

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding rate  
increase in Sumter County by Continental  
Utility, Inc.

DOCKET NO. 080024-WS  
ORDER NO. PSC-08-0334-PAA-WS  
ISSUED: May 27, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER  
APPROVING INCREASE IN WASTEWATER RATES  
AND

FINAL ORDER GRANTING TEMPORARY RATES IN THE EVENT OF PROTEST

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, except for the granting of temporary rates, subject to refund, in the event of a protest, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

I. Background

Continental Utility, Inc. (Continental or utility) is a Class B water and wastewater utility located in Sumter County serving approximately 800 individual residential customers and approximately 100 customers in a master-metered condominium building. Continental is wholly owned by Continental Country Club Residents Organization (CCCRO), whose members constitute the utility's customer base. The utility's 2006 annual report reflects wastewater operating revenues of \$228,845, and wastewater operating income of \$31,774.

The utility's last rate proceeding was in Docket No. 910093-WS, which culminated in Proposed Agency Action Order No. 25347, dated November 14, 1991.<sup>1</sup> Subsequently, two amendatory orders were entered, 25347-A and 25347-B, on January 8, 1992 and February 12, 1992, respectively. Continental's wastewater rates were last adjusted on February 14, 1997, as a result of a Price Index Application.

<sup>1</sup> In re: Request for rate increase in Sumter County by Continental Utility, Inc.

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FPSC-COMMISSION CLERK

On January 7, 2008, the utility filed its application for a limited proceeding pursuant to Section 367.0822, Florida Statutes (F.S.). The utility has filed for a limited proceeding in order to recover the costs of rehabilitating seven wastewater lift stations. The utility met the filing requirements of Rule 25-30.445, F.A.C., and our staff established an official filing date of January 7, 2008. We have jurisdiction pursuant to Section 367.0822, F.S.

## II. Limited Proceeding Rate Increase

### A. Revenue Requirement

In January 2007, the utility commissioned an engineering evaluation of its seven lift stations to recommend necessary repairs to rehabilitate the system. An inspection and evaluation was performed and completed by Booth, Ern, Straughan & Hiott, Inc. (BESH) and summarized in its report dated February 2007, a copy of which was included in the utility's filing. On June 7, 2007, a contract with Utility Technicians, Inc. was signed for rehabilitation of all seven lift stations at a cost of \$354,452. The total project was completed by the end of 2007. A copy of the contract and the scope of work performed at each lift station was included in Continental's filing. In response to our staff's data request, the utility provided evidence that it solicited bids for the rehabilitation project, and that the bid submitted by Utility Technicians, Inc. was the lowest of the three bids received.

In its application, Continental states that financing of the project was accomplished by means of a loan from CCCRO at a rate of Prime Rate plus 1%. In response to a staff data request, the utility stated that it does not have the ability to obtain financing in its own name because its assets are encumbered by a mortgage to Wachovia Bank, and a refinancing of that mortgage would incur termination expenses approaching \$200,000. Further, the Wachovia mortgage also encumbers the assets of CCCRO and a related party. The utility asserts that funding the improvements through a loan from CCCRO is the most cost-effective means available to the customers to allow recovery of the rehabilitation costs.

A customer meeting was held near the utility's service area on March 13, 2008. There were no objections to the proposed rate increases. Several customers expressed concerns about what they believed was an inequitable "bulk rate" billing arrangement with Sandalwood Condominium. The utility's responses to staff inquiries indicate that the condominium is billed in accordance with Continental's approved General Service tariff. Our staff shared these findings directly with the concerned customers.

In its application, the utility proposed to recover the costs of the rehabilitation project through an annual wastewater rate increase of \$48,229, or 21.08% of the wastewater revenues reported in its 2006 Annual Report. This increase was calculated using a methodology which began by applying a rate of return of 8.27% to the net increase in rate base resulting from the project over the rate base shown in the utility's 2006 Annual Report to arrive at a requested increase in operating income. The utility then added the increase in operating expenses resulting from the project and grossed the total up for the effect of the regulatory assessment fees to arrive at the requested increase in revenues. The utility's methodology is reasonable, but we find that

adjustments to the utility's rate of return are necessary. The utility's calculations and our adjustments are reflected in the following table:

	Utility Requested	Commission-Approved
Increase in new utility plant	\$354,452	\$354,452
Retirement of utility plant	<u>-125,619</u>	<u>-125,619</u>
	<u>228,833</u>	<u>228,833</u>
Accumulated Depreciation:		
Depreciation on new plant	-18,894	-18,894
Adjust depreciation for retirement	<u>125,619</u>	<u>125,619</u>
	<u>106,725</u>	<u>106,725</u>
Total increase in rate base	\$335,558	\$335,558
Rate of return	<u>8.27%</u>	<u>7.73%</u>
Increase in operating income	<u>27,751</u>	<u>25,939</u>
Increase in operating expenses:		
Depreciation expense on new plant additions	18,894	18,894
Depreciation expense on plant retired	<u>-5,025</u>	<u>-5,025</u>
Net increase in depreciation expense	13,870	13,870
Increase in property taxes	4,439	4,439
Total increase in operating expenses	<u>18,308</u>	<u>18,308</u>
Total increase in operating income and expenses	46,059	44,247
Divide by factor for Regulatory Assessment Fees	<u>0.955</u>	<u>0.955</u>
Total increase in revenue required	<u>\$48,229</u>	<u>\$46,332</u>

Continental provided schedules to support the amounts shown in its requested revenue increase. With the exception of the utility's calculation of rate of return, the schedules are

reasonable. The utility at first indicated that the return on equity was 12.07%, but noting that there appeared to be a typographical error, the utility changed that to 12.01%, stating that it was using the current leverage formula. However, the utility has an equity ratio of 17.75%, and our current leverage formula imposes a cap of 11.40% for mid-point cost of equity for utilities with an equity ratio of less than 40%. Therefore, the appropriate cost of equity for Continental in this proceeding is 11.40%. Further, Continental used a cost rate of 8.75% for the loan from CCCRO. Although there is no written agreement, the cost of the loan is described as prime rate plus 1%. The prime rate as of October 1, 2007, was 7.75%. As of April 2008, the prime rate is 5.25%. In the absence of a written agreement specifying repayment terms, we find that it is appropriate to calculate the rate of return for this proceeding using an interest rate which is expected to reflect economic conditions at the time the requested increase in rates takes effect. Accordingly, we calculate an interest rate of 6.25% (5.25% + 1.00%) for the CCCRO loan. Taking into consideration the above adjustments, we calculate the appropriate rate of return to be 7.73%.

Based on this rate of return, we calculate the appropriate increase in wastewater revenues in this proceeding to be \$46,332, or 20.25% of the wastewater revenue reported in the utility's 2006 Annual Report.

#### B. Appropriate Wastewater Rates

To allow the utility the opportunity to generate additional revenues of \$46,332 for wastewater service, the residential wastewater rates must be increased by \$3.55 per month, or approximately 20.25%, for the average residential customer. Our approved rates are shown on Schedule No. 1.

The utility shall file revised tariff sheets and a proposed customer notice to reflect the appropriate rates. The approved rates shall 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., provided the notice has been approved by our staff. Within 10 days of the date the order is final, the utility shall provide notice of the tariff changes to all customers. The utility shall provide proof the customers have received notice within 10 days after the date that the notice was sent.

#### III. Temporary Rates in the Event of Protest

We propose an increase in wastewater rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility.

Therefore, in the event of a protest filed by a substantially affected person, the approved rates shall be approved as temporary rates subject to refund with interest. The approved rates collected by the utility shall be subject to the refund provisions discussed below.

The utility shall be authorized to collect the temporary rates upon our staff's approval of the appropriate security for the potential refund and the proposed customer notice. Security shall be in the form of a bond or letter of credit in the amount of \$31,430. Alternatively, the utility may establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond shall contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission approves the rate increase; or
- 2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If the utility chooses a letter of credit as a security, it shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect; and
- 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission;
- 2) The escrow account shall be an interest bearing account;
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility;
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments;
- 8) The Commission Clerk must be a signatory to the escrow agreement; and
- 9) The account must specify by whom and on whose behalf such monies were paid.

In no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the

utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase shall be maintained by the utility. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The utility shall maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility shall file reports with our Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed shall also indicate the status of the security being used to guarantee repayment of any potential refund.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Continental Utility, Inc.'s application for a limited proceeding is granted, and as set forth herein, the utility shall be allowed to increase its wastewater rates such that the utility will be given the opportunity to generate additional revenues of \$46,332, or approximately 20.25%. It is further

ORDERED that the utility shall file revised tariff sheets and a proposed customer notice to reflect the appropriate rates as shown on Schedule No. 1, attached hereto and incorporated herein by reference. It is further

ORDERED that the approved rates shall 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., provided the notice has been approved by our staff. It is further

ORDERED that within 10 days of the date the order is final, the utility shall provide notice of the tariff changes to all customers. It is further

ORDERED that the utility shall provide proof the customers have received notice within 10 days after the date that the notice was sent. It is further

ORDERED that the rates approved herein shall be approved for the utility on a temporary basis, subject to the refund provisions set forth in the body of this Order, in the event of a protest filed by a substantially affected person. It is further

ORDERED that in the event the increased rates are placed in effect on a temporary basis, pursuant to Rule 25-30.360(6), F.A.C., Continental shall file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed shall also indicate the status of the security being used to guarantee repayment of any potential refund. It is further

ORDERED that prior to implementation of any temporary rates, Continental shall provide the proposed customer notices and appropriate security for the potential refund. Security

shall be in the form of a bond or letter of credit in the amount of \$31,430. Alternatively, the utility may establish an escrow agreement with an independent financial institution. It is further

ORDERED that irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase shall be maintained by the utility. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C. It is further

ORDERED that in no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility. It is further

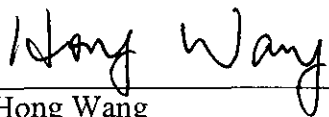
ORDERED that, except for the granting of temporary rates, subject to refund, in the event of a protest, the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. It is further

ORDERED that if a Consummating Order is issued, the docket shall be closed upon its issuance and upon our staff's approval of the revised tariff sheets.

By ORDER of the Florida Public Service Commission this 27th day of May, 2008.

ANN COLE  
Commission Clerk

By:   
\_\_\_\_\_  
Hong Wang  
Office of Commission Clerk

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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.

Except for provision for temporary rates which is final agency action, as identified in the body of this order, our action approving increased wastewater rates is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file 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 Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 17, 2008. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final 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.

Any party adversely affected by the Commission's final action approving temporary rates in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 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 wastewater utility by filing a notice of appeal with the Office of Commission Clerk 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.



Schedule No. 1

Schedule of Present and Approved Wastewater Rates

	<u>Present Rates</u>	<u>Approved Increase</u>	<u>Approved Rates</u>
<u>Residential</u>			
<u>Base Facility Charges</u>			
5/8" x 3/4"	\$8.06	\$1.63	\$9.69
Gallage Charge-per 1,000 gallons (Maximum 6,000 gallons)	\$2.44	\$0.49	\$2.93
<u>General Service</u>			
<u>Base Facility Charges</u>			
5/8" x 3/4"	\$8.06	\$1.63	\$9.69
1"	\$20.15	\$4.08	\$24.23
1 1/2"	\$40.29	\$8.16	\$48.45
2"	\$64.48	\$13.06	\$77.54
3"	\$128.95	\$26.11	\$155.06
4"	\$201.48	\$40.80	\$242.28
6"	\$402.94	\$81.60	\$484.54
Gallage Charge-per 1,000 gallons	\$2.92	\$0.59	\$3.51

Typical Residential Bills, 5/8" x 3/4" Meter Customers

	<u>Rates Prior to Filing</u>	<u>Commission-Approved Rates</u>
3,000 Gallons	\$15.38	\$18.48
5,000 Gallons	\$20.26	\$24.34
6,000 or more Gallons	\$22.70	\$27.27

(Wastewater Gallage Cap – 6,000 Gallons)