

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint motion requesting Commission approval of settlement agreement by the Office of Public Counsel and Black Bear Waterworks, Inc.

DOCKET NO. 20210174-WU
ORDER NO. PSC-2021-0461-PAA-WU
ISSUED: December 15, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT ADDRESSING POTENTIAL OVERTURNINGS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.).

Background

Black Bear Waterworks, Inc. (Black Bear or Utility) is a Class C utility serving approximately 331 water customers in Lake County. Black Bear was previously identified as potentially overearning in 2017, and agreed to refund 10.44 percent of water revenues billed for 2017, as a result of a Commission-approved Settlement Agreement in that case.¹ Based on its review of Black Bear's 2020 Annual Report, Commission staff identified potential 2021 overearnings. By letter dated August 5, 2021, Black Bear acknowledged our jurisdiction over revenues in excess of the maximum of the allowed Return on Equity (ROE) for 2021. On October 15, 2021 and October 27, 2021, informal meetings were held between Black Bear and the Office of Public Counsel (OPC) (collectively referred to as Parties) to discuss the disposition of potential 2021 overearnings. On November 5, 2021, Black Bear and OPC filed a Joint Motion requesting our approval of a Settlement Agreement to resolve potential 2021 overearnings.

¹ Order No. PSC-2017-0481-PAA-WU, issued December 21, 2017, in Docket 20170247-WU, *In re: Joint Motion requesting Commission approval of settlement agreement by the Office of Public Counsel, Black Bear Waterworks, Inc., Brendenwood Waterworks, Inc., Brevard Waterworks, Inc., Country Walk Utilities, Inc., Harbor Waterworks, Inc., Lake Idlewild Utility Company, Raintree Waterworks, Inc., and Sunny Hills Utility Company.*

The Joint Motion and Settlement Agreement have been attached as Attachment A to this order. We have jurisdiction pursuant to Sections 367.081, 367.082, and 367.121, Florida Statutes.

Decision

As stated in the background, as part of its ongoing surveillance activities, Commission staff identified possible overearnings based upon its review of Black Bear's 2020 Annual Report. On November 5, 2021, the Parties filed a Joint Motion requesting our approval of a Settlement Agreement to resolve the disposition of 2021 overearnings, and address possible overearnings for 2022. With respect to 2021 overearnings, the Settlement Agreement provides that Black Bear should refund, via bill credits, 16.57 percent of water revenues billed for the calendar year 2021. The bill credits are anticipated to total approximately \$32,500, and are expected to be issued during the first quarter of 2022. The refunds will be made in accordance with Rule 25-30.360, F.A.C.

In its letter dated August 5, 2021, the Utility indicated that it intends to consolidate Black Bear, as well as nine other subsidiary systems that are located within the same geographic vicinity, into a new corporation. This merger is intended to recognize efficiencies and resolve the historical difficulties in earnings for these systems. Many of the systems included in the planned consolidation have habitually earned below the bottom of their authorized rate of return on equity, while others have occasionally overearned while having relatively low rates.

The Settlement Agreement also provides protections for customers for possible overearnings of Black Bear in 2022. Black Bear has agreed to hold subject to refund all revenues received during calendar year 2022 that are above its authorized ROE range until a final review of its 2022 Annual Report is made.

In keeping with our long-standing policy and practice of encouraging parties to settle issues whenever possible, we hereby approve the Joint Motion and Settlement Agreement by the Parties. The proposed Settlement Agreement adequately addresses the potential overearnings Commission staff identified during its ongoing earnings surveillance activities, and provides protections for Black Bear's customer for possible overearnings in 2022.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed Settlement Agreement, attached hereto, is approved. As outlined in the Settlement Agreement, Black Bear shall refund 16.57 percent of water revenues billed for the calendar year 2021. It is further

ORDERED that 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, Florida Administrative Code, is received by the 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

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ORDERED that this docket shall remain open to allow Commission staff to verify completion of the refunds approved herein. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 15th day of December, 2021.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JSC

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 5, 2022.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

FILED 11/5/2021
DOCUMENT NO. 12563-2021
FPSC - COMMISSION CLERK
DOCKET NO. 20210174-WU

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of 2021 Overearnings for
Black Bear Waterworks, Inc.
in Lake County
_____ /

Docket No. 2021_____

Filed: November 5, 2021

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

The Office of Public Counsel (“OPC”), on behalf of the Citizens of the State of Florida (“Citizens”) and Black Bear Waterworks, Inc. (Black Bear), pursuant to Section 367.081 and Section 120.57(4), Florida Statutes, and Rule 28-106.301, Florida Administrative Code, file this Joint Motion respectfully requesting the Florida Public Service Commission (“Commission”) to approve the Settlement Agreement, attached as Exhibit “A”, as provided in this motion. In support of the Joint Motion, OPC and Black Bear (the “Parties”) state:


1. The staff of the Commission identified potential 2021 overearnings based upon the review of the 2020 Annual Report of Black Bear.
2. The Parties exchanged data regarding Black Bear potential earnings above the maximum allowed returned on equity (ROE), and conducted discussions related to earnings data provided by Black Bear to OPC.
3. 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 to settle issues whenever possible, OPC and Black Bear have entered into a Settlement Agreement.
4. This Settlement Agreement resolves the disposition of 2021 overearnings for Black Bear as well as holds subject to refund all revenues received during the calendar year 2022 that are above its authorized ROE range until the final review of its 2022 Annual Report.

5. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification.

6. The Parties request expedited review and approval of this Settlement Agreement at the December 7, 2021 Commission Agenda Conference.

WHEREFORE, OPC and Black Bear respectfully request the Commission approve this Settlement Agreement.

Respectfully submitted this 5th day of November, 2021.


Anastacia Pirrello
Associate Public Counsel
Office of Public Counsel



Gary Deremer
President
Black Bear Waterworks, Inc.

Exhibit "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of 2021 Overearnings for
Black Bear Waterworks:

Docket No. 2021_____

Filed: November 3, 2021

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 3rd day of November, 2021, by and between Black Bear Waterworks, Inc. (hereafter referred to as "Black Bear"), and the Office of Public Counsel ("OPC"), on behalf of the Citizens of the State of Florida ("Citizens") and customers of Black Bear (hereafter, "Parties").

WITNESSETH

WHEREAS, the staff of the Florida Public Service Commission ("Commission" or "FPSC") identified potential 2021 overearnings based upon the review of the 2020 Annual Report of Black Bear;

WHEREAS, Black Bear submitted a letter dated August 5, 2021 to the FPSC as acknowledgement of and consent to the FPSC's jurisdiction over the extent to which the earned return on common equity (ROE) for the year ending December 31, 2021 exceeds the maximum of the allowed ROE;

WHEREAS, it was Black Bear's understanding that any decision regarding the disposition of any portion of such earned return above the maximum allowed ROE will be subject for disposition after the nature and extent of any such amount above the approved ROE ranges are known;

WHEREAS, on October 15, 2021 and October 27, 2021, informal meetings between the

Black Bear and OPC were held to discuss the potential disposition of any portion of such earned return above the maximum allowed ROE (“overearnings”);

WHEREAS, the Parties conducted further discussions and evaluation of additional data provided by Black Bear to OPC on such overearnings;

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this proceeding so as to maintain a degree of stability and predictability with respect to customer bills;

WHEREAS, the Parties have entered into this Settlement Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350 and 367, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this agreement each has agreed to concessions to the others with the expectation that all provisions of this Settlement Agreement will be enforced by the Commission as to all matters addressed herein with respect to all parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the agreement as provided herein and upon approval in the public interest; and

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, the sufficiency of which is hereby acknowledged the parties agree to the following:

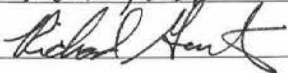
1. **Black Bear Waterworks, Inc.:** Black Bear Waterworks, Inc. (Black Bear) agrees to refund via credit on its customers’ account 16.57% of water revenues billed for the calendar year 2021. The refunds shall be made pursuant to Rule 25-30.360(3), Florida Administrative Code. This refund credit shall be based upon each individual customer’s billed amounts for the 2021 calendar year. Black Bear also agrees to hold subject to refund all revenues received during the calendar year 2022 that are above its authorized ROE range until the final review of its 2022

Annual Report. Black Bear hereby consents to the FPSC's jurisdiction over the extent to which its earned ROE for the year ending December 31, 2022 exceeds the maximum of its allowed ROE.

2. In keeping with the Commission's long-standing policy and practice of encouraging parties to settle issues whenever possible, the Parties submit this Settlement Agreement for review and approval. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification. The Parties further agree that they will support this Settlement Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Settlement Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Settlement Agreement or the subject matter hereof. No Party will assert in any proceeding before the Commission that this Settlement Agreement nor any of the terms herein shall have any precedential value nor may it be used in any other proceeding. To the extent a dispute arises among the parties about the provisions, interpretation, or application of this agreement, the parties agree to meet and confer in an effort to resolve the dispute. To the extent that the Parties cannot resolve any dispute, the matter may be submitted to the Commission for resolution. Approval of this Settlement Agreement in its entirety will resolve all matters and issues discussed herein pursuant to and in accordance with Section 120.57(4), Florida Statutes. This docket should be closed administratively after Commission staff verifies the revised tariff sheets, customer notices have been mailed, and refunds have been made.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by their signature.

OFFICE OF PUBLIC COUNSEL

Date: Nov. 3, 2024
By: 

Richard Gentry;
Public Counsel

Attorney for the Citizens
of the State of Florida

UTILITIES

Date: Nov 3 2024
By: 

Gary Deremer;
President

Black Bear Waterworks, Inc.