

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by City of Vero Beach to delete its Curtailable Commercial Service rate and its QF Transmission tariff and add a "Disclaimer of Liability" clause to its General Rules and Regulations.

DOCKET NO. 990943-EM
ORDER NO. PSC-99-1999-TRF-EM
ISSUED: October 13, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER GRANTING APPROVAL OF TARIFF REVISION

BY THE COMMISSION:

On July 20, 1999, City of Vero Beach (City) submitted a petition to revise portions of its tariff. The City requests authority to delete its Curtailable Commercial Service rate and its Qualifying Facility (QF) transmission rate. The City also seeks to add a "disclaimer of liability" clause to its general rule and regulations.

I. CURTAILABLE COMMERCIAL SERVICE RATE AND QUALIFYING FACILITY (QF) TRANSMISSION TARIFF

The Curtailable Service Rate was first implemented in 1993 and the Qualifying Facility (QF) Transmission Tariff was implemented in 1986. No customers have requested service under either tariff since their adoption. City believes both tariffs are out of date

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but have no basis for revising them since no customers have indicated interest in taking service under them. We have not mandated that municipal utilities offer Curtailable or Interruptible service schedules, and federal regulations simply require that a utility develop a QF wheeling rate if one is requested. The City had indicated that, should a customer express interest in either a Curtailable rate or a QF transmission rate, the City will at that time develop an appropriate rate. Therefore, we approve the deletion of these two schedules.

II. DUE DILIGENCE LANGUAGE

Chapter 366.04(2), Florida Statutes, lists four areas over which we have jurisdiction for municipal and rural cooperative electric utilities: System of accounts, rate structure, grid participation, and territorial matters. Section 366.04(6), F.S., adds the enforcement of the National Electric Safety Code to that list. At issue is whether the proposed "due diligence" language falls under any of the categories subject to our review. Upon review, we find that this, and similar general operating rules, do not constitute rate structure and therefore do not require our approval. Such information is important to a complete understanding of a municipal utility's operation and should be filed as part of the utility's tariff, but does not require us to approve these type provisions.

We recognize tariff filing requirements for municipal and cooperative utilities have often fallen into grey areas. While limitations on our authority to review cost support and to pursue remedies when we disagree with the utility exist, all utility documentation historically has been filed as a "tariff" and was formally or administratively approved by us, whether or not the information directly concerned rates or charges. There is some question, however, on whether the term "rate structure" extends to non-rate areas such as general rules and regulations governing utility operation.

Therefore, while a utility may be required to file general policy statements such as the proposed language, there is no requirement or clear provision for us to make an affirmative

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decision on it under the specific authority of Chapter 366.04(2), F.S., because it does not address rate structure. If the utility derives comfort from including this language in its tariff, it may do so without formal approval. Since municipal and cooperative utilities may go into effect without our approval, we decline to take action on the proposed "due diligence" clause.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Vero Beach's request to delete its Curtailable Commercial Service rate and its QF Transmission tariff is approved. It is further

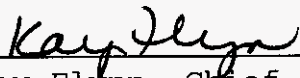
ORDERED by the Florida Public Service Commission that we decline to take action on the City of Vero Beach's request to add a "disclaimer of liability" clause to its General Rules and Regulations. It is further

ORDERED that if a protest is filed within 21 days of issuance of the Order, the tariff shall remain in effect pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 13th day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 3, 1999.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.