



Public Service Commission

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RECORDS AND REPORTING

DATE: MAY 20, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BYÓ)

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN)
DIVISION OF WATER AND WASTEWATER (WILLIS, BUTTS, RENDELL)

RE: DOCKET NO. 981825-SU - APPLICATION BY TRADEWINDS UTILITIES, INC. FOR APPROVAL OF A NEW CLASS OF SERVICE FOR WASTEWATER-ONLY FLAT RATES IN MARION COUNTY.

AGENDA: 06/01/99 - REGULAR AGENDA

CRITICAL DATES: NONE - THE EIGHT MONTH STATUTORY DEADLINE HAS BEEN WAIVED.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981825.RCM

CASE BACKGROUND

Tradewinds Utilities, Inc. (Tradewinds or utility) is a Class C water and wastewater utility located in Marion County. According to the utility's 1997 annual report, the utility provides water services to approximately 421 customers and wastewater service to approximately 257 customers. In its 1997 annual report, the utility reported water revenues in the amount of \$84,259 and wastewater revenues in the amount of \$132,456 with expenses of \$78,286 for water and \$120,302 for wastewater, resulting in net operating income of \$5,973 and \$12,154 respectively. The utility's service area is located in the St. John's River Water Management District.

By Order No. PSC-98-0484-FOF-WS, issued April 6, 1998, the Commission amended the utility's certificated territory to include additional territory in Marion County. Residents in this additional territory currently have private wells and septic tanks; however, as a result of problems with contamination of wells and

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backing-up of septic tanks in this area, the Marion County Health Department requested that the utility extend its territory into this area.

On November 6, 1998, we received a complaint from a customer representative in the newly certificated territory that Tradewinds recently installed a private water/sewer system and was mandating that all property owners connect to this system. The representative stated that the utility neither notified customers prior to the installation nor provided any opportunity for customers to reject the proposal. We responded to the complaint on November 24, 1998, and explained that, pursuant to Section 367.045, Florida Statutes, the Commission had recently granted the utility's amendment application to serve the area. As part of its application, Tradewinds was required to submit proof that it provided adequate customer notice of the proposed amendment. The notice was published in the Starr-Banner Newspaper on January 28, 1998, and no protests were filed within the 30-day protest period set forth in Rule 25-30.031, Florida Administrative Code. The customer representative was urged to contact the Marion County Health Department for further information regarding the requirement to connect to Tradewinds' system.

The additional territory includes customers requesting water and wastewater services, for which the utility has Commission approved metered rates, and customers requesting wastewater-only services, for which the utility does not have Commission approved rates. On December 8, 1998, pursuant to Section 367.091(4), Florida Statutes, Tradewinds submitted an application to approve flat rates for a new class of service for wastewater-only customers in the newly certificated area. The utility proposed to serve an additional 32 equivalent residential connections consisting of an estimated 26 quadruplexes, and six light industrial buildings.

On January 14, 1999, in a telephone conversation, the utility's president, Mr. Charles de Menzes, stated that 16 of the customers requesting water and wastewater service were already connected and being charged the Commission approved metered rates. However, those customers that are not metered by the utility for water cannot be charged the Commission approved base facility and gallonage charge for wastewater. Since some customers did not wish to accept water service, the utility requested flat rates for a new class of wastewater-only service for those customers. These customers are not connected as of this date.

By Order No. PSC-99-0382-FOF-SU, issued February 23, 1999, the Commission approved temporary rates, subject to refund, for a new

class of service for wastewater-only flat rates. This Order provided that "if a protest is filed within 21 days of issuance of this order, the tariff sheet shall remain in effect, with monies collected held subject to refund, pending resolution of the protest."

In accordance with this language a timely protest was filed by Mr. Charles Ruse, Jr. By letter dated March 12, 1999, Mr. Ruse stated that our approved temporary rate of \$261.55 for quadruplexes was outrageous. He also stated that requiring utilization of a two-inch meter was excessive, especially where a two-inch pipe would terminate into an existing one-inch pipe. According to Mr. Ruse, "this is some ploy by the utility company to maximize its income." Because we received a protest, the matter was set for hearing by Order No. PSC-99-0898-PCO-SU, issued May 5, 1999, Order Establishing Procedure.

Staff believes it was incorrect to include language providing for a protest period in the order approving temporary rates. The following will address staff's recommendation to vacate the provision in Order No. PSC-99-0382-FOF-SU allowing a twenty-one (21) day protest period and to vacate the Order Establishing Procedure and cancel the hearing.

DISCUSSION OF ISSUES

ISSUE 1: Should the portion of Order No. PSC-99-0382-FOF-SU allowing for a 21 day protest period and Order No. PSC-99-0898-PCO-SU, the Order Establishing Procedure, be vacated?

RECOMMENDATION: Yes. The portion of Order No. PSC-99-0382-FOF-SU allowing for the protest of the temporary rates and Order No. PSC-99-0898-PCO-SU, setting the prehearing and hearing, should be vacated. (Crossman)

STAFF ANALYSIS: Some customers in the utility's newly-certificated territory did not wish to accept water service. Since the utility did not have a tariff on file with the Commission for wastewater-only rates, on December 8, 1998, it submitted an application for a new class of service for wastewater-only flat rates. By Order No. PSC-99-0382-FOF-SU, issued February 23, 1999, the Commission approved the implementation of wastewater-only flat rates on a temporary basis, subject to refund, pending further investigation by staff. Although these potential customers were not connected, staff believed that temporary rates were necessary in this instance because, given the health concerns associated with contamination of private wells and back-up of private septic tanks, there was a strong possibility that they would connect prior to the final rates being approved by the Commission. These potential customers are not currently being served.

Because the Commission's decision to approve temporary rates was interim in nature, the rates will remain in effect only until staff completes its investigation and the Commission determines whether to approve or deny the tariff filing. "An interim rate increase is a part of the main proceeding and is authorized only pending a final order by the Commission." Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975). Additionally, since the temporary rates are subject to refund, the customers are protected in the event the Commission determines the rates are excessive.

By Order No. PSC-99-0382-FOF-SU, approving temporary rates, the Commission provided that "if a protest is filed within 21 days of issuance of this order, the tariff sheet shall remain in effect, with monies collected held subject to refund, pending resolution of the protest." This language is normally reserved for proposed decisions on whether to approve tariff filings, but was inadvertently included in the aforementioned order. To allow

protests at this point would be premature because a point of entry for protests will be provided when the Commission issues its final tariff order on proposed final rates.

Accordingly, staff believes it was incorrect to include language providing for a protest period in the order approving temporary rates. As a result, staff believes that it is appropriate to vacate the portion of Order No. PSC-99-0382-FOF-SU that allows for the protest of the temporary rates and to vacate Order No. PSC-99-0898-PCO-SU setting the matter for hearing. Therefore, the prehearing and hearing scheduled to take place in this docket would be canceled. Staff also notes that to go to hearing on temporary rates would be an inefficient use of the Commission's and the parties' resources because all substantially affected persons will be given the opportunity to protest the Commission's decision to approve or deny the tariff filing.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending staff's investigation and recommendation on whether the tariff filing should be approved. (Crossman)

STAFF ANALYSIS: This docket should remain open in order for staff to conclude its investigation and the Commission to decide whether to approve the tariff filing.