrative Code, states a utility may discontinue service

for nonpayment of bills or noncompliance with the utility's rules and regulations in connection with the same or a different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers....

According to this rule, in order for FPUC to include in its tariff a provision which allows discontinuing service to one of its customers for the nonpayment of wastewater charges to the City, an established affiliation should exist. According to Financial Accounting Statement 57, paragraph 24a, an affiliate is defined as "a party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an enterprise." We do not believe that the City and FPUC are under common control.

When reviewing the definition of related parties, as defined by Financial Accounting Statement 57, paragraph 24f, an affiliate is further referenced as an entity "for which investments are accounted for by the equity method by the enterprise." We have not been provided any documentation which would lend credibility to the argument that the City and FPUC are affiliates. In accordance with the definitions above, we do not believe that the utility and the City are affiliates.

However, FPUC provides statutory authority for its request. Section 159.18(2), Florida Statutes, provides the following:

Any municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or charges of the municipality by the owners of the water facilities at the same time water charges are

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billed and collected by such owners of the water facilities.

FPUC argues that this statute contemplates the exact type of agreement for which the utility seeks approval. Otherwise, the utility argues, there would be no reason for this statute to exist. We agree. Therefore, we find it appropriate to initiate rulemaking proceedings to amend Rule 25-30.320, Florida Administrative Code, to authorize utilities under our jurisdiction to discontinue water service for nonpayment of municipal sewer service under the circumstance specifically provided in Section 159.18(2), Florida Statutes. This rulemaking procedure will be addressed in a separate docket. Accordingly, the agreement between FPUC and the City, for the discontinuance of FPUC's water service for nonpayment of the City's sewer service, is hereby approved. Additionally, FPUC's proposed tariff revision to implement the aforementioned agreement is hereby approved. The utility has filed a revised tariff reflecting the requested agreement for discontinuance of service. The tariff shall become effective pursuant to Rule 25-30.475, Florida Administrative Code, provided the customers have received notice and upon staff's approval of the proposed customer notice and tariff sheet. The tariff sheet shall be approved upon staff's verification that the tariff is consistent with our decision herein and that the proposed customer notice is adequate. The utility shall provide proof that the customers have received notice within 10 days after the date of the notice.

The proposed tariff sheet shall become final if a formal protest is not received from a substantially affected person within 21 days of the issuance date of this Order. If a protest is filed within 21 days of the issuance day of this Order, the tariff shall remain in effect pending resolution of the protest. If no timely protest is filed, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's tariff request to implement the agreement with the City of Fernandina Beach is hereby approved. It is further

ORDERED that the tariff shall become effective for services rendered on or after the stamped approval date on the tariff sheets, provided that the customers have received notice. The tariff shall be approved after staff's verification that the tariffs are consistent with the Commission's decision and that the proposed customer notice is adequate. The utility shall provide

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proof that the customers have received notice within 10 days after the date of the notice. It is further

ORDERED that the tariff revision approved herein is interim in nature and shall become final unless a substantially affected person files a petition for a formal proceeding which is received by the Director, Division of Records and Reporting, by the date in the Notice of Further Proceedings set forth below. It is further

ORDERED that if a timely protest is filed in accordance with the requirements set forth below, this tariff shall remain in effect pending resolution of the protest. It is further

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

By ORDER of the Florida Public Service Commission this 28th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 18, 1997.

In the absence of such a petition, this Order shall become final on the day subsequent to the above date.

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 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 date this Order becomes final, 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.