

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSIONER  
LEE P. RAY

## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 23, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Fletcher, Bulecza-Banks, Rendell) *BF*  
Office of the General Counsel (Fleming) *RFM* *JS* *W*

**RE:** Docket No. 060260-WS – Application for increase in water and wastewater rates in Highlands County by Lake Placid Utilities, Inc.

**AGENDA:** 06/05/07 – Regular Agenda – Parties May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 12/24/07 (8-Month Effective Date)

**SPECIAL INSTRUCTIONS:** Place next to Dockets Nos. 060256-SU, 060258-WS, and 060261-WS

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\060260.RCM.DOC

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### Case Background

Lake Placid Utilities, Inc. (Lake Placid or utility), is a Class C utility providing water and wastewater service to approximately 125 water and 194 wastewater customers in Highlands County. According to its 2005 annual report, Lake Placid reported revenues of \$45,173 and \$70,362 for water and wastewater, respectively. Lake Placid reported a net operating income of \$29,387 for water and a net operating loss of \$14,944 for wastewater. Water and wastewater rates were last established for this utility in its 1995 rate proceeding.<sup>1</sup>

<sup>1</sup> See Order No. PSC-96-0910-FOF-WS, issued July 15, 1996, in Docket No. 951027-WS, In re: Application for rate increase in Highlands County by Utilities, Inc.

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Docket No. 060260-WS

Date: May 23, 2007

On May 15, 2006, Lake Placid filed its application for approval of a final and interim rate increase in this docket and requested that the application be processed using the Proposed Agency Action (PAA) procedure. In its filing, the utility requested an annual interim revenue increase of \$49,376 or 70.12% for wastewater only. By Order No. PSC-06-0662-FOF-WS, issued August 7, 2006, the Commission denied Lake Placid's request for a wastewater interim revenue increase.

By Order No. PSC-07-0287-PAA-WS ("PAA Order"), issued April 3, 2007, the Commission approved rates that were designed to generate a water revenue requirement of \$56,579 and a wastewater revenue requirement of \$90,637.

On April 24, 2007, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On May 4, 2007, Lake Placid and OPC (collectively, "Parties") filed a Joint Motion Requesting Commission Approval of Settlement Agreement (Joint Motion). That motion and settlement agreement are incorporated in this recommendation as Attachment A.

This recommendation addresses the Parties' Settlement Agreement. The Commission has jurisdiction pursuant to Section 367.081 and 367.121, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the Joint Motion Requesting Commission Approval of Settlement Agreement?

**Recommendation:** Yes. The Joint Motion and Settlement Agreement should be approved. The utility should file a proposed customer notice and revised tariff sheets within 15 days of the Commission vote, which is consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), Florida Administrative Code, after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice. (Fletcher, Fleming)

**Staff Analysis:** In the Settlement Agreement, the Parties have agreed that the PAA Order should be amended to eliminate the language relating to the determination of the used and usefulness of Lake Placid's water treatment plant, in order for the PAA Order to have no precedential value as to determining the used and usefulness of the water treatment plant. The Commission has previously approved a proposed settlement where the language regarding a used and useful calculation was stricken from a proposed agency action order.<sup>2</sup> Staff agrees that the language of the PAA Order which the Parties seek to strike can be stricken because each rate case is decided on its own merits.

Notwithstanding the above amendment, the Parties have stipulated to the water and wastewater revenue requirements set forth in the PAA Order. Further, the Parties agree that the stipulated revenue requirement shall in no way limit or estop either party from espousing whatever positions either deems appropriate for each and every issue in any subsequent proceeding.

Staff believes that the Parties' Settlement Agreement is a reasonable resolution because it addresses all protested issues. Further, staff believes that it is in the public interest for the Commission to approve the Settlement Agreement because it promotes administrative efficiency and avoids the time and expense of a hearing. In keeping with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible,<sup>3</sup> staff recommends that the Commission approve the Parties' Settlement Agreement.

The utility should file a proposed customer notice and revised tariff sheets within 15 days of the Commission vote, which is consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff

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<sup>2</sup> Order No. PSC-06-0665-S-WS, issued August 7, 2006, in Docket No. 050281-WS, In re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

<sup>3</sup> Order No. PSC-06-0092-AS-WU, issued February 9, 2006, in Docket No. 000694-WU, In re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County.; Order No. PSC-05-0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, In re: Settlement offer for possible overearnings in Marion County by BFF Corp.; and Order No. PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.

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pursuant to Rule 25-30.475(1), Florida Administrative Code, after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice.

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Date: May 23, 2007

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement. (Fletcher, Fleming)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of  
LAKE PLACID UTILITIES, INC.  
for an increase in wastewater  
rates in Highlands County, Florida

DOCKET NO. 060260-WS

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JOINT MOTION REQUESTING COMMISSION APPROVAL OF  
SETTLEMENT AGREEMENT

LAKE PLACID UTILITIES, INC. ("Lake Placid" or "Utility"), and the OFFICE OF PUBLIC COUNSEL ("OPC") file this Joint Motion requesting the Florida Public Service Commission ("Commission") to approve the attached Settlement Agreement. In support of this Joint Motion, Lake Placid and OPC state:

1. Lake Placid and OPC have entered into a Settlement Agreement resolving OPC's Petition on Proposed Agency Action Order No. PSC-07-0287-PAA-WS, in accordance with the terms of the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as Exhibit "A".

2. Lake Placid and OPC have entered into the Settlement Agreement to avoid the time, expense and uncertainty associated with adversarial litigation, in keeping with the CMP Commission's long-standing policy and practice of encouraging parties in protested COM proceedings to settle issues whenever possible. For these reasons, Lake Placid and OPC CTR request the Commission to expeditiously issue a Final Order approving the Settlement ECR Agreement without modification and close Docket No. 060260-WS. GCL 2 OPC

3. Pending Commission consideration of the Settlement Agreement, Lake Placid

RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SGA \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH \_\_\_\_\_

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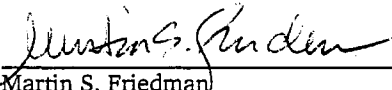
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and OPC request the Commission to suspend discovery and all events currently scheduled in the CASR for this Docket until such time as the Commission acts on this Motion.

WHEREFORE, LAKE PLACID UTILITIES, INC., and OFFICE OF PUBLIC COUNSEL respectfully request the Commission to approve without modification the attached Settlement Agreement and to suspend discovery and other events scheduled in this proceeding until a Final Order is issued closing this docket.

Respectfully submitted this 4<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
Stephen C. Reilly  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400  
PHONE: (850) 488-9330

  
\_\_\_\_\_  
Martin S. Friedman  
Rose, Sundstrom & Bentley, LLP  
2180 W. State Road 434  
Suite 2118  
Longwood, FL 32779  
PHONE: (407) 830-6331

Attorney for Citizens of the State of Florida

Attorney for Lake Placid Utilities, Inc.

**ORIGINAL**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of )  
LAKE PLACID UTILITIES, INC. )  
For an increase in wastewater )  
rates in Highland County, Florida )

DOCKET NO. 060260-WS

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 4<sup>th</sup> day of May, 2007, by and between Lake Placid Utilities, Inc. ("Lake Placid" or "Utility"), and the Office of Public Counsel, on behalf of the customers of Lake Placid ("Citizens").

**WITNESSETH**

WHEREAS, the Florida Public Service Commission ("Commission") issued Proposed Agency Action Order No. PSC-07-0287-PAA-WA in this docket on April 3, 2007, ("PAA Order"); and

WHEREAS, on April 24,, 2007, Citizens filed a timely protest to the PAA Order; and

CMP \_\_\_\_\_ WHEREAS, in order to avoid the time, expense and uncertainty associated with  
COM \_\_\_\_\_ adversarial litigation, and in keeping with the Commission's long-standing policy and  
CTR \_\_\_\_\_ practice of encouraging parties in protested proceedings to settle issues whenever  
ECR \_\_\_\_\_ possible, the Citizens and Lake Placid hereby enter into this Agreement to settle this case  
GCL 2 \_\_\_\_\_ in accordance with the terms and conditions contained herein.  
OPC \_\_\_\_\_  
RCA \_\_\_\_\_

SCR \_\_\_\_\_ NOW, THEREFORE, for and in consideration of the mutual covenants set forth  
SGA \_\_\_\_\_ below, the Citizens and Lake Placid agree as follows:  
SEC \_\_\_\_\_  
OTH \_\_\_\_\_

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*R.V.N.*

OFFICE OF PUBLIC COUNSEL

DOCUMENT NUMBER-DATE

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1. The PAA Order shall be amended to eliminate the language relating to the determination of the used and usefulness of Lake Placid's water treatment plant. It is the intent of Lake Placid and Citizens that the PAA shall have no precedential value as to determining the used and usefulness of the water plant. Notwithstanding this amendment to the PAA Order, the parties stipulate to the revenue requirement as set forth in the PAA Order. Further, approval by Lake Placid and the Citizens of the above stipulated revenue requirements shall in no way limit or estop either party from espousing whatever positions either deems appropriate for each and every issue that might be in controversy in any subsequent proceeding.

2. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without modification by Commission Order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

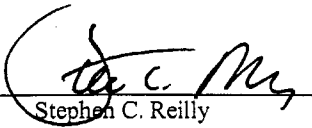
3. Lake Placid and the Citizens expressly agree that all activity relating to this docket should be suspended until the Commission disposes of the Joint Motion Requesting Commission Approval of Settlement Agreement.

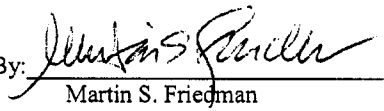
4. This Settlement Agreement will become effective on the date the Commission enters a final order approving the agreement in total. Upon the Commission issuing a final order approving this Settlement, the Citizens Petition on Proposed Agency Action shall be deemed resolved, in accordance with the terms of this Settlement Agreement.

5. The Parties have evidenced their acceptance and agreement with the provisions of this Settlement Agreement by their signatures, and personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

**OFFICE OF PUBLIC COUNSEL**

**LAKE PLACID UTILITIES, INC.**

By:   
Stephen C. Reilly  
Associate Public Counsel  
On behalf of the Customers  
of Lake Placid Utilities, Inc.

By:   
Martin S. Friedman  
Attorney for Utilities, Inc. of  
Pennbrooke