

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 18, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Smith, Mouring) *BS M B=CRRY ALM*
Office of the General Counsel (Brownless) *BS FC*

RE: Docket No. 150137-SU – Petition for approval to defer legal expenses associated with the resolution of land use issues for utility treatment facilities that are located in Polk County by West Lakeland Wastewater, Inc..

AGENDA: 12/03/15 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

West Lakeland Wastewater, Inc. (West Lakeland or utility) is a Class C wastewater utility that serves approximately 302 customers in Polk County. Water service is provided by the City of Lakeland. According to West Lakeland's 2014 annual report, total gross revenues were \$116,063 and total operating expenses were \$120,000, resulting in a net loss of \$3,937.

By letter dated March 26, 2009, West Lakeland gave notice of abandonment effective June 30, 2009. On May 13, 2009, the Polk County Attorney filed a Petition for Appointment of Receiver for West Lakeland in the Circuit Court of the Tenth Judicial Circuit (Circuit Court). The Circuit Court appointed Mr. Mike Smallridge as receiver for the wastewater system. On September 8,

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2009, the Commission acknowledged West Lakeland's abandonment and the Court's appointment of Mr. Smallridge as receiver.¹

On March 3, 2013, Mr. Smallridge sent a letter to the Commission requesting that a docket be opened to transfer Certificate No. 515-S from West Lakeland, Inc. to West Lakeland Wastewater, LLC. This application was withdrawn by the utility in a letter dated September 11, 2014.

On April 23, 2015, West Lakeland filed a petition for approval to defer expenses associated with a lawsuit to obtain an easement to its ponds and spray fields, and to amortize these expenses over three years. The total legal costs to date associated with this litigation are \$6,245.

¹ Order No. PSC-09-0607-FOF-SU as amended by PSC-09-0607A-FOF-SU, issued February 16, 2010, in Docket No. 090154-SU, *In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve West Lakeland Wastewater, Inc.'s petition to defer expenses related to obtaining an easement to its clearing ponds and spray fields?

Recommendation: Yes. The Commission should approve the petition by West Lakeland to defer the legal expenses associated with obtaining an easement to its ponds and spray field. (Smith)

Staff Analysis: On April 23, 2015, West Lakeland filed a letter seeking approval to defer expenses associated with a lawsuit to obtain an easement to its ponds and spray fields, and to amortize these expenses over three years. The utility has stated the total legal costs to date associated with this litigation are \$6,245.

The 2013 transfer application was withdrawn because the utility did not own or have a long-term lease for the land on which the ponds and spray fields are located. Rule 25-30.037(2)(Q), F.A.C., requires "evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative."

The concept of deferral accounting allows companies to defer costs due to events beyond their control and seek recovery through rates at a later time. The alternative would be for the company to seek a rate case each time it experiences an exogenous event. To ensure that the utility is given the opportunity to recover the reasonable costs associated with the process of obtaining an easement, staff recommends that the Commission approve the utility's petition to defer expenses related to obtaining an easement to its ponds and spray fields.

The expenses in the instant docket relate to legal fees incurred by the utility in trying to obtain an easement to property which contain the ponds and spray field. Since this situation is still ongoing, creating a regulatory asset is not possible at this time. Upon completion of a fully executed easement, Mr. Smallridge would be able to file for the establishment and recovery of the deferred legal fees through a regulatory asset. Therefore, staff recommends the Commission approve the petition by West Lakeland to defer the legal expenses associated with obtaining an easement to its ponds and spray field.

Issue 2: Should West Lakeland file a transfer application within 90 days of a fully executed easement?

Recommendation: Yes. (Smith)

Staff Analysis: In Docket Nos. 140174-WU and 140176-WU, the Commission imposed conditions on any new purchases of Commission-regulated utilities by Mr. Smallridge.² Condition number 5 states, “If Michael Smallridge purchases, either directly or indirectly, any other Commission-regulated utilities prior to December 31, 2017, an application for transfer shall be submitted within 90 days of such purchase.” Despite the fact that Mr. Smallridge was already appointed receiver of West Lakeland when the Commission rendered its decision, staff believes the underlying reasons for this condition apply in this case. Therefore, staff is recommending Mr. Smallridge be required to file for a transfer within 90 days of a fully executed easement.

² Order No. PSC-15-0420-PAA-WU, issued October 5, 2015, in Docket No. 140174-WU, *Notice of Proposed Agency Action Order approving transfer of Certificate No. 117-W and setting new book value for transfer purposes*; and Order No. PSC-15-0422-PAA-WU, issued October 6, 2015, in Docket No. 140176-WU, *Notice of Proposed Agency Action Order approving transfer of Certificate No. 116-W and setting new book value for transfer purposes*.

Issue 3: Should this docket be closed?

Recommendation: If a person whose substantial interests are affected by the proposed agency action does not file a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (Brownless, Smith)

Staff Analysis: If a person whose substantial interests are affected by the proposed agency action does not file a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.