

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in
Lake County by TLP Water, Inc.

DOCKET NO. 090244-WU
ORDER NO. PSC-09-0605-PCO-WU
ISSUED: September 8, 2009

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

ORDER APPROVING INTERIM RATES

BY THE COMMISSION:

BACKGROUND

TLP Water, Inc. (TLP or Utility) is a Class C utility serving 53 water customers in Lake County. The Utility is located in the St. Johns River Water Management District (SJRWMD) area where water use restrictions apply. Wastewater treatment is provided by septic tanks. According to TLP's 2008 Annual Report, total gross revenue was \$22,520 for water. The Utility's operating expenses were \$38,838 for water.

Three Lakes Mobile Home Park is a privately owned property formerly known as Cari's Camp. In 1945, Cari's Camp installed a small 4-inch well to provide water service to the area. A 1948 agreement required Cari's Camp to supply water to the residents on Lakeside Lane and Canal Street, which are located outside of the park. The camp became known as the Three Lakes Mobile Home Park in the 1960s. The Commission received jurisdiction over Lake County in 1972.¹ In 1992, Three Lakes Mobile Home Park was incorporated as a non-profit cooperative. The mobile home park believed it was exempt from the Commission's jurisdiction, pursuant to Section 367.022, Florida Statutes (F.S.); however, the Utility continued to serve customers outside the cooperative, which actually rendered it subject to this Commission's jurisdiction. Recently, we approved TLP's Water Certificate No. 644-W and flat rate of \$39.²

The Utility has never had a rate proceeding before us. In the instant docket, TLP filed a request for a staff-assisted rate case (SARC). The Utility has also requested interim rates.

¹ See Order No. 5472, issued June 30, 1972, in Docket No. 5818-WS, In re: Jurisdictional Resolutions from Boards of County Commissioners adopting the Water and Sewer System Regulatory Law, Chapter 71-278, Laws of Florida, (Chapter 367, Florida Statutes). Resolution Adopted by Lake County.

² See Order No. PSC-09-0542-PAA-WU, issued August 4, 2009, in Docket No. 080499-WU, In re: Application for certificate to operate water utility in Lake County by TLP Water, Inc.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

By letter dated, June 16, 2009, TLP waived the statutory time frame for its interim request through August 18, 2009. This order addresses TLP's request for interim rates. We have the authority to consider this rate case and interim rates under Section 367.0814(4), F.S.

INTERIM WATER RATES

As stated above, we received an application for a staff-assisted rate case from TLP. The Utility has requested interim water rates. Section 367.0814(4), F.S., provides that:

[t]o establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

We have reviewed the Utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the TLP's 2008 Annual Report and SARC filing, we have determined that the Utility's water operation and maintenance expenses exceed its revenues.

TLP recorded \$38,838 for water O&M expenses in its 2008 annual report. We have analyzed the O&M expenses reported on the 2008 annual report, compared them to expenses we have allowed in a past case for a like-sized utility, and found them to be reasonable.³ Therefore, the Utility shall be allowed an interim water revenue increase necessary to cover the cost of its O&M expenses of \$38,838. In addition, the interim water increase shall be grossed up to include regulatory assessment fees (RAFs). We have previously determined that it would be inappropriate to approve an increase in an utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.⁴ Furthermore, by approving an interim rate that allows for the payment of RAFs, the Utility will be able to cover its O&M expenses. The RAFs accrued during the interim period will amount is projected to be \$1,830.

Based on the above, TLP's interim water rates shall be established to produce revenues of \$40,668 (\$38,838 + \$1,830) in order to cover O&M expenses and RAFs. This is an 80.57 percent increase above the Utility's 2008 revenues of \$22,520. It is our practice to apply the interim percentage increase to existing rates. TLP currently has a flat rate of \$39. By applying the interim rate increase, the interim water flat rate will be \$70.42.

If the Utility submits revised tariffs reflecting our decision on interim rates, our staff shall be given administrative authority to approve the tariffs. The approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.), provided customers have received notice. The

³ See Order No. PSC-06-0684-PAA-WS, issued August 8, 2006, in Docket No. 060575-WS, In re: Application for staff-assisted rate case in Charlotte County by MSM Utilities, LLC. (MSM Utilities, LLC. had 50 water customers, and the Commission approved O&M expenses of \$60,657).

⁴ See Order No. PSC-01-1654-FOF-WS, issued August 13, 2001, in Docket No. 010396-WS, In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.

rates shall not be implemented until our staff verifies that the tariff sheets are consistent with the our decision, the proposed customer notice is adequate, and the required security has been filed. The Utility shall provide proof of the date notice was given within 10 days after the date the notice is provided to the customers.

APPROPRIATE SECURITY

In order to protect the customers in the event that the final rates are less than those authorized as a result of the interim increase, the Utility shall provide security by placing in escrow the difference in revenues between the interim rates and the previously authorized rates, or by providing a bond or letter of credit. We have calculated the amount of potential refunds associated with the interim revenue increase to be \$9,074. We have calculated the amount pursuant to Section 367.0814(5), F.S., which specifies that:

The Commission may require that the difference between the interim rates and the previously authorized rates be collected under a bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission.

If the security provided is an escrow account, said account shall be established between the Utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Commission Clerk, Office of Commission Clerk; that the account shall be interest bearing; that if a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers; that if a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility; that information concerning the escrow account shall be available from the institution to the Commission or its representative at all times; and, that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

The Utility shall deposit 80.57 percent of the interim water rate revenue into the escrow account each month, pending the completion of the rate case proceeding. If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers. If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.

If the security provided is a bond or a letter of credit, said instrument shall be in the amount of \$9,074. If the Utility chooses a bond as security, the bond shall state that it will be released or shall terminate upon subsequent order of this Commission addressing the requirement of a refund. If the Utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered addressing the requirement of a refund.

Regardless of the type of security provided, the Utility shall keep an accurate and detailed account of all monies that it receives. Pursuant to Rule 25-30.360(6), F.A.C., the Utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund as of the end of the proceeding month. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

Under no circumstances shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the Utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of TLP Water, Inc., for an interim water rate increase is approved as set forth in the body of this Order. It is further

ORDERED that if the Utility submits revised tariffs reflecting our decision on interim rates, our staff shall have administrative authority to approve the submitted tariffs. It is further

ORDERED that the approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C., provided customers have received notice. It is further

ORDERED that the rates shall not be implemented until our staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security has been filed. It is further

ORDERED that the Utility shall provide proof of the date notice was given within 10 days after the date the notice is provided to the customers. It is further

ORDERED that the Utility shall be required to file a bond, letter of credit, or escrow agreement as security to guarantee any potential refunds of revenues collected under interim conditions as set forth in the body of this Order. It is further

ORDERED that pursuant to Rule 25-30.360(6), F.A.C., the Utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund as of the end of the proceeding month. It is further

ORDERED that this docket shall remain open pending the final resolution of the Utility's staff-assisted rate case.

By ORDER of the Florida Public Service Commission this 8th day of September, 2009.



ANN COLE
Commission Clerk

(S E A L)

CMK

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 shall not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is non-final in nature, may request (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. *Citizens of the State of Florida v. Mayo*, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.