

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 29, 2007

TO: Commission Clerk (Cole)

FROM: Division of Economic Regulation (Merta, Rendell, Springer) *SM*
Office of the General Counsel (Brubaker) *ALM*

RE: Docket No. 060261-WS – Application for increase in water and wastewater rates in Lake County by Utilities, Inc. of Pennbrooke.

AGENDA: 04/10/07 – Regular Agenda – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Pending

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060261.RCM.DOC

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Case Background

Utilities, Inc. of Pennbrooke (Pennbrooke or utility) is a Class C utility providing water and wastewater service to approximately 1,344 water and 1,244 wastewater customers in Lake County. The utility is a wholly-owned subsidiary of Utilities, Inc. (UI). Water and wastewater rates were last established for this utility in its 2000 rate proceeding.¹ Consummating Order No. PSC-01-1375-CO-WS, issued June 27, 2001, made Order No. PSC-01-1246-PAA-WS effective and final.

On May 15, 2006, Pennbrooke filed the Application for Rate Increase at issue in the instant docket. By Order No. PSC-07-0088-PAA-WS (“PAA Order”), issued January 31, 2007,

¹ See Order No. PSC-01-1246-PAA-WS, issued June 4, 2001, in Docket No. 001382-WS, In re: Application for staff-assisted rate case in Lake County by Pennbrooke Utilities, Inc.

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the Commission approved rates that were designed to generate a water revenue requirement of \$341,185 and a wastewater revenue requirement of \$436,207. It was determined that the water system was overearning. The water revenue requirement was set equal to adjusted test year revenues (0.00% increase) and the overearnings were used to fund conservation programs.

On February 21, 2007, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On March 2, 2007, Pennbrooke timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). By letter dated March 14, 2007, Pennbrooke stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing.

Alafaya Utilities, Inc. (Alafaya) also filed the Application for Rate Increase at issue in the instant docket on May 15, 2006. Alafaya is another subsidiary of UI. By Proposed Agency Action Order No. PSC-07-0130-SC-SU (Alafaya PAA Order), issued February 15, 2007, the Commission approved rates that were designed to generate a wastewater revenue requirement of \$3,508,843. On March 8, 2007, the OPC timely filed a protest of the Alafaya PAA Order. On March 16, 2007, Alafaya timely filed a cross-petition to protest the Alafaya PAA Order. By letter dated March 14, 2007, Alafaya stated that it also intends to put the Alafaya PAA Order rates in effect during the pendency of the administrative hearing.

This recommendation addresses the implementation of the PAA rates on a temporary basis for Pennbrooke and the security to guarantee the increased revenues collected under the temporary PAA rates for Pennbrooke and Alafaya. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes, (F.S.).

Discussion of Issues

Issue 1: Should the Commission acknowledge the implementation of the proposed agency action rates by Utilities, Inc. of Pennbrooke?

Recommendation: Yes. The Commission should acknowledge the utility's implementation of the proposed agency action rates on a temporary basis pending the outcome of this rate proceeding. (Merta, Brubaker)

Staff Analysis: As discussed in the Case Background, the PAA order was protested by the OPC and cross-protested by the utility. On March 14, 2007, Pennbrooke submitted its notice of intent to implement rates pursuant to Section 367.081(8), F.S., pending the resolution of the protest filed in this docket. The utility also submitted tariff sheets, a proposed customer notice, and corporate undertakings to secure any potential refund.

Section 367.081(8), F.S., states:

At the expiration of 5 months following the official filing date, if the commission has not taken action or, if the Commission's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs.

The filing of OPC's objection triggers the applicability of subsection 367.081(8), F.S., and the utility should be allowed to implement the PAA rates as requested by the utility. Although the utility has the right to implement its requested final rates, Pennbrooke has elected to implement the final rates approved by the Commission in the PAA order. These Commission-approved rates are lower than the rates requested by the utility in its filing.

Staff reviewed the tariff sheets, customer notice, and security provided by the utility, and determined that the utility has met the requirements of Section 367.081(8), F.S. The security for the rate increase is discussed further in Issue 2. Based on the above, staff recommends that the Commission acknowledge the utility's implementation of the PAA rates on a temporary basis pending the outcome of this rate proceeding.

Issue 2: What is the appropriate security to guarantee the increased revenues collected under the temporary proposed agency action rates?

Recommendation: A corporate undertaking is acceptable contingent upon receipt of the written guarantee of the parent company, Utilities, Inc. (UI), and written confirmation of UI's continued attestation that it does not have any outstanding guarantees on behalf of UI-owned utilities in other states. UI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of revenues collected under temporary PAA rates. UI's total guarantee should be a cumulative amount of \$1,784,788, which includes an incremental amount of \$717,496 subject to refund in this docket and Docket No. 060256-SU (Alafaya's rate case). Pursuant to Rule 25-30.360(6), F.A.C., the utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. (Merta, Springer)

Staff Analysis: As discussed in Issue 1, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund pursuant to Section 367.081(8), F.S. In addition to allowing the utility to implement its requested rates, the statute requires that "The utility shall keep accurate records of amounts received as provided by subsection (6)." Subsection (6) specifies that "The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid."

By Order No. PSC-07-0088-PAA-WS, the Commission approved increased PAA rates and charges for Utilities Inc. of Pennbrooke, which included an annual revenue increase of \$0 for water and \$128,249 for wastewater. Although the Commission approved no increase for the water system, the water PAA rates included a \$20,845 allowance for conservation program expenses which the Commission ordered secured through a corporate undertaking. In addition, by Order No. PSC-07-0130-SC-SU, issued February 15, 2007, the Commission approved increased PAA rates and charges for Alafaya, which included an annual revenue increase of \$626,000. By letter dated March 14, 2007, Alafaya also stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing in Docket No. 060256-WS.

Pennbrooke and Alafaya are wholly-owned subsidiaries of UI, which provides all investor capital to its subsidiaries. UI's present cumulative corporate undertaking amount is \$1,067,292. UI has requested a corporate undertaking to secure the implementation of temporary PAA rates granted for Pennbrooke and Alafaya. In accordance with Rule 25-30.360, F.A.C., staff has calculated the potential refund of revenues and interest collected to be \$138,015 for Pennbrooke and \$579,481 for Alafaya. The total incremental amount of \$717,496 is based on an estimated ten months of revenue being collected. With the total incremental amount for Pennbrooke and Alafaya, the requested cumulative corporate undertaking amount is \$1,784,788 (\$1,067,292 plus \$717,496).

The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff has reviewed UI's financial statements from 2003 to 2005 to determine the financial condition of the parent

company. Staff's analysis shows that UI has experienced a significant decline in liquidity and interest coverage during 2005 compared to prior years. However, UI's average equity ratio over the three-year period has been 40%. Additionally, net income has been on average six times greater than the requested cumulative corporate undertaking amount. UI's financial performance has demonstrated adequate levels of both profitability and equity capitalization to offset the recent decline in liquidity and interest coverage. Based upon this analysis, staff recommends that a cumulative corporate undertaking of \$1,784,788 is acceptable contingent upon the receipt of the written guarantee of UI and written confirmation that UI does not have any outstanding guarantees on behalf of UI-owned utilities in other states.

Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

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 protest to the PAA order. (Brubaker, Merta)

Staff Analysis: Because a protest has been filed to PAA Order No. PSC-07-0088-PAA-WS, supra, this docket should remain open to complete the hearing process.