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# Public Service Commission

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COMMISSION  
CLERK

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

**DATE:** May 12, 2011

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Roberts, Fletcher, Hudson, Maurey, Simpson)  
Office of the General Counsel (Williams, Crawford)

*Handwritten initials and signatures:* ARW, BF, SH, P.V., CSK, CRWB, ALM, W

**RE:** Docket No. 090346-WU – Application for staff-assisted rate case in Lake County by Brendenwood Water System, Inc.

**AGENDA:** 05/24/11 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 04/16/11 (Complete Pro Forma Plant)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090346.RCM.DOC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

### **Case Background**

Brendenwood Water System, Inc. (Brendenwood or Utility) is a Class C utility which is currently providing water service to approximately 58 customers. Brendenwood is located in the St. Johns River Water Management District (SJRWMD). According to the Utility's 2009 Annual Report, Brendenwood had operating revenues of \$29,844 and operating expenses of \$27,479.

On June 24, 2009, Brendenwood filed an application for a staff-assisted rate case (SARC) and paid the appropriate filing fee on June 25, 2009. By Order No. PSC-10-0167-PAA-WU, issued March 23, 2010, in this docket, the Commission approved Phase I and Phase II revenue requirements. The Phase II revenue requirement was only to be implemented once the Utility had completed the pro forma plant addition. In the above-referenced order, the Utility was ordered to expend \$8,800 for the refurbishment of its hydroneumatic tank (tank) within 12-months of the effective date of the consummating order. The 12-month period ended April 16, 2011.

By letter dated March 15, 2011, the Utility indicated it would be unable to complete the pro forma plant addition by April 16, 2011. Brendenwood stated it does not have the funds necessary to complete the refurbishment of the tank. However, because of the regulatory mandates of the Florida Department of Environmental Protection (DEP), the Utility is required to refurbish the tank. Currently, DEP is writing a consent order for Brendenwood. Based on an e-mail response from DEP, the consent order will grant the Utility an extension until April 30, 2012, to complete the tank refurbishment. As a result, by letter dated March 30, 2011, the Utility has requested that the Commission grant an extension of time to complete the pro forma plant addition.

The Commission has the authority to consider this rate case matter pursuant to Section 367.0814, Florida Statutes (F.S.).

### Discussion of Issues

**Issue 1:** Should the Utility's request for an extension of time to complete the required pro forma plant addition be approved?

**Recommendation:** Yes. The Utility's request for an extension to complete the required pro forma plant addition should be approved. The pro forma plant addition should be completed by April 30, 2012. The Utility should be allowed to implement the Phase II rates once the pro forma plant addition has been completed and verified by staff. Once verified, the rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The rates should not be implemented until notice has been received by the customers. Brendenwood should be required to provide proof of the date notice was given within ten days after the date of the notice. If the Utility encounters any unforeseen events that will impede the completion of the pro forma addition, the Utility should immediately notify the Commission. (Roberts, Hudson)

**Staff Analysis:** As discussed in the case background, pursuant to Order No. PSC-10-0167-PAA-WU, issued March 23, 2010, in this docket, the Utility was ordered to refurbish its hydroneumatic tank within 12-months of the effective date of the consummating order. This 12-month period ended April 16, 2011. During the 12-month period, the Utility could not obtain financing for the refurbishment of the tank. Therefore, the Utility submitted a letter advising of its inability to complete the pro forma plant addition due to not having the funds available. The refurbishment of the tank is mandated by DEP. If the Utility fails to refurbish the tank, it would result in the Utility not being in compliance with Rule 62-555.350(2), F.A.C. Therefore, by letter dated March 30, 2011, the Utility requested an extension of one year to complete the refurbishment of the tank.

In the above-referenced letter, Brendenwood described its plans to complete the pro forma addition. Now that its debt is paid off, the Utility intends to build up a reserve to increase the down payment for the refurbishment of the tank. Brendenwood stated that the larger down payment would minimize the amount of debt incurred. Therefore, the interest expense would be lower. The Utility has also been in contact with the Florida Rural Water Association to discuss available financing alternatives. Finally, DEP has granted Brendenwood an extension until April 30, 2012, to make the corrective actions to the tank.

Section 367.081(2), F.S., states:

The Commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the Commission.

Further, the statute states that the Commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs. In the statute, the term "environmental compliance costs" includes all reasonable expenses and a fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the United States

Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction. DEP has granted the Utility an additional year to complete the corrective actions to the tank. The Phase II rates approved by Order No. PSC-10-0167-PAA-WU allow the Utility the opportunity to recover a fair return on the plant investment expended to be in compliance with DEP.

The Utility should be allowed to implement the Phase II rates once the pro forma plant addition has been completed and verified by staff. Once verified, the rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until notice has been received by the customers. Brendenwood should be required to provide proof of the date notice was given within ten days after the date of the notice. If the Utility encounters any unforeseen events that will impede the completion of the pro forma addition, the Utility should immediately notify the Commission.

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**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open to allow the Utility additional time to complete the pro forma plant addition to the water system. If the Utility completes the plant addition by April 30, 2012, the docket should be closed administratively upon staff verifying that the plant addition is complete. (Williams)

**Staff Analysis:** The docket should remain open to allow the Utility additional time to complete the pro forma plant improvement to the water system. If the Utility completes the pro forma plant addition by April 30, 2012, the docket should be administratively closed once staff verifies that the plant addition is finished.