

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Tradewinds Utilities, Inc. for approval of a new class of service for wastewater-only flat rates in Marion County.

DOCKET NO. 981825-SU
ORDER NO. PSC-99-1390-FOF-SU
ISSUED: July 19, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER AMENDING ORDER NO. PSC-99-0382-FOF-SU TO DELETE THE PROTEST LANGUAGE IN THE NOTICE OF FURTHER PROCEEDINGS ATTACHED THERETO, AND VACATING ORDER NO. PSC-99-0898-PCO-SU, THE ORDER ESTABLISHING PROCEDURE

BY THE COMMISSION:

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 service 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 a 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, in Docket No. 971174-WS, 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 backing-up of septic tanks, the

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ORDER NO. PSC-99-1390-FOF-SU
DOCKET NO. 981825-SU
PAGE 2

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 in the newly certificated territory that Tradewinds recently installed a private water and wastewater system and was mandating that all property owners connect to this system. The customer 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 customer 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 by Section 367.045(3), Florida Statutes. The customer 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 filed 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

ORDER NO. PSC-99-1390-FOF-SU
DOCKET NO. 981825-SU
PAGE 3

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, we approved temporary rates, subject to refund, for a new class of service for wastewater-only flat rates. By the Notice of Further Proceedings attached to that order, we 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 that language, a timely protest was filed on March 12, 1999, by Mr. Charles Ruse, Jr. Accordingly, the matter was set for hearing by Order No. PSC-99-0898-PCO-SU, issued May 5, 1999, Order Establishing Procedure.

AMENDING ORDER NO. PSC-99-0382-FOF-SU AND VACATING ORDER NO. PSC-99-0898-PCO-SU

Section 367.091(4), Florida Statutes, provides that a utility may "furnish a new class of service and fix and charge just, reasonable, and compensatory rates or charges". By Order No. PSC-99-0382-FOF-SU, we approved temporary rates and ordered the rates to remain in effect only until our staff completed its investigation and we determined whether to approve or deny the tariff filing. Additionally, since the temporary rates are held subject to refund, the customers are protected in the event we determine that the rates are excessive.

In Order No. PSC-99-0382-FOF-SU, approving temporary rates, we 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 generally used in tariff decisions. It was erroneously included in the aforementioned order since this was a temporary tariff rate. To allow protests at this point would be premature because a point of entry for protests will be provided when we issue our tariff order approving or denying the tariff filing. Additionally, since the temporary rates are held subject to refund, the customers are protected in the event we determine

ORDER NO. PSC-99-1390-FOF-SU
DOCKET NO. 981825-SU
PAGE 4

that the rates are excessive. 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 our decision to approve or deny the tariff filing.

Because it was incorrect to include language providing for a protest period in Order No. PSC-99-0382-FOF-SU, we hereby amend the Order to correct the Notice of Further Proceedings attached thereto by deleting the protest language. Order No. PSC-99-0898-PCO-SU, the Order Establishing Procedure, is vacated and the hearing has been canceled. This docket shall remain open pending our decision on whether to approve the tariff filing.

Based on the foregoing, it is

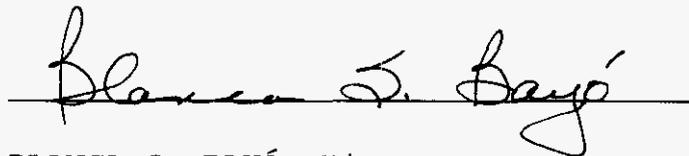
ORDERED by the Florida Public Service Commission that Order No. PSC-99-0382-FOF-SU, issued February 23, 1999, in this docket, is amended to delete the protest language in the Notice of Further Proceedings attached thereto. It if further

ORDERED that Order No. PSC-99-0382-FOF-SU is reaffirmed in all other respects. It if further

ORDERED that Order No. PSC-99-0898-PCO-SU, the Order Establishing Procedure, is hereby vacated. It if further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 19th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-99-1390-FOF-SU
DOCKET NO. 981825-SU
PAGE 5

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/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 after the issuance of this order, 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.