

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 23, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Hudson, Rendell) *HR*
Office of the General Counsel (Gervasi) *JSJ 198*

RE: Docket No. 050862-WU – Application for staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.

AGENDA: 04/04/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050862.RCM.DOC

Case Background

County-Wide Utility Company (County-Wide or utility) is a Class C utility located in Marion County. The utility provides water service only. Based on the 2004 Annual Report, the utility serves approximately 482 water customers. Revenues for 2004 were reported as \$109,074 for water, and the utility reported an operating income of \$947.

Due to a 1996 change in Marion County's Land Development Code to require fire flow in new developments, County-Wide hired an engineer to perform a capacity analysis and to look at alternatives to expand capacity and provide fire flow. After considering alternatives, County-Wide entered into an agreement with the City of Ocala for the interconnection of its system to receive bulk water and wastewater. County-Wide has constructed an interconnection between its existing system and the City of Ocala and has begun purchasing water.

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FPSC-COMMISSION CLERK

In its initial staff-assisted rate case (SARC) filing, the utility requested interim rates. The utility's interim rates request was based on it being allowed to immediately earn a return on its major investment. By Order No. PSC-06-0063-FOF-WU, issued January 24, 2006, in the instant docket, the Commission denied the utility's request for interim rates. This denial was based on Section 367.0814(4), Florida Statutes which 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.

However, because it is critical for the utility to continue payment to the City of Ocala for the purchase of water, the Commission encouraged staff to continue to explore alternative avenues for expedited rate relief.

Immediately following the January 5, 2006 Agenda Conference, staff contacted the utility by telephone to inform them of the Commission's decision and what information would be needed to consider emergency rates for the utility. The utility indicated that it could have the information to staff within a week. However, staff did not receive the information until February 28, 2006, by way of a formal petition for emergency rates.

This recommendation addresses the utility's request for emergency rates. The Commission has jurisdiction pursuant to Chapter 367, Florida Statutes, including Sections 367.011, 367.121, and 367.081, Florida Statutes.

Discussion of Issues

Issue 1: Should the request for emergency rates by County-Wide Utility Company, Inc. to recover the additional cost of its water facilities interconnection with the City of Ocala be approved, subject to refund with interest, until a final determination is made by the Commission and if so, what is the appropriate increase?

Recommendation: Yes. The request for emergency rates by County-Wide Company, Inc. should be approved, in part, subject to refund with interest, until the Commission determines the appropriate final rates for the water interconnection with the City of Ocala. The appropriate revenue increase should be \$139,291 (127.60%). However, the tariffs filed by County-Wide should be denied. If the utility submits revised tariffs reflecting the Commission's decision on emergency rates, staff recommends it be given administrative authority to approve the submitted tariffs. The approved rates should 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. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission decision, the proposed customer notice is adequate, and the required security has been filed. The utility should provide proof of the date notice was given within 10 days after the date of the notice. (Hudson, Gervasi)

Staff Analysis: On February 28, 2006, the utility filed a petition for emergency water rates. In its petition, the utility requested emergency rates to allow the utility to recover the costs of the interconnection with the City of Ocala, interest on the debt financing, increased tangible and intangible taxes and purchased water from the City. The costs included in the calculation for emergency rates were a return on the new required investment and adjusted operation and maintenance (O&M) expense grossed up for the regulatory assessment fees. The total requested revenue increase for emergency rates was \$150,073 (135.00% increase).

Based on staff's analysis of the utility's cost justification, staff has determined that the appropriate emergency rate increase should be \$139,291 (127.60% increase). This differs from the utility's requested emergency rate increase in that staff discovered two errors in the utility's calculation. The utility double counted the increase in tangible and intangible taxes. Therefore, staff made an adjustment to remove \$14,850 from operating expenses. The utility also removed revenue associated with its stand-by customer class. This results in a rate structure change. In requests for emergency rates, the percentage increase is across-the-board with the rate structure remaining the same.¹ Therefore, staff has made an adjustment of \$4,552 to include the revenue of the stand-by customer class.

The Commission has granted emergency relief in certain circumstances under its general ratemaking powers. See, e.g., Order No. PSC-97-0207-FOF-SU, issued February 21, 1997, in Docket No. 961475-SU, In re: Application for limited proceeding increase in wastewater rates by

¹ See, e.g., Order No. PSC-00-2227-PAA-WU, issued November 21, 2000, in Docket Nos. 940109-WU and 000694-WU, In Re: Petition for interim and permanent rate increase in Franklin County by St. George Island Utility Company Ltd., and In Re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County. That Order was consummated by Order No. PSC-00-2045-CO-WU, issued December 14, 2000.

Forest Hills Utilities, Inc. (granting tariff request for emergency rates and finding that although Chapter 367, Florida Statutes, does not expressly authorize emergency rates, Section 367.011, Florida Statutes, provides that the Commission has exclusive jurisdiction over a utility's rates). Moreover, pursuant to Section 367.121, Florida Statutes, the Commission's general powers include the power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each utility. In all such instances when the Commission has granted emergency relief, the Commission has required the utility to hold the monies collected subject to refund pending a final decision. While staff notes that in prior cases, emergency rates were approved on the basis of purchased treatment costs and that this is the first time the Commission has considered a return on investment to be included in emergency rates, the Commission's authority to do so is inherent under its general ratemaking powers.

At the time the Commission's decision was made on the interim rate request, staff did not have the utility's 2005 financial information available. Since that time, the audit of the utility's 2005 financial information was received on February 20, 2006. The audit indicates that the utility had a net operating loss of \$12,327 for 2005. The loss the utility sustained in 2005 is only reflective of one month of increased costs from purchased water and interest on the total debt incurred for the interconnection. Staff believes that one of the most urgent needs in ratemaking is to provide the utility with the opportunity to generate funds for its financial and operational stability. Thus, with the increased costs for O&M expenses and the payment of interest on the debt, staff believes it is imperative not to jeopardize the viability of this utility. Therefore, staff believes at this time that it is appropriate to allow the return on the new investment to be included in the emergency rates as well. It should be noted that the emergency rates should be held subject to refund and that there will be a true-up for the final rates determination.

In consideration of the above, staff believes the utility's request for emergency water rates should be approved subject to refund with interest until the Commission determines the appropriate final rates for the water interconnection with the City of Ocala. The tariff sheets filed by County-Wide represent a 135.00% increase in rates. Based on staff's analysis, the emergency increase in rates should be 127.60%. Therefore, the tariffs filed by County-Wide should be denied. If the utility submits revised tariffs reflecting the Commission's decision on emergency rates, staff recommends it be given administrative authority to approve the submitted tariffs. The approved rates should 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 the customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission decision, the proposed customer notice is adequate, and the required security has been filed. The utility should provide proof of the date notice was given within 10 days after the date of the notice.

Schedule No. 1 reflects the utility's existing rates, the utility's proposed emergency rates and staff's recommended emergency rates.

Issue 2: What is the appropriate security to guarantee the emergency rate increase?

Recommendation: The utility should be required to file an escrow agreement to guarantee any potential refunds of water revenues collected under the emergency rates. The utility should deposit in the escrow account each month the difference in revenue between the emergency rates and the previously approved rates. In addition, the escrow agreement should allow for automatic withdrawals each month by the utility for payments to the City of Ocala for purchased water and for payment of interest on the debt incurred in order to construct the facilities necessary for the interconnection. Under no circumstances should the utility be allowed to withdraw any amount of money except for payments to the City of Ocala for purchased water and to Compass Bank for payment of interest. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report, to the Division of Economic Regulation, by the 20th day of each month indicating in detail the total amount collected from its water customers, the additional revenue collected through the emergency rates and the amount of the withdrawals to the City of Ocala and to Compass Bank, all on a monthly and total basis. The utility should also provide copies of invoices from the City of Ocala and payment coupons for the loan. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. (Hudson)

Staff Analysis: In Issue 1, staff recommends that the excess of emergency rates over the previously authorized rates should be collected subject to refund with interest. Although an estimated amount for a potential refund may be calculated, due to the change in monthly customer bills, an accurate amount for a potential refund cannot be calculated by staff. Therefore, the utility should deposit in an escrow account each month the difference in revenue between the emergency rates and the previously approved rates. In addition, the escrow agreement should allow for automatic withdrawals each month by the utility for payments to the City of Ocala for purchased water and for payment of interest on the debt incurred in order to construct the facilities necessary for the interconnection. Under no circumstances should the utility be allowed to withdraw any amount of money except for payments to the City of Ocala for purchased water and to Compass Bank for payment of interest.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report, to the Division of Economic Regulation, by the 20th day of each month indicating in detail the total amount collected from its water customers, the additional revenue collected through the emergency rates and the amount of the withdrawals to the City of Ocala and to Compass Bank, all on a monthly and total basis. The utility should also provide copies of invoices from the City of Ocala and payment coupons for the loan.

The escrow agreement should be established between the utility and an independent financial institution pursuant to a written escrow agreement. 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 monthly automatic withdrawals of funds should be allowed for payments to the City of Ocala for purchased water and for payment of interest on the debt incurred in order to construct the facilities necessary for the interconnection; that no other funds in the escrow account may be withdrawn by the utility without the express approval of the Commission; that the account should be interest bearing; that the Director of Commission Clerk

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and Administrative Services must be a signatory to the escrow agreement; that all information concerning the escrow account be available to a Commission 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.

If a refund to the customers is required, all interest earned by the escrow account should be distributed to the customers and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. If a refund to the customers is not required, the interest earned by the escrow account should revert to the utility.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility.

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Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open to process the utility's staff-assisted rate case. (Gervasi)

Staff Analysis: This docket should remain open pending the final resolution of the utility's staff-assisted rate case.

Schedule No. 1

	<u>Rates Prior To Filing</u>	<u>Utility's Proposed Emergency Rates</u>	<u>Staff's Recommended Emergency Rates</u>
<u>Residential</u>			
Base Facility Charge			
Flat Charge (0 - 22,500)	\$13.23	\$34.83	\$30.11
Gallonge Charge (per 1,000 gals)			
3,751 Gals. - 22,500 Gals.	\$1.89	\$3.12	\$4.30
Over 22,500 Gallons	\$1.02	\$1.69	\$2.32
<u>General Service</u>			
5/8" x 3/4" Meter	\$13.23	\$34.83	\$30.11
Gallonge Charge (per 1,000 gals)			
3,751 Gals. - 22,500 Gals.	\$1.89	\$3.12	\$4.30
Over 22,500 Gallons	\$1.02	\$1.69	\$2.32
1" Meter	\$33.05	\$86.92	\$75.22
9,400 Gals. - 46,800 Gals.	\$1.89	\$3.12	\$4.30
Over 46,800 Gallons	\$1.02	\$1.69	\$2.32
1-1/2" Meter	\$66.10	\$86.92	\$150.44
18,800 Gals. - 93,600 Gals.	\$1.89	\$3.12	\$4.30
Over 93,600 Gallons	\$1.02	\$1.69	\$2.32
<u>Standby Service</u>	\$3.00	\$0	\$6.83