

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff-	)	DOCKET NO. 910276-WS
assisted rate case in Volusia	)	ORDER NO. 25216
County by Pine Island Utility	)	ISSUED: 10/14/91
Corporation	)	
	)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 MICHAEL MCK. WILSON

ORDER GRANTING EXTENSION OF TIME TO FILE DIRECT TESTIMONY

BY THE COMMISSION:

Case Background

Pine Island Utility Corporation (PIU or utility) is a class "C" utility which provides service to approximately 86 water customers and 69 wastewater customers in Volusia County.

On June 6, 1990, PIU applied for a staff-assisted rate case, which we assigned Docket No. 900530-WS. The documentation submitted by PIU concerning its organizational control and its ownership of land and plant assets was problematic. With the statutory deadline quickly approaching, we decided in Order No. 24132, issued February 18, 1991, to close the case without granting PIU any rate relief. We allowed PIU to reapply for a staff-assisted rate case once it provided adequate documentation of corporate organizational control and ownership of land and assets. PIU timely filed all of the required documentation along with a new application for staff assistance, so we opened the instant docket to process the case.

By proposed agency action (PAA) Order No. 23643, issued June 10, 1991, we allowed PIU to collect increased rates and charges, assessed and conditionally suspended a fine, required compliance with DER directives, required the installation of meters, required assurance--through security or otherwise--that PIU's power bills be paid, and approved temporary rates in the event of a protest. On July 1, 1991, a group of customers filed a timely protest to Order No. 24643.

Before PIU it could charge the increased rates on a temporary basis pursuant to Order No. 23643, PIU was required to provide

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revised tariffs, a customer notice, and security for a potential refund. When we discovered that PIU began charging the temporary rates prior to meeting all the preconditions for doing so, we issued Order No. 24961, on August 22, 1991, wherein we ordered PIU to immediately cease and desist charging the temporary rates until our staff had determined that all of the requirements of Order No. 24643 were met. We also ordered PIU to show cause in writing by September 11, 1991, why it should not be fined up to \$5,000 a day for violating Order No. 24643 and Section 367.041, Florida Statutes, and we made that portion of Order No. 24643 where we granted our staff authority to require security for PIU's power bills into final agency action.

On August 30, 1991, our staff determined that PIU had met all requirements of Order No. 24643. The temporary rate increase became effective September 6, 1991.

Upon reviewing the documents PIU submitted regarding organizational control, we attempted to get the utility to apply for a transfer of majority organizational control. Although we sent a transfer application and instructions to the prior and current utility owners and established deadlines for return of the application, we have yet to receive a completed application.

In processing PIU's rate case, we asked PIU to provide estimates and signed contracts for plant improvements required by Department of Environmental Regulation (DER) so that we could consider the improvements for pro forma treatment in PIU's rate base. PIU failed to provide estimates or contracts; its president explained that he was currently negotiating with DER and did not want to include any proforma plant improvements in this case. Accordingly, no DER required plant improvements were included in rate base. We are aware, however, that PIU is not in compliance with DERs regulations for water and wastewater plants. The major DER-required plant improvements for the water system are a hydropneumatic tank, improved pumping capacity, and backflow prevention devices. The major wastewater treatment plant deficiency is high turbidity in the clarification process, a problem which causes strong odors and potential health hazards.

By Order No. 24839, issued July 22, 1991, the Prehearing Officer required that PIU file its direct testimony on July 30, 1991. The utility requested a ten-day extension to file its testimony, and by Order No. 24839, the Prehearing Officer granted

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the extension. Nonetheless, the utility has not filed any testimony.

The prehearing for this case was scheduled for September 30, 1991, and the hearing was scheduled for October 17 and October 18, 1991.

Extension For Filing Direct Testimony

As is evident from the case background above, PIU has engaged in a pattern of seemingly apathetic conduct which this Commission has had to directly confront on at least three prior occasions. Since we are greatly concerned with the utility's failure to file direct testimony in support of its case, we have considered dismissing the utility's case.

SARCs are designed to help the small utilities which do not have a great deal of technical expertise or financial ability to obtain needed rate relief. It is important to note, however, that this type of case is a "staff-assisted" rate case, not a "staff rate case."

In this instance, PIU did not file any direct testimony. The utility was told that the testimony did not have to be complex; the utility could have simply adopted the content of the PAA staff recommendation and make any modifications it wished to support. But PIU did not even do this.

Regardless of whether or not one thinks that the character of this SARC has changed because of the protest, the utility should have some burden in proving its case. By not filing direct testimony, the utility has placed the burden on our staff to go forward with what would inevitably be a staff rate case.

However, in consideration of the utility's apparent need for rate relief and the amount of time we have to issue a final order--until August 3, 1992--we shall not dismiss PIU's case at this time. PIU has until October 24, 1991, to file its direct testimony or have its case dismissed. All other scheduled events shall be revised with the Chairman's approval.

In consideration of the foregoing it is

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ORDERED by the Florida Public Service Commission that Pine Island Utility Corporation is given until October 24, 1991, to file direct testimony in this cause.

By ORDER of the Florida Public Service Commission, this 14th day of OCTOBER, 1991.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MJF

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.