

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** June 7, 2012

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

**FROM:** Division of Economic Regulation (Fletcher, Maurey)  
Office of the General Counsel (Barrera) *MPB*

**RE:** Docket No. 110153-SU – Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.

**AGENDA:** 06/19/12 – Regular Agenda – Decision on Stipulation Prior to Hearing - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Graham, Balbis, Brown

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\110153.RCM.DOC

COMMISSION  
CLERK

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### **Case Background**

Utilities, Inc. (UI or Parent) is an Illinois corporation which owns approximately 75 subsidiaries throughout 15 states including 14 water and wastewater utilities within Florida. Utilities, Inc. of Eagle Ridge (Eagle Ridge or Utility) is a Class B utility providing wastewater service to approximately 822 customers in Lee County. Water service is provided by Lee County Utilities. Eagle Ridge is a wholly-owned subsidiary of UI. Wastewater rates were last established for this Utility in 2009.<sup>1</sup>

On June 24, 2011, Eagle Ridge filed the application for rate increase at issue in the instant docket. By Order No. PSC-11-0388-PCO-SU, issued September 13, 2011, the Commission approved interim rates designed to generate annual revenues of \$1,122,517. This represents a revenue increase on an annual basis of \$132,768 or 13.41 percent, which is being secured through a corporate undertaking by UI. By Order No. PSC-11-0587-PAA-SU (PAA Order), issued December 21, 2011, the Commission approved rates designed to generate a wastewater revenue requirement of \$1,145,096.

On December 22, 2011, Eagle Ridge timely filed a protest of the PAA Order. On January 9, 2012, the Office of Public Counsel (OPC) timely filed a cross-petition to protest the PAA Order, pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.).

On May 18, 2012, Eagle Ridge and OPC (collectively, "Parties") filed a Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement (Joint Motion). The Joint Motion is incorporated in this recommendation as Attachment A.

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

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<sup>1</sup> See Order No. PSC-09-0264-PAA-SU, issued April 27, 2009, in Docket No. 080247-SU, In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.

### **Discussion of Issues**

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

**Recommendation:** Yes. The Joint Motion requesting approval of the Stipulation and Settlement Agreement should be approved. The Utility should file a proposed customer notice and revised tariff sheets consistent with the Commission's decision within 15 days of the Commission vote. 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), F.A.C., 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 of the date of the notice. (Fletcher, Barrera)

**Staff Analysis:** As outlined in the Stipulation and Settlement Agreement, Eagle Ridge petitioned the Commission to open a separate generic docket to address its protested issue relating to the Utility's Phoenix Project.<sup>2</sup> OPC agrees not to oppose that petition, and Eagle Ridge will not object to OPC including Phoenix Project issues and other issues in the generic docket that were raised in OPC's cross-petition. The Parties will request a 120-day investigatory period in order to meet informally with Commission staff in a good faith effort to resolve or narrow the disputed issues.<sup>3</sup>

In addition, the Parties agree that, if there is an upward or downward adjustment to the previously approved revenue requirement for Eagle Ridge resulting from a final Commission decision in the generic docket, the Utility should be authorized to create a regulatory asset or liability and accrue interest on the regulatory asset<sup>4</sup> or liability<sup>5</sup> at the 30-day commercial paper rate until the establishment of rates in Eagle Ridge's next rate proceeding. Further, in the Utility's next rate proceeding, the Parties agree that the unamortized regulatory asset or liability shall be amortized over four years.

The National Association of Regulatory Utility Commissioners' Uniform System of Accounts defines regulatory assets or liabilities as follows:

'Regulatory Assets and Liabilities' are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific

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<sup>2</sup> On May 23, 2012, Utilities, Inc., on behalf of its Florida-subidiaries, filed the aforementioned petition for the establishment of said generic docket which has been assigned Docket No. 120161-WS.

<sup>3</sup> If the Parties are unable to resolve all issues informally, the Parties agree to request that any remaining disputed issues be decided by the Commission.

<sup>4</sup> A regulatory asset typically involves a cost incurred by a regulated utility that would normally be expensed currently but for an action by the regulator or legislature to defer the cost as an asset to the balance sheet. This allows a utility to amortize the regulatory asset over a period greater than one year. For example, unamortized rate case expense in the water and wastewater industry is a regulatory asset. Normally, the costs of a rate case would be expensed when they are incurred. However, Section 367.0816, F.S., requires that water and wastewater utilities amortize rate case expense over a four-year period, thus creating a regulatory asset. The Commission's approval to defer entitled revenues and amortize the recovery of those revenues over a period greater than one year can also create a regulatory asset.

<sup>5</sup> An example of a regulatory liability would be the deferral of past overearnings to future periods.

revenues, expenses, or gains or losses that would have been included in determination of net income in one period under the general requirements of the Uniform System of Accounts but for it being probable that; 1) such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or 2) in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required. Regulatory assets and liabilities can also be created in reconciling differences between the requirements of generally accepted accounting principles, regulatory practice and tax laws.

Statement of Financial Accounting Standards 71 allows regulated companies to defer costs and create regulatory assets, provided that it is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. To create a regulatory asset or liability, a regulated utility must have the approval of its regulator. This concept of deferral accounting allows utilities to defer costs due to events beyond their control and seek recovery through rates at a later time. The alternative would be for a utility to seek a rate case each time it experiences an exogenous event. Based on the above, staff believes the Commission should authorize the creation of a regulatory asset or liability resulting from its post-hearing decision in the generic docket.

Moreover, the Parties agree that the PAA Order should be amended to eliminate the language relating to the determination of the used and useful percentage for Eagle Ridge's wastewater treatment plant. It is the intent of the Parties that the PAA Order not have precedential value regarding the used and useful percentage for the wastewater 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>6</sup> Staff agrees that the language of the PAA Order which the Parties seek to strike can be eliminated because each rate case is decided on its own merits. Notwithstanding the above amendment, the Parties have stipulated to the wastewater revenue requirement set forth in the PAA Order. Finally, Eagle Ridge agrees not to file a new rate case until at least two years after the approval of this Stipulation and Settlement Agreement.

Staff believes that the Parties' Stipulation and Settlement Agreement is a reasonable resolution because it addresses all protested issues in this docket. Further, staff believes that it is in the public interest for the Commission to approve the Stipulation and Settlement Agreement because it promotes administrative efficiency and avoids the time and expense of a hearing borne solely by the customers of Eagle Ridge. In keeping with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible,<sup>7</sup> staff recommends that the Commission approve the Parties' Stipulation and Settlement Agreement.

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<sup>6</sup> See 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>7</sup> See Order Nos. 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; 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 PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re:

If the Motion and Stipulation and Settlement Agreement are approved, the Utility should file a proposed customer notice and revised tariff sheets consistent with the Commission's decision within 15 days of the Commission vote. 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), F.A.C., 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.

**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' Stipulation and Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Stipulation and Settlement Agreement, staff recommends the corporate undertaking amount approved by the Commission for interim rates be released. (Barrera, Fletcher)

**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' Stipulation and Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Stipulation and Settlement Agreement, staff recommends the corporate undertaking amount approved by the Commission for interim rates be released.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for increase in wastewater )  
rates in Lee County by Utilities, Inc. of Eagle )  
Ridge. )  
\_\_\_\_\_ )

Docket No. 110153-SU  
Filed: May 18, 2012

**JOINT MOTION REQUESTING COMMISSION APPROVAL OF  
STIPULATION AND SETTLEMENT AGREEMENT**

Utilities, Inc. of Eagle Ridge ("Eagle Ridge"), and the Office of Public Counsel ("OPC") file this Joint Motion requesting the Florida Public Service Commission ("Commission") approve the attached Stipulation and Settlement Agreement. In support of this Joint Motion, Eagle Ridge and OPC state:

1. Eagle Ridge and OPC have entered into a Stipulation and Settlement Agreement resolving Eagle Ridge's Petition for a formal administrative hearing and OPC's Cross Petition concerning Proposed Agency Action Order No. PSC-11-0587-PAA-SU, issued December 21, 2011, in accordance with the terms of the Stipulation and Settlement Agreement. A copy of the Stipulation and Settlement Agreement is attached hereto as Exhibit "A".

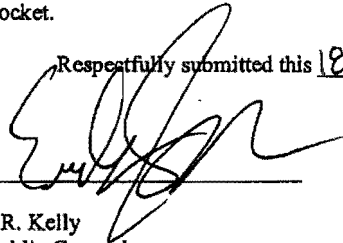
2. Eagle Ridge and OPC have entered into the Stipulation and Settlement Agreement to avoid the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible. For these reasons, Eagle Ridge and OPC request the Commission to expeditiously issue a final order approving the Stipulation and Settlement Agreement without modification and close Docket No. 110153-SU.

3. Pending Commission consideration of the Stipulation and Settlement Agreement, Eagle Ridge and OPC request the Commission to suspend and abate all discovery and all events

currently scheduled in the CASR for this Docket and established by the most recent Order Establishing Procedure, Order No. 12-0128-PCO-SU, until such time as the Commission acts on this Motion.

WHEREFORE, Eagle Ridge and OPC respectfully request the Commission to approve without modification the attached Stipulation and 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 18 day of May, 2012.

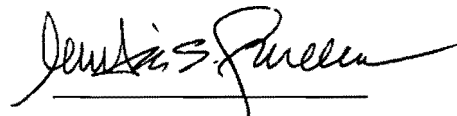


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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for increase in wastewater )	Docket No. 110153-SU
rates in Lee County by Utilities, Inc. of Eagle )	
Ridge. )	Filed: May 18, 2012
_____ )	

**STIPULATION AND SETTLEMENT AGREEMENT**

THIS STIPULATION AND SETTLEMENT AGREEMENT is made and entered into this 18 May, 2012, by and between Utilities, Inc. of Eagle Ridge ("Eagle Ridge" or "Utility"), and the Office of Public Counsel on behalf of the customers of Eagle Ridge ("OPC").

**WITNESSETH**

WHEREAS, the Florida Public Service Commission ("Commission") issued Proposed Agency Action Order No. PSC-11-0587-PAA-SU, in this docket on December 21, 2011 ("PAA Order"); and

WHEREAS, on December 22, 2011, Eagle Ridge timely filed a Petition for formal administrative hearing, protesting specific issues in the PAA Order; and

WHEREAS, on January 9, 2012, OPC timely filed a Cross-Petition, protesting specific issues in the PAA Order; and

WHEREAS, in order to avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible, OPC and Eagle Ridge hereby enter into this Agreement to settle this case in accordance with the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below, OPC and Eagle Ridge agree as follows:

1. Eagle Ridge will petition this Commission to open a separate generic docket to address the issue relating to the Utility's Phoenix Project as raised in its December 22, 2011 Petition. OPC will not oppose that petition and Eagle Ridge will not object to OPC including additional Phoenix Project issues and other issues in the generic docket which broadly relate to the issues raised by OPC in its petition, in issue identification meetings in this docket, and any issues related to making and maintaining accounting and ratemaking adjustments in compliance with the NARUC Uniform System of Accounts and prior Commission orders. Once the generic docket has been opened, the parties request a 120 day investigatory period in which to meet informally with staff in a good faith effort to resolve or narrow the disputed generic issues identified herein. If the parties are unable to resolve all the generic issues informally, the parties will request that the remaining disputed issues be decided by the Commission. Following the Commission's final decision in this generic docket, if there is an upward or downward adjustment to the previously approved revenue requirement for Eagle Ridge, the Utility shall create a regulatory asset or liability. Eagle Ridge shall be required to accrue interest on the regulatory asset or liability at the commercial paper rate until recovered in rates established in the next rate proceeding for Eagle Ridge. In the next rate proceeding, the unrecovered regulatory asset or liability shall be amortized over four years.

2. The Utility and OPC agree that the final order in this docket shall specify no used and useful percentage for the wastewater treatment facilities. It is the intent of Eagle Ridge and OPC that this PAA Order shall have no precedential value regarding this issue. The language pertaining to the used and useful percentage for the wastewater treatment facilities shall be stricken from the PAA Order. See PAA Order No. 11-0587-PAA-SU, at 9-10.

3. Regarding all other issues decided by the PAA Order, the Utility and OPC agree that those issues, except those subject to the terms of this Stipulation and Settlement Agreement, shall become final upon the Commission's acceptance and approval of this Stipulation and Settlement Agreement without modification.

4. The Utility agrees not to file the minimum filing requirements for any new rate case until at least two years after the execution of this Stipulation and Settlement Agreement, except for price index and pass-through adjustments allowed pursuant to Section 367.081(4), Florida

Statutes or a limited proceeding pursuant to Section 367.0822, Florida Statutes, following a *force majeure* event or change in regulatory requirements directly affecting Eagle Ridge.

5. If this Stipulation and Settlement Agreement is not accepted and approved without modification by the Commission, then this Stipulation and 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.

6. Eagle Ridge and OPC expressly agree that all activity relating to this docket should be suspended and abated until the Commission disposes of the Joint Motion Requesting Commission Approval of this Stipulation and Settlement Agreement.

7. This Stipulation and 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 Stipulation and Settlement Agreement, Eagle Ridges' Petition for formal administrative hearing and OPC's Cross-Petition shall be deemed withdrawn in accordance with the terms of this Stipulation and Settlement Agreement.

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

OFFICE OF PUBLIC COUNSEL

By: 

Erik L. Saylor  
Associate Public Counsel  
On behalf of the Customers of  
Utilities, Inc. of Eagle Ridge

UTILITIES, INC. OF EAGLE RIDGE

By: 

Martin S. Friedman  
Attorney for Utilities, Inc. of Eagle Ridge