

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Lake County by Utilities, Inc. of Pennbrooke. DOCKET NO. 060261-WS
ORDER NO. PSC-07-0386-PCO-WS
ISSUED: May 1, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER ACKNOWLEDGING IMPLEMENTATION
OF PAA RATES ON AN INTERIM BASIS,
SUBJECT TO REFUND, AND PROVIDING FOR SECURITY

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). We last established water and wastewater rates for this utility in its 2000 rate proceeding.¹

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, we approved rates that were designed to generate a water revenue requirement of \$341,185 and a wastewater revenue requirement of \$436,207. We 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), another subsidiary of UI, also filed an application for rate increase on May 15, 2006, in Docket No. 060256-SU. By Proposed Agency Action Order No. PSC-07-0130-SC-SU (Alafaya PAA Order), issued February 15, 2007, we approved rates designed to generate a wastewater revenue requirement of \$3,508,843. On March 8, 2007, OPC timely filed a protest of the Alafaya PAA Order. On March 16, 2007, Alafaya timely filed a

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.; consummated by Order No. PSC-01-1375-CO-WS, issued June 27, 2001.

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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 for Docket 060256-SU.

We have jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

IMPLEMENTATION OF PAA RATES

As discussed previously, 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 protests 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 we acknowledge that the utility has elected to implement the PAA rates. Although the utility has the right to implement its requested final rates, Pennbrooke has elected to implement the final rates we approved in the PAA order. These rates are lower than the rates requested by the utility in its filing.

Our staff reviewed the tariff sheets, customer notice, and security provided by the utility, and we have determined that the utility has met the requirements of Section 367.081(8), F.S. Based on the above, we find it appropriate to acknowledge the utility's implementation of the PAA rates on a temporary basis pending the outcome of this rate proceeding.

APPROPRIATE SECURITY SUBJECT TO REFUND

As discussed previously, 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 "[t]he utility shall keep accurate records of amounts received as provided by subsection (6)." Subsection (6) specifies that "[t]he 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, we approved increased PAA rates and charges for Pennbrooke, which included an annual revenue increase of \$0 for water and \$128,249 for wastewater. Although we did not approve an increase for the water system, the water PAA rates included a \$20,845 allowance for conservation program expenses which we ordered secured

through a corporate undertaking. In addition, by Order No. PSC-07-0130-SC-SU, we 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-SU.

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., Commission staff 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. Our staff reviewed UI's financial statements from 2003 to 2005 to determine the financial condition of the parent company. The 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, we find 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 shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

In no instance 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 Utilities, Inc. of Pennbrooke's notice of implementation of the PAA rates set forth in Order No. PSC-07-0088-PAA-WS, on an interim basis, subject to refund, pending the outcome of this proceeding, is hereby acknowledged as set forth in the body of this order. It is further

ORDERED that the corporate undertaking discussed herein is acceptable contingent upon receipt of the written guarantee of the parent company, Utilities, Inc., 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 shall 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 shall 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). 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. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. It is further

ORDERED that this docket shall remain open to complete the hearing process.

By ORDER of the Florida Public Service Commission this 1st day of May, 2007.



ANN COLE
Commission Clerk

(S E A L)

JSB

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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate 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 Commission Clerk, Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.