

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: May 23, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Fletcher, Bulecza-Banks, Lingo, Rendell)
Office of the General Counsel (Brubaker)

RE: Docket No. 060261-WS – Application for increase in water and wastewater rates in Lake County by Utilities, Inc. of Pennbrooke.

AGENDA: 06/05/07 – Regular Agenda –Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/21/07 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: Place next to Dockets Nos. 060256-SU, 060258-WS, and 060260-WS

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060261.RCM.DOC

Case Background

Utilities, Inc. of Pennbrooke (Pennbrooke or utility) is a Class C utility providing water and wastewater service to approximately 1,344 water and 1,244 wastewater customers in Lake County. The utility is a wholly-owned subsidiary of Utilities, Inc. (UI). Water and wastewater rates were last established for this utility in its 2000 rate proceeding.¹ Consummating Order No. PSC-01-1375-CO-WS, issued June 27, 2001, made Order No. PSC-01-1246-PAA-WS effective and final.

¹ See Order No. PSC-01-1246-PAA-WS, issued June 4, 2001, in Docket No. 001382-WS, In re: Application for staff-assisted rate case in Lake County by Pennbrooke Utilities, Inc.

On May 15, 2006, Pennbrooke filed the Application for Rate Increase at issue in the instant docket. By Order No. PSC-06-0670-FOF-WS, issued August 7, 2006, the Commission approved an interim annual revenue increase of \$114,155 or 37.07% for the utility's wastewater system. By Order No. PSC-07-0088-PAA-WS ("PAA Order"), issued January 31, 2007, the Commission approved rates that were designed to generate a water revenue requirement of \$341,185 and a wastewater revenue requirement of \$436,207. It was determined that the water system was overearning. The water revenue requirement was set equal to adjusted test year revenues (0.00% increase) and the overearnings were used to fund conservation programs.

On February 21, 2007, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On March 2, 2007, Pennbrooke timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). By letter dated March 14, 2007, Pennbrooke stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing.

By Order No. PSC-07-0386-PCO-WS, issued May 1, 2007, the Commission acknowledged Pennbrooke's implementation of the PAA rates which are being held subject to refund and secured through a corporate undertaking by UI (Pennbrooke's parent company). On May 4, 2007, Pennbrooke and OPC (collectively, "Parties") filed a Joint Motion Requesting Commission Approval of Settlement Agreement (Joint Motion). That motion and settlement agreement are incorporated in this recommendation as Attachment A.

This recommendation addresses the Parties' Settlement Agreement. The Commission has jurisdiction pursuant to Section 367.081 and 367.121, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Joint Motion Requesting Commission Approval of Settlement Agreement?

Recommendation: Yes. The Joint Motion and Settlement Agreement should be approved. The final water and wastewater rates produced by the Settlement Agreement are shown in Attachment B and Attachment C, respectively. These attachments also show the four-year rate reduction to the settlement water and wastewater rates. The utility should file a proposed customer notice and revised tariff sheets within 15 days of the Commission vote, which is consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), F.A.C., after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice. (Fletcher, Brubaker, Lingo)

Staff Analysis: In the Settlement Agreement, the Parties have agreed that the PAA Order should be amended to eliminate the language relating to the determination of the used and usefulness of Pennbrooke's water and wastewater treatment plants, in order for the PAA Order to have no precedential value as to determining the used and usefulness of the water and wastewater treatment plants. The Commission has previously approved a proposed settlement where the language regarding a used and useful calculation was stricken from a proposed agency action order.² Staff agrees that the language of the PAA Order which the Parties seek to strike can be stricken because each rate case is decided on its own merits.

The Parties also stipulated that the PAA Order should be amended to eliminate the requirement that the \$22,143 in water system overearnings be used for water conservation programs, and, in lieu thereof, the wastewater revenue requirement should be reduced by \$22,143. The Settlement Agreement states that the standard Commission refund calculation should be used to determine whether any refunds are required for interim or the PAA implemented rates. The appropriate refund amounts are addressed in Issue 2. Moreover, the Parties propose that any refund caused by of the utility's implementation of interim or PAA rates should be accounted for on the books of Pennbrooke as contributions-in-aid-of-construction (CIAC). Further, the Parties agree that the stipulated revenue requirement shall in no way limit or estop either party from espousing whatever positions either deems appropriate for each and every issue in any subsequent proceeding.

Staff believes that the Parties' Settlement Agreement is a reasonable resolution because it addresses all protested issues. Further, staff believes that it is in the public interest for the Commission to approve the Settlement Agreement because it promotes administrative efficiency and avoids the time and expense of a hearing. In keeping with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible,³ staff

² Order No. PSC-06-0665-S-WS, issued August 7, 2006, in Docket No. 050281-WS, In re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

³ Order No. PSC-06-0092-AS-WU, issued February 9, 2006, in Docket No. 000694-WU, In re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County.; Order No. PSC-05-

recommends that the Commission approve the Parties' Settlement Agreement. The final water and wastewater rates produced by the Settlement Agreement are shown in Attachment B and Attachment C, respectively. These attachments also show the four-year rate reduction to the settlement water and wastewater rates.

If the Commission approves the Settlement Agreement, staff recommends that the utility file a proposed customer notice within 15 days of the Commission vote, which is consistent with its decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), F.A.C., after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice.

0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, In re: Settlement offer for possible overearnings in Marion County by BFF Corp.; and Order No. PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.

Issue 2: What is the appropriate refund for the wastewater interim rate increase and for the implementation of water and wastewater PAA rates?

Recommendation: If the Commission approves staff's recommendation in Issue 1, the appropriate interim rate refund is 4.84% of wastewater revenues collected under interim rates. The appropriate PAA rate refunds are 6.49% and 5.08% of water and wastewater revenues, respectively. In accordance with Rule 25-30.360(4), F.A.C., the refund amount should include interest. Pursuant to the Settlement Agreement, the refund amount should be credited to CIAC. (Fletcher)

Staff Analysis: In the Settlement Agreement, the Parties agreed that the standard Commission refund calculation should be used to determine whether any refunds are required for interim or PAA implemented rates. Staff's analysis below addresses the refund calculations for both interim and PAA rates.

Interim Rates Refund

By Order No. PSC-06-0670-FOF-WS, issued August 7, 2006, the Commission approved an interim annual revenue requirement of \$422,113 for the utility's wastewater system. According to Section 367.082, Florida Statutes, any refund shall 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 interim rates are in effect should be removed. To establish the proper refund amount, staff calculated a revised revenue requirement by using the same data used to establish settlement rates, excluding rate case expense and other items not in effect during the interim period. Using the principles discussed above, staff has calculated a wastewater revenue requirement for the interim collection period to be \$401,064 for wastewater. This revenue requirement is \$21,049 less than the interim annual revenues granted in Order No. PSC-06-0670-FOF-WS. Therefore, staff recommends Pennbrooke refund 4.84% (\$21,049 divided by \$422,113) of wastewater revenues collected under interim rates. In accordance with Rule 25-30.360(4), F.A.C., the refund amount should include interest. Pursuant to the Settlement Agreement, the refund amount should be credited to CIAC.

PAA Rates Refund

As stated in the Case Background, the Commission acknowledged Pennbrooke's implementation of the PAA rates which became effective April 12, 2007. The \$22,143 stipulated water revenue reduction represents 6.49% of the PAA Order revenue requirement of \$341,185, and the \$22,143 wastewater revenue reduction represents 5.08% of the PAA Order revenue requirement of \$436,207. Pursuant to the Settlement Agreement, the refund amount to be credited to CIAC should be 6.49% and 5.08% of water and wastewater revenues, respectively, collected from April 12, 2007, through the day before the settlement rates become effective. These refund amounts should include interest in accordance with Rule 25-30.360(4), F.A.C.

Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Settlement Agreement, staff recommends the corporate undertaking amounts approved by the Commission for interim and PAA rates should be released. (Fletcher, Brubaker)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, staff recommends this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Settlement Agreement, staff recommends the corporate undertaking amounts approved by the Commission for interim and PAA rates should be released.

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of
UTILITIES, INC. OF PENNBROOKE
for an increase in wastewater
rates in Lake County, Florida

DOCKET NO. 060261-WS

COMMISSION
CLERK

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JOINT MOTION REQUESTING COMMISSION APPROVAL OF
SETTLEMENT AGREEMENT

UTILITIES, INC. OF PENNBROOKE ("Pennbrooke" or "Utility"), and the OFFICE OF
PUBLIC COUNSEL ("OPC") file this Joint Motion requesting the Florida Public Service
Commission ("Commission") to approve the attached Settlement Agreement. In support of
this Joint Motion, Pennbrooke and OPC state:

1. Pennbrooke and OPC have entered into a Settlement Agreement resolving
OPC's Petition on Proposed Agency Action Order No. PSC-07-0088-PAA-WS, in accordance
with the terms of the Settlement Agreement. A copy of the Settlement Agreement is
attached hereto as Exhibit "A".

2. Pennbrooke and OPC have entered into the Settlement Agreement to avoid
the time, expense and uncertainty associated with adversarial litigation, in keeping with the

CMP _____
COM _____ Commission's long-standing policy and practice of encouraging parties in protested
CTR _____ proceedings to settle issues whenever possible. For these reasons, Pennbrooke and OPC
ECR 2 Request the Commission to expeditiously issue a Final Order approving the Settlement
GCL _____ Agreement without modification and close Docket No. 060261-WS.
OPC _____

RCA _____ 3. Pending Commission consideration of the Settlement Agreement, Pennbrooke

SCR _____
SGA _____
SEC _____
OTH _____

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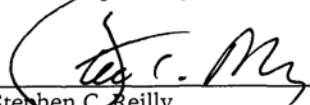
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and OPC request the Commission to suspend discovery and all events currently scheduled in the CASR for this Docket until such time as the Commission acts on this Motion.

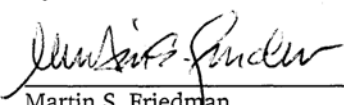
WHEREFORE, PENNBROOKE UTILITIES, INC., and OFFICE OF PUBLIC COUNSEL respectfully request the Commission to approve without modification the attached Settlement Agreement and to suspend discovery and other events scheduled in this proceeding until a Final Order is issued closing this docket.

Respectfully submitted this 4th day of May, 2007.



Stephen C. Reilly
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PHONE: (407) 830-6331

Attorney for Pennbrooke Utilities, Inc.

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase in water)
and wastewater rates in Lake County) DOCKET NO. 060261-WS
by Utilities, Inc. of Pennbrooke.)
_____)

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COMMISSION
CLERK

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 4th day of May, 2007, by and between Utilities, Inc. of Pennbrooke ("Pennbrooke" or "Utility"), and the Office of Public Counsel, on behalf of the customers of Pennbrooke ("Citizens").

WITNESSETH

WHEREAS, the Florida Public Service Commission ("Commission") issued Proposed Agency Action Order No. PSC-07-0088-PAA-WS in this docket on January 31, 2007, ("PAA Order"); and

WHEREAS, the February 21, 2007, Citizens filed a timely protest to the PAA Order; and

WHEREAS, on March 2, 2007. Pennbrooke timely filed a Cross-Petition; 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 Pennbrooke hereby enter into this Agreement to settle this case in accordance with the terms and conditions contained herein.

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

1. A. The PAA Order shall be amended to eliminate the requirement that the \$22,143 in water system overearnings be used on water conservation programs, and in lieu thereof, the wastewater revenue requirement shall be reduced by \$22,143.

B. The PAA Order shall be amended to eliminate the language relating to the determination of the used and usefulness of Pennbrooke's water and wastewater plants. It is the intent of Pennbrooke and Citizens that the PAA Order shall have no precedential value as to the issues of determining the used and usefulness of Pennbrooke's water and wastewater plants. Notwithstanding these amendments to the PAA Order, the parties stipulate to the revenue requirement as set forth in the PAA Order as modified above. Further, approval by Pennbrooke 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.

C. As a result of the above adjusted revenue requirements, the standard Commission refund calculations shall be used for determining whether any refunds are required from the interim or PAA implemented rates. Any refund required because of Pennbrooke's implementation of interim and PAA rates shall be accounted for on the books of Pennbrooke as contribution in aid of construction ("CIAC").

2. 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.

3. Pennbrooke 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.

4. The 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, the Citizens Petition on Proposed Agency Action and Pennbrooke's Cross-Petition shall be deemed resolved, in accordance with the terms of this Settlement Agreement.

5. 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.

OFFICE OF PUBLIC COUNSEL

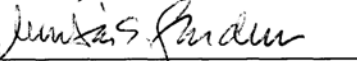
By:



Stephen C. Reilly
Associate Public Counsel
On behalf of the Customers
of Utilities, Inc. of Pennbrooke

UTILITIES, INC. OF PENNBROOKE

By:



Martin S. Friedman
Attorney for Utilities, Inc. of
Pennbrooke

Utilities, Inc. of Pennbrooke		Attachment B	
Docket No. 060261-WS			
<u>Water Rates</u>			
<u>Residential and General Service</u>	<u>PAA Rates</u>	<u>Settlement Rates</u>	<u>Four-Year Rate Reduction</u>
Base Facility Charge by Meter Size:	\$4.99	\$4.99	\$0.21
5/8" x 3/4"	\$12.48	\$12.48	\$0.52
1"	\$24.95	\$24.95	\$1.04
1-1/2"	\$39.92	\$39.92	\$1.66
2"	\$79.84	\$79.84	\$3.33
3"	\$124.75	\$124.75	\$5.20
4"	\$249.50	\$249.50	\$10.41
6"	\$399.20	\$399.20	\$16.65
8"			
<u>Residential Service</u>			
Gallage Charge, per 1,000 Gallons	\$1.69	\$1.69	\$0.07
0 - 10,000 gallons	\$2.11	\$2.11	\$0.09
Over 10,000 gallons			
<u>General Service</u>	\$1.80	\$1.80	\$0.08
per 1,000 Gallons			
<u>Typical Residential Bills 5/8" x 3/4" Meter</u>			
3,000 Gallons	\$10.06	\$10.06	
5,000 Gallons	\$13.44	\$13.44	
10,000 Gallons	\$21.89	\$21.89	

Utilities, Inc. of Pennbrooke		Attachment C	
Docket No. 060261-WS			
<u>Wastewater Rates</u>			
<u>Residential Service</u>	<u>PAA Rates</u>	<u>Settlement Rates</u>	<u>Four-Year Rate Reduction</u>
Base Facility Charge All Meter Sizes:	\$11.65	\$11.03	\$0.33
Gallage Charge - Per 1,000 gallons (6,000 gallon cap)	\$3.61	\$3.43	\$0.10
<u>General Service</u>			
Base Facility Charge by Meter Size:			
5/8" x 3/4"	\$11.65	\$11.03	\$0.33
1"	\$29.12	\$27.58	\$0.82
1-1/2"	\$58.24	\$55.15	\$1.63
2"	\$93.19	\$88.24	\$2.61
3"	\$186.38	\$176.48	\$5.23
4"	\$291.22	\$275.75	\$8.17
6"	\$582.45	\$551.50	\$16.34
8"	\$932.00	\$882.40	\$26.14
Gallage Charge, per 1,000 Gallons	\$4.33	\$4.12	\$0.12
<u>Typical Residential Bills 5/8" x 3/4" Meter</u>			
3,000 Gallons	\$22.48	\$21.32	
5,000 Gallons	\$29.70	\$28.18	
6,000 Gallons	\$33.31	\$31.61	
10,000 Gallons	\$33.31	\$31.61	
(Wastewater Gallage Cap - 6,000 Gallons)			