

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: June 30, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Bruce, Stallcup, Kummer) *ARW, ARW for KL JSC ARCS*
Office of the General Counsel (Leveille, Williams) *to*

RE: Docket No. 100313-WS – Application for authority to collect non-sufficient funds charges, pursuant to Sections 68.065 and 832.08(5), F.S., by Utilities, Inc.

AGENDA: 07/13/10 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 07/30/10 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\100313.RCM.DOC

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Case Background

Utilities, Inc. (UI) is an Illinois corporation which owns approximately 75 subsidiaries throughout 15 states including 14 water and wastewater utilities within the State of Florida. On June 1, 2010, UI requested approval of a Non-Sufficient Funds (NSF) charge for seven of its Florida utilities. These utilities are: Alafaya Utilities; Cypress Lakes Utilities; Utilities Inc. Eagle Ridge; Labrador Utilities; Lake Utility Services; Mid-County Services; and Tierra Verde Utilities.

Alafaya Utilities, Inc. is a Class A wastewater utility serving approximately 7,523 wastewater customers in Seminole County. The utility is located in the St. Johns River Water Management District (SJRWMD). The utility's annual report for 2009 shows the utility's gross operating revenue is \$3,914,424 and net operating income is \$516,861 for wastewater.

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Cypress Lakes Utilities, Inc. is a Class B water and wastewater utility serving approximately 1,265 water and 1465 wastewater customers in Polk County. The utility is located in the Southwest Florida Water Management District (SWFWMD) and is within the Southern Water Use Caution Area (SWUCA). The utility's annual report for 2009 shows the utility's gross operating revenue is \$291,817 and \$525,535 and net operating income is (\$7,591) and \$72,201 for water and wastewater, respectively.

Utilities, Inc. of Eagle Ridge is a Class A wastewater utility serving approximately 2,535 wastewater customers in Lee County and is located in the South Florida Water Management District (SFWMMD). The utility's annual report for 2009 shows the utility's gross operating revenue is \$1,022,853 and net operating income is (\$446,887) for wastewater.

Labrador Utilities, Inc. is a Class B water and wastewater utility serving 797 water and 893 wastewater customers in Pasco County. The utility is located in the SWFWMD and is within the SWUCA. The utility's annual report for 2009 shows the utility's gross operating revenue is \$238,981 and \$375,420 and net operating income is \$21,665 and \$61,638 for water and wastewater, respectively.

Lake Utility Services, Inc. is a Class A water and wastewater utility serving 8,461 water and 3,131 wastewater customers in Martin County. The utility is located in the SFWMMD. The utility's annual report for 2009 shows the utility's gross operating revenue is \$4,162,095 and \$1,894,025 and net operating income is \$815,167 and \$216,151 for water and wastewater, respectively.

Mid County Services, Inc. is a Class A wastewater utility serving 2,157 wastewater customers in Pinellas County. The utility is located in the SWFWMD and is within the SWUCA. The utility's annual report for 2009 shows the utility's gross operating revenue is \$1,870,209 and net operating income is \$321,122 for wastewater.

Tierra Verde Utilities, Inc. is a Class B wastewater utility serving 1,014 wastewater customers in Pinellas County. The utility is located in the SWFWMD and is within the SWUCA. The utility's annual report for 2009 shows the utility's gross operating revenue is \$904,523 and net operating income is \$91,211 for wastewater.

This recommendation addresses the authority to collect NSF charges pursuant to Sections 68.065 and 832.08(5), Florida Statutes (F.S.). The Commission has jurisdiction to consider this matter pursuant to Section 367.091, F.S.

Discussion of Issues

Issue 1: Should UI's request for approval of an NSF fee be granted?

Recommendation: Yes. UI's requested NSF fee should be approved. The NSF fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). Furthermore, the fees should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given no less than 10 days after the date of the notice. (Bruce, Williams)

Staff Analysis: Section 367.091, F.S., requires that rates, charges, and customer service policies be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. UI has requested an NSF fee in accordance with Sections 68.065 and 832.08(5), F.S.

Staff believes that UI should be authorized to collect an NSF fee. Staff believes the NSF fee should be established consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 832.08(5), the following fees may be assessed:

1. \$25, if the face value does not exceed \$50,
2. \$30, if the face value exceeds \$50 but does not exceed \$300,
3. \$40, if the face value exceeds \$300,
4. or five percent of the face amount of the check, whichever is greater.

Staff recommends that UI revise its tariffs to reflect the NSF charges set fourth in Sections 68.065 and 832.08(5) F.S., as may be amended.

Approval of an NSF fee is consistent with prior Commission decisions.¹ Furthermore, an NSF fee places the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, staff recommends that UI's proposed NSF fee be approved. The fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the fees should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given no less than 10 days after the date of the notice.

¹ See Order Nos. PSC-10-0364-TRF-WS, issued June 7, 2010, in Docket No. 100170-WS, In re: Application for authority to collect non-sufficient funds charges, pursuant to Sections 68.065 and 832.08(5), F.S., by Pluris Wedgefield Inc., and PSC-10-0168-PAA-SU, issued March 23, 2010, in Docket No. 090182-SU, In re: Application for increase in wastewater rates in Pasco County by Ni Florida, LLC.

Issue 2: Should this docket be closed?

Recommendation: No. If a protest is filed by a substantially affected person within 21 days of issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket will become final upon the issuance of a consummating order. However, this docket should remain open to allow staff to verify that the revised tariff sheets and customer notice have been filed by UI and approved by staff. Once staff has verified that the revised tariff sheets and customer notice have been filed by UI and approved, the docket should be closed administratively. (Leveille, Williams)

Staff Analysis: If a protest is filed by a substantially affected person within 21 days of issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket will become final upon the issuance of a consummating order. However, this docket should remain open to allow staff to verify that the revised tariff sheets and customer notice have been filed by UI and approved by staff. Once staff has verified that the revised tariff sheets and customer notice have been filed by UI and approved, the docket should be closed administratively.