

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

NOVEMBER 7, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF WATER & WASTEWATER (MESSER, GOLDEN, REDEMANN) ^{TRAD} RRR JOW
DIVISION OF LEGAL SERVICES (REYES) *but LAG by hand of*

RE: DOCKET NO. **961006-WS**
APPLICATION FOR CERTIFICATES TO PROVIDE WATER AND
WASTEWATER IN POLK COUNTY UNDER GRANDFATHER RIGHTS
BY SPORTS SHINKO UTILITY, INC. d/b/a GRENELEFE UTILITIES.
COUNTY: POLK

AGENDA: NOVEMBER 18, 1997 - REGULAR AGENDA - ISSUES 4, 5 AND 6
ARE PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS. S:\PSC\WAW\WP\961006.RCM

DOCUMENT NUMBER - DATE
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FPSC-RECORDS & REPORTING

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County (County Commission, Polk County or County) adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the privately-owned water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. This Commission acknowledged the County's resolution by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS.

The utility began providing service in 1977 to water and wastewater customers in Polk County, Florida. Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities (Grenelefe or utility) acquired the company in 1987. The utility currently provides water service to 646 residential customers and 102 general service customers. Grenelefe also provides wastewater service to 634 residential customers, but no commercial customers at this time. According to the utility's 1996 Annual Report, the utility had operating revenues of \$366,000 and \$210,000 for water and wastewater, respectively. Additionally, the utility had a net operating income of \$91,000 for water and a net operating loss of \$42,000 for wastewater.

Grenelefe has been subject to this Commission's jurisdiction since May 14, 1996. Grenelefe was advised of the Commission's jurisdiction and the utility's responsibility to obtain a certificate by a letter dated July 30, 1996. On August 30, 1996, Grenelefe filed an application for a grandfather certificate to provide water service in Polk County in accordance with Section 367.171(2)(b), Florida Statutes.

The County Commission requested the right to complete a hearing with respect to new rates for Grenelefe which had been started prior to the transfer of jurisdiction to this Commission. This rate proceeding originated from a mandate by the Southwest Florida Water Management District (SWFWMD) to Grenelefe to install meters for all water usage. This included water used for domestic use, as well as for irrigation. Grenelefe had both potable and non-potable water sources available for use to provide irrigation service; therefore, meters were installed to measure both sources.

On July 2, 1996, the County Commission approved monthly rates using the base facility and gallonage charge rate structure. The County Commission also approved an irrigation rate, which the utility has been charging to all irrigation sources since September 1, 1996. This recommendation addresses the grandfather certificate application of Grenelefe and clarifies the application of the rate

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

set by the County to both potable and non-potable water sources used for irrigation.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the application of Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities for Water Certificate No. 589-W and Wastewater Certificate No. 507-S be granted pursuant to Section 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code?

RECOMMENDATION: Yes, Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities should be granted Water Certificate No. 589-W and Wastewater Certificate No. 507-S pursuant to Section 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code, to serve the territory described in Attachment A. (MESSER, GOLDEN, REDEMANN)

STAFF ANALYSIS: On August 30, 1996, Grenelefe filed its application for a water and wastewater certificate of authority (grandfather certificate) to provide water and wastewater service in Polk County. Grenelefe fulfilled a majority of the application filing requirements upon its original submission. Staff has now received all necessary information for completion of the grandfather application.

The utility's application is in compliance with the governing statute, Section 367.171, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for a grandfather certificate. The statutes and rules do not require noticing for grandfather certificate applications. The application contains a check in the amount of \$2,750.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a warranty deed as evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.035(6), Florida Administrative Code. The utility has also filed its Annual Report and paid Regulatory Assessment Fees for 1996.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory requested by the utility is appended to this memorandum as Attachment A.

Based on the above information, staff believes it is appropriate to approve Grenelefe's application for a grandfather certificate. Accordingly, staff recommends that Grenelefe be granted Water Certificate No. 589-W and Wastewater Certificate No. 507-S to serve the territory described in Attachment A.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ATTACHMENT A

SPORTS SHINKO UTILITY, INC. d/b/a GRENELEFE UTILITIES

WATER AND WASTEWATER SERVICE AREA

DESCRIPTION OF TERRITORY SERVED

The following areas in Range 28 East, Township 28 South, Sections 5, 6, 7 and 8, Polk County, Florida;

The South 1/2 of Section 6;
The North 1/2 of Section 7; and

In Sections 7 and 8 described as follows:

The Point of Beginning (POB) identified as the center of Section 7; from the POB run N 89°42'32" E a distance of 2,599.05 feet; to the NW corner of Section 8; thence N 89°50'22" E a distance of 1,320.00 feet; thence South a distance of 1,317.85 feet more or less; thence S 03°59'01" E a distance of 827.42 feet; thence N 89°54'04" W a distance of 1,378.88 feet; to the East line of Section 7; thence S 89°26'13" W a distance of 2,574.02 feet; thence N 00°37'09" W a distance of 2,152.99 feet; to the POB; and

In Section 5 described as follows:

Begin at the SW corner of Section 5, Range 28 E, Township 28 S; run N 00°13'39" E a distance of 2,641.87 feet to the POB; from the POB run N 00°05'32" W a distance of 660.00 feet; thence N 89°49'05" E a distance of 1,600 feet more or less; thence Southerly along the waters edge of Lake Marion a distance of 685 feet more or less; thence S 89°50'03" W a distance of 1,407 feet more or less to the POB; and

In Section 5 described as follows:

From the SW corner of Section 5, Range 28 E, Township 28 S, also the POB; run N 00°13'39" E a distance a 2,641.87 feet; thence N 89°49'05" W a distance of 971.87 feet; thence S 00°43'25" E a distance of 2,642.27 feet; thence S 89°50'03"W a distance of 994.74 feet to the POB; and

In Section 8 described as follows:

From the NW corner of Section 8, Range 28 E, Township 28 S, also the POB; run N 89°50'03" E a distance a 994.74 feet; thence S 00°02'32"W a distance of 2,634.51 feet; thence S 89°50'22" W a distance of 1,000.27 feet; thence N 00°09'45" E a distance of 2,634.45 feet to the POB.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 2: What rates and charges should be approved for Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. The utility should be required to file a tariff sheet reflecting the potable water irrigation rate. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff. (MESSER, GOLDEN)

STAFF ANALYSIS: Grenelefe's most recent rates and charges were approved by Polk County as a result of a rate case, on July 2, 1996. As mentioned in the Case Background, the County had requested that it be allowed to complete a rate proceeding that was initiated prior to its decision to transfer jurisdiction to this Commission.

The following rates reflect the rates approved by the County. Staff has included the rate approved by the County for irrigation and has identified it as potable water. Since the utility did not specify this in its tariff, staff believes this should be identified and listed as shown in the recommendation. Issue 5 discusses the continued use of this rate when using non-potable irrigation water.

Monthly Service Rates

General Service & Multi-family - Water

Meter Size	Base Facility Charge
5/8 x 3/4"	\$ 5.50
1.0"	\$ 13.75
1.5"	\$ 27.50
2.0"	\$ 44.00
3.0"	\$ 88.00
4.0"	\$137.50
6.0"	\$275.00

Consumption Rate \$ 0.72 per 1,000 gallons

Residential Service - Water

Meter Size	Base Facility Charge
5/8 x 3/4"	\$ 5.50
1.0"	\$ 13.75
1.5"	\$ 27.50

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

Miscellaneous Service Charges

Initial connection	\$15.00
Normal reconnection	\$15.00
Violation reconnection	\$15.00
Premises visit	\$10.00

Service Availability Charges

Service Line Extension and Tap	Actual Cost
Meter Installation Charge (5/8" x 3/4")	\$ 65.00
Meter Installation Charge (over 5/8" x 3/4")	Actual Cost

Deposits

Grenelefe does not require deposits

The utility has filed a tariff which reflects the above rates and charges, with the exception of the irrigation rate. Staff recommends that Grenelefe be required to file a tariff sheet that separately identifies the irrigation rate, and other sheets should be approved as submitted. Staff further recommends that Grenelefe should be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 3: Should the Commission order Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities to show cause, in writing within twenty days, why it should not be fined for violation of Sections 367.081(1) and 367.091(3), Florida Statutes?

RECOMMENDATION: No. The Commission should not order Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities to show cause, in writing within twenty days, why it should not be fined for violation of Sections 367.081(1) and 367.091(3), Florida Statutes. (REYES)

STAFF ANALYSIS: As stated earlier, on May 14, 1996, the County Commission adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the privately-owned water and wastewater utilities in Polk County subject to the provisions of Chapter 367, Florida Statutes. On September 1, 1996, Grenelefe began charging rates for non-potable irrigation service. These rates have not been approved by either this Commission or the County Commission to date.

Section 367.081(1), Florida Statutes, provides that a utility may only charge rates and charges that have been approved by the Commission. Section 367.091(3), Florida Statutes, states that "[a] utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved." Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to comply with Chapter 367, Florida Statutes, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure to obtain the approval of the Commission prior to charging rates for non-potable irrigation service is an apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

However, the circumstances of this case mitigate the necessity of a show cause proceeding at this time. As mentioned previously, in May, 1993, Grenelefe was ordered by the Southwest Florida Water Management District (SWFWMD) to install meters on all service connections. This included water for domestic use and all types of irrigation. This was accomplished by the utility by May 15, 1995. Grenelefe then applied to the County at that time for approval of rates, but the County did not accept the application and requested that Grenelefe obtain one year's usage data before reapplying to the County. Grenelefe contracted with a second consulting firm, obtained the information, and resubmitted to the County in May, 1996 for approval of monthly service and irrigation rates.

During this time, the County transferred to the Commission its jurisdiction over water and wastewater utilities. However, the County specifically requested the right to complete a pending hearing with respect to the new rates for Grenelefe, and on July 2, 1996, the County Commission approved monthly service rates using the base facility and gallonage rate structure, as well as a rate for irrigation service.

Grenelefe asked for clarification of the County's vote with respect to application of the irrigation rate to non-potable water. In an August 19, 1996 letter, the County Commission staff stated, "the rates approved by the Commission for Grenelefe on July 2, 1996 were for potable water only." This letter also suggested the utility contact this Commission with respect to setting rates for non-potable water since the Commission had officially assumed jurisdiction May 14, 1996. On September 1, 1996, Grenelefe inappropriately started billing customers the new metered rates, including all irrigation customers using either potable or non-potable water.

As stated previously, staff believes that the circumstances of this case mitigate the necessity of a show cause proceeding at this time. Staff is recommending in Issue 4 that the utility be required to refund the revenues collected from the non-potable irrigation water rates. Furthermore, utility personnel have been extremely cooperative with staff in the course of obtaining all the additional information to fully understand the history of the rate and develop an alternate non-potable water irrigation rate. Therefore, based on the foregoing, staff recommends that the Commission not order Grenelefe to show cause, in writing within twenty days, why it should not be fined for violation of Sections 367.081(1) and 367.091(3), Florida Statutes. Staff's recommendation in this matter is consistent with Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, in Docket No. 921098-WS (a grandfather case wherein the Commission did not show cause the utility, but instead required refunds of unauthorized rate

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

increases imposed by the utility after the Commission obtained jurisdiction).

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 4: Should a refund of the revenues collected from the non-potable irrigation water rates implemented on September 1, 1996 by Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities be required?

RECOMMENDATION: Yes. A refund of the revenues collected from the non-potable irrigation water rates implemented on September 1, 1996 by Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities should be required with interest, pursuant to Rule 25-30.360, Florida Administrative Code. The refund should be calculated on a per customer basis and implemented within 90 days. The utility should file refund reports consistent with the rule. All unclaimed amounts should be treated as cash contributions-in-aid-of-construction in accordance with Rule 25-30.360(8), Florida Administrative Code. (MESSER, GOLDEN)

STAFF ANALYSIS: On September 1, 1996, Grenelefe began charging rates for non-potable irrigation service. These rates were identical to the rates approved for potable water irrigation service by Polk County on July 2, 1996. Although the utility was mandated by the SWFWMD to implement metered irrigation service, application of the rate to non-potable irrigation service was never officially approved by either the County or this Commission.

For informational purposes, staff requested that the utility provide an estimate of the revenue received from the non-potable irrigation service. From October 1996 through May 1997, the utility billed 179 customers, receiving \$39,152 from base facility charges and \$102,902 from gallonage charges. It is staff's understanding that the utility has continued to charge the rate; therefore, this amount would be larger at this time.

Staff believes the utility should be required to refund the revenues collected from the unauthorized rate. This case is similar to another grandfather case, In Re: Application for Certificates to Provide Water and Wastewater Service in Alachua County under Grandfather Rights by Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities, Docket No. 921098-WS, where refunds were required when the utility imposed unauthorized rate increases after the Commission obtained jurisdiction. Staff's recommendation in this matter is consistent with Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, in that docket.

While staff appreciates that the utility has been under a mandate by SWFWMD to charge for non-potable irrigation, staff does not believe the utility should be allowed to retain revenues collected as a result of the utility's implementation of an unauthorized rate.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

Therefore, staff recommends a refund of the revenues collected from the non-potable irrigation rates from September 1, 1996 by Grenelefe. The refund, with interest, should be implemented pursuant to Rule 25-30.360, Florida Administrative Code. The refund should be calculated on a per customer basis and implemented within 90 days. The utility should file refund reports consistent with the rule. All unclaimed amounts should be treated as cash contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 5: Should the potable water irrigation rate be approved for irrigation service using non-potable water?

RECOMMENDATION: No. The application of the potable water irrigation rate to non-potable irrigation service by Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities should be denied. Grenelefe should be ordered to begin charging the recommended rates as described herein and to file tariff sheets reflecting these rates. The tariff should be effective for service rendered on or after the stamped approval date on the tariff if no timely protest is received from a substantially affected person. (GOLDEN, MESSER, REDEMANN)

STAFF ANALYSIS: Prior to Commission regulation, Grenelefe included lawn irrigation service as a component of its water and wastewater service at no extra charge. All water and wastewater service was billed at a flat rate.

In May 1993, the SWFWMD issued a consent order requiring Grenelefe to install meters for all water usage, including all types of irrigation, in an effort to promote water conservation. Grenelefe contracted with consultants to assist in developing interim and permanent rates, and a schedule of installing meters. The rates were designed to be revenue neutral to the utility. Grenelefe completed the meter installation program in May of 1995, installing meters on all customer connections, and in addition, 110 connections using potable water and 192 connections using non-potable water for irrigation. Grenelefe applied to Polk County at that time for approval of rates, but the County did not accept the application and requested that Grenelefe obtain one year's usage data before reapplying to the County. Grenelefe contracted with a second consulting firm, obtained the information, and reapplied to the County in May of 1996 for approval of monthly service and irrigation rates.

During this time, the County Commission transferred to this Commission its jurisdiction over water and wastewater utilities. However, the County specifically requested the right to complete a pending hearing with respect to the new rates for Grenelefe. On July 2, 1996, the County Commission approved monthly rates based on the base facility and gallonage charge structure, with an inclining block gallonage rate. The County Commission also approved an irrigation rate comprised of the same base facility charge as the monthly water rate and gallonage rates that included the upper two tiers of the monthly water rate. These are the rates that Grenelefe has been charging all irrigation customers.

As discussed previously, correspondence after the County Commission vote clarified that the County Commission had approved

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

this irrigation rate for application to potable irrigation water. The County stated that it did not regulate non-potable water and suggested the utility pursue this with this Commission.

The staff has considered several tactics with respect to addressing the issue of whether a rate should be set for non-potable water used for irrigation purposes in the context of this grandfather application. Initially, it was decided that this issue should be considered beyond the scope of the grandfather certificate process. This is consistent with the traditional review of grandfather applications, in that the utilities are allowed to file the rates in effect at the time of the transfer. These rates have either been codified by the County or are verified through company billing data. Anything requested by the utility outside the scope of these parameters is not subject to Commission approval as a final action through a grandfather proceeding.

However, this case presented an unusual dilemma because the utility specifically received a mandate from the SWFWMD to meter and bill for all irrigation water. This includes both potable and non-potable water. The utility had already been fined by the District for not installing irrigation meters in a timely fashion. Once the staff became aware that the County had approved an irrigation rate and that this rate was for potable water, then the decision was whether staff should pursue the analysis for what is essentially a new class of service in this grandfather application.

After much discussion, it was decided that it was in the utility's best interests to extend the review process beyond the usual parameters of a grandfather application. The longer the utility remained without an approved rate, the greater its revenue losses. Because this issue goes beyond what is contemplated in the grandfather statute, this issue should be a proposed agency action.

As this issue developed, the Grenelefe Association of Condominium Owners expressed various concerns about any consideration of a rate for non-potable irrigation water. These customers allege that any rate would be double-billing customers, because the county rate case included all the expenses related to irrigation and was intended to generate a revenue neutral effect in going from a flat, unmetered environment to a metered base facility and gallonage charge rate structure. Secondly, the customers believed that information filed by the utility to identify capital costs related to non-potable service were overstated, which necessitated further discovery.

Staff specifically took these concerns into account during the collection of additional data. Staff requested that the utility contact the consultant used by the County in developing the

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

County's approved rates to obtain various supporting workpapers. Additionally, staff requested that the utility provide information regarding the plant, bills, gallons, and expenses that are associated exclusively with the provision of non-potable irrigation service. The information provided does not provide the level of detail that is necessary for staff to determine with certainty if the County's calculations excluded all of the non-potable plant items identified by the utility. However, it appears that the County's rate calculation did not include the non-potable water bills, gallons, or expenses identified by the utility.

The Commission has recognized the provision of irrigation with non-potable water in other cases such as East Central Florida Services, Inc. and recently Braden River Utilities, Inc., which provided strictly non-potable irrigation service. Typically, non-potable water rates are calculated using the same methodology that is used to calculate potable water rates, including consideration of rate base, depreciation expense, amortization expense, and operating income. However, staff believes that a more comprehensive review, such as would be conducted in a rate proceeding, is necessary to accurately determine if any of the non-potable plant and expense items were included in the County's potable water rate calculation.

Therefore, staff believes that at this time it is more prudent to only use the items that we feel confident were not included in the County's potable water rate calculation to calculate a non-potable rate. The result is that staff's recommended rate will only recover the portion of the utility's salaries, payroll taxes, purchased power, and allowance for regulatory assessment fees that is associated with the provision of non-potable water service. The rate does not include a return on the utility's investment in the non-potable plant. This is not staff's preferred methodology, but given the limited information that is available and the utility's immediate need for a non-potable water rate, staff believes that this "minimalist" approach is the most reasonable solution at this time.

The following are staff's recommended rates for irrigation service with non-potable water:

Irrigation Service - Non-Potable Water

Meter Size	Base Facility Charge
5/8 x 3/4"	\$ 2.83
1.0"	\$ 7.07
1.5"	\$ 14.15

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

2.0"	\$ 22.64
3.0"	\$ 45.28
4.0"	\$ 70.75
6.0"	\$141.49

Consumption Rate \$ 0.61 per 1,000 gallons

Staff recommends that the utility be required to file a tariff sheet reflecting the above rates. The tariff should be effective for service rendered on or after the stamped approval date on the tariff if no timely protest is filed by a substantially affected person.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 6: Should Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities be ordered to file a tariff sheet reflecting the applicability of meter installation charges and service availability charges for future requests for potable irrigation water?

RECOMMENDATION: Yes. Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities should be ordered to file a tariff sheet reflecting the applicability of meter installation charges and service availability charges for future requests for potable irrigation water. The tariff should be effective for connections made on or after the stamped approval date of the tariff. (MESSER, GOLDEN)

STAFF ANALYSIS: Commission practice with respect to applicable charges on a separate meter used for potable water irrigation is to charge the base facility and gallonage charge associated with the meter size, a meter installation charge and an additional service availability charge since these meters are placing a separate demand on the potable water treatment facility. These additional charges were not billed by the utility not because they were voluntarily requested by the customer, but because the SWFWMD mandated their installation.

However, staff is concerned with the utility being appropriately compensated in the future if additional customers request irrigation service using potable water. The utility is at risk of having these charges imputed at the time of filing for a rate increase if the charges are not properly identified in the tariff and applied by the utility. Therefore, staff believes that the utility should file a revised tariff sheet indicating the applicability of these charges for that particular service in the future. These charges are identified previously in Issue 2. This tariff should be effective for connections made on or after the stamped approval date on the tariff sheet.

DOCKET NO. 961006-WS
NOVEMBER 7, 1997

ISSUE 7: 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 and upon receipt of the revised tariff sheets and refund reports as required by Rule 25-30.360, Florida Administrative Code, this docket should be closed. (REYES)

STAFF ANALYSIS: Upon expiration of the protest period, if a timely protest is not received from a substantially affected person and upon receipt of the revised tariff sheets and refund reports as required by Rule 25-30.360, Florida Administrative Code, this docket should be closed.