

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:** April 12, 2007

**TO:** Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Merta, Rendell)  
Office of the General Counsel (Brubaker)

**RE:** Docket No. 030106-SU – Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.

**AGENDA:** 04/24/07 – Regular Agenda – Proposed Agency Action Except for Issue 3 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** McMurrian

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\030106.RCM.DOC

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**Case Background**

Environmental Protection Systems of Pine Island, Inc. (EPS or utility) is a Class C wastewater utility serving approximately 462 customers in Cherry Estates and R.V. Park in St. James City, which is located at the southern end of Pine Island, approximately 30 miles from Fort Myers. On January 30, 2003, EPS filed an application for a staff-assisted rate case (SARC). The Commission approved the utility's current rates, charges and rate base on October 7, 2003.<sup>1</sup> A portion of the rate base approved included pro forma additions to plant.

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<sup>1</sup> Order No. PSC-03-1119-PAA-SU, issued October 7, 2003, in Docket No. 030106-SU, In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.

Prior to the rate case, EPS reached an agreement with Lee County Utilities whereby EPS's treatment facility would be taken off line and EPS would interconnect with Pine Island Regional Treatment System (PIRTS). At the time of the rate case, the utility expected to interconnect with PIRTS four to six months after the Commission approved its rate increase. Construction had not begun on the facilities needed to interconnect, therefore the Commission Order was based on projected plant, retirements, cost of removal and expenses. In an amendatory order,<sup>2</sup> the Commission required the utility to complete the construction and interconnection within nine months of the issuance date of the Consummating Order, i.e., August 10, 2004. According to the utility, it encountered many problems and delays and the interconnection did not occur until September 20, 2005.

By letter dated November 16, 2004, the utility agreed to hold revenues from the date of the Order subject to refund pending a true up of the actual construction costs versus the projected costs in the Order. This recommendation addresses a refund and prospective reduction in rates.

The Commission has the authority to consider this case pursuant to Section 367.0814, Florida Statutes.

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<sup>2</sup> Order No. PSC-03-1119A-PAA-SU, issued November 10, 2003, in Docket No. 030106-SU, In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.

### **Discussion of Issues**

**Issue 1:** Should Environmental Protection Systems of Pine Island, Inc. be required to refund to customers amounts it collected for a pro forma interconnection project that was not completed within the required time period, and, if so, what amounts?

**Recommendation:** Yes. Environmental Protection Systems of Pine Island, Inc. should be required to refund 35.64 percent of revenues collected from November 15, 2003 through August 4, 2004; 8.97 percent of revenues collected from August 5, 2004 through December 31, 2004; and 4.77 percent of revenues collected from January 1, 2005, through the date rates are changed. The refunds should be made within 90 days of the effective date of the Consummating Order and include interest as required by Rule 5-30.360(4), Florida Administrative Code (F.A.C.). The utility should be required to submit the proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The refund should be made to customers of record as of the date of the Consummating Order pursuant to Rule 25-30.360(3), F.A.C. The utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. (Merta)

**Staff Analysis:** As discussed in the case background, the utility was required to complete a pro forma interconnection project within nine months of the issuance date of the Consummating Order. Order No. PSC-03-1119-PAA-SU, supra, specified that the docket remain open pending staff's verification that the utility completed the pro forma interconnection. The utility provided staff with cost verification of the completed items.

According to the utility, numerous problems and delays prevented the interconnection from occurring in the time period set out in the Commission's order. The tariffs implementing the rate increase to recover the interconnection costs were effective November 15, 2003; however, the interconnection did not occur until September 20, 2005. Therefore, from November 15, 2003, through September 20, 2005, customers paid for costs the utility had not incurred. In addition, actual costs for the project were less than the costs projected in the rate case. Thus, staff believes that refunds to customers and a rate reduction are necessary. The following is a comparison of Commission-approved pro forma plant and actual cost:

<u>PRO FORMA PROJECTS</u>	<u>Per Order 12/31/2003</u>	<u>Actual 12/31/2006</u>	<u>Difference</u>
LIFT STATION NO. 2	\$38,225	\$15,152	(\$23,073)
MASTER LIFT STATION	86,625	105,471	18,846
CONNECTION FEES less non-U&U	657,218	569,920	(87,298)
VIDEO OF LINES	23,771	28,570	4,799
LEGAL & ENG FEES	28,865	38,368	9,503
OFFICE EQUIPMENT	4,774	8,964	4,190
COST OF REMOVAL included in Early Loss calc	<u>30,237</u>	<u>30,700</u>	<u>463</u>
TOTAL	<u>\$869,715</u>	<u>\$797,145</u>	<u>(\$72,570)</u>

Staff has identified three periods of time over which refunds should be calculated. First, is the period November 15, 2003, through August 4, 2004; second is the period August 5, 2004, through December 31, 2004; and third is the period January 1, 2005, through the date rates are changed. The pro forma impact on the revenue requirement for these periods is presented on Schedule A.

November 15, 2003 – August 4, 2004: During this period, little if any construction had taken place on the interconnection. Thus, staff believes that from November 15, 2003 through August 4, 2004, the utility collected revenues to which it was not entitled. Staff calculated the revenue requirement impact of the interconnection included in the rate case. However, adjustments to the rate case revenue requirement are necessary because the rate case contemplated the interconnection would be complete. Because it was not completed, the utility continued to operate its treatment facilities. Staff reversed certain operation and maintenance (O&M) adjustments that were made in the rate case to the projected 2003 test year. This included a new expense for purchased wastewater treatment, and excluded certain O&M expenses that would no longer be incurred by the utility after the interconnection was completed. The resulting revenue requirement impact is \$107,112. In the rate case, the Commission-approved wastewater rates were designed to recover \$230,802. Therefore, staff calculated a refund to customers of 46.41 percent ( $\$107,112/\$230,802$ ) of revenues collected between November 15, 2003, and August 4, 2004. However, staff is not recommending a 46.41 percent refund.

To evaluate the effect the refunds would have on the utility's 2004 and 2005 earnings, staff analyzed EPS's annual reports. Staff made adjustments to the annual reports consistent with the utility's rate case. Based on the analysis, the utility overearned by 35.64 percent in 2004 and by 26.64 percent in 2005. Therefore, staff recommends that the utility refund to customers 35.64 percent of revenues collected between November 15, 2003, and August 4, 2004.

August 5, 2004 – December 31, 2004: It appears from invoices that from August 5, 2004, the utility began spending substantial amounts for the interconnection project. However, the cost of the project was less than what was approved by the Commission. Further, during this time, the interconnection still was not completed, so the same O&M adjustments discussed above were made to this time period. Staff calculated the difference between the revenue requirement impacts projected in the rate case and the actual costs. Staff also made the reversing adjustments described above. The resulting revenue requirement impact is \$20,714. In the rate case, the Commission-approved wastewater rates were designed to recover \$230,802. Therefore, staff recommends that the utility refund to customers 8.97 percent ( $\$20,714/\$230,802$ ) of revenues collected between August 5, 2004 – December 31, 2004.

By recommending December 31, 2004, as the ending date for the 8.97 percent refund, staff is allowing the full nine months for completion of the project as ordered by the Commission. The interconnection occurred on September 20, 2005, and December 31, 2004 would be nine months prior to the interconnection date.

January 1, 2005 – Date Rates are Changed: As stated above, the utility interconnected with PIRTS on September 20, 2005. Because the actual cost of the interconnection is less than the amount projected in the rate case, staff believes the utility is collecting more in rates than is fair and just. Since the interconnection has occurred, no reversal of the O&M adjustments was

made. As a result, staff calculated the difference in the revenue requirement impact of the interconnection approved in the rate case of \$97,401 and the actual costs incurred by the utility of \$86,398. The resulting \$11,003 was divided by the total revenue requirement from the rate case of \$230,802 to produce 4.77 percent. Therefore, staff recommends that the utility refund to customers 4.77 percent of revenues collected between January 1, 2005 and the date rates are changed. Refunds have been ordered by the Commission in prior cases.<sup>3</sup>

The refunds should be made within 90 days of the effective date of the Consummating Order finalizing the Order for refunds and a rate reduction and include interest as required by Rule 25-30.360(4), F.A.C. The utility should be required to submit the proper refund reports pursuant to Rule 25-30.260(7), F.A.C. The refund should be made to customers of record as of the date of the Consummating Order pursuant to Rule 25-30.360(3), F.A.C. The utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. In no instance should the maintenance and administrative costs associated with a refund be borne by the customers. These costs are the responsibility of, and should be borne by the utility.

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<sup>3</sup> Order No. PSC-04-0356-PAA-WU, issued April 5, 2004, in Docket No. 030423-WU, In re: Investigation into 2002 earnings of Residential Water Systems, Inc. in Marion County.

**Issue 2:** Should EPS's rates be reduced to remove the rate impact of the difference in projected versus actual cost of the pro forma plant items?

**Recommendation:** Yes. Wastewater rates should be reduced by 4.77 percent (\$11,003) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule B. (Merta)

**Staff Analysis:** Based on staff's calculation on Schedule A, the Commission-approved pro forma allowances accounted for \$97,401 of the revenue requirement approved in the above referenced order. Applying the same methodology to the actual pro forma cost incurred results in a revenue requirement of \$86,398 from pro forma additions. The difference in revenue requirement, (\$11,003) represents the amount staff believes existing rates should be reduced.

The Commission-approved wastewater rates are designed to recover \$230,802. Applying the reduction to the revenue requirement of \$11,003 discussed above results in a 4.77 percent ( $\$11,003/\$230,802$ ) reduction to existing wastewater rates.

Therefore, staff recommends that wastewater rates should be reduced across the board by 4.77 percent (\$11,003) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule B.

**Issue 3:** Should the utility be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent failure to comply with the requirements of Order No. PSC-03-1119A-PAA-SU to complete the construction of facilities needed to interconnect with PIRTS within nine months of the issuance date of the Consummating Order?

**Recommendation:** No. Show cause proceedings should not be initiated at this time. (Brubaker, Merta)

**Staff Analysis:** Pursuant to Order No. PSC-03-1119A-PAA-SU, supra, the Commission required EPS to complete the construction of facilities needed to interconnect with PIRTS within nine months of the issuance date of the Consummating Order. That PAA Order was finalized by a Consummating Order, Order No. PSC-03-1266-CO-SU, issued November 10, 2003. Therefore, the construction and interconnection should have been accomplished no later than August 10, 2004.

According to the utility, it encountered many problems and delays and the interconnection did not occur until September 20, 2005. During 2004 through 2006, the utility kept staff advised of its progress and problems and agreed to hold revenues from the date of the Order subject to refund. Obstacles that impeded the completion of the project included obtaining funding, hiring reliable contractors, and weather-related incidents.

Utilities are charged with the knowledge of the Commission's orders, rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful order of the Commission. By failing to comply with the Commission's Order, by not completing the interconnection by September 10, 2004, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule. Id. at 6.

Although regulated utilities are charged with knowledge of the Commission's orders, rules, and statutes, staff does not believe that EPS's actions rise to the level justifying the initiation of a show cause proceeding. Staff believes that mitigating circumstances exist. The utility kept staff apprised of its progress and agreed to hold revenues subject to refund. In addition, staff is recommending a refund and a prospective rate decrease. Thus, customers will be reimbursed for past charges and in the future, rates will include only the actual costs of the interconnection. Therefore, staff recommends that no show cause proceeding be initiated.

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

**Recommendation:** No. If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff and that the refund has been completed and verified by staff. Once these actions are complete, this docket should be closed administratively. (Brubaker, Merta)

**Staff Analysis:** If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff and that the refund has been completed and verified by staff. Once these actions are complete, this docket should be closed administratively.



ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC.

SCHEDULE A  
DOCKET NO. 030106-SU

PRO FORMA IMPACT ON ANNUAL WASTEWATER REVENUE REQUIREMENT

	Per Order 12/31/2003	Actual	Difference
Lift Station No. 2	38,225	15,152	
Master Lift Station	86,625	105,471	
Connection Fees less non-used and useful	657,218	569,920	
Video of Lines	23,771	28,570	
Legal and Engineering Fees	28,865	38,368	
Office Equipment	4,774	8,964	
<b>Total Pro Forma Plant</b>	<b>839,478</b>	<b>766,445</b>	
Accumulated Depreciation	(20,747)	(91,994)	
Accum Depre - Cost of Removal	0	30,700	
Non-Used & useful Plant	(35,391)	(32,689)	
Non-Used & useful Accum Dep	771	3,169	
Rate Base	784,111	675,631	
Rate of Return	6.25%	6.25%	
<b>Return on Rate Base</b>	<b>49,007</b>	<b>42,227</b>	
Depreciation Expense	41,035	37,174	
Loss on Early Retirement	4,392	4,392	
Non-Used and Useful Depreciation Expense	(1,416)	(1,283)	
Total	93,018	82,510	
Gross up for RAF	0.955	0.955	
<b>Revenue Requirement Impact related to plant</b>	<b>\$97,401</b>	<b>\$86,398</b>	<b>(\$11,003)</b>
Purchased Wastewater Treatment	(38,809)		(38,809)
Sludge Removal Expense	3,585		3,585
Purchased Power	5,457		5,457
Chemicals	5,106		5,106
Testing	1,227		1,227
Operator expense	4,160		4,160
Rent	10,000		10,000
Sub total of O&M effect	(\$9,274)		(\$9,274)
Gross up for RAF	0.955		0.955
Impact on O&M	(\$9,710.99)		(\$9,710.99)
<b>Total Revenue Requirement Impact</b>	<b>(\$107,112)</b>		<b>(\$20,714)</b>
Per order	230,802		230,802
Percent of Refund for 11/15/03 - 8/4/04	-46.41%		
Percent of Refund for 8/5/04 through 12/31/04			-8.97%
Percent of Refund for 1/1/05 through present			-4.77%

ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC.

RECOMMENDED RATE REDUCTION SCHEDULE

SCHEDULE B

DOCKET NO. 030106-SU

CALCULATION OF RATE REDUCTION AMOUNT

MONTHLY WASTEWATER RATES

	MONTHLY EXISTING RATES	MONTHLY RECOMMENDED RATES
<b>RESIDENTIAL SERVICE</b>		
Base Facility Charge All Meter Sizes	\$24.64	\$23.47
Gallage Charge Per 1,000 Gallons	\$8.26	\$7.87
<b>GENERAL SERVICE</b>		
Base Facility Charge by Meter Size:		
5/8"X3/4"	24.64	\$23.47
3/4"	36.97	\$35.21
1"	61.61	\$58.67
1-1/2"	123.22	\$117.35
2"	197.16	\$187.76
3"	394.31	\$375.51
4"	616.12	\$586.75
6"	1,232.23	\$1,173.49
Gallage Charge Per 1,000 Gallons	9.91	\$9.44
<b>Typical Residential 5/8" x 3/4" Meter Bill Comparison</b>		
0 Gallons	\$24.64	\$23.47
3,000 Gallons	\$49.42	\$47.08
5,000 Gallons	\$65.94	\$62.82
10,000 Gallons	\$107.24	\$102.17