

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, Inc. | DOCKET NO. 090415-SU  
| ORDER NO. PSC-09-0793-PCO-SU  
| ISSUED: December 1, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
NANCY ARGENZIANO  
NATHAN A. SKOP  
DAVID E. KLEMENT

ORDER APPROVING INTERIM RATES

BY THE COMMISSION:

BACKGROUND

West Lakeland Wastewater, Inc. (West Lakeland or Utility) is a Class C wastewater utility currently serving approximately 300 customers in Polk County (County). This area is in the Southwest Florida Water Management District (SWFWMD) and is considered a water use caution area. Water service is provided by the City of Lakeland. The Utility's 2006 annual report shows operating revenue of \$67,521 and net operating loss of \$34,442.

The Utility, previously known as ABCA, Inc. (ABCA), has been providing service to customers in Polk County since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group (Ameribanc) for a system known as Village Lakeland. Polk County came under this Commission's jurisdiction on July 11, 1996. In 1998, we granted the Utility its grandfather Certificate No. 515-S for wastewater service.<sup>1</sup> ABCA's certificate was transferred to West Lakeland in 2001.<sup>2</sup>

By letter dated March 26, 2009, West Lakeland gave notice of abandonment effective June 30, 2009. On May 13, 2009, the County Attorney filed a Petition for Appointment of Receiver for West Lakeland Wastewater, Inc. in the Circuit Court of the Tenth Judicial Circuit (Circuit Court). The Circuit Court issued an order in Case No. 53-2009CA-005284, on June 22, 2009, in which it declared West Lakeland Wastewater, Inc. abandoned and appointed Mr.

<sup>1</sup> See Order No. PSC-98-0752-FOF-SU, issued June 1, 1998, in Docket No. 971531-SU, In re: Application for grandfather certificate to operate wastewater utility in Polk County by ABCA, Inc.

<sup>2</sup> See Order No. PSC-01-1576-FOF-SU, issued July 30, 2001, in Docket No. 010382-SU, In re: Application for transfer of Certificate No. 515-S in Polk County from ABCA, Inc. to West Lakeland Wastewater, Inc.

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Michael Smallridge (Mr. Smallridge or Receiver) as receiver of the wastewater system. On September 3, 2008, we have acknowledged Mr. Smallridge as the receiver.<sup>3</sup>

On August 20, 2009, we received an application for a staff-assisted rate case from West Lakeland. By letter dated, September 15, 2009, the Utility waived the statutory time frame for its interim request through November 10, 2009. This order addresses West Lakeland's request for interim rates. We have the authority to consider this rate case and interim rates under Section 367.0814, Florida Statutes (F.S.)

### INTERIM RATES

As stated above, we received an application for a staff-assisted rate case from West Lakeland. The Utility has requested interim wastewater rates pursuant to Section 367.0814(4), F.S., which provides:

[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.

In the order acknowledging the abandonment and appointment of receiver, we held the Receiver responsible for filing the 2009 annual report.<sup>4</sup> The last annual report filed by the previous owner was for 2006. Pursuant to 367.0814, F.S., interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. Therefore, we utilized the 2006 annual report as it contains the only data available at this time.

We reviewed the Utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the West Lakeland's 2006 Annual Report and SARC filing, we determined that the Utility's wastewater O&M expenses exceed its revenues.

West Lakeland recorded \$87,696 for wastewater O&M expenses in its 2006 annual report. We analyzed the O&M expenses reported on the 2006 annual report, compared them to expenses the Commission has allowed in a past case for a like-sized utility, and found them to be reasonable.<sup>5</sup> Therefore, the Utility shall be allowed an interim wastewater revenue increase necessary to cover the cost of its O&M expenses of \$87,696. In addition, the interim wastewater

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<sup>3</sup> See Order No. PSC-09-0607-FOF-SU, issued September 8, 2009, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

<sup>4</sup> See Order No. PSC-09-0607-FOF-SU, issued September 8, 2009, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

<sup>5</sup> See Order No. PSC-09-0628-PAA-WS, issued September, in Docket No. 080668-SU, In re: Application for staff-assisted rate case in Highlands County by Fairmount Utilities, the 2<sup>nd</sup>, Inc. (Fairmount had 415 customers, and the Commission approved O&M expenses of \$99,967.)

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.<sup>6</sup> The RAFs accrued during the interim period will amount is projected to be \$4,132.

Based on the above, West Lakeland's interim wastewater rates shall be established to produce revenues of \$91,828 (\$87,696 + \$4,132) in order to cover O&M expenses and RAFs. This is a 36.00 percent increase above the Utility's 2006 revenues of \$67,521. It is our practice to apply the interim percentage increase to existing rates. The approved interim rates are shown on Schedule No. 1.

If the Utility submits revised tariffs reflecting our decision on interim rates, staff shall have the administrative authority to approve those 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), F.A.C., provided customers have received notice. The rates shall not be implemented until our staff verifies the following: (1) the tariff sheets are consistent with this decision, (2) the proposed customer notice is adequate, and (3) the required security to guarantee the interim rate increase has been filed with the Office of Commission Clerk. The Utility shall also provide proof of the date notice was given within 10 days after the date the notice is provided to the customers.

#### APPROPRIATE SECURITY TO GUARANTEE THE INTERIM RATE INCREASE

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, it is recommended that the Utility 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 \$14,719. 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. This Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should 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 should 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

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<sup>6</sup> See Order No. PSC-09-0605-PCO-WU, issued September 8, 2009, in Docket No. 090244-WU, In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.

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 should 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 36.00 percent of the interim wastewater 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 \$14,179. If the Utility chooses a bond as security, the bond shall state that it will be released or terminated 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.

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that West Lakeland Wastewater, Inc.'s request for interim wastewater rates is hereby approved. It is further

ORDERED that the Utility shall be granted a 36.00 percent interim wastewater rate increase. It is further

ORDERED that if West Lakeland submits revised tariffs reflecting our decision on interim rates, staff shall be given administrative authority to approve the 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), Florida Administrative Code, 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 to guarantee the interim rate increase has been filed with the Office of Commission Clerk. 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. 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 company's staff-assisted rate case.

By ORDER of the Florida Public Service Commission this 1st day of December, 2009.



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ANN COLE  
Commission Clerk

( S E A L )

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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.

Any party adversely affected by this order, which is non-final in nature, may request (1) reconsideration within 15 days pursuant to 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. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, 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.

| WEST LAKELAND WASTEWATER, INC.<br>TEST YEAR ENDING SEPTEMBER 30, 2009<br>MONTHLY WASTEWATER RATES |                                | Schedule No. 1<br>Docket No. 090415-SU  |  |
|---|--------------------------------|---|--|
|   | UTILITY'S<br>EXISTING<br>RATES | COMMISSION<br>APPROVED<br>INTERIM RATES |  |
| <b><u>Residential</u></b>   |                                |   |  |
| <b><u>Base Facility Charge by Meter Size:</u></b>   |                                |   |  |
| All Meter Sizes   | \$13.39                        | \$18.21                                 |  |
| Gallonage Charge  |                                |   |  |
| Per 1,000 gallons (8,000 gallon maximum per month)  | \$3.26                         | \$4.43                                  |  |
| <b><u>General Service</u></b>   |                                |   |  |
| <b><u>Base Facility Charge by Meter Size:</u></b>   |                                |   |  |
| 5/8" X 3/4"   | \$13.29                        | \$18.07                                 |  |
| 3/4"  | \$18.29                        | \$24.87                                 |  |
| 1"  | \$28.09                        | \$38.20                                 |  |
| 1-1/2"  | \$52.61                        | \$71.55                                 |  |
| 2"  | \$82.02                        | \$111.55                                |  |
| 3"  | \$160.45                       | \$218.21                                |  |
| 4"  | \$248.71                       | \$338.24                                |  |
| 6"  | \$493.82                       | \$671.59                                |  |
| Gallonage Charge  |                                |   |  |
| Per 1,000 Gallons   | \$3.89                         | \$5.29                                  |  |
| <b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>                               |                                |   |  |
| 3,000 Gallons   | \$23.17                        | \$31.51                                 |  |
| 5,000 Gallons   | \$29.69                        | \$40.38                                 |  |
| 10,000 Gallons  | \$39.47                        | \$53.68                                 |  |