

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SUNRAY UTILITIES, ) DOCKET NO. 870539-WS  
 INC. for water and sewer certificates in ) ORDER NO. 23714  
 St. Johns County, Florida. ) ISSUED: 11-02-90  
 )

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 FRANK S. MESSERSMITH

ORDER APPROVING TEMPORARY RATES  
SUBJECT TO REFUND

BY THE COMMISSION:

On August 28, 1987, Sunray Utilities, Inc. (Sunray or the Utility) applied for original water and sewer certificates in St. Johns County. The application was protested by St. Johns North Utility Corporation (SJN) and a hearing was held on the issue of which utility would serve the proposed territory. Pursuant to Order No. 19428, issued June 6, 1988, Sunray was granted Water Certificate No. 504-W and Sewer Certificate No. 438-S. The docket was left open pending the establishment of rates and charges.

In April 1990, the Utility began providing service to the Cimarrone Property Owners Association (Cimarrone), without compensation, pending the establishment of initial rates and charges. On August 10, 1990, this Commission issued proposed agency action Order No. 23341 approving initial rates and charges. On August 30, 1990, Cimarrone, Sunray's sole existing customer and Cordele Properties, Inc. (Cordele), the developer of the Cimarrone Project, filed a joint protest to the Order.

On September 10, 1990, Sunray filed a request for implementation of temporary rates or, alternatively, a notice of placing rates into effect pursuant to Section 367.081(6), Florida Statutes (1988). According to Sunray, its intent in filing its request was to obtain approval to implement rates

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and charges subject to refund, to avoid an unrecoverable loss of revenue pending finalization of this docket. Sunray requests that it be allowed to implement as temporary rates and charges, subject to refund, those rates and charges we proposed to approve in Order No. 23341. Sunray has filed appropriate tariff sheets as well as a corporate undertaking to assure any refund based upon final rates and charges established in this docket. Sunray states within its request, that it has lost approximately \$34,000 providing non-compensated service to Cimarrone and would continue to lose revenue, without rates and charges, pending resolution of the protest through the hearing process. All revenue collected by implementation of the temporary rates would be subject to refund, with interest, based upon this Commission's final order in this docket. Therefore, Cimarrone would not be harmed in that it would pay the rates and charges ultimately approved by this Commission.

We have often approved temporary rates in staff-assisted rate cases when such cases have been protested by a substantially affected person other than the utility. If a protest is received in such cases the temporary rates are implemented subject to refund pending formal hearing and issuance of a final order. The purpose for such temporary rates is to allow a utility to avoid an unrecoverable loss of revenue, while protecting the ratepayers with the refund provision. We find Sunray's request for temporary rates to be reasonable and to have a sound economic basis. Therefore, we hereby approve as temporary rates, subject to refund, the rates we proposed to approve in Order No. 23341.

On September 25, 1990, Cimarrone Property Owners Association and Cordele Properties filed a Memorandum in Opposition to Sunray's request for temporary rates and charges. In their Memorandum, Cimarrone and Cordele argue that they do not oppose the temporary implementation of the monthly service rates, but do oppose the temporary implementation of guaranteed revenue and allowance for funds prudently invested (AFPI) charges since they were not contemplated in the Utility's Service Agreement. Also, Cordele and Cimarrone state that since Sunray had not requested these charges within its initial application they should not be implemented. They argue that Sunray's request for temporary rates should be viewed as a request for extraordinary relief and should be justified as such by Sunray. And finally, Cordele and Cimarrone argue that temporary implementation of the guaranteed revenue and AFPI charges is not equitable and will harm Cimarrone and Cordele as they will adversely affect the marketability of the units in the Cimarrone development.

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Guaranteed revenue charges and AFPI charges were not contained in the Utility's initial application, but were later verbally requested by the Utility. However, we find it appropriate to establish guaranteed revenue and AFPI charges regardless of whether they are requested by a utility. If a utility requests less than compensatory rates in its certificate application, it has been our practice to establish compensatory, i.e., higher than requested rates, so that rate shock will not occur when compensatory rates are set in a subsequent proceeding. Similarly, when initial rates are being established, it is our practice to establish all appropriate rates and charges so the utility can begin its operation in a comprehensive manner.

We find that the temporary implementation of these rates and charges will not be harmful to any of the parties while the disputed issues are addressed because these rates and charges will be implemented under bond or corporate undertaking and will be subject to refund. We would also note that protecting the marketability of a developer's project is not within this Commission's purview. Setting fair, just and reasonable rates for a utility is. Retroactive ratemaking is proscribed. If temporary rates and charges are not established in this instance, and at the conclusion of this proceeding, the rates and charges are found to be appropriate, the utility would have been forced to forego these appropriate revenues.

Based upon the foregoing, we find Sunray's request for implementation of temporary rates and charges, subject to refund with interest, consistent with those we proposed to approve in our Order No. 23341 and we hereby approve them. The concerns raised in Cimarrone's and Cordele's Memorandum will be addressed during the course of this proceeding. The monthly service rates shall be effective for meter readings on or after thirty days from the stamped approval date on the tariff sheets. Non-recurring charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service that Sunray Utilities, Inc.'s request to place into effect as temporary rates, subject to refund, the rates we proposed to approve in Order No. 23341 is hereby approved. It is further

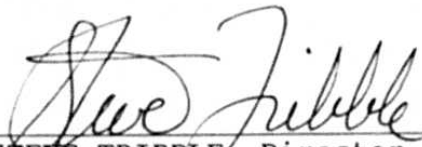
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ORDERED that the corporate undertaking previously filed by Sunray Utilities, Inc., to assure any refund based upon the final rates and charges approved in this Docket shall continue in effect until the conclusion of this proceeding. It is further

ORDERED that the temporary monthly service rates herein approved shall be effective for meter readings on or after thirty days from the stamped approval date on the tariff sheets. The temporary non-recurring service charges approved herein shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. The tariff sheets will be approved upon Staff's verification that they are consistent with our decision herein and that the proposed customer notice is adequate. It is further

ORDERED that Sunray Utilities, Inc., shall provide notice to its customers of the temporary rates and charges approved herein as well as the basis for their approval. Such notice shall be submitted for our Staff's approval.

By ORDER of the Florida Public Service Commission, this 2nd day of NOVEMBER, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

SFS

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.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.