

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Orange County by
Pluris Wedgefield, LLC

Docket No. 20230083-WS

PLURIS WEDGEFIELD, LLC'S RESPONSE TO OFFICE OF PUBLIC
COUNSEL'S MOTION FOR RECONSIDERATION OF ORDER GRANTING
INTERIM RATES

Pluris Wedgefield, LLC. ("Pluris"), by and through its undersigned attorneys and pursuant to Rule 25-22.0376(2), Florida Administrative Code, files this response to the unprecedented Motion for Reconsideration of Order Granting Interim Rates filed by Office of Public Counsel ("OPC") [Document #00115-2024], with regard to PSC Order No. PSC-2023-0387-PCO-WS issued on December 27, 2023, and states:

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order.¹ In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.² Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."³

To claim that the Commission overlooked OPC's arguments is not only factually incorrect but defies logic. On November 13, 2023, OPC filed a letter in the Docket [DN #06049-2023]

1 See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981).

2 *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

3 *Stewart Bonded Warehouse, Inc.* at 317.

setting forth its argument. Then on November 15, 2023, OPC filed a corrected letter [DN #06080-2023], again asserting its position. Again, on November 30, 2023, OPC filed yet another letter which included this argument [DN #06410-2023]. At the Commission Conference on December 5, 2023, the Commission made the extraordinary decision to allow OPC to orally argue its position on the Utility's interim rate request, which OPC did for almost fifteen minutes. OPC further provided a handout at the Commission Conference setting forth its position [DN #06495-2023]. Then, at the request of Commissioner Graham, OPC was given yet another five minutes near the end of the Commissioners' consideration of this matter to further argue its position. The Commission could not have overlooked OPC's twenty minutes of argument. OPC's arguments were fully and thoughtfully considered by the Commission.

As OPC acknowledges in its Motion, interim rate relief is a way to reduce regulatory lag by providing immediate financial relief to the utility. The short deadline within which the Commission must act on an interim rate request does not afford an in-depth analysis. In recognition of this, the utility's customers are protected since they will get a refund, with interest, if the final rates granted by the Commission are less than the interim rates. Thus, the customers are not harmed even if there is an error in the interim rate calculation. However, the opposite is not true. Should the final rates be greater than the interim rates, the utility cannot recover that under-recovery from the customers. The interim rates will only be in effect for about three and one-half months⁴ so any uncertainty in the accuracy of the interim rates will not have a substantial negative impact on the customers of Pluris.

⁴ The interim rates went into effect on December 24, 2023, and the scheduled Commission Conference on the final rates is April 2, 2024.

The staff recommended and the Commission approved certain substantial adjustments to Pluris' interim rate request for the water system of \$718,997, which resulted in a reduction to only \$410,299 (a reduction of 43%), and for the wastewater system, a reduction from the requested \$513,161 interim rate request to \$244,186 (a reduction of 52%). If all of those adjustments reducing the interim rate request should not have been made, then there is no remedy for Pluris to recover the lost revenue. In fact, OPC has pointed out one such error.

It appears that there is a difference of opinion between OPC and Staff as to whether adjustments were made consistent with Section 367.082, Florida Statutes. Little would be accomplished by going through every instance of a disagreement. However, OPC spent a great deal of time arguing about the cost of capital and disagreed with the treatment of the money that the parent contributed to Pluris so that Pluris could meet its financial obligations in connection with defending against and settling a frivolous lawsuit. Whether the funds contributed by the parent company were initially booked as accounts payable to associated companies or to advances from associated companies, the latter of which OPC agrees would be appropriate, is merely semantics.

At the end of the test year Pluris did reclassify the funds recorded in Accounts Payable-Associated Companies to equity to properly reflect the true nature of the funds. This is in direct contradiction to OPC's assertion that there was nothing in the "four corners of the petition" (which presumably would include the accompanying financial schedules) that these funds were more properly classified as equity.

To claim that including in the capital structure the cost of the money that the parent had to infuse in the Utility to pay the lawsuit settlement is barred by the Settlement Agreement is beyond the jurisdiction of this Commission. OPC, which was not a party to that litigation and had no input into the settlement is attempting to interpret the Settlement Agreement. In such case, OPC has no standing to make such interpretation. By the terms of the Settlement Agreement, Pluris agreed not to recover in rates the cost of litigation, the settlement payment, and certain prospective water sampling costs. None of those costs are included in the expenses for which Pluris is seeking an increase in rates, which was the intent in the Settlement Agreement. This also negates OPC's argument that the refund provisions of Section 367.082(4), Florida Statutes, are ineffective to protect the customers even if the final revenue requirement is higher than the interim revenue requirement. The frivolous lawsuit had nothing to do with fines as implied by OPC as there were none involved since Pluris was always in compliance with regulatory standards. Thus, the statement that the PSC does not allow fines to be included in the revenue requirement is irrelevant and merely a smokescreen.

Pluris is perplexed by OPC's argument that the staff did not properly calculate the used and useful percentage for Pluris' water distribution and wastewater collection systems. It appears that OPC's argument is that the used and useful percentage should be higher than that calculated by staff which would have resulted in higher interim rates. Recognizing the inexactitude of the interim rate calculations and the short period of time that the interim rates will be in effect, Pluris is not contesting this error.

In conclusion, due to the time constraints, the calculation of the interim revenue requirement is not always perfect. In a proposed agency action rate case, the interim rates are only

in effect for a short period of time, so any error in the calculation will have nominal impact on the customers or Pluris. In this case, OPC has pointed out what it believes are two errors in the interim rate calculations, one of which was in favor of Pluris, and one of which is in favor of the customers. There is a mechanism in place to protect the customers in case a mistake was made in favor of Pluris, but none to protect Pluris if the mistake was made in favor of the customers. When Pluris' final revenue requirement is set by the Commission, if it is less than the interim revenues then the customers will get a refund with interest.

WHEREFORE, Pluris Wedgefield, LLC, requests that this Commission enter an Order denying the Motion to for Reconsideration of Order Granting Interim Rates filed by Office of Public Counsel [Document #00115-2024].

Respectfully submitted this 16th day of January, 2024, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

E-mail to the following parties this 16th day of January 2024:

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