

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

FEBRUARY 5, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (MERCHANT, FUCHS, ZHANG)  
DIVISION OF LEGAL SERVICES (BRUBAKER)

RE: DOCKET NO. 980057-WU - PETITION OF GULF UTILITY COMPANY  
FOR AN INTERIM AND PERMANENT INCREASE IN WATER RATES,  
PURSUANT TO SECTIONS 367.0817, 367.082 AND 367.0822,  
FLORIDA STATUTES.

COUNTY: LEE

AGENDA: 2/17/98 - REGULAR AGENDA - DECISION ON INTERIM RATES -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: INTERIM STATUTE: MARCH 10, 1998

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\980057WU.REC

CASE BACKGROUND

Gulf Utility Company (Gulf or utility) is a Class A utility which serves approximately 7,040 water and 2,435 wastewater customers in Lee County, Florida. The utility is located in a water use caution area as designated by the South Florida Water Management District (SWFWMD).

By Order No. PSC-96-0501-FOF-WS, issued April 11, 1996, in Docket No. 960234-WS, the Commission initiated an overearnings investigation and ordered the utility to hold \$353,492 in annual water revenues subject to refund. As noted by that order, the overearnings investigation would be combined at the appropriate time with a rate proceeding the utility had indicated that it would be filing for its wastewater system.

DOCUMENT NUMBER-DATE

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On June 27, 1996, Gulf filed an application for an increase in wastewater rates, approval of a decrease in water rates, and approval of service availability charges. The test year for final rates was the projected year ended December 31, 1996.

By Order No. PSC-97-0847-FOF-WS, issued July 15, 1997 (Final Order), in Dockets No. 960234-WS and 960329-WS, the Commission approved final water and wastewater rates and charges for Gulf. On July 30, 1997, Gulf timely filed a motion for reconsideration of Order No. PSC-97-0847-FOF-WS. Gulf also filed a Motion to Release Escrow Funds on July 30, 1997. OPC filed a response to the Motion for Reconsideration on August 11, 1997, after an extension of time approved by the Commission. On September 18, 1997, Gulf filed a Request for Administrative Notice for a letter provided by an engineering firm to support the in-service time frame for the one-million gallon reject holding tank.

By Order No. PSC-97-1544-FOF-WS (Reconsideration Order), issued December 9, 1997, the Commission denied Gulf's Request for Administrative Notice. The Commission also approved in part and denied in part the Motion for Reconsideration. The Order finalized the rate base, revenue requirement, rates and rate structure. The Order also approved releasing of the escrow account to Gulf.

On January 9, 1998, Gulf filed in the instant docket its Petition for an Interim and Permanent Water Rate Increase Pursuant to Sections 367.0817, 367.082 and 367.0822, Florida Statutes. In this limited proceeding, Gulf requests a return on its investment in water reuse facilities and recovery of additional salaries and chemical expense. In addition to its rate case expense for this proceeding, Gulf also seeks to recover the rate case expense it incurred in filing its motion for reconsideration in Dockets No. 960234-WS and 960329-WS. This recommendation addresses Gulf's request for an interim increase in water rates, pursuant to Section 367.082, Florida Statutes.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should Gulf Utility Company's request for interim rates be approved?

**RECOMMENDATION:** No. Staff recommends that no revenue increases should be approved on an interim basis at this time. (BRUBAKER, ZHANG)

**STAFF ANALYSIS:** As stated previously, Gulf filed this application pursuant to Sections 367.0817, 367.082 and 367.0822, Florida Statutes, for a limited proceeding to increase its water rates. In its filing, Gulf requests that the Commission authorize an increase in its rates on an interim and permanent basis, which would provide for an annual increase in water revenues of \$222,403 (10.52%), based on the year ended November 30, 1997.

Pursuant to the Final Order in Dockets No. 960234-WS and 960329-WS, the Commission declined to include the costs of the reject holding tank and monitoring and control system in Gulf's revenue requirement. In its rate case, Gulf chose to file a projected test year ended December 31, 1996. The Commission found that evidence in the record was not sufficient to support the utility's projection. Gulf did not produce firm evidence of its commitment to construct the holding tank, even though the hearing was held on March 4 and 5, 1997, three months after the end of the test year. Further, the utility did not have any bids for the tank's construction or a firm start/completion date for the project. Had there been at least a signed contract to construct the reject holding tank, the Commission could have considered its inclusion in some manner. However, there was no date certain in the record as to when the tank would be built. Therefore, the Commission concluded that the evidence did not support the inclusion of the one-million gallon reject water holding tank in rate base. The Commission further noted that the utility could apply for a limited proceeding when it had firm figures and dates available, and if it could show financial need.

Pursuant to the Reconsideration Order, the Commission denied the inclusion of additional salaries and chemical expense. The order states that the utility failed to ask for relief in the rate case, and that a motion for reconsideration is an improper vehicle to request costs not requested, nor ever considered by the Commission in the record of the docket.

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In its petition, Gulf states that the reject holding tank and monitoring and control system represents an investment of \$803,064. The tank was completed and placed in service on November 1, 1997, and is permitted by the Florida Department of Environmental Protection (DEP) as part of Gulf's reuse system pursuant to Section 403.064, Florida Statutes. Gulf states that the tank was constructed as a component part of the expansion of the Corkscrew water treatment plant and was necessary to obtain both the construction and operating permit for the expansion of the water treatment plant.

Gulf also states that it is seeking increased salary costs because DEP rules now require the staffing of the Corkscrew plant to be sixteen hours a day for seven days a week instead of six hours a day for five days a week. The increased staffing has apparently been required by DEP due to the expansion of the Corkscrew plant, whose DEP treatment plant classification has recently changed from a Class C to a Class B facility. Gulf further states that the increase in expense of chemicals is for the corrosion products fed at the Corkscrew and San Carlos Water Treatment facilities.

Finally, Gulf is seeking recovery of its rate case expense for both this proceeding and those incurred in filing its motion for reconsideration in Docket Nos. 960234-WS and 960329-WS. The expense for the filing of the motion for reconsideration were incurred after the determination of rate case expense in those dockets.

A utility may receive "interim" rates pursuant to the interim statute set forth in Section 367.082, Florida Statutes. Although Section 367.082, Florida Statutes, contains very broad language regarding the availability of interim rates, it has been past Commission practice and policy not to use Section 367.082, Florida Statutes, in limited proceedings. See Order No. PSC-93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU, *In Re: Petition for a Limited Proceeding to Adjust Water Rates in Pasco County by Betmar Utilities, Inc.*; Order No. PSC-97-0825-WS, issued July in Docket No. 970536-WS, *In re: Application for limited proceeding increase in water and wastewater rates by Aloha Utilities, Inc.* Gulf's petition was filed under the provisions of the limited proceeding statute, Section 367.0822, Florida Statutes, which does not include a provision for interim rates.

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The purpose of the interim statute is to allow the utility an opportunity to earn a fair rate of return during the pendency of a full rate proceeding through higher interim rates subject to refund or to provide for refunds of excess earnings during the pendency of rate reduction cases. Thus, the granting of interim rates is a mechanism to address the regulatory lag which accompanies a full rate proceeding, which typically takes eight months. This may be distinguished from the instant case, in that limited proceedings are processed within a much shorter time, typically four to five months. Further, the limited proceeding statute was passed after the interim statute, and does not incorporate the interim concept. Therefore, staff believes that interim rates are not appropriate here. Accordingly, staff recommends that the utility's request for interim rates pursuant to Section 367.082, Florida Statutes be denied.

However, the Commission has in the past allowed emergency or temporary rates in limited proceedings. The determination of whether emergency/temporary rates are appropriate is made on a case-by-case basis. See Order No. PSC-97-0825-WS, issued July in Docket No. 970536-WS, *In re: Application for limited proceeding increase in water and wastewater rates by Aloha Utilities, Inc.*; Order No. PSC-93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU, *In Re: Petition for a Limited Proceeding to Adjust Water Rates in Pasco County by Betmar Utilities, Inc.* The Commission has previously granted temporary/emergency rates for utilities where the utility has demonstrated an immediate or substantial increase in its costs or has demonstrated that a situation exists which requires the Commission's immediate attention in order to preserve the public health, safety, and welfare. See Order No. PSC-93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU, *In Re: Petition for a Limited Proceeding to Adjust Water Rates in Pasco County by Betmar Utilities, Inc.* (Emergency/temporary rates were granted with respect to costs associated with an inspection/testing program, where an emergency was shown to exist due to the corrosive quality of water in the service area); Order No. PSC-97-0825-WS, issued July in Docket No. 970536-WS, *In re: Application for limited proceeding increase in water and wastewater rates by Aloha Utilities, Inc.*, (Emergency/temporary rates were denied where utility failed to demonstrate a substantial increase in costs or an immediate need for an increase in costs, and no immediate attention was required to preserve the public health, safety and welfare); Order No. PSC-92-0127-FOF-SU, issued March 31, 1992, in Docket No. 911146-SU, *In re: Application for a limited proceeding to increase*



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wastewater service rates for Aloha Gardens Wastewater System in Pasco County by Aloha Utilities, Inc., (Emergency/temporary rates were granted where, pursuant to a DEP consent order, the utility was ordered to abandon its facilities and interconnect with the County, and the interconnection costs resulted in a 95.64% increase in the utility's wastewater rates); Order No. 25711, issued February 12, 1992, in Docket No. 911206-SU, *In re: Petition for emergency limited proceedings on wastewater service in Pasco County by Mad Hatter Utility, Inc.*, (An emergency/temporary rate increase of 102.41% and 90.98% for two wastewater systems was granted to preserve the public health, safety and welfare, where the systems were operating without DEP permits and could not otherwise afford to pay Pasco County for wastewater treatment and disposal services).

Gulf did not request emergency/temporary rates in its petition. Even if the utility had made such a request, staff believes that Gulf's petition fails to demonstrate the kinds of exigent circumstances which would warrant the granting of emergency/temporary rates. Staff does not believe the utility has demonstrated an immediate need for an increase in costs occasioned by the water reuse facilities. Further, staff believes that the utility could have supported its request for the inclusion of costs for the reject tank and could have requested recovery of the additional salaries and chemical cost in the rate case. Limited proceedings are typically processed within four to five months, and Gulf's petition does not appear to contain any allegations which would warrant the recovery of its reuse facility costs prior to the time normally required to process a limited proceeding. Finally, staff does not believe the utility has presented in its filing a situation which requires the Commission's immediate attention in order to preserve the public health, safety, and welfare. Therefore, staff recommends that no emergency/temporary rates should be granted in this case