

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-**

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**DATE:** February 22, 2024

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

**FROM:** Division of Accounting and Finance (Cicchetti, Norris, Sowards) *ALM*  
Division of Economics (Bethea, McClelland) *EJD*  
Division of Engineering (Davis, Ellis) *TB*  
Office of the General Counsel (Crawford, Dose) *JSC*

**RE:** Docket No. 20230083-WS – Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, LLC.

**AGENDA:** 03/05/24 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested; Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On September 22, 2023, Pluris Wedgefield, LLC (Pluris or Utility) filed its application for approval of interim and final water and wastewater rate increases. Pluris is a Class A utility providing water and wastewater service to approximately 1,743 water customers and 1,711 wastewater customers in Orange County. The Office of Public Counsel (OPC) intervened and is the only other party to this docket. Rates were last established for this Utility in its 2017 limited proceeding.<sup>1</sup> The Utility's last comprehensive base rate proceeding was in 2012.<sup>2</sup>

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<sup>1</sup> Order No. PSC-2018-0311-PAA-WS, issued June 13, 2018, in Docket No. 20170166-WS, *In re: Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.*

The Utility's application for increased interim and final water and wastewater rates was based on the historical 13-month average period ended December 31, 2022. Pluris requested an increase to recover all expenses it will incur in order to generate a fair rate of return on its investment and pro forma plant additions.

The Utility requested interim rates designed to generate revenues of \$2,370,815 for water and \$1,608,064 for wastewater, which would result in a revenue increase of \$743,196, or 45.66 percent, for water and \$541,637, or 51.49 percent, for wastewater. Staff recommended interim rates designed to generate revenues of \$2,040,748 for water and \$1,301,113 for wastewater, which would result in a revenue increase of \$410,299, or 25.61 percent, for water and \$244,186, or 23.10 percent, for wastewater. At the December 5, 2023 Commission Conference, OPC made oral argument for approximately 20 minutes and presented handouts to the Commission opposing staff's recommended interim rates. In particular, OPC argued that Commission staff failed to follow the requirements of Section 367.082, Florida Statutes (F.S.), when calculating interim rates. The Commission ultimately approved staff's recommendation for interim rates. Order No. PSC-2023-0387-PCO-WS, approving the interim rates and suspending Pluris' requested final rates (Interim Order), was issued on December 27, 2023.

On January 8, 2024, OPC timely filed a Motion for Reconsideration (Motion) pursuant to Rule 25-22.0376, Florida Administrative Code (F.A.C.), and a Request for Oral Argument on its Motion for Reconsideration (Request) pursuant to Rule 25-22.0022 F.A.C. In its Motion, OPC argues that when setting interim rates for Pluris, the Commission made adjustments inconsistent with Pluris' most recent individual rate proceeding and the Commission's own Rules and procedures. OPC further argues that the Commission failed to make certain adjustments that were consistent with the statute governing interim rates.

On January 16, 2024, Pluris filed its Response to Office of Public Counsel's Motion for Reconsideration (Motion Response), and argued that OPC's arguments regurgitate those that were already presented to and considered by the Commission at the December 5, 2023 Commission Conference. Pluris also filed its Response to Office of Public Counsel's Request for Oral Argument on its Motion for Reconsideration (Request Response) and argued that OPC was already given more time than it is now requesting to make the same arguments OPC made at the December 5, 2023 Commission Conference.

This recommendation addresses OPC's Request for Oral Argument and Motion for Reconsideration, and Pluris' responses thereto. The Commission has jurisdiction over this matter pursuant to Chapter 367, F.S., including Sections 367.081 and 367.082, F.S.

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<sup>2</sup> Order No. PSC-13-0187-PAA-WS, issued May 2, 2013, in Docket No. 20120152-WS, *In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, Inc.*

## Discussion of Issues

**Issue 1:** Should OPC's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-2023-0387-PCO-WS be granted?

**Recommendation:** No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and rule on the Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends that 5 minutes per party is sufficient. (Dose)

### **Staff Analysis:**

#### Law

Rule 25-22.0022(1), F.A.C., allows a party to request oral argument before the Commission for any dispositive motion (such as motions for reconsideration) by filing a separate written pleading filed concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

#### OPC's Position

OPC requests the opportunity to provide 10 minutes of oral argument on the Motion to further elaborate on its arguments and to aid the Commissioners in understanding and evaluating the issues it raises as well as answer any questions.

#### Pluris' Position

In its Response, Pluris states that the issues raised in OPC's Motion were already extensively presented to the Commission and that nothing would be gained from further oral argument. Pluris also notes that OPC is requesting only 10 minutes for oral argument on its Motion while simultaneously claiming that the 20 minutes given at the December 5, 2023 Commission Conference was an insufficient time to be heard on the same issues.

#### Conclusion

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide OPC's Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends 5 minutes per party as sufficient.

**Issue 2:** Should OPC’s Motion for Reconsideration of Order No. PSC-2023-0387-PCO-WS be granted?

**Recommendation:** OPC’s Motion for Reconsideration should be granted in part and denied in part. With respect to the Specific Equity Adjustment, Management Fees, and Recovery of the Judgment and Legal Fees Associated with the Lawsuit, staff recommends that OPC’s Motion should be denied because it fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. Staff believes that the Equity Adjustments that were made are consistent with prior Commission practice. Staff further does not believe that there is any methodology from the prior rate case to support OPC’s position regarding Management Fees. Staff disagrees with OPC’s contention that reclassification of two recorded current and accrued liabilities as equity allows the Utility to recover the judgment and legal fees associated with a lawsuit against the Utility and constitutes retroactive ratemaking.

Staff agrees with OPC’s position regarding Advances from Associated Companies and Used and Useful; therefore, reconsideration is appropriate as to these issues. However, both of the adjustments urged by OPC would have the effect of raising interim rates. To avoid confusion and promote rate stability, staff recommends leaving interim rates unchanged due to the short time period during which interim rates will be in effect before PAA rates are established.

(Sewards, Cicchetti, Norris, Davis)

**Staff Analysis:**

Law

*Reconsideration*

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317.

*Interim*

The file and suspend law was designed to provide accelerated rate relief without sacrificing the protections inherent in the overall regulatory scheme. Interim rates, which are one aspect of this scheme, were designed “to make a utility whole during the pendency of the proceeding without the interjection of any opinion testimony.” *Citizens v. Public Service Commission*, 435 So. 2d 784, 786 (Fla. 1983). Thus, the provision of interim rates is a “quick and dirty” means by which

a utility can obtain immediate financial relief and address the regulatory lag which accompanies a full rate proceeding. Pursuant to Section 367.082(2), F.S., customers' interests are protected by requiring interim revenues be collected subject to refund with interest, should the rate increase ultimately approved by the Commission be less than the authorized interim rates. According to Section 367.082(4), F.S., any refund should be calculated to reduce the rate of return of the Utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period that interim rates are in effect should be removed, such as rate case expense or any pro forma items. Thus, the process is not merely comparing the interim and final revenue requirements.

In order to establish a prima facie entitlement for interim relief, the utility shall demonstrate that it is earning outside the range of reasonableness on its authorized rate of return. In setting interim rates, the Commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a utility and its authorized rate of return applied to an average investment rate base or an end-of-period investment rate base. Section 367.082(5)(a), F.S. For interim purposes, the "achieved rate of return" means the rate of return earned by the utility for the most recent 12-month period, calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility and annualizing any rate changes occurring during such period. Section 367.082(5)(b)1., F.S.

#### OPC's Motion

In its Motion, OPC states that "the Commission failed to make, or refrained from making, adjustments consistent with Pluris' most recent individual rate proceeding and the Commission's own promulgated rules and procedures." OPC claims the adjustments the Commission failed to make, or refrained from making include: 1) a total specific equity adjustment of \$5,894,387 to reclassify \$3,848,517 recorded by the Company in Accounts Payable-Associated Companies and \$3,049,849 recorded in Miscellaneous Current and Accrued Liabilities; 2) \$250,000 recorded in Advances from Associated Companies; 3) adjustments related to Contractual Services-Management Fees; and 4) the adjustment for used and useful. Additionally, OPC argues that reclassification of two recorded current and accrued liabilities as equity allows the Utility to recover judgment and legal fees associated with a lawsuit against the Utility and constitutes retroactive ratemaking. OPC urges the Commission to reconsider the Interim Order and make adjustments consistent with OPC's motion. OPC's motion does not address the timing or process by which it believes such adjustments should be made. Finally, OPC reasserts its arguments from its letters dated November 30, 2023, and December 5, 2023, which were presented at the December 5, 2023 Commission Conference.<sup>3</sup>

#### Pluris' Response

In its Response, Pluris claims that the Commission did not overlook OPC's arguments at the December 5, 2023 Commission Conference. Pluris claims that the adjustments that the

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<sup>3</sup> Document Nos. 06410-2023 and 06495-2023.

Commission made were consistent with the interim statute. The Utility also claims that none of its costs that it seeks to recover in rates are related to litigation or its settlement payment. Pluris also notes that OPC's recommended adjustment for used and useful would result in higher interim rates for customers, however Pluris does not contest this error. Pluris lastly argues that should mistakes be discovered when final rates are set, there is a mechanism in place for customers to receive a refund with interest if the final revenue requirement set by the Commission is less than the interim revenue requirement.

### Analysis

As detailed below, staff disagrees with three of the five adjustments OPC urges the Commission reconsider, and recommends that reconsideration is not appropriate. While staff agrees that, with hindsight, two of the adjustments may be appropriate, both of those adjustments have the effect, if any, of raising the interim rate amount. As discussed below, staff recommends approval in part and denial in part of OPC's Motion. However, for the reasons set forth below, staff nevertheless recommends leaving interim rates unchanged.

#### *1. Specific Equity Adjustment*

Regarding the specific equity adjustment, Pluris' parent company contributed \$7.9 million of capital to Pluris so it could meet its financial obligations due to losses Pluris incurred in 2021 and 2022 due to a lawsuit. The contributed amount was originally booked on the balance sheet into Account No. 233, Accounts Payable-Associated Companies and Account No. 241, Miscellaneous Current and Accrued Liabilities. The approximately \$7.9 million was reclassified in December of 2022 into Equity Capital Account No. 212, Contributions from Parent. It is instructive to note that had Pluris requested a year-end interim test year, as is allowed by the interim statute, as opposed to a 13-month average interim test year, there would not be a dispute about the amount of the Company's equity, as the amount Pluris' parent contributed is clearly booked as equity at year-end. Whether the amounts contributed by Pluris' parent were booked as equity or current liabilities is essentially irrelevant as it has been the Commission's long-standing policy to treat inter-company debt that is not being repaid, and does not carry an interest rate, as equity.<sup>4</sup>

The starting point for determining a Company's capital structure is not Minimum Filing Requirements (MFR) Schedule D-1 nor MFR Schedule D-2 as argued by OPC in its Motion for Reconsideration and at the December 5, 2023 Commission Conference. The starting point is the Company's balance sheet. A review of the Company's balance sheet is necessary to determine whether the amounts entered onto MFR Schedules D-1 and D-2 are correct. Because a

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<sup>4</sup> See Order Nos. PSC-00-1165PAA-WS, issued June 27, 2000, in Docket No. 990243-WS, *In re: application for limited proceeding increase and restructuring of water rates by Sun communities Finance Limited Partnership in Lake County, and overearnings investigation*; PSC-02-1449-PAA-WS, issued October 21, 2002, in Docket No. 011451-WS, *In re: Investigation of water and wastewater rates for possible overearnings by Plantation Bay Utility Co. in Volusia County*; PSC-2014-1095-PAA-WS, issued May 1, 2014, in Docket No. 20130211-WS, *In re: Application for staff-assisted rate case in Polk County by S.V. Utilities, Ltd.*; PSC-2013-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*; PSC-2011-0366-PAA-WU, issued August 31, 2011, in Docket No. 20100126-WU, *In re: Application for increase in water rates in Marion County by C.F.A.T. H2O, Inc.*

company's balance sheet must balance (assets equal liabilities and capital), so too a utility's rate base and capital structure must balance. All accounts on a utility's balance sheet correlate to either rate base (assets) or capital structure (liabilities and capital). Working capital (rate base), using the balance sheet method, equals current assets minus current liabilities. When current assets and current liabilities are properly accounted for, the rate base and capital structure will balance.

Pluris, in its MFRs, properly reclassified Account Nos. 233 and 241 to equity. Staff verified this using Pluris' balance sheet and recognized that the parent company contributions booked into Account Nos. 233 and 241 met the Commission's criteria to be considered equity. Staff not only followed long-standing Commission practice in reaching this conclusion but, recognizing that the parent company's contributions were not booked into an equity account, also followed Commission Administrative Procedure Manual (APM) Section 13.12 Interpreting and Applying Interim Statutes, which states that "[a]djustments to correct errors in the interim test year data are appropriate."<sup>5</sup> Furthermore, APM Section 13.12(D)(4) states:

Adjustments to reflect current practice should be made only if adjustments based on the same practice were made in the prior rate proceeding. The rationale for the adjustment is based on the action taken in the prior rate proceeding, but the amount of the adjustment is based on the amount included in the interim test year.

The policy being followed in the instant docket is consistent with Pluris' last rate case in that intercompany payables from associated companies with no interest payments are treated as common equity.<sup>6</sup> In reaching its result, staff determined the per books amounts of the sources of capital that comprise the capital structure per Commission practice as should be done in all rate proceedings. Once the appropriate per books capital structure has been determined, ratemaking adjustments can be applied.

In its exhibit presented at the December 5, 2023 Commission Conference,<sup>7</sup> OPC proposed to recognize Pluris' parent company's investment in Pluris as a current liability, not equity. Current liabilities are defined as debt or other obligations expected to come due within a year. Having Pluris' 2022 annual report on hand at the time of the interim filing, and said amounts having been reclassified as equity in December of 2022, these amounts are not debt or other obligations expected to come due within a year. Treating Pluris' investment as a current liability produced a negative working capital allowance of \$6,055,979 and forced OPC to impute to Pluris \$3,618,388 of debt that does not exist to get the capital structure to equal rate base and to calculate a weighted average cost of capital. Although OPC argues that Pluris' equity adjustments are improper because they were not made in the last rate case, OPC's solution to impute debt fails the same metric. Furthermore, OPC's recommended rate base was \$5,303,084. For a utility with a \$5.3 million rate base to have a negative \$6.1 million working capital allowance (which OPC zeroed out) is, to say the least, a red flag.

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<sup>5</sup> Florida Public Service Commission Administrative Procedures Manual, Section 13.12(D)(1).

<sup>6</sup> Order No. PSC-13-0187-PAA-WS, issued May 2, 2013, in Docket No. 20120152, *In re: Application for an increase in water and wastewater rates in Orange County by Pluris Wedgefield, Inc.*

<sup>7</sup> Document No. 06495-2023. OPC specifically references and adopts these materials in its Motion for Reconsideration.

Because the arguments raised by OPC in its Motion on this issue are reargument of its position at the December 5, 2023 Commission Conference, and fail to identify a point of fact or law that the Commission overlooked or failed to consider in rendering its decision, this portion of OPC's Motion for Reconsideration should be denied.

## *2. Advances from Associated Companies*

Pluris has Account No. 223 Advances from Associated Companies on its balance sheet with a balance of \$250,000. As pointed out by OPC, this account was treated as equity in Pluris' last rate case and should be recognized as equity for the interim revenue requirement. Staff did not recognize this amount as equity in its recommendation on the interim revenue requirement, and agrees this amount should be recognized as equity. However, the \$250,000 advance from Pluris' parent company increases the interim revenue requirement by \$8,439 and, consequently, would raise interim rates. While staff agrees that reconsideration would be appropriate on this issue, it does not recommend the Interim Order be modified or additional interim revenues be assessed to customers. As stated by Pluris in its response, "[d]ue to the time constraints, the calculation of the interim revenue requirement is not always perfect. In a proposed agency action rate case, the interim rates are only in effect for a short period of time, so any error in the calculation will have nominal impact on the customers or Pluris." To avoid confusion and promote rate stability, staff recommends leaving interim rates unchanged due to the short time period during which interim rates will be in effect before PAA rates are established.

## *3. Management Fees*

In its Motion, OPC stated that the Commission did not make adjustments to Contractual Services-Management Fees consistent with the Utility's last rate case. Staff was aware of OPC's suggested adjustments; however, staff believes that the proposed adjustments were not appropriate.

Section 367.082(5)(b), F.S., states that "the achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility or regulated company." Staff's decision to not recommend OPC's adjustments was guided by past Commission decisions and how the interim statute was applied in making those interim adjustments, as well as the APM's guidance in determining how the statute is applied.

APM Section 13.12(D)(2) states that "[a]djustments made to be consistent with the last rate proceeding should be based on the methodology used in that case, but the amount of the adjustment should be based on the amounts reported in the interim test year." In application, staff reviews the order from the last rate case for an established methodology that can be applied to the amounts reported in the current rate case.

For example, a common adjustment the Commission has made is to calculate a multi-year average of an account to normalize a volatile expense that may vary widely from year to year.<sup>8</sup>

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<sup>8</sup> See Order No. PSC-2013-0332-POC-WS, issued July 22, 2013, in Docket No. 20120209-WS, *In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities*,



For interim purposes, staff would apply the methodology of a three-year average to the most recent three years to determine what interim adjustment to recommend. Another common adjustment is to reduce certain expenses by the percentage of excessive unaccounted for water or inflow and infiltration established by the Commission.<sup>9</sup> For interim purposes, staff would apply the methodology used in the previous case to calculate those percentages and apply them to the current interim balance of those same accounts. In reviewing the Order from Pluris' last rate case, staff did not find a methodology established for management fees that could rationally be applied to the current rate case.

By letters dated November 13 and 15, 2023,<sup>10</sup> OPC suggested management fees should be capped at 82.03% of the \$259,794 combined water and wastewater test year balance. This percentage was derived by dividing the amount of management fees approved in the 2012 rate case by the amount recorded in the MFR for that case. Staff does not believe this adjustment is consistent with the methodology established in the last rate case that can be applied to the current case; rather, it is an arbitrary wholesale adjustment that does not take into consideration the individual adjustments made to management fees in the last rate case.

By letter dated November 30, 2023,<sup>11</sup> OPC mentions in a footnote that staff did not make adjustments to remove disallowed amounts that were removed in the Utility's price index applications in 2013 and 2015, but not in 2020. Staff reviewed the expense deduction work paper on page 18 of the November 30 letter, the Order from the last rate case, and each of the price index applications cited by OPC. The adjustments cited by OPC were made to specific cost categories allocated in the test year expense for management fees in the last rate case, such as the exclusion of the expense for a personal tax return, travel identified for potential acquisitions, and relocation costs. The amount of each adjustment was the exact amount identified in the last case, not based on current test year expenses. Further, none of the adjustments OPC listed were based on a methodology that could be brought forward and applied to amounts reported in the current docket.

The adjustments in the last rate case were made to pre-allocated costs charged to Pluris as a single fee for management services and recorded in an expense account for Contractual Services. The details of those pre-allocated costs are examined and audited in a rate case, but not listed in an annual report used to process price index applications. Staff accepted the adjustments in the two index applications immediately following the last rate case as self reported amounts matching the exclusions, not as mandatory adjustments pursuant to a defined methodology.

Because the arguments raised by OPC in its Motion on this issue are reargument of its position at the December 5, 2023 Commission Conference, and fail to identify a point of fact or law that the

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*Inc. of Florida*; Order No. PSC-2012-0265-PCO-WS, issued May 30, 2012, in Docket No. 20120037-WS, *In re, Application for increase in water and wastewater rates in Lake County by Utilities, Inc. of Pennbrooke*.

<sup>9</sup> Order No. PSC-2023-0101-PAA-WS, issued February 28, 2023, in Docket No. 20220099-WS, *In re: Application for staff-assisted rate case in Highlands County by LP Waterworks, Inc.*; Order No. 2022-0432-PAA-WS, issued December 19, 2022, in Docket No. 20220032-WS, *In re: Application for staff-assisted rate case in Polk County by Anglers Cove West, Ltd.*

<sup>10</sup> Document Nos. 06049-2023 and 06080-2023.

<sup>11</sup> Document No. 06410-2023.

Commission overlooked or failed to consider in rendering its decision, this portion of OPC's Motion for Reconsideration should be denied.

#### *4. Used and Useful*

In its initial MFRs filed on September 22, 2023, the Company included in its used and useful calculations a five-year growth factor of 63 equivalent residential connections (ERCs). Staff used this value, and the methodology from the prior rate case Order, to determine the used and useful for interim rates of 92.2 percent. However, when the Company filed revised schedules on October 26, 2023 to correct certain deficiencies, the five-year growth value changed to 85 ERCs, which would have changed the used and useful to 93.4 percent. This updated value was not used by staff due to an oversight. Staff recommends that granting reconsideration on this issue may be appropriate, because the Commission did not have the correct ERC value before it when it made its decision on interim. However, staff does not recommend the Interim Order be modified or additional interim revenues assessed to customers. An increase in used and useful of less than 2 percent would have the effect of causing a de minimis increase, if any, in interim rates. As stated by Pluris in its response, "due to the time constraints, the calculation of the interim revenue requirement is not always perfect. In a proposed agency action rate case, the interim rates are only in effect for a short period of time, so any error in the calculation will have nominal impact on the customers or Pluris." To avoid confusion and promote rate stability, staff recommends leaving interim rates unchanged due to the short time period during which interim rates will be in effect before PAA rates are established.

#### *5. Recovery of Judgment and Legal Fees Associated with Lawsuit*

In its Motion, OPC stated:

OPC respectfully submits that the Commission should take caution in allowing the reclassification of the two recorded current and accrued liabilities as equity for interim purposes because the Commission previously has disallowed legal expenses associated with a lawsuit, as well as a retroactive ratemaking concern of increasing equity by previously expensed legal costs. The Commission has disallowed the capitalization of items previously expensed by utilities, as it was found to violate the prohibition of retroactive ratemaking.

In support of these statements, OPC cited Order Nos. PSC-98-1583-FOF-WS and PSC-01-0326-FOF-SU.<sup>12</sup>

First, neither Pluris nor staff included any costs associated with the lawsuit in their respective interim revenue requirement calculations. Consequently, there can be no retroactive ratemaking

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<sup>12</sup> Order No. PSC-98-1583-FOF-WS, issued November 25, 1998, in Docket No. 971663-WS, *In re: Petition of Florida Cities Water Company for limited proceeding to recover environmental litigation costs for North and South Ft. Myers Divisions in Lee County and Barefoot Bay Division in Brevard County* (finding that recovery of litigation expenses constitutes unlawful retroactive ratemaking); Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.* (finding that penalties and fines should be borne by shareholders of the utility rather than ratepayers).

implications because neither the judgment nor the legal expenses associated with the lawsuit were requested or included in interim rates. In order for the costs of the judgment or the legal fees to be included in rates, there has to be a specific expense associated with the judgment or legal fees included in operating expenses. When determining rates, the costs included for the capital structure include the interest expense on debt and an allowed return on equity, determined by the Commission, to compensate shareholders for exposing their capital to risk. The operating expenses that are allowed are the expenses associated with providing utility service. If there are no expenses associated with the lawsuit included in operating expenses, there is no recovery of such costs from customers. Consequently, OPC's statement in its Motion regarding the determination of Pluris' equity that "[t]his means that Pluris customers will effectively be paying back what they won from Pluris in a settlement" is not correct. Furthermore, as evidenced by its statement above, OPC seems to be confusing the term recapitalization, which means "provide more funds," with the term "capitalize versus expense." Expensing a cost indicates that it is included on the income statement and subtracted from revenue to determine profit. Capitalizing indicates that the cost has been determined to be a capital expenditure and is accounted for on the balance sheet as an asset, with only depreciation showing up on the income statement.

Second, the Orders cited by OPC address whether certain legal fees should be allowed to be recovered in those dockets and whether recovery of such costs would amount to retroactive ratemaking. No legal fees associated with Pluris' lawsuit have been requested or allowed in this docket, so the point is moot.

Because the arguments raised by OPC in its Motion on this issue are reargument of its position at the December 5, 2023 Commission Conference, and fail to identify a point of fact or law that the Commission overlooked or failed to consider in rendering the interim order, this portion of OPC's Motion for Reconsideration should be denied.

### *Conclusion*

OPC's Motion for Reconsideration should be granted in part and denied in part. With respect to the Specific Equity Adjustment, Management Fees, and Recovery of the Judgment and Legal Fees Associated with the Lawsuit, staff recommends that OPC's Motion should be denied because it fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. Staff believes that the Equity Adjustments that were made are consistent with prior Commission practice. Staff further does not believe that there is any methodology from the prior rate case to support OPC's position regarding Management Fees. Staff disagrees with OPC's contention that reclassification of two recorded current and accrued liabilities as equity allows the Utility to recover the judgment and legal fees associated with a lawsuit against the Utility and constitutes retroactive ratemaking.

Staff agrees with OPC's position regarding Advances from Associated Companies and Used and Useful; therefore, reconsideration is appropriate as to these issues. However, making the adjustments urged by OPC would have the effect of raising interim rates. To avoid confusion and promote rate stability, staff recommends leaving interim rates unchanged due to the short time period during which interim rates will be in effect before PAA rates are established.

**Issue 3:** Should this docket be closed?

**Recommendation:** No, this docket should remain open to allow the Commission to address the Utility's requested rates. (Dose)

**Staff Analysis:** This docket should remain open to allow the Commission to address the Utility's requested rates.