

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Richards, Mouring) *ALM*
Division of Engineering (P. Buys, King, Ramos) *TB*
Office of the General Counsel (Sandy, Crawford) *JSC*

RE: Docket No. 20210184-WS – Application for limited proceeding in Highlands County by HC Waterworks, Inc.

AGENDA: 09/08/22 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

HC Waterworks, Inc. (HCWW or Utility) is a Class B utility providing water service to approximately 967 residential customers, 12 general service customers, and 1 private fire protection customer in the Leisure Lakes, Lake Josephine, and Sebring Lakes subdivisions in Highlands County. The Utility also provides wastewater service to 317 residential wastewater customers in the Leisure Lakes subdivision. The service area is in the Southwest Florida Water Management District and is in a water use caution area. According to the Utility's 2021 Annual Report, operating revenues were \$770,063 for water and \$88,191 for wastewater. Operating expenses were \$559,035 for water and \$108,950 for wastewater.

By Order No. PSC-2014-0314-PAA-WS, the Commission approved the transfer of Certificate Nos. 422-W and 359-S from Aqua Utilities Florida, Inc. to HCWW.¹ As part of the transfer, the Commission approved a negative acquisition adjustment, recognizing that HCWW's purchase of the system was less than 80 percent of the system's net book value. Per the transfer order, 50 percent of the negative acquisition adjustment (\$424,720 for the water system and \$10,539 for the wastewater system) was to be amortized over a seven-year period, and the remaining 50 percent amortized over the remaining life of the assets. At the time of the transfer, HCWW estimated the remaining life of the applicable water assets as 24 years, and 12 years for the wastewater assets.

Water rates were last established for the Utility in 2020 in Docket No. 20190166-WS.² In determining the quality of service provided by HCWW, the Commission evaluated the quality of the Utility's product (water) and the Utility's attempt to address customer satisfaction (water and wastewater). The Commission determined that HCWW's overall quality of service was unsatisfactory due to the volume of customer complaints and reduced HCWW's return on equity by 50 basis points. The Commission also required HCWW to engage with its customers and the Office of Public Counsel (OPC) in an ongoing effort to address the Utility's service quality and communication issues. Subsequently, water rates were increased by a price index rate adjustment in 2021. Wastewater rates were last established in 2015 and had subsequent price index rate adjustments in 2018 and 2021.³

On November 18, 2021, HCWW filed its application in this docket for a limited proceeding to increase its water and wastewater rates.⁴ The main issue in the limited proceeding was to address the significant financial impact of HCWW's earning levels beginning in April 2021, when the amortization period for 50 percent of the acquisition adjustment approved in the transfer order ended. Based on the Utility's filing, the negative offset of amortization would cause increases to net depreciation expense that would not be recovered through current rates, causing existing rates to no longer be compensatory. Accompanying the Utility's application were minimum filing requirement (MFR) schedules required by Section 367.081, Florida Statutes (F.S.), and Rule 25-30.445, Florida Administrative Code (F.A.C.). The Utility was notified of deficiencies in the MFRs on December 14, 2021.⁵ The deficiencies were cured on December 22, 2021, which was established as the official filing date.⁶

On May 3, 2022, at a Commission Conference that members of the OPC attended, staff presented HCWW's application for a limited proceeding in Highlands County to the Commission. During its introduction of the item, staff stated the following:

¹Order No. PSC-2014-0314-PAA-WS, issued June 13, 2014, in Docket No. 20130175-WS, *In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 422-W and 359-S of Aqua Utilities Florida, Inc. to HC Waterworks, Inc. in Highlands County.*

²Order No. PSC-2020-0168-PAA-WS, issued May 22, 2020, in Docket No. 20190166-WS, *In re: Application for increase in water rates in Highlands County by HC Waterworks, Inc.*

³Order No. PSC-2015-0282-PAA-WS, issued July 8, 2015, in Docket No. 20140158-WS, *In re: Application for increase in water/wastewater rates in Highlands County by HC Waterworks, Inc.*

⁴Document No. 12849-2021, filed on November 18, 2021.

⁵Document No. 13057-2021, filed on December 14, 2021.

⁶Document No. 13148-2021, filed on December 22, 2021.

Subsequent to the filing of this recommendation, staff is aware that a group of customers have filed a complaint with the Office of Consumer Affairs concerning the wastewater treatment plant. It's staff's understanding that Consumer Affairs has been in contact with the utility and that the utility is working with customers to resolve their concerns.

On May 23, 2022, the Commission issued PAA Order No. PSC-2022-0192-PAA-WS (PAA Order) approving the limited proceeding increase.⁷ In the PAA Order, the Commission approved an increase for water rates of \$35,220, or 4.64 percent, and an increase for wastewater rates of \$15,862, or 18.72 percent. The Commission made no adjustment to a previously-ordered 9.17 percent return on equity, which reflected a 50 basis point reduction related to quality of service matters in a previous docket.⁸ Section 367.0812, F.S., requires that in fixing rates, the Commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection. At page 3 of the PAA Order, the Commission addresses HCWW's compliance with this statute, including the following:

As part of the instant Docket, we received 20 customer comments opposing the rate increase. *Additionally, one group of customers filed a complaint with our Customer Assistance and Outreach (CAO) division concerning the wastewater treatment plant.* Of the 20 customer comments specifically related to the instant docket, 16 of the customers also commented on poor water quality; specifically, chlorine smell, cloudy water, discolored clothes from water, unacceptable water pressure, and bad taste.⁹ (Emphasis added.)

On June 13, 2022, OPC filed a timely petition protesting the Commission's PAA Order.¹⁰ In its petition, OPC limits its protest to the portion of the order addressing the quality of service provided by HCWW. OPC contends that certain customer service and due process issues were not appropriately addressed by the Commission at the time of issuing the PAA Order; in particular, the exclusion of a specific reference to a petition signed by 143 customers of HCWW.¹¹ The document was not originally filed in the docket file, but was instead filed as an informal customer complaint with CAO, and did not reference Docket No. 20210184-WS. Staff assigned to the docket learned of this document subsequent to filing its written recommendation on April 21, 2022. In an abundance of caution, staff referenced the CAO complaint in its introduction of this item at the May 3, 2022 Commission Conference, both of which are captured in the quoted material referenced above.

On July 1, 2022, HCWW and OPC filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Agreement) which is Attachment A to this recommendation.¹² The

⁷ The PAA Order also addresses the approval of initial customer deposits and revision to HCWW's miscellaneous service charges.

⁸ Order No. PSC-2020-0168-PAA-WS, issued May 22, 2020, in Docket No. 20190166-WS, *In re: Application for increase in water rates in Highlands County by HC Waterworks, Inc.*

⁹ Document No. 02990-2022, Agenda Conference transcript, at p. 2.

¹⁰ Document No. 03794-2022, filed on June 13, 2022.

¹¹ OPC filed the document in question in this docket on May 4, 2022 (Document No. 02790-2022).

¹² Document No. 04416-2022, filed on July 1, 2022.

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Agreement details steps HCWW has taken and will continue to take to address concerns raised by its customers. The Utility and OPC agree a final order should be issued in this case and should reference, with specificity, the petition signed by the 143 customers, as well as the Utility's subsequent communications with customers and OPC regarding plans to work toward addressing the customers' complaints.

The Commission has jurisdiction pursuant to Sections 367.081 and 367.0812, F.S.

Discussion of Issues

Issue 1: Should the Office of Public Counsel’s Petition Protesting Proposed Agency Action in this docket be denied?

Recommendation: Yes. Staff recommends that the Petition be denied. While OPC’s Petition disputes the characterization in the Commission’s PAA Order of customer complaints, it fails to dispute an issue of material fact. Therefore, the Protest fails to meet the statutory standards required to request a hearing pursuant to Section 120.57, F.S. If the Commission approves staff’s recommendation in this Issue, Issue 2 becomes moot, and PAA Order No. PSC-2022-0192-PAA-WS should be made final. (Sandy, Crawford)

Staff Analysis: Pursuant to Rule 25-22.029, F.A.C., a person whose substantial interests are affected by action proposed by the Commission may file a petition for a Section 120.569 or 120.57, F.S., hearing. Formal hearings proceeding pursuant to Section 120.57, F.S., are predicated upon there being disputed issues of material fact. A material fact is “[a] fact that is significant or essential to the issue or matter at hand.”¹³ Furthermore, Section 120.80(13)(b), F.S., provides that, “a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute,” and that “[i]ssues in the proposed action which are not in dispute are deemed stipulated.”

At the May 3, 2022 Commission Conference, staff referenced customer complaints, including a reference to the CAO complaint, during its introduction, in addition to discussing customer complaints in its written recommendation.

On May 23, 2022, the Commission issued PAA Order No. PSC-2022-0192-PAA-WS (PAA Order). According to OPC’s June 13, 2022 petition protesting the Commission’s PAA Order, the material fact in dispute is as follows:

In the broadest terms, the Citizens’ ultimate factual allegation is that the PAA Order contains an incorrect, or at best vague, characterization of the number of customers who expressed dissatisfaction with the quality of both the water and wastewater service HCWW provides.

Based on what it describes as an incorrect or vague characterization, pursuant to Section 120.80(13)(b), F.S., OPC objects to and protests the applicable portions of the PAA Order as it relates to the quality of service.

Pursuant to Section 367.0812, F.S., the Commission shall consider quality of water service when fixing water and wastewater utility rates. As set out in the PAA Order, the Commission provided almost an entire page’s worth of analysis, specifically addressing the Utility’s quality of service issues. OPC protests the Commission’s characterization of how one group of customers filed a complaint with the Commission’s CAO division concerning the Utility’s wastewater treatment plant.

¹³ B. Garner, Black’s Law Dictionary, p. 611 (7th ed. 1999).

Contrary to OPC's protest, the Commission's characterization of the customer complaint received by CAO is neither incorrect nor vague. Commission staff noted the complaint without objection during its presentation to the Commission. Furthermore, the complaint was referenced in the PAA Order in the context of quality of service. OPC's protest amounts to a nitpicking criticism of how the Commission described customer communication.

More importantly, where OPC's protest caters to its own editorial preferences, it fails to raise a substantive criticism of the Commission's decision in the instant docket. This docket is prompted by the Utility seeking a limited proceeding to increase rates that offset underearning caused by the reduction in the amortization of a negative acquisition adjustment. On this OPC remains silent. Nor does OPC contend that the Commission somehow failed to substantively consider the Utility's quality of water service before rendering its vote. Therefore, staff believes there is no legal basis for the Commission to grant the remedy that OPC requests.

Where OPC's protest merely disputes the characterization of customer complaints in the PAA Order, it fails to dispute an issue of material fact. For there is no dispute that a group of customers filed a complaint with the CAO about the waste water plant; that the Commission was aware of this complaint prior to the May 3rd Commission Conference; and that there is a petition signed by 143 customers of HCWW and filed by OPC on May 4. Therefore, the protest fails to meet the statutory standards required to request a hearing pursuant to Section 120.57, F.S. For these reasons, staff believes OPC's Petition Protesting Proposed Agency Action in this docket should be denied. If the Commission approves staff's recommendation in this Issue, Issue 2 becomes moot, and PAA Order No. PSC-2022-0192-PAA-WS should be made final.

Issue 2: Should the Joint Stipulation and Settlement Agreement filed on July 1, 2022, by HCWW and OPC be approved?

Recommendation: No. If the Commission approves staff’s recommendation in Issue 1, this Issue is moot. If a decision on this Issue is required, staff recommends that the Commission deny the Joint Stipulation and Settlement Agreement because it fails to demonstrate how approval of the Agreement is in the public interest. (Sandy, Crawford)

Staff Analysis: The standard for approval of a settlement agreement is whether it is in the public interest.¹⁴ A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.¹⁵ The joint settlement agreement before the Commission proposes two remedies, neither of which are ultimately in the public interest because they violate a principle of procedural economy that the Commission relies on to effectively regulate. If approved, the precedent created by the Agreement could subject every Commission decision to protest and revision based on a party’s editorial preferences. The resulting regulatory slowdown could result in inefficiency and uncertainty for utilities and ratepayers alike.

First, the Agreement proposes the following:

The Parties agree the record for the instant Docket should reflect that prior to the May 3, 2022 Agenda Conference, 22 customers submitted comments to the Docket opposing the rate increase and lodging various complaints about poor water quality, including but not limited to, discolored clothes from the water, unacceptable water pressure and bad taste. Additionally, the Commission’s Customer Assistance and Outreach (CAO) division was in possession of a petition complaint letter signed by 143 customers. The face of the petition complaint letter was stamped received by the PSC on April 22, 2022, and the text includes a “formal complaint” about HCWW’s water and sewage plants, noise and odor from the sewage plant, and the statement “we find it difficult to accept a water rate increase again this year when our request for better service has not been satisfied.”

This proposal is merely a more fulsome recitation of facts that are currently set forth in Order No. PSC-2022-0192-PAA-WS, described in language agreeable to OPC. Although OPC advocates on behalf of Florida’s utility consumers, staff does not believe it serves the public interest for the Commission in this instance to use its finite resources to readdress facts already in the record – even if not worded in the particular manner OPC would prefer – especially where no mistake of fact actually exists.

Second, the joint settlement agreement describes the means by which the Utility is addressing customer complaints about smell, sound, and water quality. Specifically, the Utility sets forth the following:

¹⁴ *Sierra Club v. Brown*, 243 So.3d 903 (Fla. 2018)

¹⁵ Order No. PSC-16-0560- AS-EI, issued December 15, 2016, in Docket No. 2016-0021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

HCWW advised a customer that the utility is in the process of conducting an engineering study and obtaining estimates for noise mitigation and odor control. HCWW advised OPC of its plans to construct a roof over the sewage blower room and to present costs for additional proposed abatement measures at a meeting with customers at the Covered Bridge HOA in the fall, when seasonal residents return to the community.

It appears as if the Utility began taking affirmative steps to address customer complaints before entering the Agreement. The language of the Agreement appears to merely memorialize those steps, rather than having initiated them.¹⁶ Nevertheless, the Commission was already aware of customer complaints against the Utility when it deducted 50 basis points from its return on equity in Docket No. 20190166-WS, which is referenced by the PAA Order and remains in place at the time of this recommendation. The Commission was also aware of customer complaints – including a reference to the petition received by CAO – when it approved the Utility’s request in the present docket.

As set forth in Order No. PSC-2021-0089-S-WS, the Utility is required to file quarterly reports regarding customer complaints and correspondence. The quarterly reports indicate a declining trend in overall customer complaints as well as complaints regarding secondary water quality issues - proof that the Utility has been proactive in addressing quality of service concerns. It is duplicative for the Commission to approve a settlement agreement that contains actions already captured by the PAA Order, or already set in motion by the Utility, especially when the crux of the agreement appears to be based upon OPC’s editorial critique of a Commission Order.

For the aforementioned reasons, staff recommends that the Commission deny the Joint Stipulation and Settlement Agreement because it does not offer a material change to the Commission’s PAA Order, and it is not in the public interest for parties to dictate how the Commission drafts its Orders.

¹⁶ Document No. 02822-2022, filed on May 6, 2022.

Issue 3: Should this docket be closed?

Recommendation: Yes, this docket should be closed. (Sandy, Crawford)

Staff Analysis: If the Commission grants staff's recommendations in Issues 1 and 2, a final order should issue reflecting those decisions and consummating PAA Order No. PSC-2022-0192-PAA-WS. This docket should be closed upon the issuance of that final order.