

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: April 6, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Bruce) *[Handwritten initials]*
Office of the General Counsel (Mapp) *[Handwritten initials]*

RE: Docket No. 20180014-WS – Investigation of allowance for funds prudently invested (AFPI) in Lake County, by Utilities, Inc. of Florida.

AGENDA: 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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COMMISSION CLERK

Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A water and wastewater utility providing service in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. The utility reported operating revenues of \$2,498,891 for water and \$1,440,710 for wastewater in its 2016 annual report.

Pursuant to Order No. PSC-2017-0361-FOF-WS,¹ the Commission found the utility serving in excess of the number of equivalent residential connections (ERCs) upon which the allowance for funds prudently invested (AFPI) charges were designed for UIF's Lake Groves water and wastewater systems and UIF's Lake Utility Services (LUSI) water system. As a result, the

¹ Order No. PSC-2017-0361-FOF-WS, in Docket No. 20160101-WS, issued September 25, 2017, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Docket No. 20180014-WS

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Commission discontinued the AFPI charges for those systems and ordered an investigation to determine the amount of overcollection of AFPI charges and the appropriate disposition of the overcollection.

This recommendation addresses the results of the investigation into potential overcollections of AFPI charges and the disposition of the overcollection for UIF's Lake Groves and LUSI systems. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should UIF be required to refund overcollections of AFPI charges and, if so, what is the appropriate amount to be refunded?

Recommendation: Yes. UIF should be required to refund overcollected AFPI charges of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C. to the two developers that paid AFPI charges for a total of 292 connections. The refund should be completed within 90 days of the Commission's vote and documentation supporting the final refund should be provided within 10 days of the completed refund. (Bruce)

Staff Analysis:

Background

Pursuant to Rule 25-30.434, Florida Administrative Code (F.A.C.), an AFPI charge is a mechanism designed to allow a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the customers that will be served by that plant. This one-time charge is assessed based on the date the future customer connects to the utility's system. The charge is calculated for one equivalent residential connection (ERC) on a monthly basis up to the time the utility reaches the designed capacity of the plant for which the charge applies. The calculation includes the costs associated with the non-used and useful facilities and the number of future ERCs from which the utility may collect the AFPI charges.

Lake Groves

Lake Groves's initial rates and charges became effective in an original certificate case in 1991.² The water and wastewater AFPI charges that were approved in that docket were designed to be collected from 545 ERCs. The projected capacity of the water system at the time the charges were approved was 600,000 gallons per day (gpd) and the projected capacity of the wastewater system was 160,000 gpd.

Over the years, Lake Groves's certificates were amended on several occasions to include additional territory and the Commission approved the utility's existing rates and charges, including AFPI for each new territory.³ In 1999, the Commission approved the transfer of majority organizational control of Lake Groves to Utilities, Inc. and the rates and charges of Lake Groves were continued.⁴ According to the order approving the transfer, the utility was

² Order No. 24283, issued March 25, 1991, in Docket No. 19900957-WS, *In re: Application of Lake Groves Utilities, Inc. for water and sewer certificates in Lake County.*

³ Order No. PSC-92-1328-FOF-WS, issued November 16, 1992, in Docket No. 19920900-WS, *In re: Application of Lake Groves Utilities, Inc. for amendment of Certificates Nos. 534-W and 465-S in Lake County, FL*; Order No. PSC-94-0116-FOF-WS, issued January 31, 1994, in Docket No. 19931000-WS, *In re: Application for amendment of Certificate Nos. 534-W and 465-S in Lake County by Lake Groves Utilities, Inc.*; Order No. PSC-99-0884-FOF-WS, issued May 3, 1999, in Docket No. 19990195-WS, *In re: Application for amendment of Certificates Nos. 434-W and 465-S to add additional territory in Lake County by Lake Groves Utilities, Inc.* and Order No. PSC-00-1657-PAA-WS, issued September 18, 2000, in Docket No. 20000430-WS, *In re: Application for amendment of Certificates Nos. 534-W and 465-S to add territory in Lake County by Lake Groves Utilities, Inc.*

⁴ Order No. PSC-99-0164-FOF-WS, issued January 26, 1999, in Docket No. 19980958-WS, *In re: Application for transfer of majority organizational control of Lake Groves Utilities, Inc. in Lake County to Utilities, Inc.*

serving approximately 600 water and wastewater customers at that time, which exceeded the number of ERCs upon which the AFPI charges were based.

In Docket No. 20070693-WS,⁵ the Commission found that the Lake Groves wastewater system was 52.42 percent used and useful based on 1,000,000 gpd of capacity; the utility was serving approximately 2,860 ERCs during the test year. According to the utility's annual reports, no AFPI charges were collected from 1991 through 2016. However, in response to a data request, the utility indicated that during early 2017 it had collected \$165,739 in AFPI charges for future Lake Groves wastewater connections.

LUSI

The Commission approved AFPI charges for the LUSI water system in the utility's original certificate application in 1988.⁶ The charges were designed to be recovered from 106 future ERCs based on projected capacity of 37,100 gpd. Several amendments were approved for the LUSI system and by 1992 the utility was serving over 300 customers.⁷ Subsequently, in a rate case in 1997,⁸ the Commission found that LUSI may have incorrectly collected the AFPI charges approved in 1988 and opened an investigation. During the 1997 rate case, the Commission also approved new AFPI charges for the LUSI water system as a result of increases in the capacity of the water treatment plant (WTP) and the distribution system. Separate charges were designed for the WTP and the distribution system based on the increased capacity of those systems and the used and useful adjustments that were made during the rate case. The new WTP AFPI charge was designed to be collected from 1,080 future ERCs and the distribution system AFPI charge was designed to be collected from 977 future ERCs. At that time, the LUSI water system served 937 ERCs.

As a result of the investigation into the potential overcollection of LUSI's 1998 AFPI charges, the Commission found that LUSI had overcollected those AFPI charges and required LUSI to record the overcollection as contributions-in-aid-of-construction (CIAC).⁹ Following a protest and settlement agreement, two customers who protested were given a refund in the amount of the AFPI charges they paid.¹⁰ According to the utility's annual reports, AFPI charges in the amount

⁵ Order No. PSC-09-0101-PAA, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

⁶ Order No. 19962, issued September 8, 1988, in Docket No. 19871080-WU, *In re: Application of Lake Utility Services, Inc. for an original water certificate in Lake County, Florida.*

⁷ Order No. 24957, issued August 21, 1991, in Docket No. 19900989-WU, *In re: Application of Lake Utility Services, Inc. for amendment of Certificate No. 496-W in Lake County, Florida*; Order No. PSC-92-1369-FOF-WU, issued November 24, 1992, in Docket No. 19920174-WU, *In re: Application for Amendment of Certificate No. 496-W in Lake County by Lake Utility Services, Inc.*; Order No. PSC-93-1092-FOF-WU, issued July 27, 1993, in Docket No. 19910760-WU, *In re: Application for transfer of assets from Lake Saunders Acres Subdivision to Lake Utility Services, Inc., Amendment of Certificate No. 496-W and a Limited Proceeding to establish rates and charges.*

⁸ Order No. PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 19960444-WU, *In re: Application for rate increase and for increase in service availability charges in Lake County by Lake Utility Services, Inc.*

⁹ Order No. PSC-98-0796-FOF-WU, issued June 8, 1998, in Docket No. 19980483-WU, *In re: Investigation into possible over collection of allowance for funds prudently invested (AFPI) in Lake County, by Lake Utility Services, Inc.*

¹⁰ Order No. PSC-99-0644-AS-WU, issued April 6, 1999, in Docket No. 19980483-WU, *In re: Investigation into possible over collection of allowance for funds prudently invested (AFPI) in Lake County, by Lake Utility Services, Inc.*

of \$421,472 were collected for LUSI from 1999 through 2001 based on the new charges approved in the 1997 rate case.

Merger of Lake Groves and LUSI

In 2002, as a result of a corporate merger and name change, Lake Groves was merged with LUSI.¹¹ At that time, the LUSI system had approximately 3,000 water customers and the Lake Groves system had approximately 2,200 water and wastewater customers.

Following the merger, the utility had rate cases in 2008¹² and 2010¹³; however, the final orders in those dockets did not address AFPI charges and collections. The utility was serving approximately 8,746 water and 2,827 wastewater customers in 2010. The Commission found that the Lake Groves wastewater treatment plant (WWTP) was 53 percent used and useful (the capacity had been expanded from 500,000 gpd to 1,000,000 gpd), and the WTP as well as the water distribution and wastewater collection lines were 100 percent used and useful.

Staff Investigation

In Docket No. 20160101-WS, the Commission discontinued the AFPI charges for UIF's Lake Groves and LUSI systems and ordered an investigation to determine the amount of over collection and the disposition of the overcollection of AFPI charges.¹⁴ As noted above, the Lake Groves AFPI charges were approved in 1991 based on 545 ERCs. Based on staff's review of annual reports and prior rate case dockets, the number of ERCs upon which the Lake Groves water and wastewater AFPI charges were based was exceeded around 1999 when the utility was serving approximately 600 ERCs. After several expansions to the capacity of the WWTP, it was found to be 52.42 percent used and useful in Docket No. 20070693-WS; the utility was serving approximately 2,860 ERCs during the test year.¹⁵

In response to staff's data request, the utility argued that the AFPI charges for its Lake Groves wastewater system should not have been discontinued in the 2016 rate case because it had been found to be less than 100 percent used and useful. As a result, the utility believed it was entitled to collect AFPI charges pursuant to its tariff. The utility indicated that its tariffs did not specify a cap on the ERCs for which AFPI could have been collected. The utility stated that had it known there was a cap on the number of ERCs, it would have filed the appropriate tariff amendment at the time. Further, due to the fact that the wastewater plant had undergone a substantial increase in capacity, the utility stated that the AFPI tariff was actually obsolete and the Commission should have updated the AFPI charges in prior rate proceedings to recognize the substantial

¹¹ Order No. PSC-02-1658-FOF-WS, issued November 26, 2002, in Docket No. 20020695-WS, *In re: Application for name change on Certificate No. 465-S in Lake County from Lake Groves Utilities, Inc. to Lake Utility Services, Inc., holder of Certificate No. 496-W, pursuant to merger of Lake Groves with Lake Utility, and request for cancellation of Certificate No. 534-W held by Lake Groves.*

¹² Order No. PSC-09-0101-PAA-WS, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

¹³ Order No. PSC-11-0514-PAA-WS, issued November 3, 2011, in Docket No. 100426-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

¹⁴ Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

¹⁵ Order No. PSC-09-0101-PAA-WS, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

increase in the capacity of the WWTP plant. According to the utility, the only AFPI charges collected for Lake Groves was \$165,739, which was collected during early 2017 for 292 connections.

Rule 25-30.434(6), F.A.C., provides that the utility can collect AFPI charges until all projected ERCs included in the calculation of the charge have been added. While staff agrees that the original tariff for the Lake Groves AFPI charges did not reflect the 545 ERCs upon which the charges were based, the requirement was included in the Order No. 24283 when the AFPI charges were approved in 1991. Staff agrees with the utility that the AFPI charges could have been revised to reflect that circumstances had changed in regards to the capacity of system. However, pursuant to Section 367.091(4), F.S., a utility may only charge the rates and charges in its approved tariff. Rates and charges may only be changed as a result of a Commission decision and it is incumbent upon the utility to request a revaluation of its rates and charges. Therefore, the utility should have discontinued collection of AFPI charges for the Lake Groves water and wastewater systems when the 545 ERCs were connected. Therefore, UIF should be required to refund overcollected AFPI charges for the Lake Groves system of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C.

Further, as previously discussed, the Commission investigated the overcollection of AFPI charges for LUSI, a sister cooperation, in 1998.¹⁶ The Commission required LUSI to record the overcollection as CIAC and required refunds to the two customers that had protested an earlier decision. Following approval of new AFPI charges in 1997, that were based on increased capacity in the water system, the LUSI customer growth exceeded the number of ERCs upon which those charges were based around 2001. According to the utility's annual reports, the LUSI AFPI charges were only collected from 1999 through 2001; it does not appear that the AFPI collection exceeded the number of ERCs upon which the charges were based. Therefore, it appears there was no overcollection of AFPI for the LUSI water system.

UIF currently has approved AFPI charges for seven of its wastewater systems, including Longwood¹⁷ and Sandalhaven¹⁸ as well as the five systems for which charges were recently approved in Docket No. 20170223-SU. None of the UIF water systems have approved AFPI charges.

CONCLUSION

Based on the above, it appears there was no overcollection of AFPI for the LUSI water system. However, UIF should be required to refund overcollected AFPI charges for the Lake Groves system of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C. to the two developers that paid AFPI charges for a total of 292 connections. The refund should be completed within 90 days of the Commission's vote and documentation supporting the final refund should be provided within 10 days of the completed refund.

¹⁶ Order No. PSC-99-0644-AS-WU, issued April 6, 1999, in Docket No. 19980483-WU, *In re: Investigation into possible overcollection of allowance for funds prudently invested in Lake County, by Lake Utility Services, Inc.*

¹⁷ Order No. 20779, issued February 20, 1989, in Docket No. 19871059-SU, *In re: Application by Longwood Utilities, Inc. for rate increase in Seminole County.*

¹⁸ Order No. PSC-16-0151-FOF-SU, issued April 18, 2016, in Docket No. 20150102-SU, *In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven.*

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open for staff's verification that the utility has completed the refund pursuant to Rule 25-30.360, F.A.C. Once staff has verified that refunds are complete, this docket should be closed administratively. (Mapp)

Staff Analysis: If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open for staff's verification that the utility has completed the refund pursuant to Rule 25-30.360, F.A.C. Once staff has verified that refunds are complete, this docket should be closed administratively.