BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for modification of Service Availability Policy in Collier County by Rookery Bay Utility Co.	DOCKET NO. 900541-SU ORDER NO. 23360 ISSUED: 8-15-90

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 MODIFICATION TO SERVICE AVAILABILITY POLICY

BY THE COMMISSION:

BACKGROUND

Rookery Bay Utility Company (Rookery Bay or company) is a Class C wastewater utility operating in Collier County. The 1989 Annual Report identified that the company served 1,667 customers. The Commission obtained jurisdiction over Rookery Bay on April 16, 1985, at which point all rates and charges were grandfathered. The grandfathered service availability policy consisted of only a plant capacity charge with no formal policy. The company has not had a rate case before the Commission, but has been involved in an overearnings investigation (Docket No. 860554-SU), which resulted in a reduction of rates.

On April 25, 1988, Rookery Bay applied for a transfer of the service territory of Riverwood Associates. Its request was approved by Order No. 20957, issued March 29, 1989. By that Order, we also ordered the company to continue charging Riverwood Estates' residents the rates and service availability charges which were charged by the Riverwood Estates System prior to the transfer. Rookery Bay subsequently added the new rates and service availability charges to its tariff.

On October 27, 1989, Rookery Bay filed an application to amend its service territory to include Six L's Farm. On November 21, 1989, Rookery Bay filed a developer agreement for Six L's Farm, which was closely followed by similar agreements for Imperial Wilderness, Inc. and Rookery Bay, Ltd. - Wentworth Development Corporation. Each of these developers agreements purported to set rates and charges for the affected areas.

By letter dated January 8, 1990, the Staff of this Commission (Staff) advised Rookery Bay that its method of setting rates and charges by developers agreements was inappropriate. Staff also requested information to justify the rates and charges and suggested that the company file a request for a new class of service and a service availability policy. Rookery Bay was of the opinion that, since we did not take any action on the developers agreements within thirty days, it had a right to implement those rates and charges.

By Order No. 22967, issued May 22, 1990, we rejected Rookery Bay's arguments and ordered it to file for a new class of service and a service availability policy. The company filed its request for modification of the service availability policy on May 31, 1990.

APPLICATION

As discussed in the case background, the company's existing service availability policy was approved by Order No. 16029, by which the company was issued its grandfather certificate. The only service availability charge was a $1.00 per gallon plant capacity charge, based on average daily usage. Two additional charges were approved by Order No. 20957 in Docket No. 880611-SU, on March 29, 1989, that authorized the company to charge, to Riverwood Estates only, connection fees of $2,000 per mobile home and $5,000 per commercial account.

On May 31, 1990, the company submitted a new service availability policy in response to Order No. 22967. Revisions to the tariff sheets were made on June 26, 1990.

This filing was originally treated as a tariff revision on the belief that the company was modifying only the "language" of the policy, but not the charges. On July 9, 1990, Staff was advised that the company intended to delete the $2,000 and $5,000 connection fees that were approved in Order No. 20957. The company stated that charging these fees would lead to

costly litigation between the company and developer, would cause the company to be over-contributed, and would result in discriminatory treatment of its customers.

The company asserts it was previously unaware that service availability charges must be applied uniformly to all customers, and, believing that the fees were excessive for a mobile home park, the company decided not to assess the service availability fees to Riverwood Estates. Upon notification as to the proper application of service availability charges, the company began to assess the connection fees against Riverwood Estates. The developer objected and threatened to sue the company. The company's consultant determined that the company was in danger of becoming over-contributed if it succeeded in assessing the fees. In order to avoid litigation and over-contribution, the company has now deleted the $2,000 and $5,000 connection fees from the tariff and charged Riverwood Estates the $1.00 plant capacity charge that is applied to all of its other customers.

We have confirmed that the company has never charged the connection fees. Although a violation of the tariff, the fact that the connection fees have never been charged by the company allows treating this filing as a tariff revision to formalize the actual policy being applied to the utility's customers.

As of May 15, 1990, the utility's contribution level was 43% for wastewater, which is within the guidelines of Rule 25-30.580, Florida Administrative Code. Riverwood Estates is currently expanding, therefore, it is expected that the contribution level will rise. If the company had assessed the $2,000 and $5,000 connection fees to Riverwood Estates, the contribution level could be 92% by the end of 1990, which far exceeds the Rule guidelines of a maximum 75% contribution level.

We considered the alternative of lowering the fees rather than eliminating them from the tariff, and thereby enabling the company to reach a 75% contribution level. The overriding factor against this alternative is that the company has a history of overearning and the increased CIAC without a concurrent rate adjustment could aggravate an already tenuous overearning position.

The revised tariff submitted by the utility reflects the company's true service availability policy. The text of the service availability tariff as revised is acceptable.

If the need arises for additional modifications to the service availability policy, the company shall request Commission approval prior to applying any new policy to any of its customers. The company is hereby placed on notice that any future violation of the service availability policy, or the implementation of modifications to the policy without prior Commission approval, will result in a show cause action by this Commission.

The revised tariff shall become effective for connections made on or after the stamped approval date of the revised tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Rookery Bay Utility Company's application to modify its service availability policy to reflect its actual applied policy is hereby approved. It is further

ORDERED that the revised tariff shall become effective for all connections made on or after the stamped approval date of the revised tariff sheets. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 15th day of AUGUST, 1990.

Steve Tribble

STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

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 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 or sewer 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.