

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-**

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**DATE:** March 24, 2022

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Economics (Sibley, Hudson) *JGH*  
Division of Accounting and Finance (D. Brown, Casper, T. Brown) *ALM*  
Office of the General Counsel (Trierweiler, Garcia) *TLI*

**RE:** Docket No. 20220026-WU – Application for staff-assisted rate case in Marion County, and request for interim rate increase, by Leighton Estates Utilities, LLC.

**AGENDA:** 04/05/22 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 3/28/22 (60 day Decision On Interim Rates, Waived)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Leighton Estates Utilities, LLC (Leighton Estates or utility) is a Class C utility serving approximately 80 residential customers in Marion County. The Commission last set rates in an original certificate proceeding in 2010 when the utility was known as Arma Water Service, LLC.<sup>1</sup> Subsequently, the utility's rates have been amended through two price index rate increases. The utility was transferred to the present operator in 2021.<sup>2</sup> The utility has never had a staff-assisted rate case before the Commission. According to Leighton Estates' 2021 Annual

<sup>1</sup>Order No. PSC-2010-0552-PAA-WU, issued September 3, 2010, in Docket No. 20090366-WU, *In re: Application for certificate to operate water utility in Marion County by Arma Water Service, LLC.*

<sup>2</sup>Order No. PSC-2021-0408-PAA-WU, issued November 01, 2021, in Docket No. 20210043-WU, *In re: Application to transfer facilities and water Certificate No. 652-W in Marion County from Arma Water Service, LLC to Leighton Estates Utilities, LLC.*

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Report, total gross water revenue was \$28,105 and total water operating expense was \$45,069. On January 27, 2022, Leighton Estates filed its application for a staff-assisted rate case. On February 15, 2022, the utility requested to waive the 60 day statutory deadline for interim rates.<sup>3</sup> The utility has requested a test year ended December 31, 2021, for purposes of interim and final rates.

This recommendation addresses the utility's request for interim rates. The Commission has jurisdiction pursuant to Sections 367.082 and 367.0814(4), Florida Statutes (F.S).

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<sup>3</sup>Document No. 01370-2022

## Discussion of Issues

**Issue 1:** Should an interim revenue increase be approved?

**Recommendation:** Yes. Leighton Estates should be authorized to collect interim revenues as indicated below:

	<b>Test Year Revenues</b>	<b>\$ Increase</b>	<b>Revenue Requirement</b>	<b>% Increase</b>
Water	\$27,605	\$3,076	\$30,681	11.14%

(D. Brown, Casper)

**Staff Analysis:** On January 27, 2022, Leighton Estates filed an application requesting an interim revenue increase in its water rates. Section 367.0814(4), F.S., details the criteria for evaluating a request for an interim rate increase for staff-assisted rate cases.

Section 367.0814(4), F.S., states:

The Commission may, upon its own motion, or upon petition from the regulated utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Water Utilities (1996) of the National Association of Regulatory Utility Commissioners.

Staff has reviewed the utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the utility's filing, staff recommends that Leighton Estates has demonstrated a *prima facie* entitlement to an interim rate increase in accordance with Section 367.0814(4), F.S.

### Revenue Increase

In order to establish interim rate relief as prescribed by Section 367.0814(4), F.S., staff used the utility's revenues reflected in its revised application dated January 31, 2022, for the test year ended December 31, 2021.<sup>4</sup> The test year revenues are \$27,605, which includes \$27,240 from water service rates and \$365 from miscellaneous service revenues. The test year O&M expenses are \$30,543. The difference between the utility's reported revenues and O&M expenses is \$2,938.

In addition, the interim rate increase should be grossed up to include regulatory assessment fees (RAFs). The Commission has previously determined that it would be inappropriate to approve an increase in a utility's rates to cover its operating expenses and deny that same utility the funds to

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<sup>4</sup>Document No. 00858-2022, filed on January 31, 2022.

pay RAFs.<sup>5</sup> Furthermore, by approving an interim rate increase that allows for the payment of RAFs, the utility should be able to fully cover its O&M expenses. The RAFs associated with the interim increase equal \$138.

In total, Leighton Estates should be allowed an interim revenue increase of \$3,076 (\$2,938 + \$138) to produce revenues sufficient to cover O&M expenses and additional RAFs. Thus, staff recommends the appropriate interim revenue requirement is \$30,681. This is an 11.14 percent increase above the utility's test year revenues. Table 1-1 illustrates staff's interim increase calculation.

**Table 1-1**  
**Determination of Interim Increase**

	Water
1. Utility Test Year O&M Expenses	\$30,543
2. Less: Utility Test Year Revenues	\$27,605
3. Revenues to Cover O&M Expenses	<u>\$2,938</u>
4. Interim Revenue Increase	\$2,938
5. RAFs on Interim Rate Increase	\$138
6. Total Interim Revenue Increase (\$)	<u>\$3,076</u>
7. Total Interim Revenue Increase (%)	11.14%

Source: Utility's revised application and staff's calculations.

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<sup>5</sup>Order No. PSC-2001-1654-FOF-WS, issued August 13, 2001, in Docket No. 20010396-WS, *In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.*

**Issue 2:** What are the appropriate interim water rates?

**Recommendation:** The interim rate increase of 11.29 percent should be applied as an across-the-board increase to the water service rates. The rates, as shown on Schedule No. 1, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, staff has approved the proposed customer notice, and the notice has been received by the customers. The utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Sibley)

**Staff Analysis:** Staff recommends that interim service rates for Leighton Estates be designed to allow the utility the opportunity to generate annual operating revenues of \$30,681 for water. Before removal of miscellaneous revenues, this would result in an increase of \$3,076 (11.14 percent). To determine the appropriate increase to apply to the service rates, miscellaneous revenues should be removed from the test year revenues. The calculation is as follows:

**Table 2-1  
 Percentage Service Rate Increase**

	<u>Water</u>
1 Total Test Year Revenues	\$27,605
2 Less: Miscellaneous Revenues	<u>\$365</u>
3 Test Year Revenues from Service Rates	\$27,240
4 Revenue Increase	<u>\$3,076</u>
5 Percentage Service Rate Increase (Line 4/Line 3)	11.29%

Source: Staff's Interim Recommended Revenue Requirement

Staff recommends that the interim rate increase of 11.29 percent should be applied as an across-the-board increase to the water service rates. The rates, as shown on Schedule No. 1, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, staff has approved the proposed customer notice, and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice.

**Issue 3:** What is the appropriate security to guarantee the interim increase?

**Recommendation:** The utility should be required to open an escrow account or secure a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the utility should deposit \$257 into the escrow account each month. Otherwise, the surety bond or letter of credit should be in the amount of \$2,054. Pursuant to Rule 25-30.360(6), F.A.C., the utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and in accordance with Rule 25-30.360, F.A.C. (D. Brown, Casper)

**Staff Analysis:** Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission. As recommended in Issue 1, the interim increase for water is \$3,076. In accordance with Rule 25-30.360, F.A.C., staff calculated the potential refund of revenues and interest collected under interim conditions to be \$2,054. This amount is based on an estimated eight months of revenue being collected under the recommended interim rates shown on Schedule No. 1.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed Leighton Estates' financial condition. Because the utility reported a significant net loss in 2021, has no meaningful liquidity, and has no equity, staff does not believe the utility has the financial capability to support a corporate undertaking in the amount requested at this time. In addition, the utility has only one year of annual reports under current ownership, whereas staff prefers to have three years of financial records. Instead, staff recommends that the utility be required to secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refund.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

- 1) The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
- 2) No monies in the escrow account may be withdrawn by the utility without the express approval of the Commission Clerk, or his or her designee.
- 3) The escrow account shall be an interest bearing account.
- 4) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 5) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 6) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 7) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 8) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to

*Cosentino v. Elson*, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

- 9) The account must specify by whom and on whose behalf such monies were paid.

If the security provided is a surety bond or a letter of credit, said instrument should be in the amount of \$2,054. If the utility chooses a surety bond as security, the surety bond should state that it will be released or terminated only upon subsequent order of the Commission. If the utility chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the utility or requiring a refund.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

**Issue 4:** Should this docket be closed?

**Recommendation:** No. Staff recommends that this docket should remain open to address the merits of Leighton Estates' staff-assisted rate case. (Trierweiler, Garcia)

**Staff Analysis:** Staff recommends that this docket should remain open to address the merits of Leighton Estates' staff-assisted rate case.

<b>Leighton Estates Utilities, LLC</b>		<b>Schedule No. 1</b>	
<b>Test Year Ended 12/31/21</b>		<b>Docket No. 20220026-WU</b>	
<b>Water Rates</b>			
	<b>UTILITY'S EXISTING RATES</b>	<b>STAFF RECOMMENDED RATES</b>	
<b><u>Residential and General Service</u></b>			
Base Facility Charge by Meter Size			
5/8" x 3/4"	\$22.00	\$24.48	
1"	\$55.00	\$61.20	
1 1/2"	\$110.00	\$122.40	
2"	\$176.00	\$195.84	
Charge per 1,000 gallons	\$1.66	\$1.85	
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>			
3,000 Gallons	\$26.98	\$30.03	
6,000 Gallons	\$31.96	\$35.58	
10,000 Gallons	\$38.60	\$42.98	