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January 8, 2015

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Item 1

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (C. Beard) *CSB PR BJ*
Office of the General Counsel (J. Barraco)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 1/8/2015 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Applications for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>CERT. NO.</u>
140178-TX	ITS Fiber, LLC d/b/a ITS Fiber	8864
140193-TX	Atlantis Communications LLC	8868

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, 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 entities listed above for payment by January 30.

Item 2

FILED DEC 23, 2014
DOCUMENT NO. 06867-14
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: December 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari) *HFC AT*
Office of Telecommunications (Casey) *PC*
Office of Consumer Assistance and Outreach (Hicks) *RA CW*

RE: Docket No. 140222-TC – Initiation of show cause proceedings against Tri-County Telephone, Inc. for apparent violation of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

AGENDA: 01/08/15 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

RECEIVED-FPSC
14 DEC 23 AM 11:31
COMMISSION
CLERK

Case Background

By Order PSC-01-1695-PAA-TC, issued August 21, 2001, Tri-County Telephone, Inc. (Company) was granted Payphone Certificate Number 7903 to provide pay telephone service in the State of Florida. The Order specified that pay telephone providers are subject to Chapter 25-24, Florida Administrative Code (F.A.C.), and all applicable provisions of Chapter 364, Florida Statutes (F.S.), and Chapter 25-4, Florida Administrative Code. In 2014, the Company paid its 2013 Regulatory Assessment Fees and indicated on its Regulatory Assessment Fee Return that it had no payphones in operation at the end of 2013.

Docket No. 140222-TC
Date: December 23, 2014

On July 28, 2014, the Florida Public Service Commission (Commission) Office of Consumer Assistance & Outreach received a complaint from a property manager that the payphone located at 1001 SW 2nd Avenue in Boca Raton, Florida operated by Tri-County Telephone, Inc. was not working (Complaint No. 1154120T). The property manager stated that the payphone was not in service, and requested it be removed from the property.

This recommendation addresses a payphone complaint forwarded to Tri-County Telephone, Inc. and Tri-County Telephone, Inc.'s apparent violation of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. The Commission has jurisdiction pursuant to Chapter 364, F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032, F.A.C.

Discussion of Issues

Issue 1: Should the Commission order Tri-County Telephone, Inc., to show cause in writing within 21 days of the date of the order why it should not be penalized \$2,000 or its Certificate No.7903 should not be cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C.?

Recommendation: Yes. The Commission should order Tri-County Telephone, Inc., to show cause in writing within 21 days of the issuance of the Commission Order why it should not be penalized \$2,000 or its Certificate No. 7903 cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. Specifically, staff recommends that Tri-County Telephone, Inc., be directed to repair or remove the inoperable payphone, pay a penalty of \$2,000, update company contact information with the Commission Clerk, and update the Company’s Corporate Registration with the Florida Secretary of State. Tri-County Telephone, Inc.’s response must contain specific allegations of fact or law. If Tri-County Telephone, Inc., fails to respond to the show cause order or request a hearing pursuant to Section 120.57, F.S., within 21 days and/or remit the penalty, the facts should be deemed admitted and the Company’s certificate No. 7903 should be cancelled. If a penalty is assessed and paid by the Company, the Commission will remit the penalty to the State of Florida General Revenue Fund pursuant to Section 364.285, F.S. (Corbari, Casey, Hicks)

Staff Analysis:

Factual Allegations

Pursuant to Section 364.335(2), F.S., certificated companies are required to ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

Pursuant to Section 364.3375(2), F.S., each pay telephone station shall:

- Receive and permit coin-free access to the universal emergency telephone number “911” where operable or to a local exchange company toll operator;
- Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service; and
- Be eligible to subscribe to flat-rate, single-line business local exchange services.

Rule 25-4.0051, F.A.C., (Current Certificate Holder Information) requires each certificated company to file updated information for the following items with the Office of Commission Clerk within 10 days after any changes to the following:

- 1) The address of the certificate holder’s main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code; or

- 2) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regard to the ongoing Florida operations of the certificated company.

Rule 25-22.032(6)(b), F.A.C., (Customer Complaints), requires a company to provide the Commission with a written response to a customer complaint, within 15 working days after the complaint is sent to the company by Commission staff.

Complaint No. 1154120T

On July 28, 2014, the Commission's Office of Consumer Assistance & Outreach received a complaint that the payphone located at 1001 SW 2nd Avenue in Boca Raton, Florida was out of order. On August 27, 2014, the Office of Consumer Assistance & Outreach attempted to contact Tri-County Telephone, Inc. via telephone but the telephone number was disconnected.

On September 4, 2014, the Office of Consumer Assistance & Outreach forwarded the complaint to the Commission's Office of Telecommunications for further action. On September 4, 2014, the Office of Telecommunications also called the payphone number and received a recording that it was disconnected. On September 5, 2014, the Office of Telecommunications sent a certified letter to Tri-County Telephone, Inc. notifying it of the payphone complaint the Commission received regarding the payphone at 1001 SW 2nd Avenue in Boca Raton, Florida being out of order, and the property manager wanting the payphone removed. Commission staff requested that the company provide the Commission with its plan to repair or remove the phone within fifteen (15) days of the date of the letter. Staff also advised the company that failure to comply with staff's request may result in cancellation of its payphone certificate or penalties of up to \$25,000 per day, pursuant to Section 364.285, Florida Statutes. On September 30, 2014, the certified letter was returned by the United States Postal Service as "unclaimed, unable to forward." (See, Attachment A – Copy of staff's September 5, 2014, letter which was returned on September 30, 2014.)

Staff Recommendation

Certificated companies 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 certificated companies are charged with the knowledge of the Commission's Rules and Statutes, and the intent of Section 364.285(1) is to penalize those who affirmatively act in opposition to those orders, rules, or statutes.¹

¹ 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

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 company 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 company. If the Commission issues a show cause order, the company is required to file a written response. The response must contain specific allegations of disputed fact. If there are no disputed factual issues, the company's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

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

In the event the company fails to timely respond to the show cause order, the company is deemed to have admitted the factual allegations contained in the show cause order. The company'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 364.285, F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, 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 364. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the company and is enforceable by the Commission as a statutory lien.²

Willfulness is a question of fact.³ Therefore, part of the determination the Commission must make in evaluating whether to penalize a company is whether the company willfully violated the rule, statute, or order. Section 364.285, 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

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.

See also, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 (Fla. 1963), and Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992) (utilities are subject to the rules published in the Florida Administrative Code).

² See, Section 364.285(1), F.S.

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

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.

As outlined above, staff has attempted to contact Tri-County Telephone, Inc., numerous times via telephone, facsimile, and certified letter with no success. Tri-County Telephone, Inc.’s fax line and telephone line have been disconnected. Staff also tried to call phone numbers listed on the Company’s 2013 Regulatory Assessment Fee Return with no success. A certified letter sent by staff has been returned as unclaimed, unable to forward. In addition, staff reviewed the Florida Secretary of State Corporation database (See, Attachment B – Copy of Florida Tri-County Telephone, Inc. Expired Corporate Registration) and found that the Company does not have a current Florida Corporate Registration, in violation of Section 364.335, F.S.

Staff believes that Tri-County Telephone, Inc., has knowingly failed to comply with the provisions of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C., and, as a result, Tri-County Telephone, Inc.’s acts were “willful” in the sense intended by Section 364.285, F.S., and Fugate. Staff therefore recommends that Tri-County Telephone, Inc. should be ordered to show cause in writing, within 21 days of the issuance of the Commission Order, why it should not be penalized \$2,000 or its certificate No. 7903 cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. Staff asserts that the penalty amount recommended of \$500 per violation is consistent with amounts imposed for similar violations.

Tri-County Telephone, Inc.’s response must contain specific allegations of fact or law. If Tri-County Telephone, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, F.S., and/or the penalty is not paid within the 21-day response period, the facts should be deemed admitted and the Company’s certificate No. 5108 should be cancelled. If the Company pays the assessed penalty, the Commission will remit the penalty to the State of Florida General Revenue Fund pursuant to Section 364.285, F.S.

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 Tri-County Telephone, Inc., as respondent.
2. The Company shall respond to the show cause order within 21 days of service on the Company, and the response shall reference Docket No. 140222-TC In re: Initiation of show cause proceedings against Tri-County Telephone, Inc. for apparent violation of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

3. The Company 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 Company'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 the Company 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.
8. In the event that the Company fails to file a timely response to the show cause order, and the respective penalty is not received, Tri-County Telephone, Inc.'s Certificate No. 7903 should be cancelled and this docket closed administratively.
9. If the Company responds to the show cause order by remitting the penalty, resolving the complaints, updating company contact information with the Commission Clerk, and updating the Company's Corporate Registration with the Florida Secretary of State, this show cause matter will be considered resolved, and the docket closed.

Issue 2: Should this docket be closed?

Recommendation: No. If Issue 1 is approved, then Tri-County Telephone, Inc., will have 21 days, from the issuance of the Order to Show Cause, to respond in writing why it should not be assessed a penalty or have its certificate canceled. If Tri-County Telephone, Inc. timely responds, in writing, to the Order to Show Cause, and repairs or removes the inoperable payphone, updates the company contact information with the Commission Clerk, updates the Company's Corporate Registration with the Florida Secretary of State, and timely pays the assessed penalty of \$2,000, the penalty should be deposited in the Florida General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and the docket closed administratively. If Issue 1 is approved and Tri-County Telephone, Inc. fails to timely respond to the Order to Show Cause or request a hearing, fails to repair or remove the inoperable payphone, fails to update the company contact information with the Commission Clerk, fails to update the Company's Corporate Registration with the Florida Secretary of State, or fails to timely pay the assessed penalty of \$2,000, then Tri-County Telephone, Inc.'s Certificate No. 7903 should be canceled and the docket closed administratively. (Corbari, Casey, Hicks)

Staff Analysis: If Issue 1 is approved, then Tri-County Telephone, Inc., will have 21 days, from the issuance of the Order to Show Cause, to respond in writing why it should not be assessed a penalty or have its certificate canceled. If Tri-County Telephone, Inc. timely responds, in writing, to the Order to Show Cause, and repairs or removes the inoperable payphone, updates the company contact information with the Commission Clerk, updates the Company's Corporate Registration with the Florida Secretary of State, and timely pays the assessed penalty of \$2,000, the penalty should be deposited in the Florida General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and the docket closed administratively. If Issue 1 is approved and Tri-County Telephone, Inc. fails to timely respond to the Order to Show Cause or request a hearing, fails to repair or remove the inoperable payphone, fails to update the company contact information with the Commission Clerk, fails to update the Company's Corporate Registration with the Florida Secretary of State, or fails to timely pay the assessed penalty of \$2,000, then Tri-County Telephone, Inc.'s Certificate No. 7903 should be canceled and the docket closed administratively.

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISE
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



OFFICE OF TELECOMMUNICATIONS
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

September 5, 2014

Ms. Debbie Little, Director
Tri-County Telephone, Inc.
P.O. Box 667812
Pompano Beach, Florida 33066-7812

Certified No. 7009 3410 0002 4112 9571


Re: Tri-County Telephone, Inc. Payphone Number (561) 487-9193, located at 1001 SW 2nd Avenue, Boca Raton, Florida

Dear Ms. Little:

Florida Public Service Commission (Commission) staff has attempted to contact you numerous times via fax and telephone regarding the above payphone with no success. The manager of this property would like this payphone removed. This payphone has a recording stating it is disconnected or no longer in service. Section 364.3375(2), Florida Statutes, provides that each pay telephone station shall:

- (a) Receive and permit coin-free access to the universal emergency telephone number "911" where operable or to a local exchange company toll operator.
- (b) Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service.
- (c) Designate a party responsible for processing refunds to customers.
- (d) Be equipped with a legible sign, card, or plate of reasonable permanence which provides information determined by the commission, by rule, to adequately inform the end user.
- (e) Be eligible to subscribe to flat-rate, single-line business local exchange services.

Please provide the Commission with your plan to remove this phone within fifteen (15) days of the date of this letter. Failure to do so may result in cancellation of your payphone certificate No. 7903 or penalties of up to \$25,000 per day pursuant to Section 364.285, Florida Statutes.

Sincerely,

Robert J. Casey
Public Utilities Supervisor

cc: Office of Telecommunications (Salak)
Office of General Counsel (Teitzman)
Office of Consumer Assistance & Outreach (Hicks)
Ms. Debbie Little, 2816 NW 62nd Ave., Margate, Florida 33063

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Ms Debbie Little
2816 NW 62nd Ave
Margate, Florida 33063

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RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 32399055099 *0830-11029-04-41

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State of Florida
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



7009 3410 0002 4112 9571

ALLIANCE FL 323
04 SEP 2014 PM 2 T



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OFFICE OF
TELECOMMUNICATIONS

Ms. Debbie Little, Director
Tri-County Telephone, Inc.
P.O. Box 667R17
Pompano B

NC 9/6

NIXIE 333 SE 1809 0009/23/14


RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

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Foreign Profit Corporation
TRI - COUNTY TELEPHONE INC.

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Officer/Director Detail

Name & Address

Title PD

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Annual Reports
No Annual Reports Filed

Document Images

07/03/2001 -- Foreign Profit

Item 3

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari) *KE*
Office of Telecommunications (Casey) *PC*
Office of Consumer Assistance & Outreach (Hicks) *RTH cm*

RE: Docket No. 140223-TC – Initiation of show cause proceedings against Florida Public Telephone Company for apparent violation of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

AGENDA: 01/08/15 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

RECEIVED-FPSC
14 DEC 23 AM 11:31
COMMISSION
CLERK

Case Background

By Order PSC-97-0271-FOF-TC, issued March 11, 1997, Florida Public Telephone Company (Company) was granted Payphone Certificate Number 5108 to provide pay telephone service in the State of Florida. The Order specified that pay telephone providers are required to comply with all applicable provisions of Chapter 364, Florida Statutes (F.S.), and Chapter 25-24, Florida Administrative Code (F.A.C.). In 2014, the Company paid its 2013 Regulatory Assessment Fees (RAFs) and indicated on its Regulatory Assessment Fee Return that it had 42 payphones in operation at the end of 2013.

Docket No. 140223-TC
Date: December 23, 2014

On February 18, 2014, the Florida Public Service Commission's (Commission) Office of Consumer Assistance & Outreach received a complaint from a consumer who stated that the payphone located at 10696 Biscayne Boulevard in Jacksonville, Florida operated by Florida Public Telephone Company was not working (Complaint No. 1139237T). The consumer stated that both the payphone number and repair number were out of order.

On March 27, 2014, the Commission's Office of Consumer Assistance & Outreach received a complaint from the City of Jacksonville stating the payphone operated by Florida Public Telephone Company, located at 1245 West 8th Street in Jacksonville, Florida, was not working and should be removed (Complaint No. 1142992T). The complaint states that this payphone is located in a known drug area, has not been working for a very long time, and the Jacksonville Sheriff's Office would like the payphone removed due to illegal activity in the area.

This recommendation addresses two payphone complaints forwarded to Florida Public Telephone Company and Florida Public Telephone Company's apparent violation of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. The Commission has jurisdiction pursuant to Chapter 364, F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032, F.A.C.

Discussion of Issues

Issue 1: Should the Commission order Florida Public Telephone Company to show cause in writing, within 21 days of the date of the order why it should not be penalized \$2,000, or its Certificate No. 5108 should not be cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C.?

Recommendation: Yes. The Commission should order Florida Public Telephone Company to show cause in writing, within 21 days of the issuance of an Order, why it should not be penalized \$2,000, or its Certificate No. 5108 cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. Specifically, staff recommends that Florida Public Telephone Company be directed to repair or remove the inoperable payphones, pay a penalty of \$2,000, update company contact information with the Commission Clerk, and update the Company's Corporate Registration with the Florida Secretary of State. Florida Public Telephone Company's response must contain specific allegations of fact or law. If Florida Public Telephone Company fails to respond to the show cause order or request a hearing pursuant to Section 120.57, F.S., within 21 days and/or remit the penalty and resolve the complaints, the facts should be deemed admitted and the Company's certificate No. 5108 should be cancelled. If a penalty is assessed and paid by the Company, the Commission will remit the penalty to the State of Florida General Revenue Fund pursuant to Section 364.285, F.S. (Corbari, Casey, Hicks)

Staff Analysis:

Factual Allegations

Pursuant to Section 364.335(2), F.S., certificated companies are required to ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

Pursuant to Section 364.3375(2), F.S., each pay telephone station shall:

- Receive and permit coin-free access to the universal emergency telephone number "911" where operable or to a local exchange company toll operator;
- Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service; and
- Be eligible to subscribe to flat-rate, single-line business local exchange services.

Rule 25-4.0051, F.A.C., (Current Certificate Holder Information) requires each certificated company to file updated information for the following items with the Office of Commission Clerk within 10 days after any changes to the following:

- 1) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code; or
- 2) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regard to the ongoing Florida operations of the certificated company.

Rule 25-22.032(6)(b), F.A.C., (Customer Complaints), requires a company to provide the Commission with a written response to a customer complaint, within 15 working days after the complaint is sent to the company by Commission staff.

In the instant docket, Commission staff received two complaints that payphones located at 10696 Biscayne Boulevard, and 1245 West 8th Street in Jacksonville, Florida, were out of order. Staff from the Office of Consumer Assistance & Outreach attempted to contact Florida Public Telephone Company via telephone and facsimile, however, both lines were out of service. To date, Florida Public Telephone Company has not responded to either complaint that its payphones are out of order. In addition, technical staff from the Office of Telecommunications attempted to call the two payphone numbers and received a recording that the payphones were disconnected.

Complaint No. 1139237T

On February 18, 2014, the Commission's Office of Consumer Assistance & Outreach received a complaint that the payphone at 10696 Biscayne Boulevard, Jacksonville, Florida was out of order. The complainant stated that neither the payphone number nor the repair number was working. On February 19, 2014, the Office of Consumer Assistance & Outreach mailed a copy of the complaint to the Company. No response has been received.

On March 21, 2014, the Office of Consumer Assistance & Outreach forwarded the complaint to the Commission's Office of Telecommunications for further action. On June 25, 2014, the Office of Telecommunications sent a certified letter to Florida Public Telephone Company notifying it of the payphone complaint and that Commission staff had attempted to contact the Company numerous times regarding the payphone located at 10696 Biscayne Boulevard, with no success. Commission staff requested Florida Public Telephone Company submit a plan, within fifteen (15) days of the date of the letter, outlining when the payphone would be operational. In addition, staff advised the Company that failure to comply with staff's request may result in cancellation of its payphone certificate or penalties of up to \$25,000 per day, pursuant to Section 364.285, F.S. On July 25, 2014, the certified letter was returned by the United States Postal Service as "unclaimed, unable to forward." (See, Attachment A – Copy of staff's June 25, 2014, letter which was returned on July 25, 2014.)

Complaint No. 1142992T

On March 27, 2014, the Commission's Office of Consumer Assistance & Outreach received a complaint regarding the payphone at 1245 West 8th Street in Jacksonville, Florida was out of order. On March 28, 2014, staff with the Office of Consumer Assistance & Outreach sent

a copy of the complaint to the Company, via certified mail. On April 4, 2014, a Certified, Return Receipt postcard signed by David Swearingen (owner of Florida Public Telephone Company) was received by the Commission, evidencing receipt of the complaint by Florida Public Telephone Company. (See, Attachment B – Copy of Certified Return Receipt signed by David Swearingen on March 31, 2014.)

After receiving no response from the Company to the complaint, the Office of Consumer Assistance & Outreach attempted to call and fax the Company regarding the complaint, however, the Company's fax number was "out of order" and the telephone number was "disconnected." On May 1, 2014, the Office of Consumer Assistance & Outreach sent another copy of the complaint to the Company via certified mail. On May 9, 2014, a Certified, Return Receipt postcard was received by the Commission, evidencing receipt of the complaint by Florida Public Telephone Company. (See, Attachment C – Copy of Certified Return Receipt signed on May 3, 2014)

Upon receiving no response from the Company, the complaint was forwarded to the Commission's Office of Telecommunications for further action. On July 3, 2014, the Office of Telecommunications sent a certified letter to Florida Public Telephone Company notifying it of the payphone complaint and that Commission staff had attempted to contact the Company numerous times regarding the payphone located at 1245 West 8th, with no success. Commission staff requested Florida Public Telephone Company submit a plan, within fifteen (15) days of the date of the letter, outlining when the payphone would be operational. In addition, staff advised the Company that failure to comply with staff's request may result in cancellation of its payphone certificate or penalties of up to \$25,000 per day pursuant to Section 364.285, F.S. On August 9, 2014, the certified letter was returned by the United States Postal Service as "unclaimed, unable to forward." (See, Attachment D – Copy of staff's July 3, 2014, letter which was returned on August 9, 2014.)

Staff Recommendation

Certificated companies 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 certificated companies are charged with the knowledge of the Commission's Rules and Statutes, and the intent of Section 364.285(1) is to penalize those who affirmatively act in opposition to those orders, rules, or statutes.¹

¹ 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.

3. The Company 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 Company'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 Florida Public Telephone Company 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.
8. In the event that Florida Public Telephone Company fails to file a timely response to the show cause order, and the respective penalty is not received, Florida Public Telephone Company's Certificate No. 5108 should be cancelled and this docket closed administratively.
9. If the Company responds to the show cause order by remitting the penalty, resolving the complaints, updating company contact information with the Commission Clerk, and updating the Company's Corporate Registration with the Florida Secretary of State, this show cause matter will be considered resolved, and the docket closed administratively.

Issue 2: Should this docket be closed?

Recommendation: No. If Issue 1 is approved, then Florida Public Telephone Company, will have 21 days, from the issuance of the Order to Show Cause, to respond in writing why it should not be assessed a penalty or have its certificate canceled. If Florida Public Telephone Company timely responds, in writing, to the Order to Show Cause, and repairs or removes the inoperable payphones, updates the company contact information with the Commission Clerk, updates the Company's Corporate Registration with the Florida Secretary of State, and timely pays the assessed penalty of \$2,000, the penalty should be deposited in the Florida General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and the docket closed administratively. If Issue 1 is approved and Florida Public Telephone Company fails to timely respond to the Order to Show Cause or request a hearing, fails to repair or remove the inoperable payphones, fails to update the company contact information with the Commission Clerk, fails to update the Company's Corporate Registration with the Florida Secretary of State, or fails to timely pay the assessed penalty of \$2,000, then Florida Public Telephone Company's Certificate No. 5108 should be canceled and the docket closed administratively. (Corbari, Casey, Hicks)

Staff Analysis: If Issue 1 is approved, then Florida Public Telephone Company, will have 21 days, from the issuance of the Order to Show Cause, to respond in writing why it should not be assessed a penalty or have its certificate canceled. If Florida Public Telephone Company timely responds, in writing, to the Order to Show Cause, and repairs or removes the inoperable payphones, updates the company contact information with the Commission Clerk, updates the Company's Corporate Registration with the Florida Secretary of State, and timely pays the assessed penalty of \$2,000, the penalty should be deposited in the Florida General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and the docket closed administratively. If Issue 1 is approved and Florida Public Telephone Company fails to timely respond to the Order to Show Cause or request a hearing, fails to repair or remove the inoperable payphones, fails to update the company contact information with the Commission Clerk, fails to update the Company's Corporate Registration with the Florida Secretary of State, or fails to timely pay the assessed penalty of \$2,000, then Florida Public Telephone Company's Certificate No. 5108 should be canceled and the docket closed administratively.

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISE
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



OFFICE OF TELECOMMUNICATIONS
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

June 25, 2014

Mr. David Swearing
Florida Public Telephone Company
220 E 6th street
Jacksonville, FL 32206-4506

Certified No. 70060100000310986751

Re: Florida Public Telephone Company Payphone Number (904)751-4886, located at 10696 Biscayne Blvd., Jacksonville, FL 32218

Dear Mr. Swearingen:

Florida Public Service Commission (Commission) staff has attempted to contact you numerous times via telephone regarding the above payphone with no success. The Commission also sent you a letter dated May 28, 2014, requesting you inform the Commission within fifteen (15) days on what actions you will take to solve this matter. The Commission received no response. This payphone is out of order and the Commission has received multiple complaints about it. Section 364.3375(2), Florida Statutes, provides that each pay telephone station shall:

- (a) Receive and permit coin-free access to the universal emergency telephone number "911" where operable or to a local exchange company toll operator.
- (b) Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service.
- (c) Designate a party responsible for processing refunds to customers.
- (d) Be equipped with a legible sign, card, or plate of reasonable permanence which provides information determined by the commission, by rule, to adequately inform the end user.
- (e) Be eligible to subscribe to flat-rate, single-line business local exchange services.

Please provide the Commission with your plan within fifteen (15) days of the date of this letter on when this payphone will be operational. Failure to do so may result in cancellation of your payphone certificate or penalties of up to \$25,000 per day pursuant to Section 364.285, Florida Statutes.

Sincerely,

Handwritten signature of Robert J. Casey in black ink.

Robert J. Casey
Public Utilities Supervisor

cc: Office of Telecommunications (Flores, Beard, Salak)

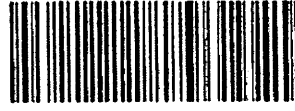
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State of Florida
Public Service Commission
2340 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



7006 0100 0003 1098 6751

14 JUL 25 AM 7:30

OFFICE OF
TELECOMMUNICATIONS

**RETURN RECEIPT
REQUESTED**

CR: 6/30/14

Mr. David Swearing
Florida Public Telephone Company
220 E. 6th Street
Jacksonville, FL 32202-1500

7/2

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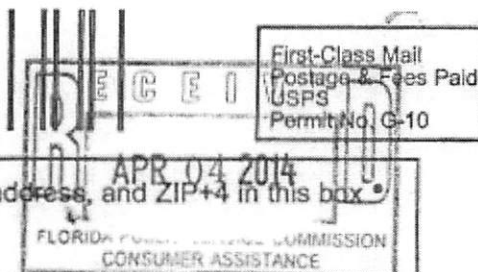
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RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

3220624506 0002

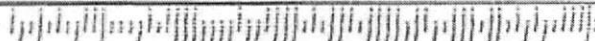
BC 32399085095 10638-03910-23-42

UNITED STATES POSTAL SERVICE



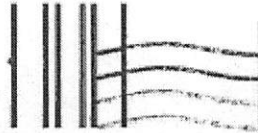
• Sender: Please print your name, address, and ZIP+4 in this box •

Florida Public Service Commission
 2540 Shumard Oak Blvd
 Tallahassee, 32399-0850
 SRC Marcos Bermudez-Frau
 Case Number 1142992T



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>X D Swearingen</i></p> <p>B. Received by (Printed Name) <i>D Swearingen</i></p> <p>C. Date of Delivery <i>3/31/11</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>Article Addressed to:</p> <p>Florida Public Service Telephone Company Attn: David Lynn Swearington 220 East Sixth Street Jacksonville, FL 32206-4506</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>Article Number (Transfer from service label)</p>	<p>7011 0110 0001 9796 7293</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

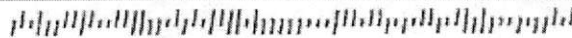
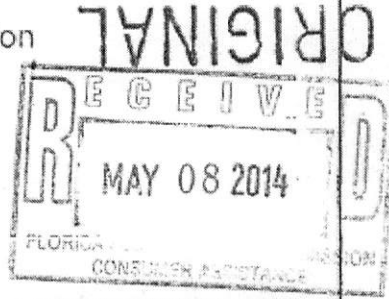
UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850
 Case number 1142992T



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Florida Public Telephone Company
 Attn: David Lynn Swearingen
 220 East Sixth Street
 Jacksonville, FL 32206-4506

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 X ALON ZOTONIS Addressee
- B. Received by (Printed Name) C. Date of Delivery
 5/3/14
- D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (transfer from) 7012 3460 0001 1362 3403

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 company 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 company. If the Commission issues a show cause order, the company is required to file a written response. The response must contain specific allegations of disputed fact. If there are no disputed factual issues, the company's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

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

In the event the company fails to timely respond to the show cause order, the company is deemed to have admitted the factual allegations contained in the show cause order. The company'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 364.285, F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, 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 364. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the company and is enforceable by the Commission as a statutory lien.²

Willfulness is a question of fact.³ Therefore, part of the determination the Commission must make in evaluating whether to penalize a company is whether the company willfully violated the rule, statute, or order. Section 364.285, 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.

See also, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 (Fla. 1963), and Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992) (utilities are subject to the rules published in the Florida Administrative Code).

² See, Section 364.285(1), F.S.

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

As outlined above, staff has attempted to contact Florida Public Telephone Company numerous times, by numerous methods, in order to resolve the two complaints and have been unsuccessful. The Company's telephone and facsimile lines have been disconnected. Staff even attempted to contact the Company at the telephone numbers listed on the Company's 2013 Regulatory Assessment Fee Return, with no success. Furthermore, staff's attempts to contact the Company via certified mail were either received and ignored by the Company, or returned as "unclaimed." By failing to file updated contact information with the Office of Commission Clerk within 10 days after any changes, the Company is in apparent violation of Rule 25-4.0051, F.A.C. In addition, staff reviewed the Florida Secretary of State Corporation database (See, Attachment E – Copy of Florida Public Telephone Company Expired Corporate Registration) and found that the Company does not have a current Florida Corporate Registration, in violation of Section 364.335, F.S.

Staff believes that Florida Public Telephone Company has knowingly failed to comply with the provisions of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C., and, as a result, Florida Public Telephone Company's acts were "willful" in the sense intended by Section 364.285, F.S., and Fugate. Staff therefore recommends that Florida Public Telephone Company should be ordered to show cause in writing, within 21 days of the issuance of the Commission Order, why it should not be penalized \$2,000 or its certificate No. 5108 cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. Staff asserts that the penalty amount recommended of \$500 per violation is consistent with amounts imposed for similar violations.

Florida Public Telephone Company's response must contain specific allegations of fact or law. If Florida Public Telephone Company fails to respond to the show cause order or request a hearing pursuant to Section 120.57, F.S., and/or the penalty is not paid within the 21-day response period and the complaints resolved, the facts should be deemed admitted and the Company's certificate No. 5108 should be cancelled. If the Company pays the assessed penalty, the Commission will remit the penalty to the State of Florida General Revenue Fund pursuant to Section 364.285, F.S.

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 Florida Public Telephone Company, as respondent.
2. The Company shall respond to the show cause order within 21 days of service on the Company, and the response shall reference Docket No. 140223-TC In re: Initiation of show cause proceedings against Florida Public Telephone Company for apparent violations of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



OFFICE OF TELECOMMUNICATIONS
BETH W. SALAK
DIRECTOR
(850)413-6600

Public Service Commission

July 3, 2014

Mr. David Swearingen
Florida Public Telephone Company
220 E 6th street
Jacksonville, FL 32206-4506

Certified No.70041160000457517987

Re: Florida Public Telephone Company Payphone Number (904) 880-3411, located at 1245 West 8th Street, Jacksonville, FL 32209

Dear Mr. Swearingen:

Florida Public Service Commission (Commission) staff has attempted to contact you numerous times via telephone regarding the above payphone with no success. It appears your fax number is inoperable and your phone number on file has been disconnected. The Commission also sent you a certified letter on May 1, 2014, with a copy of the complaint. The Commission received no response. This payphone is out of order and the Commission has received multiple complaints about it. Section 364.3375(2), Florida Statutes, provides that each pay telephone station shall:

- (a) Receive and permit coin-free access to the universal emergency telephone number "911" where operable or to a local exchange company toll operator.
- (b) Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service.
- (c) Designate a party responsible for processing refunds to customers.
- (d) Be equipped with a legible sign, card, or plate of reasonable permanence which provides information determined by the commission, by rule, to adequately inform the end user.
- (e) Be eligible to subscribe to flat-rate, single-line business local exchange services.

Please provide the Commission with your plan within fifteen (15) days of the date of this letter on when this payphone will be operational or be removed. Failure to do so may result in cancellation of your payphone certificate or penalties of up to \$25,000 per day pursuant to Section 364.285, Florida Statutes.

Sincerely,

Handwritten signature of Robert J. Casey in black ink.

Robert J. Casey
Public Utilities Supervisor

cc: Office of Telecommunications (Salak)
Office of General Counsel (Teitzman)
Office of Consumer Assistance & Outreach (Hicks)

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State of Florida
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

CERTIFIED MAIL



7004 1160 0004 5751 7987



14 AUG 12 AM 7:35
OFFICE OF
TELECOMMUNICATIONS

UN
7/5/14

Mr. David Swearingen
Florida Public Telephone Company
220 E. 6th street
Jacksonville NIXIE

7/17

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RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

3220684506 0002

BC: 32399085099 *0938-02552-02-47

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DIVISION OF CORPORATIONS

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No Filing History

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Fictitious Name

FLORIDA PUBLIC TELEPHONE COMPANY

Filing Information

Registration Number G06094900222
Status EXPIRED
Filed Date 04/04/2006
Expiration Date 12/31/2011
Current Owners 1
County DUVAL
Total Pages 1
Events Filed NONE
FEI/EIN Number NONE

Mailing Address

220 E. 6TH ST.
JACKSONVILLE, FL 32206

Owner Information

SWEARINGEN, DAVID LYNN
220 E. 6TH ST.
JACKSONVILLE, FL 32206
FEI/EIN Number: NONE
Document Number: NONE

Item 4

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (T. Brown, Norris, Fletcher) *ALM*
Office of the General Counsel (Villafrate) *S.M.L.*

RE: Docket No. 140005-WS – Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

Docket No. 150005-WS – Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

AGENDA: 01/08/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/31/15 (Statutory Reestablishment Deadline)

SPECIAL INSTRUCTIONS: This recommendation should also be placed in Docket No. 150005-WS, upon its establishment on January 2, 2015.

RECEIVED-FPSC
14 DEC 23 PM 1:10
COMMISSION
CLERK

Case Background

Since March 31, 1981, pursuant to the guidelines established by Section 367.081(4)(a), Florida Statutes (F.S.), and Rule 25-30.420, Florida Administrative Code (F.A.C.), the Commission has established a price index increase or decrease for major categories of operating costs on or before March 31 of each year. This process allows water and wastewater utilities to adjust rates based on current specific expenses without applying for a rate case.

Docket Nos. 140005-WS and 150005-WS

Date: December 23, 2014

Staff has calculated its proposed 2015 price index by comparing the Gross Domestic Product Implicit Price Deflator Index for the fiscal year ended September 30, 2013, to the same index for the fiscal year ended September 30, 2014. This same procedure has been used each year since 1995 to calculate the price index. The U.S. Department of Commerce, Bureau of Economic Analysis, released its final third quarter figures on December 23, 2014.

Since March 31, 1981, the Commission has received and processed approximately 3,428 index applications. The Commission has jurisdiction over this matter pursuant to Section 367.081, F.S.

Discussion of Issues

Issue 1: Which index should be used to determine price level adjustments?

Recommendation: The Gross Domestic Product Implicit Price Deflator Index is recommended for use in calculating price level adjustments. Staff recommends calculating the 2015 price index by using a fiscal year, four quarter comparison of the Implicit Price Deflator Index ending with the third quarter 2014. (T. Brown)

Staff Analysis: In 1993, the Gross Domestic Product Implicit Price Deflator Index (GDP) was established as the appropriate measure for determining the water and wastewater price index. At this same time, the convention of using a four quarter fiscal year comparison was also established and this practice has been used every year since then.¹ The GDP is prepared by the U.S. Department of Commerce. Prior to that time, the Gross National Product Implicit Price Deflator Index (GNP) was used as the indexing factor for water and wastewater utilities. The Department of Commerce switched its emphasis from the GNP to the GDP as the primary measure of U.S. production.

Pursuant to Section 367.081(4)(a), F.S., the Commission, by order, shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. Since 1995, the price index was determined by using a four quarter comparison, ending September 30, of the Implicit Price Deflator Index in order to meet the statutory deadline. The current price index was determined by comparing the change in the GDP using the four quarter fiscal year comparison ending September 30. This method has been used consistently since 1995 to determine the price index.²

In Order No. PSC-14-0056-PAA-WS, issued January 27, 2014, in Docket No. 140005-WS, the Commission, in keeping with the practice started in 1993, reiterated the alternatives which could be used to calculate the indexing of utility revenues. Past concerns expressed by utilities, as summarized from utility input in previous hearings, are:

- 1) Inflation should be a major factor in determining the index;
- 2) Nationally published indices should be vital to this determination;
- 3) Major categories of expenses are labor, chemicals, sludge-hauling, materials and supplies, maintenance, transportation, and treatment expense;

¹ See Order No. PSC-93-0195-FOF-WS, issued February 9, 1993, in Docket No. 930005-WS, In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

² See Order No. PSC-95-0202-FOF-WS, issued February 10, 1995, in Docket No. 950005-WS, In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

- 4) An area wage survey, Dodge Building Cost Index, Consumer Price Index, and the GDP should be considered;
- 5) A broad measure index should be used; and
- 6) The index procedure should be easy to administer.

Based upon these concerns, the Commission has previously explored the following alternatives:

- 1) Survey of Regulated Water and Wastewater Utilities;
- 2) Consumer Price Index;
- 3) Florida Price Level Index;
- 4) Producer's Price Index - previously the Wholesale Price Index; and
- 5) GDP (replacing the GNP).

Over the past years, the Commission found that the Survey of Regulated Water and Wastewater Utilities should be rejected because using the results of a survey would allow utilities to pass on to customers all cost increases, thereby reducing the incentives of promoting efficiency and productivity. The Commission has also found that the Consumer Price Index and the Florida Price Level Index should be rejected because of their limited degree of applicability to the water and wastewater industry. Both of these price indices are based upon comparing the advance in prices of a limited number of general goods and, therefore, appear to have limited application to water and wastewater utilities.

The Commission further found that the Producers Price Index (PPI) is a family of indices that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller, not the purchaser, and therefore should be rejected. Because the bases for these indices have not changed, staff believes that the conclusions reached in Order No. PSC-14-0056-PAA-WS continue to apply in this case. Since 1993, the Commission has found that the GDP has a greater degree of applicability to the water and wastewater industry. Therefore, staff recommends that the Commission continue to use the GDP to calculate water and wastewater price level adjustments.

The following information provides a historical perspective of the annual price index:

Table 1-1

<u>Historical Analysis of the Annual Price Index for Water and Wastewater Utilities</u>			
	<u>COMMISSION APPROVED</u>		<u>COMMISSION APPROVED</u>
<u>YEAR</u>	<u>INDEX</u>	<u>YEAR</u>	<u>INDEX</u>
2003	1.31%	2009	2.55%
2004	1.60%	2010	0.56%
2005	2.17%	2011	1.18%
2006	2.74%	2012	2.41%
2007	3.09%	2013	1.63%
2008	2.39%	2014	1.41%

The table below shows the historical participation in the Index and/or Pass-Through programs:

Table 1-2

<u>Percentage of Jurisdictional Water and Wastewater Utilities Filing for Indexes and/or Pass-Throughs</u>			
<u>YEAR</u>	<u>PERCENTAGE</u>	<u>YEAR</u>	<u>PERCENTAGE</u>
2003	27%	2009	53%
2004	22%	2010	29%
2005	33%	2011	43%
2006	32%	2012	30%
2007	47%	2013	41%
2008	42%	2014	39%

Issue 2: What rate should be used by water and wastewater utilities for the 2015 Price Index?

Recommendation: The 2015 Price Index for water and wastewater utilities should be 1.57 percent. (T. Brown)

Staff Analysis: The U.S. Department of Commerce, Bureau of Economic Analysis, released the final third quarter 2014 figures on December 23, 2014. The percentage change in the GDP using the fiscal year comparison ending with the third quarter is 1.57 percent. This number was calculated as follows:

GDP Index for the fiscal year ended 9/30/14	108.603
GDP Index for the fiscal year ended 9/30/13	<u>106.923</u>
Difference	1.68
Divided by 9/30/13 GDP Index	<u>106.923</u>
2015 Price Index	<u>1.57%</u>

Issue 3: How should the utilities be informed of the indexing requirements?

Recommendation: Pursuant to Rule 25-30.420(1), F.A.C., the Office of Commission Clerk, after the expiration of the Proposed Agency Action (PAA) protest period, should mail each regulated water and wastewater utility a copy of the PAA order establishing the index containing the information presented in Form PSC/ECR 15 (4/99) and Appendix A (Attachment 1). A cover letter from the Director of the Division of Accounting and Finance should be included with the mailing of the order (Attachment 2). The entire package will also be made available on the Commission's website. (T. Brown)

Staff Analysis: Staff designed a package (Form PSC/ECR 15 (4/99) and Appendix A), attached hereto as Attachment 1, that details the requirements of the Commission's Index and Pass-Through programs. This package has significantly reduced the number of questions regarding what the index and pass-through rate adjustments are, how to apply for an adjustment, and what needs to be filed to meet the filing requirements.

Staff recommends that the package presented in Form PSC/ECR 15 (4/99) and Appendix A (Attachment 1) be mailed to every regulated water and wastewater utility after the expiration of the PAA protest period, along with a copy of the PAA order that has become final. The entire package will also be made available on the Commission's website.

In an effort to increase the number of water and wastewater utilities taking advantage of the annual price index and pass-through programs, staff is recommending that the attached cover letter (Attachment 2) from the Director of the Division of Accounting and Finance be included with the mailing of the PAA Order to explain the purpose of the index and pass-through applications and that Commission staff is available to assist them.

Issue 4: Should this docket be closed?

Recommendation: No. Upon expiration of the 14-day protest period, if a timely protest is not received, the decision should become final and effective upon the issuance of a Consummating Order. Any party filing a protest should be required to prefile testimony with the protest. However, this docket should remain open through the end of the year and be closed upon the establishment of the new docket on January 4, 2016. (Villafrate, T. Brown)

Staff Analysis: Uniform Rule 25-22.029(1), F.A.C., contains an exception to the procedural requirements set forth in Uniform Rule 28-106.111, F.A.C., providing that “[t]he time for requesting a Section 120.569 or 120.57 hearing shall be 14 days from issuance of the notice for PAA orders establishing a price index pursuant to Section 367.081(4)(a), F.S.” Therefore, staff recommends that the Commission require any protest to the PAA Order in this docket be filed within 14 days of the issuance of the PAA Order, and that any party filing the protest should be required to prefile testimony with the protest. Upon expiration of the protest period, if a timely protest is not received, the decision should become final and effective upon the issuance of a Consummating Order. However, this docket should remain open through the end of the year and be closed upon the establishment of the new docket on January 4, 2016.

FLORIDA PUBLIC SERVICE COMMISSION
 2015 PRICE INDEX APPLICATION
 TEST YEAR ENDED DECEMBER 31, 2014

DEP PWS ID NO. _____	WATER	WASTEWATER
DEP WWTP ID NO. _____		
*2014 Operation and Maintenance Expenses	\$	\$
LESS:		
(a) Pass-through Items:		
(1) Purchased Power		
(2) Purchased Water		
** (3) Purchased Wastewater Treatment		
*** (4) New DEP Required Water Testing		
*** (5) New DEP Required Wastewater Testing		
(6) NPDES Fees		
(b) Rate Case Expense Included in 2014 Expenses		
(c) Adjustments to O & M Expenses from last rate case, if applicable:		
(1)	_____	_____
(2)		
Costs to be Indexed	\$	\$
Multiply by change in GDP Implicit Price Deflator Index	<u> .0157 </u>	<u> .0157 </u>
Indexed Costs	\$	\$
**** Add Change in Pass-Through Items:		
(1)		
(2)		
Divide Index and Pass-Through Sum by Expansion Factor for Regulatory Assessment Fees	<u> .955 </u>	<u> .955 </u>
Increase in Revenue	\$	\$
***** Divide by 2014 Revenue	_____	_____
Percentage Increase in Rates	<u> % </u>	<u> % </u>

EXPLANATORY NOTES APPEAR ON THE FOLLOWING PAGE
 PSC/ECR 15 (04/99)

PAGE 1 NOTES

- * This amount must match 2014 annual report.
- ** This may include government-mandated disposal fees.
- *** Daily, weekly, or monthly testing required by the Department of Environmental Protection (DEP) not currently included in the utility's rates. Or additional tests required by the DEP during the 12-month period prior to filing by the utility and/or changes to the frequency of existing test(s) required by the DEP during the 12-month period prior to filing by the utility.
- **** This may include an increase in purchased power, purchased water, purchased wastewater treatment, required DEP testing, and ad valorem taxes, providing that those increases have been incurred within the 12-month period prior to the submission of the pass-through application. Pass-through NPDES fees and increases in regulatory assessment fees are eligible as pass-through costs but not subject to the twelve month rule. DEP water and wastewater testing pass-throughs require invoices. See Rule 25-30.425, F.A.C. for more information.
- ***** If rates changed after January 1, 2014, the book revenues must be adjusted to show the changes and an explanation of the calculation should be attached to this form. See Annualized Revenue Worksheet for instructions and a sample format.

ANNUALIZED REVENUE WORKSHEET

Have the rates charged for customer services changed since January 1, 2014?

- () If no, the utility should use actual revenues. This form may be disregarded.
- () If yes, the utility must annualize its revenues. Read the remainder of this form.

Annualizing calculates the revenues the utility would have earned based upon 2014 customer consumption at the most current rates in effect. To complete this calculation, the utility will need consumption data for 2014 to apply to the existing rate schedule. Below is a sample format which may be used.

CALCULATION OF ANNUALIZED REVENUES*

Consumption Data for 2014

	Number of Bill/Gal. Sold	X	Current Rates	Annualized Revenues
Residential Service:				
Bills: 5/8"x3/4" meters
1" meters
1 1/2" meters
2" meters
Gallons Sold
General Service:				
Bills: 5/8"x3/4" meters
1" meters
1 1/2" meters
2" meters
3" meters
4" meters
6" meters
Gallons Sold
Total Annualized Revenues for 2014				\$

* Annualized revenues must be calculated separately if the utility consists of both a water system and a wastewater system. This form is designed specifically for utilities using a base facility charge rate structure. If annualized revenues must be calculated and further assistance is needed, contact the Commission Staff at (850) 413-6900.

Appendix A

PRICE INDEX ADJUSTMENTS IN RATES

Section 367.081(4)(a), (c), (d), (e), and (f) Florida Statutes
Rule 25-30.420, Florida Administrative Code
Sample Affirmation Affidavit
Notice to Customers

Sections 367.081(4)(a), (c), (d), (e), and (f), Florida Statutes

(4)(a) On or before March 31 of each year, the commission by order shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. The commission by rule shall establish the procedure to be used in determining such indices and a procedure by which a utility, without further action by the commission, or the commission on its own motion, may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082. A utility may not use this procedure between the official filing date of the rate proceeding and 1 year thereafter, unless the case is completed or terminated at an earlier date. A utility may not use this procedure to increase any operating cost for which an adjustment has been or could be made under paragraph (b), or to increase its rates by application of a price index other than the most recent price index authorized by the commission at the time of filing.

(c) Before implementing a change in rates under this subsection, the utility shall file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the utility to exceed the range of its last authorized rate of return on equity. Whoever makes a false statement in the affirmation required hereunder, which statement he or she does not believe to be true in regard to any material matter, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required.

(e) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of paragraphs (a) and (b) shall be considered one rate adjustment.

(f) The commission may regularly, not less often than once each year, establish by order a leverage formula or formulae that reasonably reflect the range of returns on common equity for an average water or wastewater utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph.

25-30.420 Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers.

(1) The Commission shall, on or before March 31 of each year, establish a price increase or decrease index as required by section 367.081(4)(a), F.S. The Division of the Commission Clerk and Administrative Services shall mail each regulated water and wastewater utility a copy of the proposed agency action order establishing the index for the year and a copy of the application. Form PSC/ECR 15 (04/99), entitled "Index Application", is incorporated into this rule by reference and may be obtained from the Commission's Division of Economic Regulation. Applications for the newly established price index will be accepted from April 1 of the year the index is established through March 31 of the following year.

(a) The index shall be applied to all operation and maintenance expenses, except for amortization of rate case expense, costs subject to pass-through adjustments pursuant to section 367.081(4)(b), F.S., and adjustments or disallowances made in a utility's most recent rate proceeding.

(b) In establishing the price index, the Commission will consider cost statistics compiled by government agencies or bodies, cost data supplied by utility companies or other interested parties, and applicable wage and price guidelines.

(2) Any utility seeking to increase or decrease its rates based upon the application of the index established pursuant to subsection (1) and as authorized by section 367.081(4)(a), F.S., shall file an original and five copies of a notice of intention and the materials listed in (a) through (i) below with the Commission's Division of Economic Regulation at least 60 days prior to the effective date of the increase or decrease. The adjustment in rates shall take effect on the date specified in the notice of intention unless the Commission finds that the notice of intention or accompanying materials do not comply with the law, or the rules or orders of the Commission. The notice shall be accompanied by:

(a) Revised tariff sheets;

(b) A computation schedule showing the increase or decrease in annual revenue that will result when the index is applied;

(c) The affirmation required by section 367.081(4)(c), F.S.;

(d) A copy of the notice to customers required by subsection (6);

(e) The rate of return on equity that the utility is affirming it will not exceed pursuant to section 367.081(4)(c), F.S.;

(f) An annualized revenue figure for the test year used in the index calculation reflecting the rate change, along with an explanation of the calculation, if there has been any change in the utility's rates during or subsequent to the test year;

(g) The utility's Department of Environmental Protection Public Water System identification number and Wastewater Treatment Plant Operating Permit number.

(h) A statement that the utility does not have any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Department(s) or that the utility does have active written complaints, corrective orders, consent orders, or outstanding citations with the DEP or the County Health Department(s).

(i) A copy of any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Department(s).

(3) If the Commission, upon its own motion, implements an increase or decrease in the rates of a utility based upon the application of the index established pursuant to subsection (1) and as authorized by section 367.081(4)(a), F.S., the Commission will require a utility to file the information required in subsection (2).

(4) Upon a finding of good cause, the Commission may require that a rate increase pursuant to section 367.081(4)(a), F.S., be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection, "good cause" shall include:

(a) Inadequate service by the utility;

(b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under this rule.

(5) Prior to the time a customer begins consumption at the rates established by application of the index, the utility shall notify each customer of the increase or decrease authorized and explain the reasons therefore.

(6) No utility shall file a notice of intention pursuant to this rule unless the utility has on file with the Commission an annual report as required by Rule 25-30.110(3), F.A.C., for the test year specified in the order establishing the index for the year.

(7) No utility shall implement a rate increase pursuant to this rule within one year of the official date that it filed a rate proceeding, unless the rate proceeding has been completed or terminated.

Specific Authority: 350.127(2), 367.081(4)(a), 367.121(1)(c), 367.121(1)(f), F.S. Law Implemented: 367.081(4), 367.121(1)(c), 367.121(1)(g), F.S. History: New 04/05/81, Amended 09/16/82, Formerly 25-10.185, Amended 11/10/86, 06/05/91, 04/18/99, 12/12/03.

AFFIRMATION

I, _____, hereby affirm that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause _____ to exceed the range of its last

(Utility Name)
authorized rate of return on equity, which is _____.

I, the undersigned/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this application is true and correct.

This affirmation is made pursuant to my request for a 2015 price index and/or pass-through rate increase, in conformance with Section 367.081(4)(c), Florida Statutes.

Further, I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Signature: _____
Title: _____
Telephone Number: _____
Fax Number: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

My Commission expires:

(SEAL)

Notary Public
State of Florida

STATEMENT OF QUALITY OF SERVICE

Pursuant to Rule 25-30.420(2)(h) and (i), Florida Administrative Code,

(Utility Name)

[] does not have any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Departments.

[] does have the attached active written complaint(s), corrective order(s), consent order(s), or outstanding citation(s) with the DEP or the County Health Department(s). The attachment(s) includes the specific system(s) involved with DEP permit number and the nature of the active complaint, corrective order, consent order, or outstanding citation.

This statement is intended such that the Florida Public Service Commission can make a determination of quality of service pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420(4)(a), Florida Administrative Code.

Name: _____
Title: _____
Telephone Number: _____
Fax Number: _____
Date: _____

NOTICE TO CUSTOMERS

Pursuant to Section 367.081(4)(a), Florida Statutes, water and wastewater utilities are permitted to adjust the rates and charges to its customers without those customers bearing the additional expense of a public hearing. These adjustments in rates would depend on increases or decreases in noncontrollable expenses subject to inflationary pressures such as chemicals, and other general operation and maintenance costs.

On _____,
(date) (name of company)

filed its notice of intention with the Florida Public Service Commission to increase water and wastewater rates in _____ County pursuant to this Statute. The filing is subject to review by the Commission Staff for accuracy and completeness. Water rates will increase by approximately _____% and wastewater rates by _____%. These rates should be reflected for service rendered on or after _____.(date)

PASS-THROUGH RATE ADJUSTMENTS IN RATES

Section 367.081(4)(b), Florida Statutes
Rule 25-30.425, Florida Administrative Code
Waiver Form
Sample Affirmation Affidavit
Notice to Customers

Section 367.081(4)(b), Florida Statutes

(b) The approved rates of any utility which receives all or any portion of its utility service from a governmental authority or from a water or wastewater utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the governmental authority or other utility have changed. The approved rates of any utility which is subject to an increase or decrease in the rates or fees that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water quality or wastewater quality testing performed by laboratories approved by the Department of Environmental Protection for that purpose. The new rates, however, shall not reflect the costs of any required water quality or wastewater quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water quality or wastewater quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

25-30.425 Pass Through Rate Adjustment.

The verified notice to the Commission of an adjustment of rates under the provisions of Section 367.081(4)(b), F.S., shall be made in the following manner:

(1) Prior to an adjustment in rates because of an increase or decrease in purchased utility service, the utility shall file:

(a) A certified copy of the order, ordinance or other evidence whereby the rates for utility service are increased or decreased by the governmental agency or by a water or wastewater utility regulated by the Commission, along with evidence of the utility service rates of that governmental agency or water or wastewater utility in effect on January 1 of each of the three preceding years.

(b) A statement setting out by month the charges for utility services purchased from the governmental agency or regulated utility for the most recent 12-month period.

(c) 1. A statement setting out by month the gallons of water or wastewater treatment purchased from the governmental agency or regulated utility for the most recent 12-month period. If wastewater treatment service is not based on a metered flow, the number of units by which the service is measured shall be stated.

2. A statement setting out by month gallons of water and units of wastewater service sold by the utility for the most recent 12-month period.

(d) A statement setting out by month the gallons of water or wastewater treatment purchased from any other government entity or utility company.

(e) A statement setting out by month the gallons of water pumped or wastewater treated by the utility filing the verified notice.

(f) If the total water available for sale is in excess of 110% of the water sold, a statement explaining the unaccounted for water.

(2) Prior to an adjustment in rates because of an increase or decrease in the charge for electric power the utility shall file with the Commission:

(a) A certified copy of the order, ordinance or other evidence which establishes that the rates for electric power have been increased or decreased by the supplier, along with evidence of the electric power rates of the supplier in effect on January 1 of each of the three preceding years.

(b) A schedule showing, by month, the charges for electric power and consumption for the most recent 12 month period, the charges that would have resulted had the new electric rates been applied, and the difference between the charges under the old rates and the charges under the new rates.

(c) A statement outlining the measures taken by the utility to conserve electricity.

(3) Prior to an adjustment in rates because of an increase or decrease in ad valorem taxes the utility shall file with the Commission:

(a) A copy of the ad valorem tax bills which increased or decreased and copies of the previous three years' bills; if copies have been submitted previously, a schedule showing the tax total only is acceptable; and

(b) A calculation of the amount of the ad valorem taxes related to that portion of the water or wastewater plant not used and useful in providing utility service.

(4) Prior to an adjustment in rates because of an increase or decrease in the costs of water quality or wastewater quality testing required by the Department of Environmental Protection (DEP), or because of an increase or decrease in the fees charged by DEP in connection with the National Pollutant Discharge Elimination System Program, the utility shall file with the Commission:

(a) A copy of the invoice for testing;

(b) Calculation of the amortized amount.

(5) In addition to subsections (1), (2), (3), and (4) above, the utility shall also file:

(a) A schedule of proposed rates which will pass the increased or decreased costs on to the customers in a fair and nondiscriminatory manner and on the basis of current customers, and a calculation showing how the rates were determined;

- (b) A statement, by class of customer and meter size, setting out by month the gallons of water and units of wastewater service sold by the utility for the most recent 12 month period. This statement shall not be required in filings for the pass through of increased regulatory assessment fees or ad valorem taxes;
- (c) The affirmation reflecting the authorized rate of return on equity required by Section 367.081(4)(c), F.S.;
- (d) A copy of the notice to customers required by subsection (7) of this rule;
- (e) Revised tariff sheets reflecting the increased rates;
- (f) The rate of return on equity that the utility is affirming it will not exceed pursuant to Section 367.081(4)(c), F.S.; and
- (g) The utility's DEP Public Water System identification number and Wastewater Treatment Plant Operating Permit number;
- (6) The amount authorized for pass through rate adjustments shall not exceed the actual cost incurred and shall not exceed the incremental increase or decrease for the 12-month period. Foregone pass through decreases shall not be used to adjust a pass through increase below the actual cost incurred.
- (7) In order for the Commission to determine whether a utility which had adjusted its rates pursuant to Section 367.081(4)(b), F.S., has thereby exceeded the range of its last authorized rate of return, the Commission may require a utility to file the information required in Rule 25- 30.437, F. A. C., for the test year specified.
- (8) Prior to the time a customer begins consumption at the adjusted rates, the utility shall notify each customer of the increase authorized and explain the reasons for the increase.
- (9) The utility shall file an original and five copies of the verified notice and supporting documents with the Division of Economic Regulation. The rates shall become effective 45 days after the official date of filing. The official date of filing for the verified notice to the Commission of adjustment in rates shall be at least 45 days before the new rates are implemented.

Specific Authority 350.127(2), 367.121(1)(c), (f) FS. Law Implemented 367.081(4), 367.121(1)(c), (g) FS. History-New 6-10-75, Amended 4-5-79, 4-5-81, 10-21-82, Formerly 25-10.179, Amended 11-10-86, 6-5-91, 4-18-99.

WAIVER

_____ hereby waives the right to implement a pass-through rate increase within 45 days of filing, as provided by Section 367.081(4)(b), Florida Statutes, in order that the pass-through and index rate increase may both be implemented together 60 days after the official filing date of this notice of intention.

Signature: _____

Title: _____

(To be used if an index and pass-through rate increase are requested jointly.)

AFFIRMATION

I, _____, hereby affirm that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause _____ to exceed the range of its last _____
(Utility Name)
authorized rate of return on equity, which is _____.

I, the undersigned/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this application is true and correct.

This affirmation is made pursuant to my request for a 2015 price index and/or pass-through rate increase, in conformance with Section 367.081(4)(c), Florida Statutes.

Further, I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Signature: _____
Title: _____
Telephone Number: _____
Fax Number: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

My Commission expires:

(SEAL)

Notary Public
State of Florida

NOTICE TO CUSTOMERS

Pursuant to Section 367.081(4)(b), Florida Statutes, water and wastewater utilities are permitted to pass through, without a public hearing, a change in rates resulting from: an increase or decrease in rates charged for utility services received from a governmental agency or another regulated utility and which services were redistributed by the utility to its customers; an increase or decrease in the rates that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the Commission; and costs incurred for water quality or wastewater quality testing required by the Department of Environmental Protection.

On _____,
(date) (name of company)

filed its notice of intention with the Florida Public Service Commission to increase water and wastewater rates in _____ County pursuant to this Statute. The filing is subject to review by the Commission Staff for accuracy and completeness. Water rates will increase by approximately _____% and wastewater rates by _____%. These rates should be reflected on your bill for service rendered on or after _____.(date)

If you should have any questions, please contact your local utility office. Be sure to have your account number handy for quick reference.

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

STATE OF FLORIDA



ANDREW L. MAUREY, DIRECTOR
DIVISION OF ACCOUNTING AND FINANCE
(850) 413-6900

Public Service Commission

Month Day, 2015

All Florida Public Service Commission
Regulated Water & Wastewater Utilities

Re: Docket No. 150005-WS - 2015 Price Index

Dear Utility Owner:

Since March 31, 1981, pursuant to the guidelines established by Section 367.081(4)(a), Florida Statutes (F.S.), and Rule 25-30.420, Florida Administrative Code (F.A.C.), the Commission has established a price index increase or decrease for major categories of operating costs. The intent of this rule is to insure that inflationary pressures are not detrimental to utility owners, and that any possible deflationary pressures are not adverse to rate payers. By keeping up with index and pass-through adjustments, utility operations can be maintained at a level sufficient to insure quality of service for the rate payers.

Pursuant to Rule 25-30.420(1)(a), F.A.C., all operation and maintenance expenses shall be indexed with the exception of:

- a) Pass-through items pursuant to Section 367.081(4)(b), F.S.;
- b) Any amortization of rate case expense; and
- c) Disallowances or adjustments made in an applicant's most recent rate proceeding.

Upon the filing of a request for an index and/or pass-through increase, staff will review the application and modify existing rates accordingly. If for no other reason than to keep up with escalating costs, utilities throughout Florida should file for this rate relief on an annual basis. Utilities may apply for a 2015 Price Index anytime between April 1, 2015, through March 31, 2016. The attached package will answer questions regarding what the index and pass-through rate adjustments are, how to apply for an adjustment, and what needs to be filed in order to meet the filing requirements. While this increase for any given year may be minor, (see chart below), the long-run effect of keeping current with rising costs can be substantial.

All Florida Public Service Commission
Regulated Water & Wastewater Utilities
Page 2
Month Day, 2015

	ANNUAL		ANNUAL
	COMMISSION		COMMISSION
YEAR	APPROVED INDEX	YEAR	APPROVED INDEX
1990	4.12%	2003	1.31%
1991	4.12%	2004	1.60%
1992	3.63%	2005	2.17%
1993	3.33%	2006	2.74%
1994	2.56%	2007	3.09%
1995	1.95%	2008	2.39%
1996	2.49%	2009	2.55%
1997	2.13%	2010	0.56%
1998	2.10%	2011	1.18%
1999	1.21%	2012	2.41%
2000	1.36%	2013	1.63%
2001	2.50%	2014	1.41%
2002	2.33%	2015	1.57%

Please be aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Our staff is available at (850) 413-6900 should you need assistance with your filing. If you have any questions, please do not hesitate to call.

Sincerely,

Andrew L. Maurey
Director

Enclosures

Item 5

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lee) *KZ PV T2*
Division of Accounting and Finance (Frank) *DF BOG*
Division of Economics (Bruce) *DF BOG*
Office of the General Counsel (Crawford, Mapp) *J.W.D. ALM*

RE: Docket No. 140038-SU – Application for transfer of majority organizational control of Crooked Lake Park Sewerage Co. in Polk County, to Glenbrook Properties, LLC, a Florida limited liability company.

AGENDA: 01/08/15– Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Crooked Lake Park Sewerage Company (Crooked Lake or Company) is a Class C wastewater utility serving approximately 324 wastewater customers in Polk County. According to Crooked Lake's 2013 Annual Report, total gross revenues were \$129,567 and total operating expenses were \$126,602.

On December 13, 1957, Polk County granted a franchise to Park Water Company to operate a water and wastewater system. In 1978, the wastewater treatment plant and collection system were sold to Warner Southern College, and the name was changed to Crooked Lake Park Sewerage Company. On September 30, 1988, the Company was sold, but continued to operate under the existing name. Polk County came under the Florida Public Service Commission's

Docket No. 140038-SU
Date: December 23, 2014

(Commission) jurisdiction on July 11, 1996. In 1998, the Commission granted the Company grandfather Certificate No. 517-S for its wastewater system.¹

On February 21, 2014, the Company filed its application for transfer of majority organizational control and name change to Glenbrook Properties, LLC (Glenbrook). The application, as filed, contained several deficiencies and those deficiencies were corrected on June 11, 2014. Further, Crooked Lake has a pending application for a staff-assisted rate case in Docket No. 130178-SU.

On December 17, 2014, additional information was received that Crooked Lake did not want to change its name and the application should be amended to reflect a transfer of majority organizational control only, with no name change.

The Commission has jurisdiction in this case pursuant to Section 367.071, Florida Statutes (F.S.).

¹ See Order No. PSC-98-1247-FOF-SU, issued September 21, 1998, in Docket No. 961478-SU, In re: Application for grandfather certificate to operate a wastewater utility in Polk County by Crooked Lake Park Sewerage Company.

Discussion of Issues

Issue 1: Should the application for transfer of majority organizational control of Crooked Lake Park Sewerage Company in Polk County to Glenbrook Properties, LLC be approved?

Recommendation: Yes. The transfer of majority organizational control to Glenbrook Properties, LLC, is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the wastewater certificate, with the territory described in Attachment A. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.). (Lee, Frank, Bruce)

Staff Analysis: This application is for the transfer of majority organizational control of Crooked Lake Park Sewerage Company to Glenbrook Properties, LLC. Based on staff's review, the application is in compliance with the governing statute, Section 367.071, F.S., and Rule 25-30.037(3), F.A.C., concerning applications for transfer of majority organizational control.

Noticing, Territory, and Ownership

The applicant provided 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 filed with the Commission, and the time for doing so has expired. The notice contains a description of the territory for the Company, which is appended to this recommendation as Attachment A. The application also contains evidence of ownership including deeds for the land upon which the wastewater treatment facilities are located pursuant to Rule 25-30.037(3)(i), F.A.C.

Technical and Financial Ability

Pursuant to Rule 25-30.037(3)(f), F.A.C., the application contains statements describing the technical and financial ability of the applicant to provide service to the proposed service area. Staff has reviewed the financial statement of Glenbrook and the accompanying affidavit asserting that the Buyer will supply the necessary funds if there is need for system improvements above the level of internal funding.² Based on its review, staff believes the documents show that Glenbrook has the financial capability to operate the utility. Since assuming ownership, Glenbrook has taken actions that include retaining a new service contractor to improve the operations and, as a result, the Company has received no new DEP enforcement actions since then. Based on the above, staff believes that Glenbrook has demonstrated the technical and financial ability to provide service to the existing service territory.

² See Document No. 06519-14, in Docket No. 140038-SU.

Rate Base and Rates

A transfer of majority organizational control involving stock transfers does not affect the rate base. Therefore, it has been Commission practice that rate base and acquisition adjustments are not considered in cases involving stock transfers.

The Company's rates and charges were last approved in a staff-assisted rate case approved in 2007.³ Subsequently, the rates were reduced to reflect the expiration of the four-year amortization of the rate case expense approved in 2007. The miscellaneous service charges, customer deposits, and service availability charges have been approved by the Commission in various other dockets.⁴ The existing rates and charges are shown on Schedule No. 1. 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 the Commission. Therefore, staff recommends that the existing rates and charges remain in effect until a change is authorized by the Commission in a subsequent proceeding.

Conclusion

Based on the above, staff recommends that the transfer of majority organizational control to Glenbrook Properties, LLC is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the wastewater certificate, with the territory described in Attachment A. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, F.A.C.

³ See Order No. PSC-07-0077-PAA-SU, issued January 29, 2007, in Docket No. 060406-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.

⁴ See Order Nos. PSC-98-1247-FOF-SU, issued September 21, 1998, in Docket No. 961478-SU, In re: Application for grandfather certificate to operate a wastewater utility in Polk County by Crooked Lake Park Sewerage Company; and PSC-99-2116-PAA-SU, issued October 25, 1999, in Docket No. 980778-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.

Issue 2: Should this docket be closed?

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

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

CROOKED LAKE PARK SEWERAGE COMPANY

POLK COUNTY

WASTEWATER SERVICE AREA

Parcels or tracts of land situated, lying and being in Township 30 South, Range 27 East, Polk County, Florida and more particularly described as follows:

1. The SE 1/4 of the SE 1/4 of Section 26; AND
2. The North 1/2 of the NE 1/4 of Section 35, less and except that portion west of SR 25 (US Highway 27); AND
3. Beginning at the Northwest corner of Section 36, T. 30 S., R. 27 E.; run thence S. 00°05'00" W. with the W. line of said Section 801.90' for a point of beginning; thence S. 89°25'00" E., 1109.00'; thence S. 16°23'00" E., 1086.00' to the lake shore of Crooked Lake; thence along the shore line of said Crooked Lake to the West line of said Section (S. 47° W., 2,000' more or less); thence along said Section line N. 00°05'00" E., 2529.90', more or less to the place of beginning; AND
4. Also beginning at the Northwest corner of Section 36, T. 30 S., R. 27 E.; run thence S. 00°05'00" West with the West line of said Section 801.90' for a point of beginning; thence N. 00°05'00" E. along said Section line 156.30'; thence S. 89°25'00" E., 20.00' thence S. 00°05'00" W., 156.30'; thence N. 89°25'00" W., 20.00' to the place of beginning; being a strip of land 20.00' wide and 156.30' long East of and parallel to the West line of said Section; AND
5. From the Northeast corner of the SE 1/4 of the NE 1/4 of the NE 1/4 of said Section 35, run Westerly along the North line of said fraction 2646.94' to the Easterly right-of-way line of SR 25; thence S. 22°01'00" W. (a distance of approximately 2,300 feet) along the Easterly right-of-way of said SR 25 (US Highway 27) to the Southerly boundary of Crooked Lake Park, Tract No. 1, as recorded in Plat Book 38, Page 40 of the Public Records of Polk County, Florida; thence S. 56°28'25" E. along said Southerly boundary 1790.00', more or less, to the shore of Lake Caloosa; thence Northeasterly along said waters edge to the East line of said Section 35; thence Northerly along said East line of Section 35 to the point of beginning. AND

CROOKED LAKE PARK SEWERAGE COMPANY

POLK COUNTY

WASTEWATER SERVICE AREA

6. Beginning at the Northeast corner of the SE 1/4 of the N.W. 1/4 of the NE 1/4 of Section 35, T. 30 S., R. 27 E., Polk County, Florida; run W. 1308.76' to SR 25 (US Highway 27); thence Northeasterly along said road 700.00' for the point of beginning; thence run Northeasterly along said right-of-way 200.00'; thence E. 250.00'; thence Southwesterly to a point lying 250.00' E. of the point of beginning; thence W. 250.00' to the point of beginning. AND
7. Beginning at the Northeast corner of the SE 1/4 of the NW 1/4 of the NE 1/4 of Section 35, T. 30 S., R. 27 E., Polk County, Florida; thence run W. 1308.76' to the Easterly right-of-way of SR 25 (US Highway 27); thence run Northeasterly along right-of-way 900.00' to the point of beginning; thence run N. 22°01'00" E. along right-of-way 335.00'; thence S. 67°59'00" E., 231.45'; thence S. 22°01'00" W., 240.50'; thence W. 250.00' to the point of beginning. AND
8. That portion of the N. 1/2 of the NW 1/4 of Section 35, T. 30 S., R. 27 E. lying E. of SR 25 (US Highway 27).

FLORIDA PUBLIC SERVICE COMMISSION
Authorizes
Crooked Lake Park Sewerage Company
Pursuant to
Certificate Number 517-S

to provide wastewater service in Polk County accordance with the provision of Chapter 367, Florida Statutes, 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, cancelled or revoked by Orders of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-98-1247-FOF-SU	09/21/1998	961478-SU	Grandfather Certificate
*	*	140038-SU	Transfer of Majority Organizational Control

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

**Crooked Lake Park Sewerage Company
 Monthly Wastewater Rates**

Residential Service

Base Facility Charge – All Meter Sizes	\$15.46
Charge Per 1,000 gallons 8,000 gallon cap	\$3.06

General Service

Base Facility Charge by Meter Size	
5/8" x 3/4"	\$15.46
3/4"	\$23.19
1"	\$38.66
1 1/2"	\$77.30
2"	\$123.69
3"	\$247.38
4"	\$386.52
6"	\$773.04
Charge Per 1,000 gallons	\$3.67

Bulk Service

College Park (per unit)	\$15.46
Charge Per 1,000 gallons 8,000 gallon cap per unit	\$3.06

Initial Customer Deposits

Residential Service 5/8" x 3/4"	\$45.00
General Service 5/8" x 3/4"	\$45.00
All Other Meter Sizes	2 times average estimated bill

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)	\$15.00

Service Availability Charge

<u>Main Extension Charge</u>	
Residential – Per ERC (ERC = 250 GPD)	\$150.00
<u>Plant Capacity Charge</u>	
Residential – Per ERC (ERC = 250 GPD)	\$450.00