

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 27, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Kaproth, Bulecza-Banks)
Office of the General Counsel (Jaeger)

Handwritten initials and signatures:
KK JS
CBB
JA
1928

RE: Docket No. 060253-WS – Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

AGENDA: 04/08/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060253.RCM.DOC

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Case Background

Utilities, Inc. (UI or parent) is an Illinois corporation which owns approximately 80 utility subsidiaries throughout 16 states, including 16 water and wastewater utilities within the State of Florida. Utilities, Inc. of Florida (UIF or utility) is one of those 16 and is a Class A utility providing water and wastewater service in Marion, Orange, Pasco, Pinellas, and Seminole counties.

On March 20, 2006, UIF filed its Application for a Rate Increase. The utility requested the application be processed using the Proposed Agency Action (PAA) procedure and requested interim rates for each county except Marion County. On November 21, 2006, the Commission approved interim rates by Order No. PSC-06-1006-FOF-WS, issued December 5, 2006 (Interim Rate Order).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

By PAA Order No. PSC-07-0505-SC-WS (Rate/Refund Order), the Commission found that the interim revenue requirements for the water systems in the Orange County, Pasco County, Pinellas County, and Seminole County were less than the revenue requirements granted in the Interim Rate Order for the interim collection period, and that a refund was required. That Rate/Refund Order was consummated by Order No. PSC-07-0566-CO-WS, issued July 9, 2007, and required the interim refund percentages to be as follows:

Approved Interim Refund Percentages

| <u>County</u> | (A) | (B) | (C) | (D) | (E) | (F) |
|--------------------------|--|---|--|--|--|---------------------------------|
| | Interim Test Year Revenues Granted | Less Interim Revenue from Miscellaneous Service Charges | Interim Test Year Revenues From Rates (A) – (B) | Revised Interim Revenues From Rates * | Excess Revenue Collected from Rates (C)-(D) | Refund Percentage (E)/(C) |
| Marion – Water | | | | | | N/A |
| Marion – Wastewater | | | | | | N/A |
| Orange – Water | \$108,004 | \$2,856 | \$105,148 | \$94,685 | \$10,463 | 100.00% |
| Pasco – Water | \$796,634 | \$12,197 | \$784,437 | \$751,495 | \$32,942 | 4.20% |
| Pasco – Wastewater | \$431,317 | 0 | \$431,317 | \$430,872 | \$445 | No Refund |
| Pinellas – Water | \$114,470 | \$1,215 | \$113,255 | \$102,834 | \$10,421 | 9.20% |
| Seminole - Water - | \$809,835 | \$11,151 | \$798,684 | \$733,542 | \$65,142 | 8.16% |
| Seminole – Wastewater | \$783,689 | 0 | \$783,689 | \$783,689 | (\$70,540) | No Refund |

*Recalculated interim revenue requirement, excluding rate case expense and other items not in effect during the interim period.

The Rate/Refund Order also stated that the corporate undertaking would be released after the appropriate amounts of interim revenues were refunded and the refund amounts were verified by staff. The Rate/Refund Order also ordered that if UIF paid the \$8,250 in fines,¹ and complied with the other requirements of the Order, the docket would be closed administratively upon staff's verification that there was no timely protest, the proposed fines had been paid, and the appropriate refunds had been made. Pursuant to Rule 25-30.360, Florida Administrative Code (F.A.C.), refunds must be made within 90 days of the Commission's order requiring the refunds, which would have made the refunds due by October 8, 2007.

¹ In the Refund Order, the Commission ordered UIF to show cause in writing, within 21 days, why it should not be fined a total of \$3,000 for its apparent failure to adjust its books to conform with the NARUC USOA, as required by Rule 25-30.115, F.A.C., and Orders Nos. PSC-03-1440-FOF-WS and PSC-04-1275-AS-WS, and also why it should not be fined a total of \$5,250, or \$750 per system, for apparently serving outside its certificated territory in seven separate systems in apparent violation of Subsection 367.045(2), F.S. Therefore, the proposed total fine was \$8,250.

By letter dated November 16, 2007, staff counsel advised counsel for the utility that despite repeated calls the utility had failed to provide the required refund documentation. That letter requested the utility to provide the requested documentation by November 26, 2007, or staff would proceed with a show cause proceeding.

The Rate/Refund Order also required that the utility provide proof, within 90 days (i.e., by October 8, 2007) that the Commission adjustments for all the applicable NARUC Uniform System of Accounts (USOA) primary accounts had been made. By letter dated December 3, 2007, the utility explained that it was implementing a new accounting system, which was delaying the utility actually booking the Commission-ordered adjustments. The letter reflected the bookkeeping entries that would be made when the accounting system was fully functional which was expected to be by the end of the week. This new bookkeeping system was also delaying the implementation of the refunds.

In response to staff's letter dated November 16, 2007, the utility requested a meeting to discuss the problem it was having with timely making the refunds (and recording the adjustments). That meeting was held on December 19, 2007.

Realizing that it was in violation of the Rate/Refund Order, and that it was subject to show cause proceedings and fines, UIF filed its Settlement Offer on December 28, 2007. In that Settlement Offer, the utility noted that though the new financial system "went live" in mid-December, the new customer system was still in development and was not scheduled to "go live" until March 31, 2008. Therefore, the utility had to use the old billing system which the utility states required a lot of manual work outside of the system and involved 18 subdivisions with over 90 billing codes and 6,500 accounts. As of the date of the Settlement Offer, the utility stated that 15 of the 18 subdivisions had received their refund, and that the remaining three would receive their refunds in the first week of January 2008.² Based on these apparent³ violations of the Rate/Refund Order, the utility offered to pay a fine of \$2,000 in lieu of the initiation of show cause proceedings, with such payment being made within 10 days of entry of an order accepting the Settlement Offer.

This recommendation addresses the utility's Settlement Offer and whether it should be accepted in lieu of the initiation of show cause proceedings. The Commission has jurisdiction pursuant to Sections 367.081, 367.082, and 367.161, Florida Statutes (F.S.).

² Utility confirmed that the refunds were made to the remaining subdivisions by the end of the first week in January, and has provided the required documentation.

³ Utility used the word "technical" violation.

Discussion of Issues

Issue 1: Should Utilities, Inc. of Florida's Settlement Offer be accepted?

Recommendation: Yes, the utility's Settlement Offer should be accepted in lieu of initiation of show cause proceedings, and the utility should pay \$2,000 as a fine for its violation of Rule 25-30.360, F.A.C., and the requirements of the Rate/Refund Order. Such payment should be made within 10 days of the Order accepting the Settlement Offer. (Jaeger, Kaproth)

Staff Analysis: In its Settlement Offer, UIF notes that its parent has been implementing an integrated financial, accounting, and management system which coincided with the timing of UIF making refunds of interim rates and adjusting its NARUC USOA primary accounts to reflect Commission ordered adjustments. UIF further notes that this implementation of major computer software upgrades has not gone as smoothly as anticipated. Therefore, while there was no intentional violation of the Rate/Refund Order and the refund rule, the utility recognizes that it nevertheless has violated the provisions of that Order and the refund rule. Finally, the utility notes that because the refunds were with interest, the customers were not harmed in the delay of the refund.

Since the filing of its Settlement Offer, the utility has completed its refunds and provided the necessary documentation (refunds were completed in early January). Also, the utility has provided proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Still, staff recognizes that an apparent violation of both the Rate/Refund Order and Rule 25-30.360, F.A.C., has occurred.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful order of the Commission. By failing to comply with the above-noted requirements of the Rate/Refund Order and Rule 25-30.360, F.A.C., the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule. Id. at 6.

However, with the Settlement Offer, and having reviewed the circumstances in this case, staff believes that the problem with the change-over in its computer system is a mitigating factor which helped cause the delay in making the refunds and adjusting the primary accounts. Staff notes that with the implementation of the new financial system, the processing of any future refunds or the adjustments for all the applicable NARUC USOA primary accounts to reflect Commission adjustments should be a lot simpler and proceed in a more expeditious manner. However, in this docket, staff believes that there has been both a violation of the Rate/Refund Order and Rule 25-30.360, F.A.C.

Docket No. 060253-WS
Date: March 27, 2008

If the utility had not proposed this Settlement Offer, staff would have recommended that a show cause proceeding be initiated with a recommended fine approximating the amount the utility is offering to pay. Therefore, based on the utility's cooperativeness, and to save time and resources of both the Commission and the utility, staff recommends that the Commission accept the utility's Settlement Offer. Pursuant to that Settlement Offer, the utility should pay \$2,000 as a fine for its violation of Rule 25-30.360, F.A.C., and the requirements of the Rate/Refund Order, with such payment being made within 10 days of the Order accepting the Settlement Offer.

Docket No. 060253-WS
Date: March 27, 2008

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, the docket should be closed administratively upon staff's verification that the utility has timely paid the \$2,000 fine. (Jaeger)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the docket should be closed administratively upon staff's verification that the utility has timely paid the \$2,000 fine.