



**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-**

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FEB 11 1999  
11:10:25  
COMMUNICATIONS SECTION

**DATE:** FEBRUARY 4, 1999

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

**FROM:** DIVISION OF LEGAL SERVICES (JAEGER, FLEMING) *[Handwritten initials]*  
DIVISION OF WATER AND WASTEWATER (CASEY, DAVIS, LINGO) *[Handwritten initials]*

**RE:** DOCKET NO. 971401-WS - APPLICATION FOR STAFF-ASSISTED RATE CASE IN BAY COUNTY BY BAYSIDE UTILITIES, INC.

**AGENDA:** 02/16/99 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 15-MONTH EFFECTIVE DATE: 06/27/99 (SARC)

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\971401R2.RCM

**CASE BACKGROUND**

On October 22, 1997, Bayside Utilities, Inc. (Bayside or utility) filed an application for a staff-assisted rate case. However, because the utility had not paid its regulatory assessment fees and its filing fee, the official date of filing was not established until March 27, 1998.

On September 24, 1998, the Commission issued Proposed Agency Action (PAA) Order No. PSC-98-1269-FOF-WS granting increased rates and charges for Bayside. That Order also provided for temporary rates subject to refund in the event of protest of the proposed agency action portion of the Order.

Subsequently, on October 15, 1998, three customers of Bayside timely protested PAA Order No. PSC-98-1269-FOF-WS. The customers basically alleged that the utility's revenues were understated, expenses were overstated, return on investment should be reduced to reflect mismanagement, depreciation expense and accumulated depreciation were miscalculated, changes in operating and maintenance expenses were unsupported, rate base was overstated,

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and the revenue requirement was overstated. Accordingly, this matter was set for an administrative hearing.

Pursuant to the provisions of PAA Order No. PSC-98-1269-FOF-WS, Bayside filed a letter of credit in the amount of \$15,953, and implemented the PAA rates as temporary rates subject to refund. The utility also filed its prefiled testimony on December 22, 1998, as required by the Order Establishing Procedure, Order No. PSC-98-1516-PCO-WS, issued November 17, 1998.

However, on January 21, 1999, the three customers filed a "Notice of Voluntary Dismissal" (attached as Attachment A), in which they state that they, "hereby issue this Notice that they voluntarily withdraw their Protest of PAA Order no.[sic] PSC-98-1269-FOF-WS." This recommendation addresses the customers' withdrawal of their protest, and the proper disposition of the letter of credit filed by Bayside.

DISCUSSION OF ISSUES

ISSUE 1: Should the customers' notice of voluntary withdrawal of protest of Proposed Agency Action Order No. PSC-98-1269-FOF-WS be acknowledged and that order become final?

RECOMMENDATION: Yes, the withdrawal of protest should be acknowledged. Order No. PSC-98-1269-FOF-WS should be made final and effective February 16, 1999. (JAEGER)

STAFF ANALYSIS: As stated in the case background, on January 21, 1999, the protesting customers filed their voluntary withdrawal of protest of the Proposed Agency Action Order No. PSC-98-1269-FOF-WS. Staff recommends that the Commission acknowledge the customers' withdrawal of protest and that Order No. PSC-98-1269-FOF-WS should be made final and effective on February 16, 1999.

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**ISSUE 2:** What is the appropriate disposition of the irrevocable letter of credit in the amount of \$15,953, submitted by Peoples First Community Bank on behalf of Bayside Utilities, Inc.?

**RECOMMENDATION:** The irrevocable letter of credit in the amount of \$15,953 provided by Peoples First Community Bank on behalf of Bayside Utilities, Inc., should be released. (JAEGER, CASEY)

**STAFF ANALYSIS:** In the event of protest, Order No. PSC-98-1269-FOF-WS, issued September 24, 1998, allowed the utility to implement the PAA rates as temporary rates subject to refund, if the utility first provided a letter of credit in the amount of \$15,953. The utility did implement the PAA rates as temporary rates subject to refund, and, in accordance with that Order, the Peoples First Community Bank on behalf of Bayside Utilities, Inc., provided a letter of credit in the amount of \$15,953.

If the Commission acknowledges the withdrawal of the protest, and the finality of Order No. PSC-98-1269-FOF-WS (Issue 1 above), the temporary rates will now be final rates and no longer subject to refund. Therefore, the irrevocable letter of credit should be released since it is not needed.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. Staff has verified that Bayside Utilities, Inc., has removed all non-utility related users from the power meter at the "Eastern" lift station, and installed emergency lights for each lift station as required by Order No. PSC-98-1269-FOF-WS. Also, the utility is in compliance with all other requirements of Order No. PSC-98-1269-FOF-WS. Therefore, if the Commission approves Issues 1 and 2 of this recommendation, no further action is necessary in this docket, and the docket may be closed. (JAEGER, DAVIS, CASEY)

STAFF ANALYSIS: Order No. PSC-98-1269-FOF-WS, allowed for administrative closing of the docket upon staff's verification that Bayside had removed all non-utility related users from the power meter at the "Eastern" lift station, and installed emergency lights for each lift station. The staff engineer has verified that this has been done. Also, the utility is in compliance with with all other requirements of Order No. PSC-98-1269-FOF-WS. Therefore, if the Commission approves Issues 1 and 2 of this recommendation, no further action is necessary in this docket, and the docket may be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff  
assigned rate case to Bay County  
by Bayside Utilities, Inc. )  
 )  
 )

Docket No. 971401-WS  
Filed: 9 01 AM '99  
ADMINISTRATIVE  
MAIL ROOM

NOTICE OF VOLUNTARY DISMISSAL

Petitioners Taver Kitchens, Jim Wharton and Bobby J. Perrillo, each individually in his own name, and jointly as representatives of Bayside Homeowners' Association, voluntarily dismiss their Protest of Proposed Agency Action filed on October 15, 1998, and submit:

1. On October 22, 1997, Bayside Utilities, Inc. (Bayside) filed an application for a staff-assisted rate case. On September 24, 1998, the Public Service Commission issued Proposed Agency Action Order No. PSC-98-1269-FOF-WS, which granted increased rates and charges for Bayside Utilities.
2. On October 15, 1998, the undersigned Petitioners timely protested certain portions of Order No. PSC-98-1269-FOF-WS, and petitioned for a hearing on the controverted issues. The PSC duly established the various dates for an orderly hearing process. The deadline for Bayside's testimony was passed. The utility opted not to file comprehensive testimony on the issues, but rather to allow the PSC staff to defend the substance of the PAA.
3. Notwithstanding that PSC staff will present the entire case for Bayside, Petitioners have been advised that Bayside intends to hire counsel and other consultants, and thereby incur significant rate case expense. Petitioners further have been advised that the Commission routinely passes on this rate case expense to the customers' bills.
4. The fundamental unfairness of this predicament seems self-apparent, and the Petitioners believe the PSC should re-assess its approach to such threats of rate case expense.

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JAN 29 1999

Florida Public Service Commission  
Division of Water and Wastewater

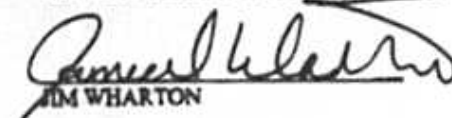
Nevertheless, the Petitioners must acknowledge the harsh reality of the present Commission policy.

5. Accordingly, in order to prevent undue rate case expense from being levied on fellow customers, the undersigned Petitioners voluntarily withdraw their Protest.

WHEREFORE, Petitioners Tarver Kitchens, Jim Wharton and Bobby J. Patillo hereby issue this Notice that they voluntarily withdraw their Protest of PAA Order no. PSC-98-1269-FOF-WS.

Respectfully submitted,

  
TARVER KITCHENS, PRESIDENT  
BAYSIDE HOMEOWNERS ASSOC.

  
JIM WHARTON

  
BOBBY PATILLO

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**CERTIFICATE OF SERVICE  
DOCKET NO. 971401-WS**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing NOTICE OF VOLUNTARY DISMISSAL has been delivered by (\*)<sup>(FAX)</sup>hand-delivery or U.S. Mail to the following parties this 20 day of JANUARY, 1999.

Robert Case, Esquire  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Bayside Utilities, Inc.  
6325 Big Daddy Drive  
Panama City Beach, Florida 32407-5506

*Tarver Kitchens*  
TARVER KITCHENS, PRESIDENT  
BAYSIDE HOMEOWNERS ASSOC.