

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: December 26, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Hudson, Bulecza-Banks, Rendell)
Office of the General Counsel (Klancke)

RE: Docket No. 070680-WS – Application for staff-assisted rate case in Pasco County by Orangewood Lakes Services, Inc.

AGENDA: 01/08/08 – Regular Agenda – Decision on Interim Rates – Participation is at the discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: 02/05/08 (60-Day Suspension Date)
04/07/09 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070680.RCM.DOC

Case Background

Orangewood Lakes Services, Inc. (Orangewood or company) is a Class C utility serving 223 water and 190 wastewater customers in Pasco County. According to the company's 2006 Annual Report, total gross revenue was \$63,451 and \$46,218 for water and wastewater, respectively. The company's operating expenses were \$58,183 for water and \$90,609 for wastewater.

The company was granted water and wastewater Certificate Nos. 315-W and 260-S, respectively, in 1978.¹ This company has never had a rate proceeding before this Commission. On November 9, 2007, in the instant docket, the company filed a request for staff-assisted rate case (SARC). The company also requested emergency wastewater rates. By letter dated December 7, 2007, the company withdrew its request for emergency wastewater rates and requested interim wastewater rates.

This recommendation addresses the company's request for interim wastewater rates. The Commission has the authority to consider this rate case and interim rates under Section 367.0814, Florida Statutes.

¹ See Order No. 8703, issued June 20, 1978, in Docket No. 780457-W, In Re: Application of Orangewood Lakes Services, Inc. for a certificate to operate a water system in Pasco County, Florida and Order No. 8683, issued August 21, 1978, in Docket No. 780660-S, In Re: Application of Orangewood Lakes Services, Inc. for a certificate to operate a sewer utility in Pasco County, Florida, Section 367.041, Florida Statutes.

Discussion of Issues

Issue 1: Should Orangewood's request for interim wastewater rates be approved?

Recommendation: Yes, Orangewood's request for interim wastewater rates should be approved. The company should be granted a 63.57% interim wastewater rate increase. The interim wastewater rate should be set as a flat rate of \$39.37. If the company submits revised tariffs reflecting the Commission's decision on interim rates, staff should be given administrative authority to approve the submitted tariffs. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission's decision, the proposed customer notice is adequate, and the required security has been filed. The company should provide proof of the date notice was given within 10 days after the date the notice is provided to the customers. (Hudson)

Staff Analysis: As stated in the case background, on November 7, 2007, the Commission received an application for a staff-assisted rate case from Orangewood. The company has requested interim wastewater rates. The company did not request any interim rate relief for its water system. Section 367.0814(4), Florida Statutes, provides that:

[t]o establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

Staff has reviewed the company's operation and maintenance (O & M) expenses in relation to its revenues. Based on the company's 2006 Annual Report and SARC filing, staff has determined that the company's wastewater operation and maintenance expenses exceed its revenues. Moreover, even if Orangewood had requested interim water rates, it would not have been entitled to such rates because Orangewood's water revenues exceed its water O & M expenses.

Orangewood recorded \$85,726 for wastewater O & M expenses in its 2006 annual report. Staff has analyzed the O & M expenses reported on the 2006 annual report, compared them to expenses the Commission has allowed in past cases for like-sized utilities, and found them to be reasonable.² Therefore, the company should be allowed an interim wastewater revenue increase that will cover the cost of its O & M expenses of \$85,726. In addition, the interim wastewater increase should be grossed up to include regulatory assessment fees (RAFs). The Commission has previously determined that it would be inappropriate to approve an increase in a utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs. Furthermore, by approving an interim rate that allows for the payment of RAFs, the company

² See Order No. PSC-07-0385-SC-WS, issued May 1, 2007, in Docket No. 060575-WS, In re: Application for staff-assisted rate case in Lee County by Useppa Island Utility, Inc. Useppa Island Utility, Inc. had 145 wastewater customers and the Commission approved O & M expenses of \$108,102.

will be able to cover its O & M expenses.³ The RAFs accrued during the interim period will amount to \$4,039.

Based on the above, Orangewood's interim wastewater rates must be established to produce revenues of \$89,765 (\$85,726 + \$4,039) in order to cover its O & M expenses and RAFs. This is a 63.57% increase above the company's 2006 annualized revenues of \$54,880. It is Commission practice to apply the interim percentage increase to existing rates. The company currently has a flat rate of \$24.07. By applying the interim rate increase, the interim wastewater flat rate will be \$39.37.

If the company submits revised tariffs reflecting the Commission's decision on interim rates, staff recommends that it be given administrative authority to approve the submitted tariffs. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission decision, the proposed customer notice is adequate, and the required security has been filed. The company should provide proof of the date notice was given within 10 days after the date the notice is provided to the customers.

³ See Order No. PSC-01-1654-FOF-WS, issued August 13, 2001, in Docket No. 010396-WS, In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.

Issue 2: What is the appropriate security to guarantee the interim wastewater rate increase?

Recommendation: The company should be required to file a bond, letter of credit, or escrow agreement as security to guarantee any potential refunds of revenues collected under interim conditions. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund as of the end of the proceeding month. (Hudson)

Staff Analysis: In order to protect the customers in the event that the final rates are less than those authorized as a result of the interim increase, it is recommended that the company provide security by placing in escrow the difference in revenues between the interim rates and the previously authorized rates, or by providing a bond or letter of credit. Staff has calculated the percentage amount of potential refunds associated with the interim revenue increase to be 56.20% of interim rate revenue for wastewater. Staff has calculated the amount pursuant to Section 367.0814(5), Florida Statutes, which specifies that,

The Commission may require that the difference between the interim rates and the previously authorized rates be collected under a bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission.

If the security provided is an escrow account, said account should be established between the company and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: That the account is established at the direction of this Commission for the purpose set forth above, that no withdrawals of funds should occur without the prior approval of the Commission through the Director of the Office of Commission Clerk, that the account should be interest bearing, that information concerning the escrow account should be available from the institution to the Commission or its representative at all times, and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

The company should deposit 63.57% of the interim wastewater rate revenue, into the escrow account each month, pending the completion of the rate case proceeding. If a refund to the customers is required, all interest earned by the escrow account should be distributed to the customers. If a refund to the customers is not required, the interest earned by the escrow account should revert to the utility.

If the security provided is a bond or a letter of credit, said instrument should be in the amount of \$14,535. If the company chooses a bond as security, the bond should state that it will be released or should terminate upon subsequent order of the Commission addressing the requirement of a refund. If the company chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered addressing the requirement of a refund.

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Regardless of the type of security provided, the company should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund as of the end of the proceeding month. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

Under no circumstances should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the company.

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Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open pending the final resolution of the company's staff-assisted rate case. (Klancke)

Staff Analysis: This docket should remain open pending the final resolution of the company's staff-assisted rate case.