Table of Contents
Commission Conference Agenda
March 13, 2014

Item 1

FILED FEB 27, 2014
DOCUMENT NO. 00934-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (S.Deas)
Office of the General Counsel (S.Hopkins)

RE: Application for Certificate of Authority to Provide Pay Telephone Service

AGENDA: 3/13/2014 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Application for Certificate of Authority to Provide Pay Telephone Service on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	CERT. NO.
130275-TC	Combined Public Communications, Inc.	8855

The Commission is vested with jurisdiction in this matter pursuant to Section 364.3375, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

Item 2

FILED FEB 27, 2014
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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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Klancke)
Division of Economics (Daniel, Hudson, Roberts)
Division of Engineering (Watts)

RE: Docket No. 130086-SU – Complaint of K W Resort Utilities Corp. against Monroe County, Florida for alleged entitlement to collect certain capacity reservation fees for excess capacity used.

AGENDA: 03/13/14 – Regular Agenda – Notice of Voluntary Dismissal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 18, 2013, KW Resort Utilities Corporation's (KWRU) initiated this docket by filing its complaint against Monroe County, Florida (County) for alleged entitlement to collect certain capacity reservation fees for excess capacity used. On May 8, 2013, the County filed an Unopposed Motion for the Extension of Time to Respond to KWRU's Complaint which was granted via Order No. PSC-13-0221-PCO-SU. Additional extensions of time were granted by separate orders issued on June 7, 2013, July 10, 2013, September 10, 2013, and December 12, 2013.[1] During this period, the County and KWRU prepared a Settlement Agreement which

[1] See Order Nos. PSC-13-0255-PCO-SU, PSC-13-0310-PCO-SU, PSC-13-0418-PCO-SU, and PSC-13-0657-PCO-SU.

KWRU executed and which the County Commission approved at the County Commission meeting on November 20, 2013.

On January 14, 2014, KWRU filed a Corrected Notice of Voluntary Dismissal With Prejudice (Dismissal) advising the Commission of its intent to voluntarily dismiss its complaint with prejudice and requesting that the Commission close Docket No. 130086-SU.

Discussion of Issues

Issue 1: Should the Commission acknowledge KW Resort Utilities Corporation's voluntary dismissal with prejudice of its complaint against Monroe County, Florida for alleged entitlement to collect certain capacity reservation fees for excess capacity used?

Recommendation: Yes, the Commission should acknowledge KW Resort Utilities Corporation's voluntary dismissal with prejudice of its complaint against Monroe County, Florida as a matter of right. (Klancke)

Staff Analysis: It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.[2] Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.[3] Both of these legal principles have been recognized in administrative proceedings.[4] In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that "the jurisdiction of any agency is activated when the permit application is filed . . . . [and] is only lost by the agency when the permit is issued or denied or when the permit applicant withdraws its application prior to completion of the fact-finding process."

In the instant case, no hearing in this matter was scheduled or undertaken. Thus, KWRU has requested the dismissal of the complaint in this matter prior to the completion of the fact-finding process. Staff therefore recommends that the Commission acknowledge KWRU's voluntary dismissal of its complaint with prejudice as a matter of right, which is in accord with past Commission decisions.[5] Staff notes that in the instant case, the Commission is not evaluating the prudence of the Settlement Agreement involved herein. Moreover, the Commission reserves the right to evaluate the Settlement Agreement in conjunction with any future rate case proceedings involving KWRU.

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[2] Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975); see also Kelly v. Colston, 977 So.2d 692, 693 (Fla. 1st DCA 2008) (holding that a plaintiff's right to take a voluntary dismissal is nearly absolute).

[3] Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).

[4] Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993), aff'd, 645 So. 2d 374 (Fla. 1994).

[5] See Order No PSC-10-0382-FOF-EI, issued June 15, 2010, in Docket No. 090109-EI, In re: Petition for approval of solar energy power purchase agreement between Tampa Electric Company and Energy 5.0, LLC.; Order No PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-10-0199-FOF-SU, issued March 31, 2010, in Docket No. 090415-SU, In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, Inc.; Order No. PSC-09-0120-FOF-EI, issued March 2, 2009, in Docket No. 080621-EI, In re: Application for authority to issue and sell securities during calendar year 2009 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company; Order No. PSC-08-0102-FOF-EI, issued February 18, 2008 in Docket No. 060638-EI, In re: Petition for approval of storm cost recovery surcharge to recover costs associated with mandatory storm preparedness initiatives, by Florida Public Utilities Company. But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the docket should be closed. (Klancke)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the docket should be closed.

Item 3

FILED FEB 27, 2014
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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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Barrera, Crawford, Gilcher) MFB JSC
Division of Economics (Draper, King) EID JWD JGK PR

RE: Docket No. 130188-EM – Complaint regarding electric rate structure for Gainesville Regional Utilities.

AGENDA: 03/13/2014 – Regular Agenda –Motion to Dismiss, Oral Argument Is Requested - Participation Limited To Interested Persons

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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COMMISSION CLERK

Case Background

On July 16, 2013, Gainesville Regional Utilities (GRU) customers, Eye Associates of Gainesville, LLC and Deborah L. Martinez (Complainants), filed a Petition for Expedited Review of Electric Rate Structure for Gainesville Regional Utilities (Complaint), requesting a formal administrative hearing to review GRU's electric rate structure. On August 2, 2013, GRU filed a motion to dismiss (Motion). Complainants filed a response in opposition to GRU's Motion and a request for oral argument on August 12, 2013.

GRU is a municipal utility wholly owned by the City of Gainesville. GRU's distribution system serves approximately 93,000 retail customers in both the incorporated and unincorporated areas of its service territory. GRU also provides wholesale electric service to the City of Alachua pursuant to the terms of a wholesale power contract that has been in place since 1988, and which was renewed on January 1, 2011, for a term of ten years.

This recommendation addresses GRU's Motion to dismiss, the Complainants' response to the Motion and request for oral argument. The Commission has jurisdiction over this matter pursuant to Section 366.04(2), Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant Complainants' Request for Oral Argument on GRU's Motion to Dismiss?

Recommendation: Yes. The request for oral argument should be granted in order to assist the Commission to understand the parties' arguments and positions on the motion to dismiss. If the Commission grants oral argument, staff recommends granting each side five (5) minutes. (Barrera, Gilcher)

Staff Analysis: Oral Arguments are governed by Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), which provides, in pertinent part:

> Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested .... Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners... in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

In their request for oral argument, Complainants suggest that oral argument will assist the Commission in understanding the stated cause of action upon which relief may be granted and why they believe the GRU Motion should be denied. Complainants further request that each side be granted five (5) minutes for oral argument at the Agenda Conference at which the Motion will be heard by the Commission. GRU did not file an objection to Complainants' request for oral argument.

Pursuant to Rule 25-22.0022(3), F.A.C., granting or denying a request for oral argument is within the sole discretion of the Commission. Complainants stated that they believe oral argument would assist the Commission. Staff recommends that the Commission grant the request for oral argument as it believes oral argument will assist with understanding and evaluating the issues to be decided. If the Commission grants oral argument, staff recommends granting each side five (5) minutes.

Issue 2: Should the Commission grant GRU's Motion to Dismiss?

Recommendation: Yes. The Commission should grant GRU's Motion to Dismiss and dismiss, with prejudice, the portions of the Complaint regarding GRU's rates and the wholesale contract. The portion of the Complaint challenging the rate structure in effect at the time the Complaint was filed should be dismissed without prejudice as moot. Complainants should be given leave to file an amended Complaint based on GRU's current rate structure within 15 days of the Commission's decision. The amended Complaint should state with specificity those sections of the rate structure Complainants challenge, the reasons therefor, and the specific relief requested. (Barrera, Gilcher)

Staff Analysis:

Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition. The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963).

Complainants' Complaint

The Complaint alleges that GRU's rate structure, both existing and proposed at the time the Complaint was filed, contain inequities between, or within, customer rate classes and such inequities are aggravating what Complainants believe to be a problem of high electric rates. The Complaint alleges that GRU's commercial class customers are unfairly subsidizing the Alachua wholesale contract to the benefit of GRU's residential class customers.

The Complaint references the findings of a cost of service and rate analysis conducted by Baker Tilly Virchow Krause, LLP, where alleged inequities between the rate-classes are shown, as well as the portions of the study Complainants believe indicate a subsidization of the Alachua wholesale contract to the benefit of the residential rate class customers. The Complaint alleges that the proposed modified, two-tiered rate structure is inequitable within the residential rate class to the extent that it shifts the majority of the proposed rate increase to customers using less than 1,000 kWh and large families using more than 1,000 kWh. The Complaint alleges, without further explanation, that Exhibits A and B to the Complaint, which constitute a "draft cost of service report" and a page from the Baker Tilly cost of service study, demonstrate the inequities of the rate structure. The alleged inequities among the classes in the challenged proposed rate structure are not stated.

Complainants also allege that GRU's alternative plan to use the existing three-tiered rate structure will substantially increase the monthly customer charge while revising the base rate energy charges within each tier. The Complaint alleges that GRU's electric rates are among the highest in the state of Florida and that its rate structure is part of the cause; that GRU overcharged its customers for fuel in "an attempt to hide the impact that GRU's contract with the Gainesville Renewable Energy Center (GREC) has on its rates;" and the projected balance of these overcharges is expected to reach $26.2 million on September 30, 2013. The Complaint further alleges that GRU is the only utility in the state that did not pass on millions of dollars of fuel savings on to their customers during the last three years. Finally, the Complaint alleges that GRU failed to seek input from affected commercial and residential customer class stakeholders prior to proposing changes to the existing rate structure.

Complainants' disputed issues of material facts are: whether the existing and proposed GRU electric rate structures are fair, just, and reasonable; whether the existing and proposed GRU electric rate structures are nondiscriminatory; whether the existing and proposed GRU electric rate structures allocate the recovery of costs appropriately between the customer classes; and whether the existing and proposed GRU electric rate structures allocate the recovery of costs equitably between the members of a customer class. The relief sought is an expedited review of the existing and proposed GRU electric rate structure[1] and a formal hearing to address disputed issues of fact.

GRU's Motion to Dismiss

GRU's Motion asserts that the portions of the Complaint regarding GRU's rates are beyond the jurisdiction of the Commission. GRU contends that the Commission's jurisdiction over municipal utilities is limited to rate structure, pursuant to Section 366.04(2)(b), F.S. In support, GRU cites City of Tallahassee v. Mann, 411 So. 2d 162 (Fla. 1981), where the Florida Supreme Court held municipal electric utility rates are set by the City Commission of the city owner of the utility, not the Public Service Commission. GRU also cites Lewis v. Florida Public Service Commission, 463 So. 2d 277 (Fla. 1985), where the Florida Supreme Court held that the Public Service Commission's jurisdiction over rate structure does not include jurisdiction over actual rates charged by a municipal utility.

Additionally, GRU asserts, the portions of the Complaint concerning wholesale contracts and wholesale power agreements are beyond the jurisdiction of the Commission. GRU states the Florida Supreme Court in Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 300-301 (Fla. 2002), cautioned that the Public Service Commission's jurisdiction under Section 366.04(2)(b), F.S., is limited to the retail rate structure of electric utilities and does not give the Public Service Commission authority to regulate wholesale rate structure or wholesale power contracts that may impact the electric utility's wholesale rate structure.

The Motion alleges facts that, although outside the four corners of the Complaint, provide the current status of the challenged proposed and existing rate structure and City Commission action. These allegations include information regarding Complainants' participation in public

[1] The existing and proposed rate structure referenced are those at the time the Complaint was filed.

hearings conducted by the Gainesville City Commission on July 16, 22, and 25, 2013 regarding GRU's rates and rate structure; the subsequent vote by the City Commission to tentatively maintain GRU's current three-tiered rate structure; the City Commission action voting down the challenged proposed two-tiered electric retail rate structure; the scheduling of additional public hearings (held September 9 and 19, 2013) to consider approval and adoption of the budget resolutions and rate ordinances based on the existing three-tiered rate structure and a new tentatively approved revenue requirement.

The motion contends that the portion of the Complaint regarding rate structure is potentially moot and not ripe for consideration as the ordinance adopting rate structure has not been finalized. GRU further asserts, to the extent Complainants seek to have the Commission investigate GRU's two-tiered rate structure, the Complaint is potentially moot and not ripe for consideration because the City Commission voted not to adopt the two-tiered rate structure and instead voted to retain GRU's previously adopted three-tiered rate structure.

Complainants' Response in Opposition to the Motion to Dismiss

Complainants assert their Complaint sets forth a prima facie showing of existing and proposed retail rate structure inequities between the GRU customer rate classes upon which requested relief is being sought, and therefore, the Motion should be denied. Complainants further assert the Complaint is sufficiently ripe for consideration by the Commission because disputed issues of material fact exist with respect to the portion of the Complaint seeking review of the inequities associated with the existing GRU electric retail rate structure.

Complainants agree that GRU voted not to adopt the proposed two-tiered rate structure, but state there are still disputed issues of material fact remaining as to the inequities associated within the proposed residential and commercial retail electric rate structure because the alternate proposed three-tiered rate structure submitted to the Commission by GRU is not, as GRU claims, a continuation of the current three-tiered rate structure. Complainants state in a footnote that they are willing to amend their Complaint to strike references to the proposed two-tiered rate structure. Complainants contend that because GRU would be required by Rule 25-9.052, F.A.C., to submit to the Commission documentation regarding proposed changes to the electric retail rate structure on, or before, August 21, 2013, the Complaint challenging GRU's changes to the electric retail rate structure are also sufficiently ripe. Complainants conclude by renewing their request for formal hearing asserting that they have a statutory right to an evidentiary hearing on disputed issues of material fact related to GRU's electric retail rate structure.

Analysis

The Commission has jurisdiction over the electric rate structure of a municipal utility pursuant to Sections 366.02(2) and 366.04(2)(b), F.S. Those statutes respectively provide that "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state, and that the Commission has power over municipal electric utilities solely for the purpose of providing a rate structure for all electric utilities.

Rule 25-9.051(3), F.A.C., defines rates as the price or charge for utility services. Rate structure is defined as the classification system used in justifying different rates and, more specifically, to the rate relationship between various customer classes, as well as the rate relationship between members of a customer class. Rule 25-9.051(7), F.A.C. The Commission's jurisdiction over municipal utilities is limited, specifically, the Commission does not have authority over the price charged by GRU. City of Tallahassee v. Mann, 411 So. 2d 162 (Fla. 1981). Thus, to the extent the Complaint's allegations include GRU's rates, those portions of the Complaint should be dismissed with prejudice.

The Commission does not have authority over wholesale power agreements and contracts. Lee County Elec. Coop., Inc. v. Jacobs, 800 So. 2d. at 300-301. To the extent the Complaint seeks relief regarding alleged inequities between classes derived from wholesale power contracts, those portions of the Complaint should be dismissed with prejudice. The Complaint also alleges that the city failed to seek input from affected customers. The Commission has no jurisdiction over city commission deliberations, regardless of the subject matter. Thus, to the extent the Complaint seeks relief regarding the city's conduct on citizen input, the those portions of the Complaint should be dismissed with prejudice.

Complainants request that a hearing be held and allege disputed issues of material fact upon which the hearing should be based. To the extent the Complaint seeks a 120.57, F.S. hearing for relief regarding GRU's proposed action, the Complaint fails to show an injury in fact has occurred as to the proposed rate structure. Before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a hearing under 120.569, F.S. and 2) that the substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

The allegations challenging the proposed rate structure are too speculative to show injury in fact. See Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997) (threatened viability of plant and possible relocation do not constitute injury in fact of sufficient immediacy to warrant a Section 120.57, F.S. hearing); Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988) (some degree of loss due to economic competition is not of sufficient immediacy to establish standing). See also Order No. PSC-96-0755-FOF-EU; citing Order No. PSC-95-0348-FOF-GU, March 13, 1995; International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990); and Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So.2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So.2d 1063 (Fla. 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process). Thus, to the extent the Complaint requests a 120.57, F.S., hearing challenging the proposed rate structure based upon regarding a future vote of the City Commission, the allegations are speculative, thus, those portions of the Complaint fail the first prong of the test set forth in Agrico and should be dismissed with prejudice.

As to the allegations concerning the rate structure in effect at the time the Complaint the Motion and response state allegations concerning the actions of the City Commission that took place subsequent to the filing of the Complaint, regarding the rate structure. This new information may substantially affect the outcome of these proceedings.[2] Without specific allegations regarding the current status of the GRU rate structure proceedings before the City Commission, it is staff's opinion that a review of the rate structure would be inefficient and ineffectual.

Thus, as to the allegations concerning the rate structure in effect at the time the Complaint was filed, the Complaint should be dismissed without prejudice to allow Complainants to file an amended complaint that specifies the factual basis for a challenge to the existing rate structure. Staff recommends Complainants be given leave to file an amended Complaint within 15 days of the Commission's decision.

For the above stated reasons, the Commission should grant GRU's Motion to Dismiss and dismiss, with prejudice, the portions of the Complaint regarding GRU's rates and the wholesale contract. The portion of the Complaint challenging the rate structure in effect at the time the Complaint was filed should be dismissed without prejudice as moot. Complainants should be given leave to file an amended Complaint based on GRU's current rate structure within 15 days of the Commission's decision. The amended Complaint should state with specificity those sections of the rate structure Complainants challenge, the reasons therefor, and the specific relief requested.

[2] For example, Complainants, in the response, stated that they no longer seek relief regarding the proposed two-tiered section of the rate structure as it was voted down by the City Commission.

Issue 3: Should the Commission grant a hearing in this matter?

Recommendation: Complainants are not entitled to a hearing as there is no proposed agency action upon which a hearing can be granted under Section 120.569, F.S. (Barrera, Gilcher)

Staff Analysis: The Complaint requests a hearing on alleged disputed issues of material fact. Section 120.569, F.S., grants hearing rights in proceedings in which the substantial interests of a party are determined by an agency. Agency action is defined as "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order." Section 120.52(2), F.S. Only when an agency binds itself to a course of action in such a way as to prevent affected parties from protecting their interests at a later date, has final agency action taken place. Save our Creeks and Environmental Confederation of Southwest Florida v. Fish And Wildlife Conservation Commission, 112 So. 3d 128, 130 (Fla. 1st DCA 2013). The Commission has not made any determination or issued an order on proposed agency action to give rise to the request for hearing. Further, the Complaint seeks an investigation into GRU's actions. There is no right to a hearing to agency investigations preliminary to agency action. Section 120.57(5), F.S. Thus, staff recommends that the Commission deny Complainants' request for hearing as premature.

Issue 4: Should this docket be closed?

Recommendation: If the Motion to Dismiss is denied, the docket should remain open to address the Complaint. If granted, the docket should remain open to allow Complainants to file an amended Complaint within the 15 day deadline. If no amended Complaint is filed within the deadline, the docket should be closed administratively. (Barrera, Gilcher)

Staff Analysis: If the Motion to Dismiss is denied, the docket should remain open to address the Complaint. If granted, the docket should remain open to allow Complainants to file an amended Complaint within the 15 day deadline. If no amended Complaint is filed within the deadline, the docket should be closed administratively.

Item 4

FILED FEB 27, 2014
DOCUMENT NO. 00949-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari, Teitzman) KFC / AT
Division of Accounting and Finance (Maurey) ALM
Division of Administrative and IT Services (Belcher, Kissell) KB
Office of Auditing and Performance Analysis (Deamer)
Office of Telecommunications (Earnhart) JE

RE: Docket No. 140031-WS – Initiation of show cause proceedings against Country Club Utilities, Inc. in Highlands County for violations of Rule 25-30.120, FAC, Regulatory Assessment Fees; Water and Wastewater Utilities.

AGENDA: 03/13/14 – Regular Agenda – Show Cause – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place item on Agenda immediately before Docket No. 120172-WS, In re: Application for staff-assisted rate case in Highlands County by Country Club Utilities, Inc.

Case Background

Staff opened the instant docket to initiate show cause proceedings against Country Club Utilities, Inc. (Country Club or Utility) for apparent violations of Florida Statutes and Commission rules and regulations in failing to remit payment of its annual Regulatory Assessment Fees (RAFs) for the years 2010, 2011 and 2012.

Country Club is a Class C water and wastewater utility providing service in Highlands County. The Utility serves approximately 404 water and 401 wastewater customers in the Country Club of Sebring development located in Highlands County. The Utility's service territory is located in the Southern Water Use Caution Area of the Southwest Florida Water Management District (SWFWMD). The following information provides a historical overview of the Commission's activities related to Country Club.

Country Club's President and owner is Mr. R. Greg Harris. Mr. Harris and his wife, Janet B. Harris (Secretary), are the Utility's only officers. Mr. Harris purchased the Utility in 2004, from his father, Roland A. Harris.

Country Club has been in existence since 1989 and came under the jurisdiction of the Commission in 1992, when the Commission granted the Utility water and wastewater certificates and set initial rates and charges.[1] From 1989 to 2003, the utility operated under the corporate name Country Club of Sebring, Inc. In 2003, the Utility changed its name to alleviate confusion with a golf facility with a similar name. On June 20, 2006, the Utility filed an application for name change and to transfer of majority organizational control from Mr. Roland A. Harris to Mr. R. Greg Harris.[2] On February 12, 2007, the Commission issued Order No. PSC-07-0121-FOF-WS, Authorizing Utility Corporate Reorganization, Name Change and Transfer of Majority Ownership Control.[3] The Order also provided that, because the new owner did not request a change in rates, the Utilities' rates and charges established in 1992, by Order No. 25788, would "continue until authorized to change by the Commission in a subsequent proceeding."[4]

In September 2011, Country Club filed an application for staff-assisted rate case (SARC), which it subsequently withdrew in December 2011.[5] Country Club again filed an application for staff-assisted rate case in June 2012.[6] Country Club's 2012 SARC application is discussed in staff's recommendation of February 27, 2014, in Docket No. 120172-WS. Both the instant matter and Docket No. 120172-WS are set for the March 13, 2014, Commission Conference.

During the processing of Country Club's SARC application, however, staff learned that Country Club had failed to remit payment of its regulatory assessment fees (RAFs) for the years 2010, 2011 and 2012, totaling $33,310.28, as required by Sections 350.113 and 367.145, F.S., and Rule 25-30.120, F.A.C. Staff made several attempts to work with Country Club regarding payment of the outstanding RAFs. In March 2013, Country Club agreed to a payment plan with staff, wherein Country Club would pay $500 per month toward its past due RAFs and pay the

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1 See Order No. 25788, issued February 24, 1992, in Docket No. 190792-WS, In re: Application for water and sewer certificates in Highlands County by Country Club of Sebring.

2 Id.

3 See, Order No. PSC-07-0121-FOF-WS, issued February 12, 2007, in Docket No. 060352-WS, In re: Application for transfer of majority organizational control of Country Club of Sebring, Inc. in Highlands County and for name change on Certificate Nos. 540-W and 468-S to Country Club Utilities, Inc.

4 Id.

5 See, Docket No. 110266-WS, In re: Application for staff-assisted rate case in Highlands County by Country Club Utilities, Inc.

6 See, Docket No. 120172-WS, In re: Application for staff-assisted rate case in Highlands County by Country Club Utilities, Inc.

balance if the Utility were sold.[7] Between March and August 2013, Country Club remitted five payments of $500. Country Club did not remit a payment in July 2013. After not receiving Country Club's monthly payment in September 2013, staff contacted the Utility's owner, Mr. Harris, to inquire whether Country Club would be submitting its monthly RAF payment. On September 27, 2013, Country Club informed staff that it would not be making its September payment and would no longer be making monthly payments as required by the agreed upon payment plan.[8]

By certified letter, dated January 9, 2014, Commission staff notified Country Club of apparent violations of Sections 350.113, 367.145 and 367.161, F.S., and Rule 25-30.120, and possible initiation of a show cause proceeding against the Utility for failing to pay its regulatory assessment fees for the years 2010, 2011, 2012.[9] Country Club's owner, Mr. Harris, was advised in the January 9, 2014, letter that Section 367.161, F.S., provides in pertinent part:

> (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than $5,000, to be fixed, imposed, and collected by the commission. . . . Each day that such refusal or violation continues constitutes a separate offense. . . .
>
> (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. . . .

In addition, Country Club was advised that Commission staff would open a docket to initiate a show cause proceeding if Country Club did not correct the violations and remit payment of the delinquent RAFs, penalties and interest by January 15, 2014. Country Club did not remit any payment in response to staff's letter.

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7 See, Document No. 00853-14, in Docket No. 120172-WS, Email exchange between Staff and Country Club, dated March 6, 2013; and Document No. 00148-14, in Docket No. 140000 and Document No. 00682-14, in Docket No. 140031-WS, Email exchange between Staff and Country Club, dated March 17, 2013, attached to Staff's demand letter of January 9, 2014.

8 See, Document No. 00148-14, in Docket No. 140000 and Document No. 00682-14, in Docket No. 140031-WS, Email exchange between Staff and Country Club, dated September 27, 2013, attached to Staff's demand letter of January 9, 2014.

9 See, Document No. 00148-14, in Docket No. 140000 and Document No. 00682-14, in Docket No. 140031-WS, Staff's demand for payment of past due RAFs, dated January 9, 2014; and, Document No. 00192-14, in Docket 140000 and Document No. 00682-14, in Docket No. 140031-WS, Certified Return Receipt signed by R. Harris on January 11, 2014, evidencing receipt by Utility of Staff's certified demand letter of January 9, 2014.

On January 16, 2014, staff counsel was contacted by John "Bart" Allen with the law firm of Peterson & Myers, in Lake Wales, Florida, on behalf of Country Club. Mr. Allen advised staff that Country Club was seeking to negotiate the possible sale of the utility to the City of Sebring. Mr. Allen inquired whether the Commission would extend Country Club additional time prior to initiating show cause proceeding in order to allow the utility to negotiate a possible sale. Staff requested that Mr. Allen submit Country Club's request for additional time in writing to staff for consideration. Mr. Allen advised staff he would submit the written request for additional time the next day. To date, staff has neither received any correspondence from Mr. Allen or Country Club, nor has Mr. Allen returned staff counsel's telephone calls.

By certified letter dated February 11, 2014, the Commission's Office of the General Counsel notified Country Club of the Commission's intent to initiate a show cause proceeding for the Utility's apparent statute and rule violations.[10]

Issue 1 is staff's recommendation regarding Country Club's apparent violations of Sections 350.113, 367.145, 367.161, F.S., and Rule 25-30.120, F.A.C., and whether the Utility should be ordered to show cause why it should not be required to pay its delinquent RAFs, including statutory penalties and interest. Issue 2 discusses the closing of the docket and options for pursuing collection of the past due RAFs and fines should the Commission approve Issue 1.

Country Club recently concluded litigation with the State of Florida, Department of Environmental Protection (DEP)[11] for violating DEP standards; however, Country Club faces possible administrative action/litigation with the South West Florida Water Management District (SWFWMD) for continued over-pumping violations.[12]

The Commission has jurisdiction pursuant to Sections 350.113, 367.121, 367.145, 367.161, F.S., and Rule 25-30.120, F.A.C.

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[10] See, Document No. 00695-14, in Docket No. 140031-WS, Letter notifying utility of establishment of a docket to initiate show cause proceeding, dated February 11, 2014; and Document No. 00891-14, in Docket No. 140031-WS, Certified Return Receipt signed by R. Harris on February 14, 2014, evidencing receipt by Utility of Staff's certified letter of February 11, 2014.

[11] In October 2012, DEP initiated litigation in Highlands County circuit court seeking enforcement for alleged violations of DEP standards by Country Club and civil penalties. State of Florida, Dep't of Envtl Protection v. Country Club Utilities, Inc., Case No. 12-924 GCS, 10TH Judicial Circuit Court for Highlands County, Florida. On February 3, 2014, DEP and Country Club entered into a Consent Judgment to settle the litigation, which the Court approved on February 20, 2014.

[12] Country Club has been over-pumping in violation of its Water Use Permit for many years. In September 2012, the Governing Board of the SWFWMD authorized its staff to initiate litigation against the utility for the over-pumping violations and assessed penalties and costs against the Utility in the amount of $83,949.00. On February 17, 2014, Country Club submitted a Compliance Report and Water Conservation Plan to SWFWMD. At this time, the SWFWMD is reviewing the information submitted by Country Club on February 17, 2014, in order to determine whether SWFWMD will pursue enforcement action/litigation against the Utility.

Discussion of Issues

Issue 1: Should Country Club Utilities, Inc. be ordered to show cause in writing, within 21 days, why it is not obligated to remit payment in the amount of $46,836.91, for delinquent Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011 and 2012?

Recommendation: Yes. Country Club should be ordered to show cause in writing, within 21 days, why it is not obligated to remit payment in the amount of $46,836.91, for delinquent Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011 and 2012 on or before April 17, 2014. Specifically, staff recommends that the Utility be directed to pay its past due RAFs in the amount of $8,248.08 for 2010, $11,269.13 for 2011, and $11,293.07 for 2012, including statutory interest and penalties in the amounts of, $6,326.33 for 2010, $5,521.87 for 2011, and $4,178.43 for 2012, (Corbari, Teitzman, Belcher, Earnhart, Maurey)

Staff Analysis:

Factual Allegations

Pursuant to Section 367.145(1), F.S., and Rule 25-30.120(1), F.A.C., each utility shall pay a RAF in the amount of 4.5 percent of its gross revenue derived from intrastate business. Subsection (2)(b) requires small utilities with annual revenues of less than $200,000, such as Country Club, to file RAFs with the Commission on or before March 31 for the preceding calendar year. Subsection (7)(a) permits the Commission to assess a penalty against any utility that fails to pay its RAFs on time.

Pursuant to Section 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. Five percent of the fee if the failure is for not more than 30 days, with an additional five percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of twenty-five percent.
2. The amount of interest to be charged is one percent for each 30 days or fraction thereof, not to exceed a total of twelve percent per annum

In addition, pursuant to Sections 367.145(1)(b) and 367.161, F.S., and Rule 25-30.120(7)(b), F.A.C., the Commission may impose an additional penalty upon a utility for its failure to pay RAFs in a timely manner.

According to Commission fiscal records, Country Club has not complied with Sections 350.113 and 367.145, F.S., and Rule 25-30.120, F.A.C., pertaining to Regulatory Assessment Fees. The Utility has failed to pay its 2010, 2011 and 2012 RAFs, despite having been provided

numerous notices that it is delinquent in submitting its RAFs.[13] Country Club has developed a pattern of disregard for regulatory compliance by not remitting its RAF payments for three consecutive years.

On March 17, 2011, Country Club filed its annual report for 2010, reporting a total gross revenue of $144,853 for water and $93,993 for wastewater. Based on its annual report filing, Country Club was required to remit a RAF payment in the amount of $6,518.39 for water and $4,229.69 for wastewater, by March 31, 2011. No payment was received from Country Club. On April 23, 2011, the Commission notified Country Club of its failure to remit its 2010 RAFs.[14] The $500 monthly payments, totaling $2,500, remitted by Country Club between March and August 2013 were applied to the Utility's 2010 delinquent RAFs, per Commission practice.

On March 15, 2012, Country Club filed its annual report for 2011, reporting a total gross revenue of $149,425 for water and $101,000 for wastewater. Based on its annual report filing, Country Club was required to remit a RAF payment in the amount of $6,724.13 for water and $4,545.00 for wastewater, by March 31, 2012. No payment was received from Country Club. On April 23, 2012, the Commission notified Country Club of its failure to remit its 2011 RAFs.[15]

On April 18, 2013[16], Country Club filed its annual report for 2012, reporting a total gross revenue of $151,060 for water and $99,897 for wastewater. Based on its annual report filing, Country Club was required to remit a RAF payment in the amount of $6,797.70 for water and $4,495.37 for wastewater, by March 31, 2013. No payment was received from Country Club. On April 20, 2013, the Commission notified Country Club of its failure to remit its 2012 RAFs.[17]

On February 26, 2014, the Commission received Country Club's 2013 RAF returns for water and wastewater, wherein Country Club reported a total gross revenue of $147,666.39 for water and $98,166.94 for wastewater. Country Club, however, did not remit payment of its 2013 RAFs with the RAF forms. Based on its 2013 RAF filing, Country Club is required to remit a RAF payment in the amount of $6,644.99 for water and $4,417.51 for wastewater, by March 31, 2014.

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[13] See, Document No. 00148-14, in Docket No. 140000 and Document No. 00148-14, in Docket No. 140031-WS, Commission correspondence to Country Club regarding outstanding RAFs, penalties and interest, attached to Staff's demand letter of January 9, 2014:
- Letter from Office of General Counsel, dated April 23, 2013, re: notification of failure to submit 2012 RAFs and demand for payment within 15 days.
- Letter from Office of General Counsel, dated April 23, 2012, re: notification of failure to submit 2011 RAFs and demand for payment within 15 days.
- Letter from Office of General Counsel, dated April 20, 2011, re: notification of failure to submit 2010 RAFs and demand for payment within 15 days.
- Letter from Fiscal Services Section, dated May 24, 2013 re: notification of untimely submission of 2010 RAFs and demand for payment by June 7, 2013.

[14] Id.

[15] Id.

[16] Staff notes that Country Club's 2012 annual reports were not filed timely. A utility's annual reports are due on or before March 31st, pursuant to Rule 25-30.110(3)(b), F.A.C.

[17] See, Document No. 00148-14, in Docket No. 140000 and Document No. 00148-14, in Docket No. 140031-WS, Commission correspondence to Country Club regarding outstanding RAFs, penalties and interest, attached to Staff's demand letter of January 9, 2014.

Staff notes that, it was not until March 2013, when staff requested Country Club make payments toward its delinquent RAFs as a condition of proceeding with the SARC application, that Country Club made any effort to fulfill its statutory obligation with regard to its delinquent RAFs. Country Club ceased making its agreed upon monthly payments to the Commission after only remitting five payments. Moreover, Country Club made no effort to contact staff prior to, or after, ceasing its payments September 2013, to discuss its RAF obligations.

Section 350.113, F.S., and Rule 25-30.120, F.A.C., provide for penalties and interest for failure to pay RAFs. A penalty in the amount of five percent of the fee is assessed for each 30-day period the payment is not received, up to a maximum of twenty-five percent. Since Country Club's failure to pay its 2010, 2011 and 2012 RAFs exceeds five 30-day periods, the maximum twenty-five percent penalty has been assessed to the RAF amounts owed by Country Club for 2010, 2011 and 2012. Further, one percent interest is assessed for each 30-day period, or fraction thereof, the payment is not received, not to exceed a total of twelve percent per annum. As of March 13, 2014, the amounts owed by Country Club for delinquent RAFs plus statutory penalty and interest, are as follows:[18]

YEAR	REVENUES	RAFS (4.5%)	PAYMENTS	PENALTY (25%)	INTEREST (THRU 03/13/14)	TOTAL DUE
2010	$238,846.00	$10,748.08	$2,500.00	$2,687.02	$3,639.31	$14,574.41
2011	$250,425.00	$11,269.13	$0.00	$2,817.28	$2,704.59	$16,791.00
2012	$250,957.00	$11,293.07	$0.00	$2,823.27	$1,355.16	$15,471.50
TOTALS	**$740,228.00**	**$33,310.28**	**$2,500.00**	**$8,327.57**	**$7,699.06**	**$46,836.91**

The Utility's owner has indicated that the Utility is unable to pay its RAFs due to the Utility's rates being inadequate. Staff does not believe that Country Club's assertion of inadequate rates is a valid justification for its failure to remit its RAFs. First, the amount of RAFs owed by a utility each year, is included in a utility's rates. Thus, Country Club has already collected the allocated 2010, 2011 and 2012 RAF amounts owed to the Commission. Second, while Country Club's current rates have remained unchanged since established by the Commission in 1992, [19] Country Club did not contact the Commission regarding a rate increase until 2011, when it filed its first SARC application, which it then withdrew. In fact, Country Club did not request a rate increase when it came to the Commission in 2006 to request approval of name change and transfer.[20]

[18] A complete breakdown of the RAF amounts, plus penalties and interest, is attached hereto as Attachment 1.

[19] See, Order No. 25788, Issued February 24, 1992, in Docket No.910792-WS, In re: Application for water and sewer certificates in Highlands County by Country Club of Sebring, stating, "the schedules have been used only as tools to aid in the establishment of initial rates. They are not intended for use in establishing rate base."

[20] See, Order No. PSC-07-0121-FOF-WS, Issued February 12, 2007, in Docket No. 060352-WS, In re: Application for water and sewer certificates in Highlands County by Country Club of Sebring, stating, the rates of former owner "must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges will continue until authorized to change by the Commission in a subsequent proceeding."

Staff Recommendation

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). In making similar decisions, the Commission has repeatedly held that utilities are charged with the knowledge of the Commission's Rules and Statutes. [21]

The procedure followed by the Commission in dockets such as this is to consider the Commission staff's recommendation and determine whether or not the facts warrant requiring the utility to respond. If the Commission approves staff's recommendation, the Commission issues an Order to Show Cause. A show cause order is considered an administrative complaint by the Commission against the utility. If the Commission issues a show cause order, the utility is required to file a written response. The response must contain specific allegations of disputed fact. If there are no disputed factual issues, the utility's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

The utility has two options if a show cause order is issued. The utility may respond and request a hearing pursuant to Sections 120.569 and 120.57, F.S. If the utility requests a hearing, a hearing will be scheduled to take place before the Commission, after which a final determination will be made. The utility may respond to the show cause order by remitting the fine. If the utility pays the fine, this show cause matter is considered resolved, and the docket closed.

In the event the utility fails to timely respond to the show cause order, the utility is deemed to have admitted the factual allegations contained in the show cause order. The utility's failure to timely respond is also a waiver of its right to a hearing. Additionally, a final order will be issued imposing the sanctions set out in the show cause order.

Pursuant to Section 367.161(1), F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than $5,000 for each such day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 367, F.S. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the utility and is enforceable by the Commission as a statutory lien. As an alternative to the above remedies, Section 367.161(2), F.S., permits the Commission to amend, suspend, or revoke a utility's certificate for any such violation.

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21 See Order No. PSC-11-0250-FOF-WU, issued June 13, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.; Order No. PSC-07-0275-SC-SU, issued April 2, 2007, in Docket No. 060406-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company; and Order No. PSC-05-0104-SC-SU, issued January 26, 2005 in Docket Nos. 020439-SU and 020331-SU; In re: Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation; In re: Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes.

Willfulness is a question of fact.[22] Therefore, part of the determination the Commission must make in evaluating whether to penalize a utility is whether the utility willfully violated the rule, statute, or order. Section 367.161, F.S., does not define what it is to "willfully violate" a rule or order. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission stated that "willful implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." The plain meaning of "willful" typically applied by the Courts in the absence of a statutory definition, is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law." Fugate v. Fla. Elections Comm'n, 924 So. at 76.

By knowingly failing to comply with the provisions of Section 367.145, F.S., Country Club's acts were "willful" in the sense intended by Section 367.161, F.S., and Fugate. Accordingly, staff believes that Country Club has not complied with Sections 350.113 and 367.145, F.S., or Rule 25-30.120, F.A.C. Therefore, staff recommends that Country Club should be ordered to show cause, in writing within 21 days, why it is not obligated to remit payment in the amount of $46,836.91, for delinquent Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011 and 2012 on or before April 17, 2014. Staff recommends that the Utility be directed to pay its delinquent RAFs in the amount of $8,248.08 for 2010, $11,269.13 for 2011, and $11,293.07 for 2012, including statutory interest and penalties in the amounts of, $6,326.33 for 2010, $5,521.87 for 2011, and $4,178.43 for 2012. In addition, Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Country Club Utilities, Inc., as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 140031-WS, In re: Initiation of show cause proceedings against Country Club Utilities, Inc. in Highlands County for violations of Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Country Club files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.

[22] Fugate v. Fla. Elections Comm'n, 924 So. 2d 74, 75 (Fla. 1st DCA 3006), citing, Metro. Dade County v. State Dep't of Envtl. Prot., 714 So. 2d 512, 517 (Fla. 3d DCA 1998).

8. In the event that Country Club fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Staff does not recommend the Commission imposing an additional penalty, pursuant to Sections 367.145 and 367.161, F.S., and Rule 25-30.120, F.A.C., for Country Club's failure to comply with statutes and rules. Section 350.113, F.S., and Rule 25-30.120, F.A.C., already impose statutory penalty and interest upon untimely submitted RAFs. As such, staff believes that the imposition of an additional penalty is not likely to further Commission efforts in bringing the Utility into compliance.

Finally, should Country Club fail to remit payment of its delinquent RAFs, penalties and interest by April 17, 2014, staff requests the Commission authorize the Office of the General Counsel to take whatever actions reasonably necessary in order to pursue collection of the delinquent RAFs, penalties and interest, as set out in Issue 2.

Issue 2: Should this docket be closed?

Recommendation: If Country Club Utilities, Inc. pays its delinquent RAFs, in the amount of $30,810.28, plus penalties and interest in the amount of $16,026.63, by April 17, 2014, the docket should be closed administratively. If Issue 1 is approved and Country Club timely responds in writing to the Order to Show Cause, the docket should remain open to allow for the appropriate processing of the response. If Issue 1 is approved and Country Club does not pay its delinquent RAFs and penalties and interest, or does not respond to the Order to Show Cause, the docket should remain open to allow the Commission to pursue collection of the amounts owed by the Utility. Additionally, staff requests the Commission authorize the Office of the General Counsel to pursue all reasonable means necessary to collect the amounts owed by Country Club, including, but not limited to, initiating action in circuit court, pursuant to Section 367.121(1)(g) and (j). (Corbari, Teitzman)

Staff Analysis:

If Country Club Utilities, Inc. pays its delinquent RAFs, in the amount of $30,810.28, plus penalties and interest in the amount of $16,026.63, by April 17, 2014, the docket should be closed administratively. If Issue 1 is approved and Country Club timely responds in writing to the Order to Show Cause, the docket should remain open to allow for the appropriate processing of the response. If Issue 1 is approved and Country Club does not pay its delinquent RAFs and penalties and interest, or does not respond to the Order to Show Cause, the docket should remain open to allow the Commission to pursue collection of the amounts owed by the Utility. Additionally, staff requests the Commission authorize the Office of the General Counsel to pursue all reasonable means necessary to collect the amounts owed by Country Club, including, but not limited to, initiating action in circuit court, pursuant to Section 367.121(1)(g) and (j). (Corbari, Teitzman)

COUNTRY CLUB UTILITIES, INC. (WS654)

DELINQUENT REGULATORY ASSESSMENT FEES

YEAR	REVENUES	RAFS (4.5%)	PAYMENTS	PENALTY (25%)	INTEREST (THRU 03/13/14)	TOTAL DUE
2010	$238,846.00	$10,748.08	$2,500.00	$2,687.02	$3,639.31	$14,574.41
2011	$250,425.00	$11,269.13	$0.00	$2,817.28	$2,704.59	$16,791.00
2012	$250,957.00	$11,293.07	$0.00	$2,823.27	$1,355.16	$15,471.50
TOTALS	$740,228.00	$33,310.28	$2,500.00	$8,327.57	$7,699.06	$46,836.91

RAF BREAKDOWN BY SERVICE & YEAR

2010	REVENUES	RAFS (4.5%)	PAYMENTS	PENALTY (25%)	INTEREST (THRU 03/13/14)	TOTAL DUE
WATER	$144,853.00	$6,518.39	$1,250.00	$1,629.60	$2,231.61	$9,129.60
SEWER	$93,993.00	$4,229.69	$1,250.00	$1,057.42	$1,407.70	$5,444.81
TOTALS	$238,846.00	$10,748.08	$2,500.00	$2,687.02	$3,639.31	$14,574.41

2011	REVENUES	RAFS (4.5%)	PAYMENTS	PENALTY (25%)	INTEREST (THRU 03/13/14)	TOTAL DUE
WATER	$149,425.00	$6,724.13	$0.00	$1,681.03	$1,613.79	$10,018.95
SEWER	$101,000.00	$4,545.00	$0.00	$1,136.25	$1,090.80	$6,772.05
TOTALS	$250,425.00	$11,269.13	$0.00	$2,817.28	$2,704.59	$16,791.00

2012	REVENUES	RAFS (4.5%)	PAYMENTS	PENALTY (25%)	INTEREST (THRU 03/13/14)	TOTAL DUE
WATER	$151,060.00	$6,797.70	$0.00	$1,699.43	$815.72	$9,312.85
SEWER	$99,897.00	$4,495.37	$0.00	$1,123.84	$539.44	$6,158.65
TOTALS	$250,957.00	$11,293.07	$0.00	$2,823.27	$1,355.16	$15,471.50

Item 5

FILED FEB 27, 2014
DOCUMENT NO. 00941-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Maurey) ALM CRB SCK
Division of Economics (Bruce) PAR J.W.D
Division of Engineering (Rieger)
Office of the General Counsel (Corbari, Teitzman) KFC/AST

RE: Docket No. 120172-WS – Application for staff-assisted rate case in Highlands County by Country Club Utilities, Inc.

AGENDA: 03/13/14 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: 5-13-14 ~~05/09/14~~ (15 month effective date (SARC))

SPECIAL INSTRUCTIONS: Please place this item immediately following the item regarding Docket No. 140031-WS.

Case Background

Country Club Utilities, Inc. (Country Club or Utility) is a Class C utility serving approximately 404 water and 401 wastewater customers in Highlands County. The Utility's service territory is located in the Southern Water Use Caution Area of the Southwest Florida Water Management District. Water and wastewater rates were last established for this Utility in an original certificate case initiated in 1991.[1]

[1] See Order No. 25788, issued February 24, 1992, in Docket No. 910792-WS, In re: Application for water and sewer certificates in Highlands County by Country Club of Sebring.

In February 2007, the Commission approved the Utility's application for transfer of majority organizational control and for a name change on Certificate Nos. 540-W and 468-S.[2] Ownership of the family-owned Utility was transferred from Mr. Roland A. Harris, the father, to Mr. R. Greg Harris, the son, and the name of the Utility was changed from Country Club of Sebring, Inc. to Country Club Utilities, Inc.

On June 13, 2012, Country Club filed an application for a staff-assisted rate case (SARC) and a docket was opened to process that application. This recommendation addresses a set of circumstances which leads staff to request that the SARC be dismissed and this docket be closed. The Commission has jurisdiction pursuant to Section 367.0814, Florida Statutes (F.S.).

[2] See Order No. PSC-07-0121-FOF-WS, issued February 12, 2007, in Docket No. 060352-WS, In re: Application for transfer of majority organizational control of Country Club of Sebring, Inc. in Highlands County and for name change on Certificate Nos. 540-W and 468-S to Country Club Utilities, Inc.

Discussion of Issues

Issue 1: Should this staff-assisted rate case be dismissed and the docket closed?

Recommendation: Yes. The lack of cooperation demonstrated by the Utility has made it difficult for staff to effectively fulfill its duties pursuant to Section 367.0814, F.S. Therefore, this docket should be closed. (Maurey, Cobari)

Staff Analysis: Rule 25-30.455(5) through (8), Florida Administrative Code (F.A.C.), states, in pertinent part, the following:

> (5) Within 30 days of receipt of the completed application, the committee shall evaluate the application and determine the petitioner's eligibility for staff assistance. . . .
>
> (6) Upon reaching a decision to officially accept or deny the application, the Director of the Division of Economic Regulation shall notify the petitioner by letter and initiate staff assistance for the accepted applicant.
>
> (7) The official date of filing will be 30 days after the date of the letter notifying the applicant of the official acceptance of the application by the Commission.
>
> (8) In arriving at a recommendation whether to grant or deny the petition, the following shall be considered: . . .
>
> (d) Whether the petitioner has paid applicable regulatory assessment fees.

As stated in the Case Background, the Commission received the Utility's application for staff assistance on June 13, 2012. On July 13, 2012, the Utility was notified that it was eligible for a SARC and that August 11, 2012, would be the official filing date for the case.

On January 3, 2013, the staff Audit Report was issued. Based upon technical staff's review of the Audit Report and the financial records produced by the Utility, it was determined that the resulting revenue requirement from the documented levels of utility-related investment and operating costs was insufficient to support an increase in rates. The Utility filed a letter on February 5, 2013, identifying concerns it had with certain findings in the Audit Report. A conference call was held on February 18, 2013, to discuss the audit process and to afford the Utility the opportunity to explain its concerns. The Utility requested, and was provided with, a copy of the audit work papers in order for it to prepare a substantive response to the Audit Report. In addition, the issue of Country Club's past due regulatory assessment fees (RAFs) for the years 2010 and 2011 in the amount of approximately $33,000 was also discussed.

On March 4, 2013, Country Club informed staff that it had entered negotiations with the City of Sebring for a possible sale of the utility. Country Club requested that it be excused from responding to the Audit Report while these discussions continued. In addition, the Utility offered to enter into a payment plan with respect to its past due RAF balance.

On March 6, 2013, the Utility formally requested a six-month abatement of its SARC. Country Club provided a six-month waiver of the statutory clock for processing the SARC in order to afford the Utility and the City of Sebring time to complete the due diligence process and enter into a sale agreement. In addition, Country Club confirmed its intent to pay $500 per month towards its past due RAF amount and to pay the remaining outstanding balance at closing when the utility was sold.

On August 13, 2013, Country Club informed staff that it was unable to reach an agreement with the City of Sebring regarding a sale of the utility and that it wanted to resume the SARC. Staff informed Country Club that it was prepared to move forward with the SARC but, in order to do so, the Utility would have to complete its response to the Audit Report. In particular, the Utility was requested to provide documentation to support any additional investment and operating costs it believes were not adequately recognized in the audit.

When the September payment under its RAF payment plan was not received, staff contacted the Utility. Country Club informed staff that it would not be making any more payments. In total, the Utility paid $2,500.00 under the payment plan, which was applied to the past due balance for 2010. In addition, the Utility did not pay its 2012 RAFs of $11,293.07 when due on March 31, 2013.

By regular and certified letter dated January 9, 2014, legal staff informed Country Club that if payment in the amount of $46,220.71 for the RAFs, including penalties and interest, for the years 2010 – 2012 was not received by January 15, 2014, staff may be forced to open a docket and initiate show cause proceedings against the Utility. By regular and certified letter dated February 11, 2014, legal staff advised Country Club that it had opened a docket to initiate show cause proceedings against the Utility for violation of Commission rules and regulations. Staff's recommendation regarding Country Club's failure to pay RAFs is addressed in Docket No. 140031-WS, scheduled for this same Agenda Conference.

Staff is aware of only two recommendations to dismiss a SARC after the acceptance of a utility's application. Staff notes that the Commission denied the staff recommendation in the Tymber Creek case and ordered the utility to provide staff any information required.[3] However, the Commission agreed with the staff recommendation in the Francis I case and closed the docket in this latter case.[4] Staff believes the instant case is distinguishable from the Tymber Creek case (which dealt with an argumentative and uncooperative owner) and is more analogous with the Francis I case (failure to provide sufficient supporting documentation). By definition, a SARC is a participatory process. In order to qualify for a rate increase, a utility must provide documentation supporting its level of investment and operating costs. It must actively participate in the process by being forthcoming with adequate documentation and financial records. Based on the information provided by the Utility to date, Country Club has failed to demonstrate that it is entitled to a rate increase.

[3] See Order No. 23612, issued October 15, 1990, in Docket No. 900501, In re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities.
[4] See Order No. PSC-11-0477-FOF-SU, issued October 21, 2011, in Docket No. 110086-SU, In re: Application for staff-assisted rate case in Highlands County by Francis I Utility, LLC.

Absent the Utility's cooperation and active participation, it is impossible for staff to meet the statutory deadlines applicable to SARCs in accordance with Section 367.0814, F.S. Due to the lack of adequate documentation to support a greater revenue requirement for this Utility, staff does not believe it is an appropriate use of resources to continue its attempts to process this SARC. Therefore, staff recommends this SARC be dismissed and the docket closed.

Item 6

FILED FEB 27, 2014
DOCUMENT NO. 00935-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Beard) CSB
Office of the General Counsel (Tan)

RE: Docket No. 130300-TX – Request for relinquishment of eligible telecommunications carrier (ETC) designation in Florida, by Express Phone Service, Inc.

AGENDA: 03/13/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

By Order No. PSC-00-1495-PAA-TX, issued August 18, 2000, in Docket No. 000776-TX, the Florida Public Service Commission (PSC or Commission) approved the transfer of Competitive Local Exchange Company Certificate No. 5636 to Express Phone Service, Inc. By Order No. PSC-08-0836-PAA-TX, issued December 24, 2008, in Docket No. 080169-TX, the Commission designated Express Phone Service, Inc. as an ETC in the AT&T and Verizon service areas of Florida.

By Order No. PSC-14-0054-FOF-TX, issued January 27, 2014, in Docket No. 130299-TX, the Commission granted Express Phone Service, Inc.'s request to cancel Certificate No. 5636 effective December 30, 2013. On December 31, 2013, Express Phone Service, Inc. filed a

request for relinquishment of its ETC designation in Florida. The Commission is vested in jurisdiction in this matter, pursuant to Section 364.10, Florida Statutes and C.F.R. §54.205.

Discussion of Issues

Issue 1: Should the Commission grant Express Phone Service, Inc.'s request for relinquishment of its ETC designation in AT&T's and Verizon's service areas in Florida without prejudice?

Recommendation: Yes, the Commission should grant Express Phone Service, Inc.'s request for relinquishment of its ETC designation in AT&T's and Verizon's service areas in Florida without prejudice. (Beard, Tan)

Staff Analysis: The PSC granted ETC designation to Express Phone Service, Inc. in the non-rural Florida service areas of AT&T and Verizon. On December 31, 2013, Express Phone Service, Inc. filed a request to relinquish its designation as an ETC in the state of Florida.

Federal rules allow an ETC to relinquish its ETC designation. 47 C.F.R. §54.205(a) provides that:

> A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

Federal rules also require state commissions to ensure that existing customers are served. 47 C.F.R. §54.205(b) provides that:

> Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

The requirement in 47 C.F.R.§54.205(b) to protect existing customers is moot in this instance since Express Phone Service, Inc. has no existing customers and its CLEC certification has been cancelled. Therefore staff recommends that the Commission grant Express Phone Service, Inc.'s request for relinquishment of its ETC designation in AT&T and Verizon's non-rural service areas in Florida without prejudice.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Tan)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

Item 7

FILED FEB 27, 2014
DOCUMENT NO. 00942-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lee)
Division of Accounting and Finance (Brown)
Division of Economics (Roberts)
Office of the General Counsel (Brownless)

RE: Docket No. 130055-WS – Application for approval of transfer of LP Utilities Corporation's water and wastewater systems and Certificate Nos. 620-W and 533-S, to LP Waterworks, Inc., in Highlands County.

AGENDA: 03/13/14 – Regular Agenda – Proposed Agency Action for Issue 2 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

L.P. Utilities Corporation (Utility or LPUC) is a Class C water and wastewater utility providing service in Highlands County. A significant portion of LPUC's residential customer base is seasonal. Based on the billing data for the 12 months ending May 31, 2013, the Utility served approximately 370 individually metered residential and several general service water and wastewater customers in Camp Florida Resort, also known as Camp Florida Resort RV Park (Resort or Park). In addition, the Utility provided water only service to approximately 54 residential customers in the Hickory Hills and Lake Ridge Estates subdivisions and a few general service customers outside the Park.

On February 26, 2002, the Commission issued Original certificates Nos. 620-W and 533-S to Woodlands of Lake Placid by order, PSC-02-0250-PAA-WS.[1] Subsequently, on November 22, 2004, the Commission approved a transfer of Certificate Nos. 620-W and 533-S from The Woodlands of Lake Placid to LPUC in Highlands County.[2] By this order, the Commission also denied transfer of the wastewater systems from LPUC to Camp Florida Property Owners Associations, Inc. and denied transfer of Majority Organizational Control of LPUC from Anbeth Corporation to Camp Florida Property Owners Association.

On February 28, 2013, an application was filed in this docket for the transfer of LPUC water and wastewater systems and Certificate Nos. 620-W and 533-S to LP Waterworks, Inc. (LPWWI). The closing occurred on December 27, 2012, contingent upon Commission approval pursuant to Section 367.071(1), Florida Statutes (F.S.). On May 24, 2013, LPWWI filed an application for staff-assisted rate case (SARC) in Docket No. 130153-WS, which is scheduled for Commission Conference on April 10, 2014.

The Commission has jurisdiction pursuant to Section 367.071, F.S.

[1] Docket 990374–WS, In re: Application for certificates to operate a water and wastewater utility in Highlands County by The Woodlands of Lake Placid, L.P., and for deletion of portion of wastewater territory in Certificate No. 361-S held by Highlands Utilities Corporation. PAA Order PSC-02-1739-PAA-WS granting in part and denying in part Woodland's application; consolidating with Docket 990374-WS; granting temporary rates, approving decrease in water rates and increase in wastewater rates; utility shall prepare monthly reports on quarterly basis for period of two years; protest due 12/31/02; dockets to close administratively upon staff's verification of specified completions. (JDBPB)

[2] See Order No. PSC-04-1162-FOF-WS, issued November 22, 2004, in Docket No. 030102-WS, In re: Application for Certificate Nos. 620-W and 533-S in Highlands County from The Woodlands of Lake Placid, L.P. to L.P. Utilities Corporation.

Discussion of Issues

Issue 1: Should the transfer of L.P. Utilities' water and wastewater systems and Certificate Nos. 620-W and 533-S to LP Waterworks, Inc. be approved?

Recommendation: Yes. The transfer is in the public interest and should be approved effective the date of the Commission vote. The territory being transferred is described in Attachment A. The resultant order should serve as the water and wastewater certificates for LP Waterworks, Inc. (LPWWI) and should be retained as such. Pursuant to Rule 25-9.044(1), Florida Administrative Code (F.A.C.), the Utility's existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. LPWWI should be responsible for annual reports and regulatory assessment fees (RAFs) for 2013 and all future years. (Lee, T. Brown)

Staff Analysis: On February 28, 2013, LPWWI filed an application for approval of the transfer of LPUC's water and wastewater systems and Certificate Nos. 620-W and 533-S to LPWWI in Highlands County. The application is in compliance with the governing statute, Section 367.071, F.S., and Administrative Rules concerning applications for transfer of certificates. The closing occurred on December 27, 2012, contingent upon Commission approval, pursuant to Section 367.071(1), F.S.

Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S. and Rule 25-30.030, F.A.C. No objections to the transfer were timely filed with the Commission. The application contains a description of the Utility's authorized service territory, which is appended to this recommendation as Attachment A. The application contains a copy of a deed that was executed on December 27, 2012, and recorded with the Highlands County Clerk of Courts, as evidence that LPWWI owns the land upon which the water and wastewater treatment facilities are located pursuant to Rule 25-30.037(2)(q), F.A.C.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(h) and (i), F.A.C., the application contains a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, leases, or debt of LPUC that must be disposed of with regard to the transfer. According to the Purchase Agreement, the total purchase price is $165,000 for the portion of the assets attributable to water and wastewater service, with 70 percent of the purchase price paid in cash at the closing. The remaining 30 percent is to be paid within 30 days of the final official approval date of the transfer established by the Commission. As noted, the sale took place on December 27, 2012, subject to Commission approval, pursuant to Section 367.071(1), F.S.

Facility Description and Compliance

LPUC's water treatment plant (WTP) plant is permitted at 350,000 gallons per day (gpd) and has two wells rated at 380 and 900 gallons per minute (gpm). The raw water is injected with chlorine, discharged into the hydropneumatic tank and channeled into the distribution system. The Utility's wastewater treatment plant (WWTP) is an extended aeration, activated sludge plant with one lift station. The wastewater plant is permitted at 50,000 gpd based on the monthly average daily flow. Liquid disinfection is applied prior to the treated wastewater effluent flowing into the percolation pond.

Staff has verified that the water and wastewater systems are currently in compliance with all applicable standards set by the Florida Department of Environmental Protection.

Technical and Financial Ability

Pursuant to Rule 25-30.037(1)(j), F.A.C., the application contains statements describing the technical and financial ability of the applicant to provide service to the proposed service area. According to the application, LPWWI has considerable Florida-specific expertise in private utility ownership within the State. The directors of LPWWI have been in the water and wastewater utility management, operations, and maintenance industry for many years, providing service to more than 550 Florida facilities throughout their careers. Further, the application indicates that the President and Vice President of LPWWI have 28 and 36 years, respectively, of operation or ownership of utilities, including a number of utilities previously regulated by the Commission. The application indicates that operating, billing, collection, and customer services will be provided by contract through an affiliated entity, U.S. Water Services Corporation, which currently provides such services to utilities serving approximately 80,000 customers in Florida. Staff reviewed the personal financial statements for the President and Vice President of LPWWI.[3] In addition, the President of U.S. Water is also a part owner of other systems regulated by the Commission, including Harbor Waterworks, Inc.,[4] Lakeside Waterworks, Inc., [5]

[3] See Document No. 02835-12 in Docket No. 120148-WU, In re: Application for approval of transfer of Harbor Hills Utility, L.P. water system and Certificate No. 522-W in Lake County to Harbor Waterworks, Inc.
[4] See Order No. PSC-12-0587-PAA-WU, issued October 29, 2012, in Docket No. 120148-WU, In re: Application for approval of transfer of Harbor Hills Utility, L.P. water system and Certificate No. 522-W in Lake County to Harbor Waterworks, Inc.
[5] See Order No. PSC-13-0425-PAA-WS, issued September 18, 2013, in Docket No. 120317-WS, In re: Application for approval to transfer water and wastewater system Certificate Nos. 567-W and 494-S in Lake County from Shangri-La by the Lake Utilities, Inc. to Lakeside Waterworks, Inc.

and several of the systems previously owned by Aqua Utilities Florida (Aqua).[6] The transfer applications to U.S. Water of the six remaining former Aqua systems are still pending before the Commission. Based on the above, it appears that LPWWI has demonstrated the technical and financial ability to provide service to the existing service territory.

Rates and Charges

The Utility's rates and charges were last approved in a SARC in 2003.[7] The rates were subsequently reduced to reflect the four-year rate reduction required by Section 367.0816, F.S., in 2007. The Utility's existing rates and charges are shown on Schedule Nos. 3 and 4. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, staff recommends that the Utility's existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding. On May 24, 2013, LPWWI filed an application for a SARC in Docket No. 130153-WS,[8] which is scheduled for the Commission Conference on April 10, 2014.

Regulatory Assessment Fees and Annual Reports

Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2012. LPWWI will be responsible for filing the Utility's annual reports and paying RAFs for 2013 and all future years.

Conclusion

Based on the above, staff recommends that the transfer of LPUC's water and wastewater systems and Certificate Nos. 620-W and 533-S to LPWWI is in the public interest and should be approved effective the date of the Commission vote. The territory being transferred is described in Attachment A. The resultant order should serve as LPWWI's water and wastewater certificates and should be retained as such. The Utility's existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. LPWWI should be responsible for annual reports and RAFs for 2013 and all future years.

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[6] See Docket No. 130171-WS, In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 507-W and 441-S of Aqua Utilities Florida, Inc. to The Woods Utility Company in Sumter County; Docket No. 130172-WS, In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 501-W and 435-S of Aqua Utilities Florida, Inc. to Sunny Hills Utility Company in Washington County; Docket No. 130173-WU, In re: Application for approval of transfer of certain water and wastewater facilities and Certificate No. 053-W of Aqua Utilities Florida, Inc.'s to Lake Osborne Waterworks, Inc. in Palm Beach County; Docket No. 130174-WU, In re: Application for approval of transfer of Aqua Utilities Florida, Inc.'s water systems and Certificate No. 002-W in Brevard County; Docket No. 130175-WS, In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 422-W and 359-S of Aqua Utilities Florida, Inc. to HC Waterworks, Inc. in Highlands County; and Docket No. 130176-WS, In re: Application for approval of Transfer of certain water and wastewater facilities and Certificate Nos. 507-W and 441-S of Aqua Utilities Florida, Inc. to Jumper Creek Utility Company in Sumter County.

[7] See Order No. PSC-03-1051-FOF-WS, issued September 22, 2003, in Docket No. 020010-WS, In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L. P.

[8] Docket No. 130153-WS, In re: Application for staff-assisted rate case in Highlands County, by L.P. Utilities Corporation c/o LP Waterworks, Inc.

Issue 2: What is the appropriate net book value for LPWWI's water and wastewater systems for transfer purposes and should an acquisition adjustment be approved?

Recommendation: The net book value (NBV) of LPWWI's water and wastewater systems for transfer purposes should be $79,237 and $98,690, respectively, as of December 27, 2012. An acquisition adjustment should not be included in rate base. Within 30 days of the date of the final order, LPWWI should be required to provide general ledgers which show its books have been updated to reflect the Commission-approved balances as of December 27, 2012. The adjustments should be reflected in the Utility's 2013 annual report when filed. (T. Brown)

Staff Analysis: Rate base for the Utility was last established as of December 31, 2001, in the amounts of $218,635 for the water system and $191,391 for the wastewater system, pursuant to Order No. PSC-02-1739-PAA-WS.[9] Later, as part of a SARC, an audit was conducted to establish rate base as of December 31, 2010, in Docket No. 110208-WS.[10] The Company's request was subsequently withdrawn; however, the audit was used as a starting point for the audit conducted in the instant docket.[11] The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. Staff's recommended NBV, as described below, is shown on Schedule Nos. 1 and 2.

Utility Plant in Service (UPIS)

The Utility's general ledger reflected water and wastewater UPIS balances of $469,295 and $377,807, respectively, as of December 27, 2012. The staff auditor discovered that several Commission-ordered adjustments from the Utility's 2002 rate proceeding had not been properly made. In addition, audit staff also posted additions and retirements to UPIS and reclassified plant additions to the correct National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) account when necessary. The net effect of these adjustments is an increase to water and wastewater UPIS of $27,922 and $6,191, respectively. Therefore, staff recommends water and wastewater UPIS balances as of December 27, 2012, of $497,217 and $383,998, respectively, as shown on Schedule Nos. 1 and 2.

Land and Land Rights

The value of land and land rights was last established by Order No. PSC-02-1739-PAA-WS. At that time, the Commission approved land values of $20,598 for water and $36,000 for wastewater. No adjustments have been identified by staff. Therefore, staff recommends approval of land and land rights of $20,598 for water and $36,000 for wastewater.

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[9] See Order No. PSC-02-1739-PAA-WS, issued December 10, 2002, in Docket No. 020010-WS, In re: Application for staff assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P.

[10] Docket No. 110208-WS, In re: Application for staff-assisted rate case in Highlands County by L.P. Utilities Corporation.

[11] See Document Nos. 03991-13, Auditor's Report, L.P. Waterworks, Inc., filed July 15, 2013, and 00588-14, Revised Audit Report Pages; L.P. Waterworks, Inc., filed February 5, 2014.

Accumulated Depreciation

The Utility's general ledger reflected accumulated depreciation balances of $272,636 and $297,869, for water and wastewater respectively, as of December 27, 2012. As noted above, audit staff determined that the Utility did not make certain plant adjustments required in its last rate proceeding. In addition, the adjustments to UPIS balances described above and the use of appropriate depreciation rates prescribed in Rule 25-30-140, F.A.C. resulted in additional adjustments to accumulated depreciation. As a result, accumulated depreciation should be increased by $33,590 for water and decreased by $24,694 for wastewater. Therefore, staff recommends water and wastewater accumulated depreciation balances as of December 27, 2012, of $306,226 and $273,175, respectively, as shown on Schedule Nos. 1 and 2.

Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC

As of December 27, 2012, the Utility's general ledger reflected water and wastewater CIAC balances of $204,307 and $65,600, respectively; and, accumulated amortization of CIAC balances of $103,313 and $39,129, respectively. Audit staff adjusted water CIAC by $61,339 for prior Commission-ordered adjustments that were not made and for CIAC additions that the Utility did not record. A $26,800 adjustment was also made to wastewater CIAC for CIAC additions that the Utility did not record. The water and wastewater accumulated amortization of CIAC balances were adjusted by $29,981 and $5,138, respectively, for prior Commission-ordered adjustments that were not made. As a result, staff recommends that the Utility's CIAC balances as of December 27, 2012, should be $265,646 and $92,400, respectively; and accumulated amortization of CIAC balances should be $133,294 and $44,267, respectively, as shown on Schedule Nos. 1 and 2.

Net Book Value

The Utility's general ledger reflected NBVs of $116,263 and $89,467, respectively, for water and wastewater as of December 27, 2012. Based on the adjustments described above and as shown on Schedule Nos. 1 and 2, staff recommends that the NBVs for the Utility's water and wastewater systems as of December 27, 2012, should be $79,237 and $98,690, respectively, for a total NBV of $177,927. Schedule Nos. 1 and 2 also contain the NARUC USOA balances for UPIS and accumulated depreciation as of December 27, 2012.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. The Utility and its assets were purchased for $165,000. As stated above, staff has determined the appropriate combined NBV for water and wastewater to be $177,927. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than NBV. Based on a total net book value of $177,927, as of December 27, 2012, the purchase price would result in a potential negative acquisition adjustment of $12,927. Pursuant to Rule 25-30.0371(3), F.A.C., if the purchase price is greater than 80 percent of NBV, a negative acquisition adjustment will not be included in rate base. Eighty percent of the net book value of this system would be $142,342.

Since the purchase price of $165,000 is greater than 80 percent of the net book value, staff recommends that no negative acquisition adjustment be made in this case.

Conclusion

Based on the above, staff recommends that the NBV for transfer purposes should be $79,237 for the water system and $98,690 for the wastewater system, as of December 27, 2012. No acquisition adjustment should be included in rate base. Within 30 days of the date of the final order, LPWWI should be required to provide general ledgers which show its books have been updated to reflect the Commission-approved balances as of December 27, 2012. The adjustments should be reflected in the Utility's 2013 annual report when filed.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, the docket should be closed administratively after LPWWI has provided proof that its general ledgers have been updated to reflect Commission-approved balances as of December 27, 2012, along with a written statement that these adjustments will be reflected in the Utility's 2013 annual report. (Brownless)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, the docket should be closed administratively after LPWWI has provided proof that its general ledgers have been updated to reflect Commission-approved balances as of December 27, 2012, along with a written statement that these adjustments will be reflected in the Utility's 2013 annual report.

LP WATERWORKS, INC.

HIGHLANDS COUNTY

WATER SERVICE AREA

Commence at the Northwest corner of Section 17, Township 37 South, Range 30 East, Highlands County, Florida; thence East along the North line of said Section 17, 824 feet, more or less, to the intersection of the North line of said Section 17 and the East right-of-way line of U.S. Highway 27 extended, being the Point of Beginning; thence continue East along the said North line of Section 17, 3700 feet, more or less, to the shoreline of Lake Grassy; thence South and Southwesterly along the shoreline of said Lake Grassy, 5600 feet, more or less, to the South line of said Section 17 and the said East right-of-way line of U.S. Highway 27; thence Northwest along said East right-of-way line, 5950 feet, more or less, to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

LP Waterworks, Inc.

Pursuant to

Certificate Number 620-W

to provide water service in Highlands County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
PSC-02-0250-PAA-WS	02/26/2002	990374-WS	Original In Existence
PSC-04-1162-FOF-WS	11/22/2004	030102-WS	Transfer
*	*	130055-WS	Transfer

***Order Number and date to be provided at time of issuance.**

LP WATERWORKS, INC.

HIGHLANDS COUNTY

WASTEWATER SERVICE AREA

Begin at a point on the North line of Section 17, Township 37 South, Range 30 East, Highlands County, Florida, 660 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Easterly along the North line of Section 17 a distance of 2,975 feet more or less to the Shore line of Lake Grassy, thence run Southerly and Southwesterly along the shore line of Lake Grassy (a straight line to this point is a distance of 2,250 feet more or less) to a point that is 413.15 feet North of the South line of the Northeast 1/4 and the Northwest 1/4 of Section 17; thence run Westerly along a line 413.15 feet North of the South line of said Northeast 1/4 and 413.15 feet North of the South line of said Northwest 1/4 to a point that is 600 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Northwesterly, 660 feet East of and parallel to the Easterly right-of-way line of US Highway 27 to the Point of Beginning. And, The North 300 feet of the South 750 feet of the West 410 feet of the East 1/2 of the East 1/2 of the Southwest 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida. And, The West 210 feet of the South 450 feet of the East 1/2 of the East 1/2 of the SW 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida.

Township 37 South, Range 30 East, Section 17- That portion of Lake Placid Camp Florida Resort, as recorded in Plat Book 15, Page 93, Highlands County, Florida, previously being part of the territory described in Highlands Utilities Corporation service area, being more particularly described as follows: Commence on the North line of Section 17, Township 37 South, Range 30 East, 660 feet Easterly of, as measured at right angles to the East right of way line of U.S. 27; thence Southeasterly along a line that is 660 feet East of and parallel with the said East right of way line, 300 feet more or less to the North line of said Lake Placid Camp Florida Resort and the **Point of Beginning**; thence continuing South easterly along the line 660 feet East of and parallel with said right of way line, 778.39 feet more or less to the South line of said Lake Placid Camp Florida Resort; the following 15 calls are along the boundary of said Lake Placid Camp Florida Resort, (1) thence N81°58"06"W, 29.61 feet; (2) thence N35°18'13"W, 256.10 feet; (3) thence S88°19'15" W, 135.89 feet; (4) N69°05'48"W, 8.86 feet; (5) thence S65°07'11"W, 291.84 feet; (6) thence N24°52'49"W, 174.00 feet; (7) thence S65°07'11"W, 165.76 feet to said right of way line; (8) thence N24°49'46"W, 157.95 feet; (9) thence N65°08'22"E, 25.57 feet; (10) thence N24°51'38"W, 219.42 feet; (11) thence N80°20'00"E, 107.91 feet; (12) thence N87°00'00"E, 218.15 feet; (13) thence N 50°00'00"E, 166.49 feet; (14) thence N75°29'10"E, 115.12 feet; (15) thence along the arc of a curve to the right with a central angle of 08°24'16", whose radius is 377.51 feet, with a chord bearing of N79°41'18"E, and a chord distance of 55.33 feet, an arc distance of 55.38 feet to the **Point of Beginning**.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

LP Waterworks, Inc.

Pursuant to

Certificate Number 533-S

to provide wastewater service in Highlands County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
PSC-02-0250-PAA-WS	02/26/2002	990374-WS	Original In Existence
PSC-04-1162-FOF-WS	11/22/2004	030102-WS	Transfer
*	*	130055-WS	Transfer

***Order Number and date to be provided at time of issuance.**

LP Utilities Corporation

LP Waterworks, Inc.

Water System

Schedule of Net Book Value as of December 27, 2012

Description	Utility Proposed	Adjustment		Staff Recommended
Utility Plant In Service	$469,295	$27,922	A	$497,217
Land & Land Rights	20,598	0		20,598
Accumulated Depreciation	(272,636)	(33,590)	B	(306,226)
CIAC	(204,307)	(61,339)	C	(265,646)
Amortization of CIAC	103,313	29,981	D	133,294
Net Book Value	$116,263	($37,026)		$79,237

Explanation of Staff's Recommended
Adjustments to Net Book Value as of December 27, 2012
Water

Explanation	**Amount**
A. Utility Plant In Service (UPIS)	
1) To reflect adjustments from Order No. PSC-02-1739-PAA-WS.	$29,157
2) To reflect plant additions.	2,180
3) To remove non-utility items.	(2,335)
4) To reflect retirements.	(1,080)
Total UPIS	$27,922
B. Accumulated Depreciation	
To reflect appropriate amount of accumulated depreciation.	($33,590)
C. Contributions in Aid of Construction (CIAC)	
To reflect adjustments from Order No. PSC-02-1739-PAA-WS and CIAC additions that the Utility did not record.	($61,339)
D. Amortization of CIAC	
To reflect appropriate amount of amortization of CIAC.	$29,981
Total Adjustments to Net Book Value as of December 27, 2012.	($37,026)

LP Utilities Corporation

LP Waterworks, Inc.

Schedule of Staff Recommended Account Balances as of December 27, 2012

Account No.	Description	Water UPIS	Accumulated Depreciation
301	Organization	$414	$119
304	Structures & Improvements	66,428	53,962
307	Wells	41,707	24,192
309	Supply Mains	1,040	439
310	Power Generation Equipment	9,706	5,350
330	Dist. Reservoirs & Standpipes	32,416	22,346
331	Transmission & Dist. Mains	206,312	103,506
333	Services	58,563	37,281
334	Meter and Meter installation	72,695	54,506
335	Hydrants	5,364	3,051
336	Backflow Prevention Devices	1,874	1,183
340	Office Furniture & Equipment	698	291
	Total	$497,217	$306,226

LP Utilities Corporation

LP Waterworks, Inc.

Wastewater System

Schedule of Net Book Value as of December 27, 2012

Description	Utility Proposed	Adjustment		Staff Recommended
Utility Plant In Service	$377,807	$6,191	A	$383,998
Land & Land Rights	36,000	0		36,000
Accumulated Depreciation	(297,869)	24,694	B	(273,175)
CIAC	(65,600)	(26,800)	C	(92,400)
Amortization of CIAC	39,129	5,138	D	44,267
Net Book Value	$89,467	$9,223		$98,690

Explanation of Staff's Recommended
Adjustments to Net Book Value as of December 27, 2012
Wastewater

Explanation	**Amount**
A. Utility Plant In Service (UPIS)	
1) To reflect adjustments from Order No. PSC-02-1739-PAA-WS.	$5,546
2) To reflect plant additions.	645
Total UPIS	$6,191
B. Accumulated Depreciation	
To reflect appropriate amount of accumulated depreciation.	$24,694
C. Contributions in Aid of Construction (CIAC)	
To reflect CIAC additions that the Utility did not record.	($26,800)
D. Amortization of CIAC	
To reflect appropriate amount of amortization of CIAC.	$5,138
Total Adjustments to Net Book Value as of December 27, 2012.	($9,223)

LP Utilities Corporation

LP Waterworks, Inc.

Schedule of Staff Recommended Account Balances as of December 27, 2012

Account No.	Description	Wastewater UPIS	Accumulated Depreciation
351	Organization	$346	$99
354	Structures & Improvements	42,176	35,516
360	Collection Sewers Force	11,557	9,311
361	Collection Sewers Gravity	141,605	80,436
362	Special Collecting Structure	1,040	379
363	Services to Customers	111,860	72,715
380	Treatment Disposal	73,822	73,822
390	Office Equipment & Furniture	645	108
393	Tools Shop and Garage Equip.	947	789
		$383,998	$273,175

Schedule 3

LP Waterworks, Inc.
Water

	Residential Service	General Service
Base Facility Charge		
5/8" x 3/4" (0.8 ERC RV's Homes)	$4.82	
5/8" x 3/4" (1 ERC Single Family)	$6.02	
Meter Sizes		
5/8" x 3/4" (RV/Lot Rentals)		$4.82
3/4" (Park Commercial)		$6.02
1"		$9.04
1 1/2"		$15.06
2"		$30.13
3"		$48.20
4"		$96.40
6"		$150.62
8"		$301.25
Gallonage Charges		
Per 1,000 gallons	$2.14	$2.14

Miscellaneous Service Charges

Initial Connection Charge	$15.00
Normal Reconnection Charge	$15.00
Violation Reconnection Charge	$15.00
Premises Visit Charge (in lieu of disconnection)	$10.00
Late payment Charge	$5.00

Initial Customer Deposits

5/8" x 3/4"	$35.00	$100.00
1"	$35.00	$100.00
1 1/2"	$35.00	$100.00
Over 2"	$35.00	$100.00

Service Availability Charges

Customer Connection (Tap-in) Charge	
5/8" x 3/4" metered service	$200.00
Meter Installation Fee	
5/8" x 3/4"	$189.00
Over 5/8" x 3/4"	Actual Cost

Schedule 4

LP Waterworks, Inc.
Wastewater

	Residential Service	General Service
Base Facility Charge		
All Meter Size	$6.44	
Meter Sizes		
5/8" x 3/4"		$6.44
3/4"		$9.67
1"		$16.11
1 1/2"		$32.23
2"		$51.57
3"		$103.14
4"		$161.15
6"		$322.30
Gallonage Charges per 1,000 gallons		
Residential Service (6,000 gallon cap)	$1.76	
General Service		$2.10

Miscellaneous Service Charges

Initial Connection Charge	$15.00
Normal Reconnection Charge	$15.00
Violation Reconnection Charge	Actual Cost
Premises Visit Charge (in lieu of disconnection)	$10.00
Late Payment Charge	$5.00

Initial Customer Deposits

5/8" x 3/4"	$35.00	$100.00
1"	$35.00	$100.00
1 1/2"	$35.00	$100.00
Over 2"	$35.00	$100.00

Service Availability Charges

Customer Connection (Tap-in) Charge	
5/8" x 3/4" metered service	$400.00

Item 8

FILED FEB 27, 2014
DOCUMENT NO. 00938-14
FPSC - COMMISSION CLERK

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: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Ellis, Watts)
Office of the General Counsel (Gilchrist)

RE: Docket No. 130261-WU – Application for amendment of Certificate No. 401-W in Highlands County, by Placid Lakes Utilities, Inc.

AGENDA: 03/13/14 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: ~~Staff~~ All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Placid Lakes Utilities, Inc. (Placid Lakes or Utility) is a Class B water utility in Highlands County, Florida and provides service to approximately 1,971 water connections. The Utility is in the Southwest Florida Water Management District. On October 24, 2013, the Utility filed an application with the Commission to amend Certificate No. 401-W to add territory in Highlands County, pursuant to Section 367.045, Florida Statutes (F.S.).

This application was filed in response to a recent review of the Utility's service territory which revealed that the Utility is currently providing service to approximately 55 water connections located outside its certificated territory. The Utility has indicated that it has been providing service to this area since the 1980s. Shortly after the Utility was notified that it was serving outside of its territory, the Utility filed its amendment of Certificate 401-W to extend its water service territory to include those customers it is already serving. The proposed amendment areas are located adjacent to Placid Lake's existing Commission-approved service territories. On

December 5, 2013, in Order PSC-13-0646-PAA-WU, the Commission declined to initiate a show cause proceeding against the Utility for serving outside of its certificated territory.[1]

The Commission has jurisdiction to address this application pursuant to Section 367.045, F.S.

[1] See Order PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 130025-WU, In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.

Discussion of Issues

Issue 1: Should the Commission approve Placid Lakes Utilities' application for amendment of Certificate 401-W?

Recommendation: Yes. The Commission should approve Placid Lakes' application for amendment of Certificate No. 401-W to include territory as reflected in Attachment A. The resultant order should serve as Placid Lakes' amended certificate and should be retained by the Utility. The Utility should continue to charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territory within thirty days from the date of the Commission Order approving the amendment. (Ellis, Watts)

Staff Analysis: This application is in compliance with the governing statute, Section 367.045, F.S., and Rule 25-30.036, Florida Administrative Code (F.A.C.). The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C.

The Utility is currently providing service to approximately 55 water connections located outside its certificated territory. The Utility has indicated that service to these customers started in the 1980s. Until recently, the Utility had assumed that the proposed areas had always been within the certificated areas authorized by the Commission. By providing service to the extended area since the 1980s, the Utility has demonstrated that it has the necessary financial and technical expertise to do so. The Utility has indicated that throughout this time period, the calculation of the annual regulatory assessment fees for Placid Lakes were inclusive of all these customers. In addition, the Utility has indicated that its current water system has sufficient capacity to serve the proposed areas.

Staff has contacted the Department of Environmental Protection and the Southwest Florida Water Management District and learned that there are no outstanding notices of violation for the Utility's water treatment facilities. Adequate service territory maps and territory descriptions have also been provided. No objections to the applications have been received at this time, and the time for filing objections has passed.

Based on the above, staff recommends that the Commission approve Placid Lakes' application for amendment of Certificate No. 401-W to include territory as reflected in Attachment A. The resultant order should serve as Placid Lakes' amended certificate and should be retained by the Utility. The Utility should continue to charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territory within thirty days form the date of the Commission Order approving the amendment.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed. (Gilcher)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed.

Description of Water Territory Added

Township 37 South, Range 29 East

Section 13
All of said Section 13 lying South and West of Catfish Creek.

Section 24
All of said Section 24 lying South and West of Catfish Creek and West of Lake Placid, excluding the area south of a line described thusly:
Commence at the Southwest Corner of Section 24, Township 37 South, Range 29 East; thence run northerly along the West Section Line of said Section 24 for a distance of approximately 660 feet to the Point of the Beginning; thence run easterly until reaching Lake Placid.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Placid Lakes Utilities, Inc.
pursuant to
Certificate No. 401-W

to provide water service in Highlands County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until suspended, canceled, or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
12954	10/10/83	820478-W	Original
17372	04/07/87	860532-WU	Amendment
22164	11/08/89	891158-WU	Amendment
PSC-97-1148-FOF-WU	09/30/97	970231-WU	Amendment
PSC-98-0687-FOF-WU	05/19/98	971204-WU	Amendment
*	*	130261-WU	Amendment

* Order Number and date to be provided at time of issuance

Item 9

FILED FEB 27, 2014
DOCUMENT NO. 00936-14
FPSC - COMMISSION CLERK

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-

RECEIVED-FPSC
14 FEB 27 AM 9:28
COMMISSION CLERK

DATE: February 27, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Roberts)
Office of the General Counsel (Brownless)

RE: Docket No. 130276-SU – Application for approval of new class of service for reuse water service in Lee County, by Forest Utilities, Inc.

AGENDA: 03/13/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Forest Utilities, Inc. (Forest or Utility) is a Class B wastewater utility serving approximately 2,478 customers in Lee County. Forest's 2012 annual report shows annual operating revenue of $859,351 and a net operating loss of $65,924. The Utility's service area lies in the South Florida Water Management District and it is located in a designated water resource caution area of the district.

On November 20, 2013, Forest filed an application for approval of a new class of service for reuse water service along with a proposed tariff sheet for its reuse rate. The Commission suspended the tariff filing pending further investigation.[1] By letter dated December 20, 2013, staff requested additional information from the Utility and the Utility's response was received on

[1] See Order No. PSC-14-0040-PCO-SU, issued January 15, 2014, in Docket No. 130276-SU, In re: Application for approval of a new class of service for reuse water service in Lee County by Forest Utilities, Inc.

January 3, 2014. This recommendation addresses the Utility's application for a new class of service for reuse. The Commission has jurisdiction pursuant to Section 367.091, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the proposed tariff to establish a reuse water rate for Forest be approved as filed?

Recommendation: Yes. The proposed tariff to establish a reuse water rate for Forest should be approved as filed. The Utility should file a proposed customer notice to reflect the Commission-approved rate. The approved rate should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rate should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customer. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Roberts)

Staff Analysis: The Utility requested a new class of service for reuse water service for private golf course irrigation at Forest Country Club (Country Club). According to Forest, the Utility has been providing reuse water at no charge to the Country Club since 1989. In the past, the Country Club and Forest were related parties. Currently, there is no affiliation between the Country Club and Forest. The Utility is only permitted by the Florida Department of Environmental Protection (DEP) to provide reuse water to the Country Club. The Utility requested $0.15 per 1,000 gallons for reuse water to offset the cost associated with providing reuse. Forest has chosen Lee County Utilities, Inc., which currently provides reuse water service at $0.45 per 1,000 gallons, as a reasonable benchmark for creating its initial rate for reuse water service.

Generally, reuse water rates cannot be determined in the same fashion as other water and wastewater rates set by the Commission. If reuse water rates were based on a utility's investment in rate base, the resulting rates would be too high to garner interest from potential customers. When staff analyzes reuse water rates, it must consider the type of customers being served and balance the disposal needs of the Utility with the consumption needs of the customers. In addition to reuse, the Country Club has its own well to supplement its irrigation needs. The reuse water provides the Country Club with less costly means for irrigation than does its own well source. Therefore, a reuse water rate should incentivize the Country Club to continue taking the reuse water from the Utility. Both Forest and the Country Club are benefiting from this arrangement. Forest has a means for effluent disposal and the Country Club has a less costly alternative for irrigation.

There are currently eight wastewater systems under Commission jurisdiction with approved reuse water rates ranging from $0 to a base facility charge of $7.37 and a gallonage charge of $1.10 per 1,000 gallons. According to the DEP's 2012 Reuse Inventory Report of all utilities providing reuse water in Florida, the average rate for reuse water in Lee County (for these systems that charge for reuse water) was $0.35 per 1,000 gallons. Thus, the Utility's proposed reuse water rate of $0.15 per 1,000 gallons is reasonable and consistent with past Commission decisions.[2] According to Forest's 2012 Annual Report, the Country Club was

[2] See Order Nos. PSC-09-0393-TRF-SU, issued June 2, 2009, in Docket No. 080712-SU, In re: Application for approval of a new class of service for reuse water service in Martin County by Indiantown Company, Inc. and PSC-

provided 78,840,000 gallons of reuse water, which results in expected additional revenues of $11,825 (78,840,000/1,000 x $0.15) from the sale of reuse water. Staff recommends the proposed tariff sheet to establish a reuse water rate for Forest should be approved as filed. The Utility should file a proposed customer notice to reflect the Commission-approved rate. The approved rate should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rate should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customer. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

02-0378-PAA-WS, issued March 20, 2002, in Docket No. 010852-WS, In re: Application for transfer of certificate Nos. 514-W and 446-S in Bay County from Sandy Creek Utilities, Inc. to Sandy Creek Utility Services, Inc.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose interests are substantially affected within 21 days of the issuance of the Order, the Tariff Order will become final upon the issuance of a Consummating Order and the docket should be closed. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect pending the resolution of the protest, and the docket should remain open. (Brownless)

Staff Analysis: If no protest is filed by a person whose interests are substantially affected within 21 days of the issuance of the Order, the Tariff Order will become final upon the issuance of a Consummating Order and the docket should be closed. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect pending the resolution of the protest, and the docket should remain open.