

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 23, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Mouring) *ALM*
Office of the General Counsel (J. Crawford) *JSC*

RE: Docket No. 20210174-WU – Joint motion requesting Commission approval of settlement agreement by the Office of Public Counsel and Black Bear Waterworks, Inc.

AGENDA: 12/07/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: ~~Administrative~~ *La Rosa* *11/23/21*

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Black Bear Waterworks, Inc. (Black Bear or Utility) is a Class C utility serving approximately 331 water customers in Lake County. Black Bear was previously identified as potentially over earning in 2017, and agreed to refund 10.44 percent of water revenues billed for 2017, as a result of a Commission-approved Settlement Agreement in that case.¹ Based on its review of Black Bear's 2020 Annual Report, Commission staff identified potential 2021 overearnings. By letter dated August 5, 2021, Black Bear acknowledged the Commission's jurisdiction over revenues in excess of the maximum of the allowed Return on Equity (ROE) for 2021. On October 15, 2021

¹ Order No. PSC-2017-0481-PAA-WU, issued December 21, 2017, in Docket 20170247-WU, *In re: Joint Motion requesting Commission approval of settlement agreement by the Office of Public Counsel, Black Bear Waterworks, Inc., Brendenwood Waterworks, Inc., Brevard Waterworks, Inc., Country Walk Utilities, Inc., Harbor Waterworks, Inc., Lake Idlewild Utility Company, Raintree Waterworks, Inc., and Sunny Hills Utility Company.*

Docket No. 20210174-WU

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and October 27, 2021, informal meetings were held between Black Bear and the Office of Public Counsel (OPC) (collectively referred to as Parties) to discuss the final disposition of potential 2021 overearnings. On November 5, 2021, Black Bear and OPC filed a Joint Motion requesting Commission approval of a Settlement Agreement to resolve potential 2021 overearnings.

The purpose of this recommendation is to present the Settlement Agreement proposal to the Commission for approval. The Joint Motion and Settlement Agreement have been attached as Attachment A to this recommendation. The Commission has jurisdiction pursuant to Sections 367.081, 367.082, and 367.121, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Joint Motion and Settlement Agreement by the Parties?

Recommendation: Yes. The proposed Settlement Agreement adequately addresses the potential overearnings staff had identified during its ongoing earnings surveillance activities. As outlined in the proposed Settlement Agreement, Black Bear should refund 16.57 percent of water revenues billed for the calendar year 2021. (Mouring)

Staff Analysis: As stated in the Case Background, as part of its ongoing surveillance activities, staff identified possible overearnings based upon a review of Black Bear's 2020 Annual Report. On November 5, 2021, the Parties filed a Joint Motion requesting Commission approval of Settlement Agreement to resolve the disposition of 2021 overearnings, and address possible overearnings for 2022. With respect to 2021 overearnings, Black Bear should refund, via bill credits, 16.57 percent of water revenues billed for the calendar year 2021. The bill credits are anticipated to total approximately \$32,500, and are expected to be issued during the first quarter of 2022. The refunds should be made in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.)

In its letter dated August 5, 2021, the Utility indicated that it intends to consolidate Black Bear, as well as nine other subsidiary systems that are located within the same geographic vicinity, into a new corporation. This merger is intended to recognize efficiencies and resolve the historical difficulties in earnings for these systems. Many of the systems included in the planned consolidation have habitually earned below the bottom of their authorized rate of return on equity, while others have occasionally overearned while having relatively low rates.

The Settlement Agreement also provides protections for customers for possible overearnings of Black Bear in 2022. Black Bear has agreed to hold subject to refund all revenues received during calendar year 2022 that are above its authorized ROE range until a final review of its 2022 Annual Report.

In keeping with the Commission's long-standing policy and practice of encouraging parties to settle issues whenever possible, staff recommends that the Commission approve the Joint Motion and Settlement Agreement by the Parties. The proposed Settlement Agreement adequately addresses the potential overearnings staff had identified during its ongoing earnings surveillance activities and provides protections for Black Bear's customer for possible overearnings in 2022.

Issue 2: Should this docket be closed?

Recommendation: No. If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue 1. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively. (J. Crawford, Mouring)

Staff Analysis: If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue 1. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively.

FILED 11/5/2021
DOCUMENT NO. 12563-2021
FPSC - COMMISSION CLERK

DOCKET NO. 20210174-WU

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of 2021 Overearnings for
Black Bear Waterworks, Inc.
in Lake County
_____ /

Docket No. 2021 _____

Filed: November 5, 2021

**JOINT MOTION REQUESTING COMMISSION APPROVAL OF
SETTLEMENT AGREEMENT**

The Office of Public Counsel (“OPC”), on behalf of the Citizens of the State of Florida (“Citizens”) and Black Bear Waterworks, Inc. (Black Bear), pursuant to Section 367.081 and Section 120.57(4), Florida Statutes, and Rule 28-106.301, Florida Administrative Code, file this Joint Motion respectfully requesting the Florida Public Service Commission (“Commission”) to approve the Settlement Agreement, attached as Exhibit “A”, as provided in this motion. In support of the Joint Motion, OPC and Black Bear (the “Parties”) state:

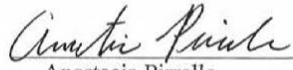
1. The staff of the Commission identified potential 2021 overearnings based upon the review of the 2020 Annual Report of Black Bear.
2. The Parties exchanged data regarding Black Bear potential earnings above the maximum allowed returned on equity (ROE), and conducted discussions related to earnings data provided by Black Bear to OPC.
3. To avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission’s long-standing policy and practice of encouraging parties to settle issues whenever possible, OPC and Black Bear have entered into a Settlement Agreement.
4. This Settlement Agreement resolves the disposition of 2021 overearnings for Black Bear as well as holds subject to refund all revenues received during the calendar year 2022 that are above its authorized ROE range until the final review of its 2022 Annual Report.

5. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification.

6. The Parties request expedited review and approval of this Settlement Agreement at the December 7, 2021 Commission Agenda Conference.

WHEREFORE, OPC and Black Bear respectfully request the Commission approve this Settlement Agreement.

Respectfully submitted this 5th day of November, 2021.


Anastacia Pirrello
Associate Public Counsel
Office of Public Counsel

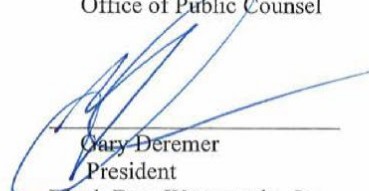

Gary Deremer
President
Black Bear Waterworks, Inc.

Exhibit "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of 2021 Overearnings for
Black Bear Waterworks:

Docket No. 2021 _____

Filed: November 3, 2021

_____ /

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 3rd day of November, 2021, by and between Black Bear Waterworks, Inc. (hereafter referred to as "Black Bear"), and the Office of Public Counsel ("OPC"), on behalf of the Citizens of the State of Florida ("Citizens") and customers of Black Bear (hereafter, "Parties").

WITNESSETH

WHEREAS, the staff of the Florida Public Service Commission ("Commission" or "FPSC") identified potential 2021 overearnings based upon the review of the 2020 Annual Report of Black Bear;

WHEREAS, Black Bear submitted a letter dated August 5, 2021 to the FPSC as acknowledgement of and consent to the FPSC's jurisdiction over the extent to which the earned return on common equity (ROE) for the year ending December 31, 2021 exceeds the maximum of the allowed ROE;

WHEREAS, it was Black Bear's understanding that any decision regarding the disposition of any portion of such earned return above the maximum allowed ROE will be subject for disposition after the nature and extent of any such amount above the approved ROE ranges are known;

WHEREAS, on October 15, 2021 and October 27, 2021, informal meetings between the

Black Bear and OPC were held to discuss the potential disposition of any portion of such earned return above the maximum allowed ROE (“overearnings”);

WHEREAS, the Parties conducted further discussions and evaluation of additional data provided by Black Bear to OPC on such overearnings;

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this proceeding so as to maintain a degree of stability and predictability with respect to customer bills;

WHEREAS, the Parties have entered into this Settlement Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350 and 367, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this agreement each has agreed to concessions to the others with the expectation that all provisions of this Settlement Agreement will be enforced by the Commission as to all matters addressed herein with respect to all parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the agreement as provided herein and upon approval in the public interest; and

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, the sufficiency of which is hereby acknowledged the parties agree to the following:

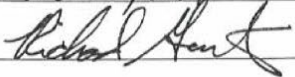
1. **Black Bear Waterworks, Inc.:** Black Bear Waterworks, Inc. (Black Bear) agrees to refund via credit on its customers’ account 16.57% of water revenues billed for the calendar year 2021. The refunds shall be made pursuant to Rule 25-30.360(3), Florida Administrative Code. This refund credit shall be based upon each individual customer’s billed amounts for the 2021 calendar year. Black Bear also agrees to hold subject to refund all revenues received during the calendar year 2022 that are above its authorized ROE range until the final review of its 2022

Annual Report. Black Bear hereby consents to the FPSC's jurisdiction over the extent to which its earned ROE for the year ending December 31, 2022 exceeds the maximum of its allowed ROE.

2. In keeping with the Commission's long-standing policy and practice of encouraging parties to settle issues whenever possible, the Parties submit this Settlement Agreement for review and approval. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification. The Parties further agree that they will support this Settlement Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Settlement Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Settlement Agreement or the subject matter hereof. No Party will assert in any proceeding before the Commission that this Settlement Agreement nor any of the terms herein shall have any precedential value nor may it be used in any other proceeding. To the extent a dispute arises among the parties about the provisions, interpretation, or application of this agreement, the parties agree to meet and confer in an effort to resolve the dispute. To the extent that the Parties cannot resolve any dispute, the matter may be submitted to the Commission for resolution. Approval of this Settlement Agreement in its entirety will resolve all matters and issues discussed herein pursuant to and in accordance with Section 120.57(4), Florida Statutes. This docket should be closed administratively after Commission staff verifies the revised tariff sheets, customer notices have been mailed, and refunds have been made.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by their signature.

OFFICE OF PUBLIC COUNSEL

Date: Nov. 3, 2021
By: 

Richard Gentry;
Public Counsel

Attorney for the Citizens
of the State of Florida

UTILITIES

Date: Nov 3, 2021
By: 

Gary Deremer;
President

Black Bear Waterworks, Inc.