

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: October 29, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090415-SU – Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, Inc.

AGENDA: 11/10/09 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: 11/10/09 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090415.RCM.DOC

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Case Background

West Lakeland Wastewater, Inc. (West Lakeland or Utility) is a Class C wastewater utility currently serving approximately 300 customers in Polk County (County). This area is in the Southwest Florida Water Management District (SWFWMD) and is considered a water use caution area. Water service is provided by the City of Lakeland. The Utility's 2006 annual report shows operating revenue of \$67,521 and net operating loss of \$34,442.

The Utility, previously known as ABCA, Inc. (ABCA), has been providing service to customers in Polk County since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group (Ameribanc) for a system known as Village Lakeland. Polk County came under Commission jurisdiction on July 11, 1996. In 1998, the

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Commission granted the Utility its grandfather Certificate No. 515-S for wastewater service.¹ ABCA's certificate was transferred to West Lakeland in 2001.²

By letter dated March 26, 2009, West Lakeland gave notice of abandonment effective June 30, 2009. On May 13, 2009, the County Attorney filed a Petition for Appointment of Receiver for West Lakeland Wastewater, Inc. in the Circuit Court of the Tenth Judicial Circuit (Circuit Court). The Circuit Court issued an order in Case No. 53-2009CA-005284, on June 22, 2009, in which it declared West Lakeland Wastewater, Inc. abandoned and appointed Mr. Michael Smallridge (Mr. Smallridge or Receiver) as receiver of the wastewater system. The Commission has acknowledged the receiver.³

On August 20, 2009, the Commission received an application for a staff-assisted rate case from West Lakeland. By letter dated, September 15, 2009, the Utility waived the statutory time frame for its interim request through November 10, 2009. This recommendation addresses West Lakeland's request for interim rates. The Commission has the authority to consider this rate case and interim rates under Section 367.0814, Florida Statutes (F.S.)

¹ See Order No. PSC-98-0752-FOF-SU, issued June 1, 1998, in Docket No. 971531-SU, In re: Application for grandfather certificate to operate wastewater utility in Polk County by ABCA, Inc.

² See Order No. PSC-01-1576-FOF-SU, issued July 30, 2001, in Docket No. 010382-SU, In re: Application for transfer of Certificate No. 515-S in Polk County from ABCA, Inc. to West Lakeland Wastewater, Inc.

³ See Order No. PSC-09-0607-FOF-SU, issued September 8, 2009, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

Discussion of Issues

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

Recommendation: Yes, West Lakeland's request for interim wastewater rates should be approved. The Utility should be granted a 36.00 percent interim wastewater rate increase. If West Lakeland 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 West Lakeland. The Utility has requested interim wastewater rates pursuant to Section 367.0814(4), F.S., which provides:

[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.

In the order acknowledging the abandonment and appointment of receiver, the Commission only held the Receiver responsible for filing the 2009 annual report.⁴ The last annual report filed by the previous owner was for 2006. Pursuant to 367.0814, F.S., interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. Therefore, staff is using the 2006 annual report as it contains the only data available at this time.

Staff has reviewed the Utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the West Lakeland's 2006 Annual Report and SARC filing, staff has determined that the Utility's wastewater O&M expenses exceed its revenues.

West Lakeland recorded \$87,696 for wastewater O&M expenses in its 2006 annual report. Staff analyzed the O&M expenses reported on the 2006 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.⁵ Therefore, the Utility should be allowed an interim wastewater revenue increase

⁴ See Order No. PSC-09-0607-FOF-SU, issued September 8, 2009, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

⁵ See Order No. PSC-09-0628-PAA-WS, issued September, in Docket No. 080668-SU, In re: Application for staff-assisted rate case in Highlands County by Fairmount Utilities, the 2nd, Inc. (Fairmount had 415 customers, and the Commission approved O&M expenses of \$99,967.)

necessary to cover the cost of its O&M expenses of \$87,696. 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 an utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.⁶ The RAFs accrued during the interim period will amount is projected to be \$4,132.

Based on the above, West Lakeland's interim wastewater rates should be established to produce revenues of \$91,828 (\$87,696 + \$4,132) in order to cover O&M expenses and RAFs. This is a 36.00 percent increase above the Utility's 2006 revenues of \$67,521. It is Commission practice to apply the interim percentage increase to existing rates. Staff's recommended interim rates are shown on Schedule No. 1.

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.

⁶ See Order No. PSC-09-0605-PCO-WU, issued September 8, 2009, in Docket No. 090244-WU, In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.

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 \$14,719. 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 36.00 percent 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 \$14,179. If the Utility chooses a bond as security, the bond should state that it will be released or terminated 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.

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 company's staff-assisted rate case. (Sayler)

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

WEST LAKELAND WASTEWATER, INC.	Schedule No. 1	
TEST YEAR ENDING SEPTEMBER 30, 2009	Docket No. 090415-SU	
MONTHLY WASTEWATER RATES	UTILITY'S EXISTING RATES	STAFF RECOMMENDED INTERIM RATES
<u>Residential</u>		
<u>Base Facility Charge by Meter Size:</u>		
All Meter Sizes	\$13.39	\$18.21
<u>Gallonge Charge</u>		
Per 1,000 gallons (8,000 gallon maximum per month)	\$3.26	\$4.43
 <u>General Service</u>		
<u>Base Facility Charge by Meter Size:</u>		
5/8" X 3/4"	\$13.29	\$18.07
3/4"	\$18.29	\$24.87
1"	\$28.09	\$38.20
1-1/2"	\$52.61	\$71.55
2"	\$82.02	\$111.55
3"	\$160.45	\$218.21
4"	\$248.71	\$338.24
6"	\$493.82	\$671.59
<u>Gallonge Charge</u>		
Per 1,000 Gallons	\$3.89	\$5.29
<u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u>		
3,000 Gallons	\$23.17	\$31.51
5,000 Gallons	\$29.69	\$40.38
10,000 Gallons	\$39.47	\$53.68