

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: January 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Fletcher, Redemann, Merchant, Willis)
Office of the General Counsel (Jaeger)

RE: Docket No. 030444-WS – Application for rate increase in Bay County by Bayside Utility Services, Inc.

AGENDA: 01/18/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030444.RCM2.DOC

Case Background

Bayside Utility Services, Inc. (Bayside or utility), a wholly-owned subsidiary of Utilities, Inc. (UI), is a class C water and wastewater utility currently serving approximately 283 residential customers and four general service customers. The utility completed its filing of an application for a rate increase on February 17, 2004, and this date was established as the official date of filing.

By Order No. PSC-04-0414-PCO-WS (Interim Order), issued April 22, 2004, the Commission suspended the utility's proposed final rates and approved an interim revenue increase of \$42,547 (or 64.57%) for water and \$51,145 (or 55.22%) for wastewater. The Commission also calculated the amount of security for any potential interim refund.

Noting that a large number of customers of Bayside had requested that the County intervene in the rate case proceeding, Bay County (County) filed its Petition to Intervene in Rate Increase Proceedings and Objection to Rate Base and Proposed Rates on July 27, 2004. By Order No. PSC-04-0729-PCO-WS, issued July 28, 2004, the Commission granted the County's Petition to Intervene.

The Commission allowed the County to participate and voice its concerns and objections to staff's recommendation which was considered at the August 3, 2004 Agenda Conference. Pursuant to its vote at that agenda conference, the Commission issued its Proposed Agency Action Order No. PSC-04-0820-PAA-WS (PAA Order) on August 23, 2004, whereby the Commission proposed to approve a \$31,517 (or 47.83%) water increase and \$39,609 (or 42.77%) wastewater increase.

After the Commission issued its PAA Order, Bay County adopted Resolution No. 2570 on September 7, 2004, rescinding Commission jurisdiction over investor-owned water and wastewater utilities in Bay County effective immediately. Moreover, on September 13, 2004, the Office of Public Counsel (OPC) filed a timely protest of the Commission's PAA Order. In that protest, OPC protested almost all aspects of the PAA Order. Pursuant to Section 367.081(8), Florida Statutes (F.S.), the Commission must render a final decision within eight months of the date OPC filed its protest.

Bayside notified staff that it would maintain its interim rates pending the Commission's final decision. By Order No. PSC-04-1064-PCO-WS, issued October 29, 2004, the Commission required the corporate undertaking guaranteed by Utilities, Inc., to be increased from \$46,964 to \$102,733.

Because of the protest, the Commission scheduled a hearing to be held in the utility's service area, and issued an Order Establishing Procedure on September 20, 2004. On October 4, 2004, OPC filed its Motion for Commission to Relinquish Jurisdiction to the County (Motion to Relinquish Jurisdiction). By Order No. PSC-04-1155-PCO-WS, issued November 22, 2004, the Commission denied OPC's Motion to Relinquish Jurisdiction. Moreover, on November 24, 2004, Bay County filed its notice of voluntary withdrawal as intervenor in this case.

Subsequently, on December 8, 2004, Bayside and OPC filed their Joint Motion Requesting Commission Approval of Settlement Agreement with the Settlement Agreement attached (Joint Motion). In the Joint Motion, Bayside and OPC requested that discovery and all events be suspended pending Commission consideration of the Settlement Agreement. This request was granted by the prehearing officer and the prehearing and hearing scheduled for February 7, 2005, and February 20-21, 2005, respectively, were canceled pending the Commission's consideration of the Settlement Agreement.

Staff's recommendation addresses the Settlement Agreement submitted by Bayside and OPC. The Commission has jurisdiction pursuant to Sections 367.081, 367.082, and 367.171(5), F.S.

Discussion of Issues

Issue 1: Should the Commission approve the Settlement Agreement in its entirety?

Recommendation: Yes, the Settlement Agreement should be approved in its entirety. With the approval of this Settlement Agreement, Utilities, Inc., should be released from its corporate undertaking guarantee in the amount of \$102,733. Bayside Utility Services, Inc. should be required to charge the rates as shown on Exhibit A of the Settlement Agreement and should comply with all other aspects of the Settlement Agreement. The tariffs submitted should be administratively approved, and the utility should send the notice to its customers prior to January 29, 2005. (Jaeger, Fletcher)

Staff Analysis: As stated in the Case Background, OPC originally protested almost all aspects of the PAA Order, but then later entered into what appears to be a comprehensive Settlement Agreement with Bayside. In the Settlement Agreement, the parties agreed that no refunds would be required, and listed the revenue requirements and the appropriate rates for the first year beginning January 29, 2005, the second year beginning January 29, 2006, and after four years beginning January 29, 2009. The parties agreed that the revenue requirements would be as follows:

	<u>WATER</u>	<u>WASTEWATER</u>
First Year (1/29/05-1/28/06)	\$80,963	\$111,132
Second Year (1/29/06-1/28/07)	\$94,017	\$127,616
After Four Years (beginning 1/29/09)	\$86,247	\$119,845

The reduction after four years represents the full amortization of rate case expense in the amount of \$7,771 for water and \$7,771 for wastewater.

Also, the parties agreed that the rates for the respective periods should be as shown on Exhibit "A" attached to the Settlement Agreement, and that neither party "may seek to make any changes to the revenue requirements and resulting rates provided in this Settlement Agreement prior to January 29, 2006." The Settlement Agreement, with its Exhibit A, is attached as Attachment "A". The parties further agreed that Bayside would complete \$25,000 of pro forma improvements to the lift stations as described in PAA Order No. PSC-04-0820-PAA-WS within 90 days of the Commission's final order approving the Settlement Agreement.

Finally, in Paragraph 7. of the Settlement Agreement, the parties agreed as follows:

Bayside's rate base shall be established as provided by Commission Order No. PSC-04-0820-PAA-WS. The simple average rate base for the test year ending December 31, 2002 is \$66,672 for water and \$194,663 for wastewater. However, the Citizens strongly disagree with these figures and shall be free to challenge the Company's rate base in subsequent proceedings before any utility regulatory authority. Such challenge shall include but not be limited to the inclusion of \$92,274 in rate base, and inclusion of nonused and useful plant in rate base. Further, approval by Bayside and the Citizens of the above stipulated revenue requirements shall in no way limit or estop either party from espousing

whatever positions either deems appropriate for each and every issue that might be in controversy in any subsequent proceeding before any utility regulatory authority.

Staff has reviewed each of the provisions and notes that, in each instance, the revenue requirement and proposed rates are less than those proposed in the original PAA Order which were less than the current interim rates being charged by the utility. However, this would not appear to impair the ability of the utility to provide satisfactory quality of service. Based on all the above, staff believes that the Settlement Agreement promotes the public interest, and recommends that the Commission approve the Settlement Agreement in its entirety. With the approval of this Settlement Agreement, Utilities, Inc., should be released from its corporate undertaking guarantee in the amount of \$102,733. Moreover, Bayside Utility Services, Inc. should be required to comply with all aspects of the Settlement Agreement and charge the rates as shown on Exhibit A of the Settlement Agreement.

The utility has already submitted the appropriate tariffs and a proposed customer notice. Staff has reviewed the tariffs and proposed notice and found them to be consistent with the Settlement Agreement. Therefore, upon vote of the Commission approving the Settlement Agreement, the tariffs should be administratively approved, and the utility should be required to send the notice to its customers prior to January 29, 2005.

Docket No. 030444-WS

Date: January 6, 2005

Issue 2: Should the docket be closed?

Recommendation: Yes, there are no further actions to be taken in this docket. (Jaeger, Fletcher)

Staff Analysis: There are no further actions to be taken in this docket, and it should be closed. With the closing of this docket, Bay County will have jurisdiction over the utility's rates, charges, and service.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase)	
in Bay County by Bayside Utility)	Docket No. 030444-WS
Services, Inc.)	Filed: December 8, 2004
)	

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this ____ day of December, 2004, by and between Bayside Utility Services, Inc., (“Bayside,” “Utility” or “Company”), and the customers of Bayside (“Citizens”), through their undersigned counsel.

WITNESSETH

WHEREAS, the Florida Public Service Commission (“Commission”) issued Proposed Agency Action Order No. PSC-04-0820-PAA-WS in this docket on August 23, 2004; and

WHEREAS, on September 13, 2004, the Citizens filed a timely protest to the PAA Order; and

WHEREAS, in order to avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission’s long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible, the Citizens and Bayside hereby enter into this agreement to settle this case in accordance with the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below, the Citizens and Bayside agree as follows:

1. Beginning January 29, 2005 Bayside's final rates shall be designed to generate revenues of \$80,963 and \$111,132 for water and wastewater, respectively. These revenues exceed test year revenues by \$15,069 and \$18,519 for water and wastewater, respectively.
2. Beginning January 29, 2006 Bayside's final rates shall be designed to generate revenues of \$94,017 and \$127,616 for water and wastewater, respectively. These revenues exceed test year revenues by \$28,123 and \$35,003 for water and wastewater, respectively.
3. As provided by Section 367.0816, F.S., Bayside's rates shall be reduced immediately after January 29, 2009 to remove the revenues associated with the four-year amortization of rate case expense and the gross-up for regulatory assessment fees on that expense. This reduction in the revenue requirement shall be \$7,771 for water and \$7,771 for wastewater.
4. Neither Bayside nor the Citizens may seek to make any changes to the revenue requirements and resulting rates provided in this Settlement Agreement until January 29, 2006. After this date Bayside may seek such further rate relief it deems necessary, and the Citizens may seek such rate reductions they feel are warranted.
5. The above revenue requirements and resulting rates shall fully satisfy Bayside's obligation to make refunds to the Citizens for having collected interim revenues in excess of the revenues finally approved in this docket.
6. Bayside shall complete \$25,000.00 of pro forma improvements to the lift stations, as described in PAA Order No. PSC-04-0820-PAA-WS, within 90 days of the Commission's final order approving this Settlement Agreement.

7. Bayside's rate base shall be established as provided by Commission Order No. PSC-04-0820-PAA-WS. The simple average rate base for the test year ending December 31, 2002 is \$66,672 for water and \$194,663 for wastewater. However, the Citizens strongly disagree with these figures and shall be free to challenge the Company's rate base in subsequent proceedings before any utility regulatory authority. Such challenge shall include but not be limited to the inclusion of \$92,274 in rate base, and inclusion of nonused and useful plant in rate base. Further, approval by Bayside and the Citizens of the above stipulated revenue requirements shall in no way limit or estop either party from espousing whatever positions either deems appropriate for each and every issue that might be in controversy in any subsequent proceeding before any utility regulatory authority.

8. The final rates produced by the revenue requirements agreed to in paragraphs 1. through 3. of this Settlement Agreement are specified in Exhibit "A" attached hereto and made a part hereof.


9. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without modification by Commission Order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

10. Bayside and the Citizens expressly agree that all activity relating to this docket should be suspended until the Commission disposes of the Joint Motion Requesting Commission Approval of Settlement Agreement.


11. This Settlement Agreement will become effective on the date the Commission enters a final order approving the agreement in total. Upon the Commission issuing a final order approving this Settlement Agreement, the Citizens Petition on Proposed Agency Action, filed on September 13, 2004, shall be deemed resolved, in accordance with the terms of this Settlement Agreement.

12. The Parties have evidenced their acceptance and agreement with the provisions of this Settlement Agreement by their signatures, and personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

**CITIZENS OF THE STATE OF FLORIDA,
OFFICE OF PUBLIC COUNSEL**

By: 
Stephen C. Reilly
Associate Public Counsel

BAYSIDE UTILITY SERVICES, INC.

By: 
Martin S. Friedman
Attorney for Bayside Utility
Services, Inc.

Bayside Utility Services, Inc.		EXHIBIT "A"			
Docket No. 030444-WS					
<u>System</u>	<u>PAA Revenue Requirement</u>	<u>Settlement Agreement First Year</u>	<u>Settlement Agreement Second Year</u>	<u>Settlement Agreement After 4 Years</u>	
Water	\$97,411	\$80,963	\$94,017	\$86,247	
Wastewater	\$132,222	\$111,132	\$127,616	\$119,845	
Water Percentage Change		-16.89%	16.12%	-8.27%	
Wastewater Percentage Change		-15.95%	14.83%	-6.09%	
WATER RATES		<u>PAA Rates</u>	<u>Settlement Agreement First Year</u>	<u>Settlement Agreement Second Year</u>	<u>Settlement Agreement After 4 Years</u>
<u>Residential Service</u>					
5/8" x 3/4"	\$12.76	\$10.61	\$12.32	\$11.30	
3/4"	\$19.15	\$15.92	\$18.48	\$16.96	
1"	\$31.91	\$26.52	\$30.80	\$28.25	
Gallonage Charge per 1,000 gallons	\$5.19	\$4.31	\$5.01	\$4.60	
<u>General Service</u>					
5/8" x 3/4"	\$12.76	\$10.61	\$12.32	\$11.30	
3/4"	\$19.15	\$15.92	\$18.48	\$16.96	
1"	\$31.91	\$26.52	\$30.80	\$28.25	
1-1/2"	\$63.82	\$53.04	\$61.60	\$56.51	
2"	\$102.11	\$84.87	\$98.55	\$90.41	
3"	\$204.23	\$169.75	\$197.11	\$180.82	
4"	\$319.10	\$265.22	\$307.98	\$282.53	
6"	\$638.20	\$530.44	\$615.97	\$565.06	
Gallonage Charge per 1,000 gallons	\$5.19	\$4.31	\$5.01	\$4.60	
WASTEWATER RATES					
<u>Residential Service</u>					
All meter sizes	\$21.86	\$18.37	\$21.10	\$19.81	
Gallonage Charge per 1,000 gallons (With 6,000 gallon cap)	\$7.10	\$5.97	\$6.85	\$6.44	
<u>General Service</u>					
5/8" x 3/4"	\$21.86	\$18.37	\$21.10	\$19.81	
1"	\$54.64	\$45.92	\$52.74	\$49.53	
1-1/2"	\$109.28	\$91.85	\$105.47	\$99.05	
2"	\$174.85	\$146.96	\$168.76	\$158.48	
3"	\$349.69	\$293.91	\$337.51	\$316.96	
4"	\$546.40	\$459.25	\$527.36	\$495.25	
6"	\$1,092.80	\$918.50	\$1,054.73	\$990.51	
8"	\$1,748.47	\$1,469.58	\$1,687.56	\$1,584.80	
Gallonage Charge per 1,000 gallons	\$8.51	\$7.15	\$8.21	\$7.71	