

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: November 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Roberts, Hudson, Massoudi, Rendell)
Office of General Counsel (Hartman)

Handwritten initials and signatures: SH, MM, E, CRP, [Signature], 199, S.M.C.

RE: Docket No. 070627-WU – Application for staff-assisted rate case in Lake County by Raintree Utilities, Inc.

AGENDA: 11/20/07 – Regular Agenda –Decision on Temporary Charges- Participation is at the discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: 02/23/09 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070627.RCM.DOC

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Case Background

Raintree Utilities, Inc. (Raintree or Utility) is a class C water utility providing service to approximately 119 customers in Lake County. The Utility is located in the Raintree Harbor and Bentwood subdivisions. Wastewater service is provided through septic tanks. According to Raintree’s 2006 Annual Report, the Utility reported operating revenues of \$45,950 and a net operating income (loss) of \$600.

On September 8, 1987, this Commission issued Order No. 18131 granting Raintree an exemption from Commission jurisdiction pursuant to Section 367.022(6), Florida Statutes (F.S.) Section 367.022(6), F.S., exempts those systems with the capacity or proposed capacity to serve 100 or fewer persons. The Commission found Raintree exempt based upon the initial 29 lot

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subdivision and associated capacity of the water plant. Raintree began operation in January 1988 and implemented rates and charges in January 1990.

On July 18, 1991, Raintree advised the Commission that it was in the process of expanding the distribution system to serve 119 lots and had received Lake County's approval for the second phase of the development. The Utility further advised that it was preparing to file an application with the Commission for an original certificate.

On October 10, 1991, Raintree filed its application for a water certificate. The Commission granted Water Certificate 539-W to the utility in Order No. PSC-92-0019-FOF-WU, issued March 10, 1992.¹ The Utility has never had rate base established and currently operates under the same rates that were established in Order No. PSC-92-0019-FOF-WU.

On April 28, 2000, the Commission rendered Order No. PSC-00-0843-FOF-WU, approving transfer of majority organizational control from Mr. Donn Monn to Mr. Keith J. Shamrock. Rate base was not established because the sale was accomplished by the transfer of stock.

On June 29, 2005, the Commission issued Order No. PSC-05-0706-PAA-WU which amended the Utility's certificate to include the additional territory of Bentwood. In addition, the Commission also approved an \$800 plant capacity charge and a meter installation charge of \$125.

On September 27, 2007, Raintree filed an application for a staff assisted rate case. This is the Utility's first staff assisted rate case. In its application, the Utility requested authority to increase its plant capacity charge from \$800 to \$2,900 on a temporary basis, pending the determination of final rates and charges in this proceeding. As Raintree Harbor is built out, the proposed plant charges will only apply to Bentwood and future developments.

This recommendation addresses Raintree's request for authority to collect revised plant capacity charges on a temporary basis. The Commission has jurisdiction pursuant to Sections 367.011, 367.0814, 367.101, and 367.121, F.S.

¹ See Order No. PSC-92-0019-FOF-WU, issued March 10, 1992, in Docket No. 911039-WU, In re: Application for of Raintree Utilities, Inc. for a water certificate in Lake County, Florida.

Discussion of Issues

Issue 1: Should Raintree's proposed water plant capacity charge of \$2,900 per residential connection be approved on an temporary basis?

Recommendation: Yes, Raintree's proposed water plant capacity charge of \$2,900 per residential connection should be approved on a temporary basis, subject to refund, for connections made on or after the stamped approval date of the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code. (Roberts, Hudson)

Staff Analysis: Currently, Raintree has an authorized residential plant capacity charge of \$800 per equivalent residential connection (ERC). On September 27, 2007, the Utility filed its application for a staff assisted rate case which included a request for increased plant capacity charges. Raintree is requesting a residential plant capacity charge of \$2,900 per ERC.

Section 367.011(2), F.S., gives the Commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.081(1), F.S., provides that, except for pass-through and index rate adjustments, a utility may only charge rates and charges that have been approved by the Commission. Section 367.101(1), F.S., states:

The commission shall set just and reasonable charges and conditions for service availability. The commission by rule may set standards for and levels of service-availability charges and service-availability conditions. Such charges and conditions shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions for service availability.

Section 367.121(1)(g), F.S., provides that in the exercise of its jurisdiction the Commission shall have the power to do all things necessary or convenient to the full and complete exercise of its jurisdiction.

The Commission has approved temporary service availability charges in several previous cases.² The Florida Supreme Court has also affirmed the Commission's authority and discretion to determine, on a case by case basis, what evidence it will consider in fixing interim rates. See Citizens of Florida v. Public Service Commission, 425 So. 2d 534, 540 (Fla. 1982), and Citizens of Fla. v. Public Service Commission, 435 So. 2d 784, 786 (Fla. 1983) ("Interim awards attempt to make a utility whole during the pendency of a proceeding without the interjection of any opinion testimony").

² See Order No. PSC-07-0327-PCO-SU, issued April 16, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; Order No. 20822, issued February 28, 1989, in Docket No. 880654-SU, In re: Application of Radnor/Plantation Utilities for increase in sewer rates in Martin County.; Order No. 23195, issued July 16, 1990, in Docket No. 900402-WS, In re: Application for approval of new service availability policy in Seminole County by Alafaya Palm Valley Associates, Ltd.; Order No. PSC-96-0043-FOF-SU, issued January 11, 1996, in Docket No. 951311-SU, In Re: Application for approval of increase in wastewater plant capacity charges in Brevard County by Florida Citifies Water Company. (Barefoot Bay Division).; and Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, In re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

Rule 25-30.580, Florida Administrative Code (F.A.C.) establishes the guidelines for designing a utility's service availability policy as follows:

- (1) The maximum amount of contributions-in-aid-of-construction, net of amortization, should not exceed 75 percent of the total original cost, net accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their capacity; and
- (2) The minimum amount of contribution-in-aid-of-construction should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems.

Raintree provided a detailed cost breakdown of the direct construction and engineering costs for the new water plant that was built for the Bentwood development, which totaled \$639,412. Raintree indicated its requested plant capacity charge would result in a 75 percent contribution level at build out. This CIAC level meets the guidelines pursuant to Rule 25-30.580, F.A.C. The information provided by the Utility indicates a prima facie entitlement for Raintree's requested temporary plant capacity charges. Staff recommends that the incremental temporary increase in plant capacity charge be held subject to refund. Thus, developers and others paying plant capacity charges will be protected if the Utility is later required by the Commission to refund any portion of the incremental temporary increase. The appropriate security to guarantee the plant capacity charges held subject to refund is addressed in Issue 2.

Based on the above, staff recommends approval of the Utility's request for collection of the temporary wastewater plant capacity charges of \$2,900 per ERC. The incremental increase should be held subject to refund in the event further analyses indicate a need to subsequently reduce these charges.

Issue 2: If the temporary charges are approved, what is the appropriate security to guarantee the temporary increase?

Recommendation: Raintree should be required to file an escrow agreement to guarantee the amount of plant capacity charges collected subject to refund. Pursuant to an escrow agreement, Raintree would be required to deposit the monthly amount of plant capacity charges collected, until completion of this investigation. Pursuant to Rule 25-30.360(6), F.A.C., the utility should be required to provide a report by the 20th day of each month indicating the monthly and total amount of plant capacity charges collected subject to refund as of the end of the preceding month. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. (Roberts, Hudson)

Staff Analysis: Staff recommends that Raintree provide an escrow agreement to guarantee the amount of plant capacity charges collected subject to refund. An escrow account should be established between the Utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: the account is established at the direction of this Commission for the purpose set forth above, no withdrawals of funds shall occur without the prior approval of the Commission through the Office of the Commission Clerk, the account shall be interest bearing, information concerning that escrow account shall be available from the institution to the Commission of its representative at all times, the amount of plant capacity charges collected subject to refund shall be deposited in the escrow account within seven days of receipt, and, pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total amount collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

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Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission's final action on the utility's requested rate increase. (Roberts, Hudson)

Staff Analysis: The docket should remain open pending the Commission's final action on the utility's requested rate increase.