

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:** August 6, 2009

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

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

**RE:** Docket No. 090244-WU – Application for staff-assisted rate case in Lake County by TLP Water, Inc.

**AGENDA:** 08/18/09 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** 60-Day Suspension Date Waived Through 08/18/09

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090244.RCM.DOC

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### Case Background

TLP Water, Inc. (TLP or Utility) is a Class C utility serving 53 water customers in Lake County. The Utility is located in the St. Johns River Water Management District (SJRWMD) area where water use restrictions apply. Wastewater treatment is provided by septic tanks. According to TLP's 2008 Annual Report, total gross revenue was \$22,520 for water. The Utility's operating expenses were \$38,838 for water.

Three Lakes Mobile Home Park is a privately owned property formerly known as Cari's Camp. In 1945, Cari's Camp installed a small 4-inch well to provide water service to the area. A 1948 agreement required Cari's Camp to supply water to the residents on Lakeside Lane and Canal Street, which are located outside of the park. The camp became known as the Three Lakes

Mobile Home Park in the 1960s. The Commission received jurisdiction over Lake County in 1972.<sup>1</sup> In 1992, Three Lakes Mobile Home Park was incorporated as a non-profit cooperative. The mobile home park believed it was exempt from the Commission's jurisdiction, pursuant to Section 367.022, Florida Statutes (F.S.); however, the Utility continued to serve customers outside the cooperative, which actually rendered it subject to the Commission's jurisdiction. Recently, the Commission approved TLP's Water Certificate No. 644-W and flat rate of \$39.<sup>2</sup>

The Utility has never had a rate proceeding before the Commission. In the instant docket, TLP filed a request for a staff-assisted rate case (SARC). The Utility has also requested interim rates.

By letter dated, June 16, 2009, TLP waived the statutory time frame for its interim request through August 18, 2009. This recommendation addresses TLP's request for interim rates. The Commission has the authority to consider this rate case and interim rates under Section 367.0814(4), F.S.

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<sup>1</sup> See Order No. 5472, issued June 30, 1972, in Docket No. 5818-WS, In re: Jurisdictional Resolutions from Boards of County Commissioners adopting the Water and Sewer System Regulatory Law, Chapter 71-278, Laws of Florida, (Chapter 367, Florida Statutes). Resolution Adopted by Lake County.

<sup>2</sup> See Order No. PSC-09-0542-PAA-WU, issued August 4, 2009, in Docket No. 080499-WU, In re: Application for certificate to operate water utility in Lake County by TLP Water, Inc.

### **Discussion of Issues**

**Issue 1:** Should TLP Water's request for interim rates be approved?

**Recommendation:** Yes, TLP's request for interim water rates should be approved. The Utility should be granted an 80.57 percent interim water rate increase. If TLP submits revised tariffs reflecting the Commission's decision on interim rates, staff should be given administrative authority to approve the 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 (F.A.C.), 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 Utility 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, the Commission received an application for a staff-assisted rate case from TLP. The Utility has requested interim water rates. Section 367.0814(4), F.S., 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 Utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the TLP's 2008 Annual Report and SARC filing, staff has determined that the Utility's wastewater operation and maintenance expenses exceed its revenues.

TLP recorded \$38,838 for water O&M expenses in its 2008 annual report. Staff has analyzed the O&M expenses reported on the 2008 annual report, compared them to expenses the Commission has allowed in a past case for a like-sized utility, and found them to be reasonable.<sup>3</sup> Therefore, the Utility should be allowed an interim water revenue increase necessary to cover the cost of its O&M expenses of \$38,838. In addition, the interim water 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 an utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.<sup>4</sup> Furthermore, by approving an interim rate that allows for the payment of RAFs, the Utility will be able to cover its O&M expenses. The RAFs accrued during the interim period will amount is projected to be \$1,830.

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<sup>3</sup> See Order No. PSC-06-0684-PAA-WS, issued August 8, 2006, in Docket No. 060575-WS, In re: Application for staff-assisted rate case in Charlotte County by MSM Utilities, LLC. (MSM Utilities, LLC. had 50 water customers, and the Commission approved O&M expenses of \$60,657.)

<sup>4</sup> 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.

Based on the above, TLP's interim water rates should be established to produce revenues of \$40,668 (\$38,838 + \$1,830) in order to cover O&M expenses and RAFs. This is an 80.57 percent increase above the Utility's 2008 revenues of \$22,520. It is Commission practice to apply the interim percentage increase to existing rates. TLP currently has a flat rate of \$39. By applying the interim rate increase, the interim water flat rate will be \$70.42.

If the Utility submits revised tariffs reflecting the Commission's decision on interim rates, staff recommends that it be given administrative authority to approve the 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), F.A.C., 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 Utility should provide proof of the date notice was given within 10 days after the date the notice is provided to the customers.

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

**Recommendation:** The Utility 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), F.A.C., 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. (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 Utility 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 amount of potential refunds associated with the interim revenue increase to be \$9,074. Staff has calculated the amount pursuant to Section 367.0814(5), F.S., 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 Utility 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 Commission Clerk, Office of Commission Clerk; that the account should be interest bearing; that if a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers; that if a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility; 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 Utility should deposit 80.57 percent of the interim water 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 \$9,074. If the Utility 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 Utility 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 Utility should keep an accurate and detailed account of all monies that it receives. Pursuant to Rule 25-30.360(6), F.A.C., 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, F.A.C.

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 Utility.

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

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

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