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 March 2, 2021

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# Item 1

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:** February 18, 2021

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

**FROM:** Office of the General Counsel (Cowdery) *SMC*  
Division of Economics (Bruce, Guffey, Hudson, Sibley) *JGH*

**RE:** Docket No. 20200119-WS – Proposed amendment of Rule 25-30.335, F.A.C.,  
Customer Billing.

**AGENDA:** 03/02/21 – Regular Agenda – Rule Proposal - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Rule 25-30.335, Florida Administrative Code (F.A.C.), Customer Billing, addresses water and wastewater utility customer billing requirements. Staff initiated rule development in order to update and clarify the requirements in the Customer Billing rule. The Notice of Rule Development was published in the Florida Administrative Register on January 8, 2020. No workshop was requested, and none was held. Also, no utility submitted comments on the draft rule in response to the January 8, 2020 notice of rule development.

Staff brought a recommendation on the draft rule to the July 7, 2020 Commission Conference. The Commission deferred consideration of staff's recommendation so that staff could look into questions raised by Commissioners concerning new subsection (5) of the rule, relating to billing base facility charges to customers who request permanent termination of their service but subsequently request service to be turned back on at the same location. Following the Commission Conference, in order to get additional input on the draft rule, staff sent a data

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request to all regulated water and wastewater utilities and the Office of Public Counsel (OPC). Staff received comments from OPC, Indiantown Co., Florida Utility Services 1, LLC, Utilities Inc. of Florida (UIF), Pluris Wedgefield, and Investor Owned Utilities that represents twenty-two water and wastewater utilities. Staff sent out a follow-up request for comments on the revised draft rule and received additional comments.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-30.335, F.A.C. The Commission has jurisdiction under Sections 350.127(2) and 367.121, Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should the Commission propose the amendment of Rule 25-30.335, F.A.C., Customer Billing?

**Recommendation:** Yes, the Commission should propose the amendment of Rule 25-30.335, F.A.C., as set forth in Attachment A. The Commission should also certify Rule 25-30.335, F.A.C., as a minor violation rule. (Hudson, Bruce, Sibley, Guffey, Cowdery)

**Staff Analysis:** The purpose of this rulemaking is to update and clarify rule requirements for billing customers when they are not in residence and to bill customers with different rate structures consistently. Overall, staff is recommending several non-substantive amendments to the rule to clarify rule language. Staff is also recommending a number of substantive amendments to Rule 25-30.335, F.A.C., which are discussed in more detail below.

### **Subsection (3): Consistency in Prorating over a 30-day Billing Cycle**

Draft subsection (3) concerns prorating bills over a 30-day billing cycle. Under subsection (3) of the current rule, when service is rendered for less than 50 percent of the normal billing cycle, the utility must prorate the base facility charge as if the billing cycle were 30 days. That same subsection states that for service taken under flat rates, 50 percent of the normal charges may be applied. Subsection (3) does not address customers paying rates that include minimum usage. Customers paying rates that include minimum usage have a base facility charge and some amount (“minimum usage”) of gallons included in their bill. If the customer uses more than the minimum usage, they pay the applicable gallonage tariff rate.

The draft amendments to subsection (3) clarify that customers who pay for service under flat rates or rates that include minimum usage will be treated the same as those who pay base facility charges when service is rendered for less than 50 percent of the billing cycle. In all cases, the utility must prorate the identified charges over a 30-day billing cycle. This recommended amendment gives consistency in treatment to all customers.

### **Subsection (4): Temporary Discontinuance of Service**

Draft subsection (4) replaces existing subsection (8) that requires a utility to bill customers the base facility charge regardless of whether there is any usage, unless the utility has an authorized vacation rate. The reference to vacation rates is obsolete because no Commission-regulated water or wastewater utility has “vacation rates.” In addition, current subsection (8) does not address customers who pay flat or minimum tariff rates that do not include a specific base facility charge. For these reasons, subsection (8) is deleted and replaced by the language in draft subsection (4).

Draft subsection (4) requires customers who request temporary discontinuance of service or are out of residence to pay either the base facility charge or 40 percent of the flat rate or rates that include minimum usage, whatever is the utility’s approved tariff rate. Customers with a flat or

minimum tariff rate structure are required to pay 40 percent of that rate because 40 percent represents the utility's fixed costs and is the equivalent of a base facility charge.<sup>1</sup>

### **Subsection (5): Permanent Termination of Service**

As stated in the Case Background, this item was deferred from the July 7, 2020 Commission Conference to allow staff time to explore questions raised by the Commission concerning draft subsection (5). As part of this effort, staff requested comments from water and wastewater utilities on the draft rule amendments. As a result of its review, staff made one revision to subsection (5) concerning requests for permanent termination of service, changing a six month time period to twelve months.

Draft subsection (5) presented at the July 7, 2020 Commission Conference provided that if a customer requests a permanent termination of service and subsequently requests service at the same location within six months of termination, the utility must bill and the customer is responsible for paying all outstanding rates and charges for that termination period. In response to staff's request for comments that was submitted to utilities subsequent to the July 7, 2020 Commission Conference, Investor Owned Utilities stated that the standard industry-wide practice for water and wastewater utilities throughout Florida has been to require customers to pay base facility charges for customers who are out of residence with discontinued service for 12 months or less. As an example, they provided an Aqua Utilities tariff sheet (no longer in effect) that had included that requirement.<sup>2</sup>

Investor Owned Utilities stated that to shorten the 12-month period to six months would be burdensome and could result in lost revenues which would be borne by the remaining general body of ratepayers and would be discriminatory toward full-time customers who do not leave the state for part of the year.

Florida Utility Services 1, LLC, stated that it has not had an issue with seasonal customers not paying base facility charges once it is explained to them that there are no "vacation rates" in Florida. It did request that the rule provide that if a customer requests a permanent termination of service and subsequently requests service at the same location, the base facility charges apply

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<sup>1</sup> It is Commission practice to recover no more than 40 percent of revenues through the base facility charge for water utilities. If a water utility experiences high seasonal fluctuations in its customer base, the rate structure might allow recovery of more than 40 percent of revenues through the base facility charge.

<sup>2</sup> This tariff stated:

TEMPORARY DISCONTINUANCE OF SERVICE – If service is terminated and resumed at the same address to the same Customer within twelve (12) months or less from the date of termination, a monthly standby charge equivalent to the Base Facility Charge will be collected by the Company as a condition precedent to restoration of service to that Customer. If the Base Facility rate structure is not in effect, one half of the approved minimum bill will be charged for each billing period. The standby charge will be collected for each month, not to exceed twelve (12) months.

Staff notes that several years ago, staff revised water and wastewater utility tariffs to a standard format and in doing so unintentionally eliminated this temporary discontinuance language from the very few utilities' tariffs that included this provision. The draft rule amendment would codify the industry practice into the rules that govern tariffs.

if the subsequent service is requested within 12 months of termination, instead of six months, noting that some customers come to Florida for only two or three months a year.

Pluris Wedgefield and UIF stated that for the rule to codify existing policy, it should provide that if someone moved back to the same residence within 12 months, they would have to pay the intervening months' base facility charge. They noted that a six-month time frame allows Canadian customers who can only reside in Florida for six months to stay away an extra day and avoid the base facility charges. It is their opinion that whether or not the intent of the rule is to codify existing policy, the time should be changed to 12 months.

Based on industry responses, staff believes that draft subsection (5) should provide that if a customer requests a permanent termination of service and subsequently requests service at the same location within 12 months of termination, the utility must bill and the customer is responsible for paying all outstanding rates and charges for that termination period.

### ***Customer Responsibility for Paying Rates and Charges Prior to Reconnection***

As stated above, draft subsection (5) states that if a customer requests permanent termination of service but requests reconnection within 12 months, the customer is responsible for paying all outstanding rates and charges for the service termination period in order for service to be restored. The term "customer" as used in this rule is defined in Rule 25-30.210(1), F.A.C., to mean any person, firm, association, corporation, governmental agency, or similar organization who has an agreement to receive service from the utility.

There was a question raised at the July 7, 2020 Commission Conference about whether there is a problem that the rule should address with people representing they are permanently terminating service while they are actually intending to be out-of-residence temporarily, and then subsequently asking for service under a different family member's name in order to avoid paying the monthly base facility charges. Staff looked into this question, and it appears that at this time utilities are not experiencing problems of this nature. Thus, rulemaking to address this issue is not necessary at this time. However, if at any time in the future it does appear that utilities are experiencing issues in this regard, staff can explore this issue in a future rulemaking.

### ***Military Service Members***

At the July 7, 2020 Commission Conference, staff was asked to explore whether other states have provisions for waiver or abatement of water and wastewater charges and fees for deployed military Service Members. Staff was unable to find any utility regulations in other states that specifically address exemptions from paying water rates or charges for deployed service members. However, the state of New Mexico enacted a statute in 2013 that provides that upon return from deployment or temporary duty assignment, a resident who is a member of a branch of the U.S. armed forces, the reserves, or the New Mexico National Guard shall be allowed to reconnect suspended public utilities services without having to pay a reconnection fee.<sup>3</sup> Florida does not have a similar statute that would give the Commission authority to exempt deployed military Service Members from paying base facility or reconnection charges as required by Rule 25-30.335, F.A.C.

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<sup>3</sup> NMSA Sec 20-1-8.1.

Staff notes that there are federally sponsored programs that give military Service Members assistance with paying utility bills. The U.S. Department of Labor sponsors a veteran and military transition center that offers federal assistance from the Low Income Home Energy Assistance Program, a federally funded program that helps low-income households with their home energy bills. In addition, Army Emergency Relief is a nonprofit organization that helps soldiers and their family members who experience financial emergencies, including paying utilities.

***Notice to Customers of Rule Amendment***

At the July 7, 2020 Commission Conference, staff was asked to consider the issue of customers having notice of the draft changes to subsection (5). Draft subsection (5), as explained above, requires customers to be responsible for paying the monthly base facility charge if they request a permanent termination of service but subsequently request service at the same location within 12 months.

Staff considered various ways in which water and wastewater utilities could provide notice of this rule requirement to customers. The main concern was how small Class C utilities could provide such notice. Staff considered utilities providing notice to individual customers who were requesting temporary or permanent disconnection of service; requiring utilities to send out an annual notice to all customers; or requiring utilities to give notice on the utilities' website. Staff received comments from Class C utilities raising concerns with all these approaches.

Although Investor Owned Utilities was not opposed to providing customer notice, it stated that several of its member utilities are very seasonal and may have up to 60 percent of their customers return to their northern residences, which would make notifying individual customers who request temporary discontinuance or permanent termination of service onerous. Investor Owned Utilities suggested annual notification through bill inserts, notification on the utility's website, or messages periodically placed on customers' bills as possible alternatives.

Pluris Wedgefield and UIF had concerns with requiring small utilities to give an annual notice, noting that most do not have websites and the customer base of many of these small utilities do not have a seasonal winter population to which the rule amendments are directed. They suggested that perhaps a one-time notification when the amended rule becomes effective would be sufficient. However, they requested that no noticing be required, noting that there are many tariff rules that are applicable and of interest to customers that rightfully have no annual noticing requirement. Florida Utility Services 1, LLC also requested that no noticing requirement be added to this rule.

After considering utility comments concerning adding a noticing requirement to this rule, staff concludes that the burden and cost to utilities outweighs any benefits to customers. Staff agrees that not all utilities have a seasonal customer base and not all utilities have the means to provide the notification in a less costly manner, such as displaying on a website. Sending a utility-wide notice that does not impact the entire customer base is not cost effective. In addition, staff agrees with utility comments that there are rules that are applicable and of interest to customers that do not have noticing requirements. Pursuant to Rule 25-30.325, F.A.C, a utility may require a customer to give reasonable notice of his or her intention to discontinue service. Staff believes if and when a customer requests temporary discontinuance or permanent termination of service, the

onus is on the utility to communicate, at that time, the requirements of the rule. This would alleviate any undue cost burden of noticing to the general body of ratepayers.

### **Landlord/Tenant Delinquent and Inactive Accounts**

During the course of finalizing the draft rule, staff requested additional comments from the participating water and wastewater utilities and OPC. In its October 9, 2020 comments, Investor Owned Utilities for the first time suggested additional amendments to the Customer Billing Rule to address certain issues pertaining to landlord/tenants and vacant inactive accounts. They suggested rule amendments that would:

1. Prohibit a new account to be opened in a new property owner's name until the delinquent amount is paid;
2. Hold the property owner (landlord) accountable for its tenants' unpaid balance;
3. Revert the account back to the property owner after any tenant leaves the premise; and
4. Charge the base facility charge to all inactive accounts where water/wastewater service is available.

Staff has considered these comments. The landlord/tenant and inactive account issues raised by Investor Owned Utilities appear to be beyond the scope of this rule. Section 120.54(1)(g), F.S., requires each rule to contain only one subject. It is possible that some or all of these issues could impact Rule 25-30.320, F.A.C., Refusal or Discontinuance of Service. These issues appear to include some complex policy considerations that could be of great interest to a number of persons not participating in this docket. Staff believes it is the better course to finalize the draft customer billing rule so that issues concerning temporary and permanent discontinuance of service billing may be updated and clarified for utilities and customers. For these reasons, staff does not recommend addressing the landlord/tenant and vacant inactive accounts issues raised by Investor Owned Utilities in this rulemaking. However, staff will continue to assess these issues and determine whether rulemaking may be appropriate in the future.

### **Minor Violation Rules Certification**

Pursuant to Section 120.695, F.S., the agency head must certify for each rule filed for adoption whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-30.335, F.A.C., is currently listed on the Commission's website as a rule for which a violation would be minor because violation of the rule would not result in economic or physical harm to a person or have an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. The amendments to the rule would not change its status as minor violation rules. Thus, staff recommends that the Commission certify Rule 25-30.335, F.A.C., as a minor violation rule.

### **Statement of Estimated Regulatory Costs**

Pursuant to Section 120.54(3)(b), F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. Following the July 7, 2020 Commission Conference, receipt of responses to staff's information

request, and revision of the draft rule, staff prepared a new SERC. The SERC is appended as Attachment B to this recommendation.

The SERC concludes that the rule will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. Further, the SERC economic analysis concludes that the rule will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the rule does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended amendments to Rule 25-30.335, F.A.C.

### **Conclusion**

Based on the foregoing, staff recommends that the Commission should propose the amendment of Rule 25-30.335, F.A.C., as set forth in Attachment A. The Commission should also certify Rule 25-30.335, F.A.C., as a minor violation rule.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or Joint Administrative Procedure Committee comments are filed, the rule should be filed with the Department of State, and the docket should be closed. (Cowdery)

**Staff Analysis:** If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rule may be filed with the Department of State and the docket should be closed

1       **25-30.335 Customer Billing.**

2       (1) Except as provided in this rule, a utility must ~~shall~~ render bills to customers at regular  
3 intervals, and each bill must ~~shall~~ indicate: the billing period covered; ~~the applicable rate~~  
4 ~~schedule~~; beginning and ending meter reading; the amount of the bill; the delinquent date or  
5 the date after which the bill becomes past due; and any authorized late payment charge.

6       (2) When a utility is unable to obtain an actual meter read, estimated bills may be  
7 provided.

8       (a) If the utility estimates a bill, ~~the bill statement shall prominently show~~ the word  
9 “Estimated” must be prominently displayed on the face of the bill.

10       (b) The utility is obligated to timely correct any problems within the utility’s control  
11 causing the need to estimate bills. In no event may ~~shall~~ a utility provide an estimated bill to  
12 any one customer account more than four times in any 12-month period due to circumstances  
13 that are within the utility’s control and service obligations.

14       (c) Upon issuance of a second estimated bill in a 6-month period, the utility must ~~shall~~  
15 provide the customer with an explicit written explanation for the estimation, along with the  
16 utility contact information and the Commission toll-free complaint number, 1(800) 342-3552.

17       (d) The utility must ~~shall~~ maintain records, for a minimum of two years, detailing the  
18 number, frequency, and causes of estimated bills, and those records must ~~which shall~~ be made  
19 available upon request to the Commission or to any party to a rate proceeding for the utility.

20       (3) When service is rendered for less than 50 percent of the normal billing cycle, the utility  
21 must ~~shall~~ prorate the base facility charges, flat rates, or rates that include minimum usage as  
22 though the normal billing cycle were 30 days, ~~except that~~ The utility may elect ~~not to~~ not  
23 issue an initial bill ~~for service~~ if the service is rendered for ~~during~~ a time period ~~which is~~ less  
24 than 50 percent of the normal billing cycle. Instead, the utility may elect to issue a single bill  
25 combining ~~combine~~ the amount owed for the service rendered during the initial time period

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1 with the amount owed for the next billing cycle, ~~and issue a single bill for the combined time~~  
2 ~~period. For service taken under flat rate schedules, 50 percent of the normal charges may be~~  
3 ~~applied.~~

4 (4) If a customer requests a temporary discontinuance of service or is out of residence:

5 (a) Utilities that have the base facility charge rate structure must continue to bill the base  
6 facility charge.

7 (b) Utilities that have a flat rate or a rate that includes minimum usage must bill the  
8 customer 40 percent of the flat or minimum rate contained on the applicable tariff.

9 (5) If a customer requests a permanent termination of service and the same customer  
10 subsequently requests service at the same location within 12 months of that termination, the  
11 utility must bill the customer the base facility charges or 40 percent of the flat rate or rates that  
12 include minimum usage for the service termination period. The customer is responsible for  
13 payment of all outstanding rates and charges for the termination period in order for service to  
14 be restored.

15 ~~(6)~~(4) A utility may not consider a customer delinquent in paying his or her bill until the  
16 21st day after the utility has mailed or presented the bill for payment.

17 ~~(7)~~(5) A Each utility must ~~shall~~ establish each point of delivery as an independent  
18 customer account and must ~~shall~~ calculate the amount of the bill accordingly, except where  
19 physical conditions make it necessary to use additional meters or points of delivery for one  
20 class of service to a single customer on the same premises, or where such multiple meters or  
21 delivery points are used for the convenience of the utility.

22 ~~(8)~~(6) A utility may not incorporate municipal or county franchise fees into the amount  
23 indicated as the cost for service on the customer's bill. Rather, the utility must ~~shall~~ show any  
24 such franchise fee as a separate item.

25 ~~(9)~~(7) The utility must ~~shall~~ maintain a record of each customer's account for the most  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 current 2 years so as to permit reproduction of the customer's bills during the time that the  
2 utility provided service to that customer.

3 ~~(8) If a utility utilizes the base facility and usage charge rate structure and does not have a~~  
4 ~~Commission authorized vacation rate, the utility shall bill the customer the base facility charge~~  
5 ~~regardless of whether there is any usage.~~

6 *Rulemaking Authority 350.127(2), 367.121 FS. Law Implemented ~~367.091~~, 367.121 FS.*

7 *History—New 9-14-74, Amended 6-21-79, Formerly 25-10.97, 25-10.097, Amended 11-10-86,*  
8 *11-30-93, 6-17-13, \_\_\_\_\_.*

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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:** December 22, 2020

**TO:** Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel

**FROM:** Sevini K. Guffey, Public Utility Analyst III, Division of Economics *SKG*

**RE:** **Statement of Estimated Regulatory Costs** for the Proposed Adoption of Rule 25-30.335, Florida Administrative Code, Customer Billing.

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Commission staff is proposing revisions to Rule 25-30.335, Florida Administrative Code (F.A.C.), Customer Billing. The rule is applicable to all water and wastewater utilities that are under the Commission's jurisdiction. The purposes of these proposed rule revisions are to allow utilities to recover charges such as base facility charges during a customer's temporary discontinuance of service. Furthermore, the proposed rule would require the customer to pay all outstanding rates and charges for the service termination period prior to requesting new service at the same address within 12 months of the termination. The recommended revisions are discussed in detail in the staff recommendation. The proposed revisions will enable the utilities to maintain appropriate cash flow and achieve their authorized rate of return.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the economic impacts and considerations required pursuant to Section 120.541, Florida Statutes (F.S.). The SERC analysis indicates that the proposed rule amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. The proposed rule amendments would not potentially have adverse impacts on small businesses, would have no implementation cost to the Commission or other state and local government entities, and would have no impact on small cities or counties.

No regulatory alternatives were submitted pursuant to Section 120.541(1)(g), F.S. The SERC concludes that none of the impacts/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the proposed rule revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rule 25-30.335, F.A.C.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth

Yes  No

Private-sector job creation or employment

Yes  No

Private-sector investment

Yes  No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes  No

Productivity

Yes  No

Innovation

Yes  No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes  No

Economic Analysis: The recommended amendments to Rule 25-30.335, F.A.C., will allow the utility to recover charges that have accrued during a customer's temporary discontinuance of service and ensure a more stable revenue stream for the utility. Regulatory or transactional costs will not exceed \$1 million in the aggregate within 5 years after the implementation of this rule.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 177,256 customers in Florida. Water and wastewater utilities which come under the jurisdiction of the Commission in the future also may be affected by the new rule.

(2) A general description of the types of individuals likely to be affected by the rule.

The 132 investor-owned water and wastewater utilities and customers of those utilities are likely to be affected by this rule.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

None.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

None.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

No adverse impact on small business.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial

census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
  - Adopted in its entirety.
  - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

# Item 2

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:** February 18, 2021

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

**FROM:** Office of the General Counsel (DuVal) *SMC*  
Office of Industry Development and Market Analysis (Deas, Fogleman) *CH*

**RE:** Docket No. 20200260-TP – Petition for declaratory statement concerning jurisdiction over wireless telecommunications, specifically commercial radio service providers, for the sole purpose of lifeline-only ETC designation, by TruConnect Communications, Inc.

**AGENDA:** 03/02/21 – Regular Agenda – Declaratory Statement – Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 3/23/21 (Final Order on Request for Declaratory Statement Must be Issued by this Date pursuant to Section 120.565(3), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On December 23, 2020, TruConnect Communications, Inc. (TruConnect), filed a petition for declaratory statement (Petition). TruConnect asks the Commission to declare that, based on the facts presented, the Commission can and should assert jurisdiction over wireless telecommunications, specifically commercial mobile radio service (CMRS) providers, for the sole purpose of Lifeline-only eligible telecommunications carrier (ETC) designation. In its Petition, TruConnect also requests that the Commission hold a hearing before issuing its decision.

## **Overview of ETC Designation**

ETC designation is a requirement for telecommunications carriers to receive federal Universal Service Funds (USF) for the Lifeline and High Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services, and offer qualifying households a discount on their monthly bills. The High Cost program helps carriers provide voice and broadband service in remote and underserved communities.

Federal law, 47 U.S.C. § 214(e)(2), authorizes state commissions to designate common carriers as an ETC. Section 214(e) provides in pertinent part:

### (2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Federal law, 47 U.S.C. § 214(e)(6), also provides that the Federal Communications Commission (FCC) will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier. Section 214(e) provides in pertinent part:

### (6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

### **Florida Law Applicable to TruConnect's Petition**

Section 364.10, Florida Statutes (F.S.), sets forth the framework for Lifeline service in Florida and provides the Florida Legislature's definition of an ETC. Section 364.10(1), F.S., provides in relevant part:

(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in the eligible telecommunications carrier's published schedules. For the purposes of this section, the term "eligible telecommunications carrier" means a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.

Section 364.02, F.S., outlines the definition of a telecommunications company for purposes of Chapter 364, F.S. Section 364.02(13), F.S., states, in pertinent part, that:

"Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

\*\*\*

(c) A commercial mobile radio service provider;

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However, each commercial mobile radio service provider and each intrastate interexchange telecommunications company shall continue to be liable for any taxes imposed under chapters 202, 203, and 212. Each intrastate interexchange telecommunications company shall continue to be subject to s. 364.163 and shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.

Section 364.011, F.S., lists the telecommunications services that are exempt from oversight by the Commission, except as otherwise set forth in Chapter 364, F.S. Section 364.011, F.S., exempts:

- (1) Intrastate interexchange telecommunications services.
- (2) Broadband services, regardless of the provider, platform, or protocol.
- (3) VoIP.
- (4) Wireless telecommunications, including commercial mobile radio service providers.

(5) Basic service.

(6) Nonbasic services or comparable services offered by any telecommunications company.

Section 364.01, F.S., sets forth the powers of the Commission under, and the legislative intent of, Chapter 364, F.S. Section 364.01, F.S., provides in relevant part:

(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

\*\*\*

(3) Communications activities that are not regulated by the Florida Public Service Commission are subject to this state's generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by the appropriate state authority or through actions in the judicial system. This chapter does not limit the availability to any party of any remedy or defense under state or federal antitrust laws. The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and has provided customers with freedom of choice, encouraged the introduction of new telecommunications service, encouraged technological innovation, and encouraged investment in telecommunications infrastructure.

### **Procedural Matters**

Pursuant to Section 120.565(3), F.S., and Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the December 29, 2020 edition of the Florida Administrative Register to inform interested persons of the Petition. No requests to intervene were filed, and the time for filing such a request expired on January 19, 2021.

This recommendation addresses TruConnect's Petition. Pursuant to Section 120.565(3), F.S., a final order on a request for a declaratory statement must be issued within 90 days. As such, the statutory deadline to issue a final order on the Petition is March 23, 2021.

This recommendation addresses whether TruConnect's request for a hearing on its Petition should be granted and whether the Commission should grant TruConnect's petition for declaratory statement. The Commission has jurisdiction to consider this matter pursuant to Section 120.565 and Chapter 364, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant TruConnect's request for hearing on its Petition?

**Recommendation:** No. TruConnect's request for hearing on its Petition should be denied. Pursuant to Rule 28-105.003, F.A.C., the Commission should rely on the facts set forth in TruConnect's petition without taking any position with regard to the validity of the facts. However, the Commission has the discretion, pursuant to Rule 25-22.0021(7), F.A.C., to allow TruConnect to participate informally at the agenda conference. (DuVal)

**Staff Analysis:** Citing to Rule 28-105.003, F.A.C., TruConnect requests that the Commission hold a hearing before issuing its decision on the Petition. Rule 28-105.003, F.A.C., addresses agency disposition of petitions for declaratory statement and states that an agency may hold a hearing to consider a petition for declaratory statement. Additionally, the rule states the agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Thus, under Rule 28-105.003, F.A.C., the Commission has the discretion to forgo a hearing on a petition for declaratory statement and rely solely on the statement of facts set forth in the petition without vetting those facts through a formal hearing process under Sections 120.569 and 120.57, F.S.

Staff recommends that TruConnect's request for hearing should be denied because staff does not believe a hearing is necessary to dispose of TruConnect's Petition. The Commission should, instead, rely on the facts set forth in TruConnect's petition without taking any position with regard to the validity of the facts.

Rule 25-22.0021, F.A.C., is the Commission rule addressing agenda conference participation. Subsection (7) of Rule 25-22.0021, F.A.C., states that in certain types of cases in which the Commission issues an order based on a given set of facts without hearing, such as declaratory statements, the Commission allows informal participation at its discretion. Thus, the Commission has the discretion to allow TruConnect to participate informally at the Commission's agenda conference.

**Issue 2:** Should the Commission grant TruConnect's Petition for Declaratory Statement?

**Recommendation:** While the Commission should find that TruConnect satisfies the requirements for the issuance of a declaratory statement, it should decline to issue the affirmative declaration requested by TruConnect. Instead, the Commission should issue a declaratory statement that the Commission cannot and will not assert jurisdiction over TruConnect for the sole purpose of Lifeline-only ETC designation because TruConnect is a commercial mobile radio service provider exempted from the Commission's jurisdiction under Sections 364.011(4), 364.02(13)(c), and 364.10, F.S. (DuVal, Deas, Fogleman)

**Staff Analysis:**

### **Law Governing Petitions for Declaratory Statement**

Section 120.565, F.S., sets forth the necessary elements of a petition for declaratory statement. This section provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., states the purpose of a declaratory statement:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.002(5), F.A.C., requires that a petition for declaratory statement include a description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances. A party seeking a declaratory statement must not only show that it is in doubt as to the existence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *State Department of Environmental Protection v. Garcia*, 99 So. 3d 539, 544-45 (Fla. 3d DCA 2011). A declaratory statement is intended to enable members of the public to definitively resolve ambiguities of law in the planning of their future affairs and to enable the public to obtain definitive binding advice as to the applicability of agency law to a particular set of facts. *Department of Business and Professional Regulation, Div. of Pari-Mutual Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999).

### **TruConnect's Petition**

In its Petition, TruConnect states that it is a commercial mobile radio service provider that delivers prepaid wireless telecommunications services to consumers. TruConnect further states that it currently has an application for Lifeline-only ETC designation pending before the FCC. However, TruConnect explains that it believes the FCC has not acted upon its ETC application in a timely manner and, therefore, filed its Petition with the Commission to remedy the situation. TruConnect further provides that if its requested declaratory statement is granted, it will withdraw its ETC application from the FCC and file an ETC application with the Commission.

TruConnect maintains that the Commission should be able to assert jurisdiction over commercial mobile radio service providers for the sole purpose of Lifeline-only ETC designation. The Petition contains the following four arguments in support of this belief. TruConnect's arguments are as follows:

- TruConnect argues that Section 364.011, F.S., is ambiguous because it does not contain a provision explicitly addressing the Commission's authority, or lack of authority, over ETC designations. TruConnect maintains that the Commission erroneously relies upon the 2011 Florida Legislature's revisions to Section 364.011, F.S., in order to defer wireless ETC designation requests to the FCC and further suggests that, through those revisions, the Legislature unwittingly undermined its intent to foster competition in telecommunications services.
- TruConnect argues that an ETC designation request does not require the Commission to regulate the provider or the services that will be offered. Accordingly, TruConnect asserts that the Commission may simply grant ETC designation to non-jurisdictional entities and defer regulation to the FCC.
- TruConnect argues that the Commission's continued deferral of jurisdiction over wireless Lifeline-only ETC applications is contrary to the expressed legislative intent of Chapter, 364, F.S.
- TruConnect argues that, regardless of Florida law, the Commission should recognize that the Telecommunications Act of 1996 grants it the authority to designate ETCs.

### **Statutory Provisions Identified in The Petition**

TruConnect states in its Petition that Sections 364.011 and 364.01(3), F.S., are the statutory provisions applicable to the jurisdictional question raised in its Petition. For ease of reference, the relevant text of these provisions are included in the Case Background of this recommendation.

### **TruConnect's Requested Declaratory Statement**

TruConnect asks the Commission to issue the following affirmative declaratory statement:

The Commission can and should assert jurisdiction over wireless telecommunications, specifically CMRS providers, for the sole purpose of Lifeline-only ETC designation.

## **Staff's Analysis of the Petition for Declaratory Statement**

### ***Threshold Requirements of Petition***

The purpose of a declaratory statement is to address the applicability of statutory provisions, orders, or rules of the agency in particular circumstances. Section 120.565, F.S.; *See Chiles v. Department of State, Division of Elections*, 711 So. 2d 151, 154 (Fla. 1st DCA 1998). Further, pursuant to Rule 28-105.001, F.A.C., a petition for declaratory statement may be used to resolve questions or doubts as to how an agency's statutes and rules may apply to the petitioner's particular circumstances.

TruConnect's Petition contains specific facts as required by Section 120.565(2), F.S., and provides that TruConnect believes Sections 364.01(3) and 364.011, F.S., apply to its set of circumstances. TruConnect alleges that it is substantially affected by these statutory provisions because they are ambiguous as to the Commission's jurisdiction, or lack of jurisdiction, over commercial mobile radio service providers (such as itself) for Lifeline-only ETC designation.

TruConnect further asserts that there is a need for its requested declaratory statement and that the statement will enable it to plan its future affairs. Specifically, TruConnect provides that, if the Commission issues its requested declaratory statement, TruConnect will withdraw its ETC application from the FCC and file a new ETC application with the Commission.

As shown above, staff recommends that TruConnect has satisfied the requirements for the issuance of a declaratory statement. Based on the information provided in the Petition, it appears that any declaratory statement issued to resolve TruConnect's questions or doubts about the provided statutes has the potential to apply to other individuals with an identical fact pattern. However, an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances even if the explanation would have a broader application than to the petitioner. *Society for Clinical & Medical Hair Removal, Inc. v. Department of Health*, 183 So. 3d 1138, 1144 (Fla. 1st DCA 2015).

### ***Jurisdictional Question Raised by Petition***

Although staff is recommending that TruConnect has satisfied the requirements for the issuance of a declaratory statement, staff recommends that the Commission not issue the affirmative declaratory statement requested by TruConnect in its Petition. As discussed in more detail below, Sections 364.01, 364.011, 364.02, and 364.10, F.S., establish that the Commission does not have jurisdiction to designate TruConnect, a CMRS provider, as a Lifeline-only ETC.

### ***Section 364.10, F.S., Lifeline Service, and Section 364.02, F.S., Definition of Telecommunications Company***

Section 364.10, F.S., addresses Lifeline service in Florida. Section 364.10(1)(a), F.S., states that an ETC for the purposes of the section means a telecommunications company, as defined by Section 364.02, F.S., which the Commission designates as an ETC pursuant to the federal law provisions provided in 47 C.F.R. § 54.201.

Section 364.02, F.S., defines the term "telecommunications company" as used in Chapter 364, F.S. Section 364.02(13)(c), F.S., provides that a commercial mobile radio service provider does

not qualify as a telecommunications company.<sup>1</sup> As such, a commercial mobile radio service provider does not fall within the definition of an ETC for purposes of Chapter 364, F.S.

The remainder of Section 364.10, F.S., sets forth the duties of ETCs designated by the Commission and the Commission's power to regulate Lifeline service in Florida. Under Florida law, if the Commission designates a telecommunications company as an ETC, that company is then subject to the Lifeline service requirements set forth in Section 364.10, F.S.

In its Petition, TruConnect argues that the Commission may consider commercial mobile radio service providers' applications for ETC designation because such a request does not require the Commission to regulate the provider or the services that will be offered and that the Commission can merely confer ETC designation and defer regulation to the FCC. However, Section 364.10, F.S., unambiguously states otherwise. In Florida, an ETC designation by the Commission *does* require the Commission to regulate the provider or services that will be offered.

### ***Section 364.011, F.S., Exemptions from Commission Jurisdiction***

TruConnect argues that ambiguity exists within Section 364.011, F.S., that allows the Commission to consider commercial mobile radio service providers' applications for Lifeline-only ETC designation. TruConnect further argues that the Commission may assert jurisdiction over commercial mobile radio service providers for Lifeline-only ETC designation because the Florida Legislature has not explicitly prohibited the Commission from doing so. Section 364.011, F.S., as currently enacted, unambiguously exempts commercial mobile radio service providers from any Commission oversight, thus, leaving the Commission with no authority to assert jurisdiction over such entities under Chapter 364, F.S., for purposes of ETC designation.

Section 364.011, F.S., as originally enacted in 2005, listed the services exempt from the Commission's oversight, "except to the extent delineated in [Chapter 364, F.S.] or specifically authorized by federal law." The Commission subsequently relied on the phrase, "specifically authorized by federal law," to find that it had new authority to consider commercial mobile radio service providers' requests for ETC designation. However, in 2011, pursuant to H.B. 1231,<sup>2</sup> the Florida Legislature removed that language from Section 364.011, F.S. As a result, effective July 1, 2012, in compliance with Florida law, the Commission only evaluates wireline ETC applications.

Staff notes that the House of Representatives Staff Analysis of H.B. 1231 expressly noted that the Commission previously relied upon this statutory language as the basis for its authority to designate wireless carriers in Florida as ETCs for purposes of receiving support from the USF that supports Lifeline and Link-up programs. The House of Representative Staff Analysis further mentioned the Commission's assertion that without state authority to designate wireless ETCs in Florida, that authority would default to the FCC. Thus, it appears that the Legislature was aware that the 2011 change in the law would affect the Commission's jurisdiction to designate wireless carriers as ETCs.

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<sup>1</sup> However, commercial mobile radio service providers are still liable for any taxes imposed under Chapters 202, 203, and 212, F.S.

<sup>2</sup> 2011 FL H.B. 1231, Adopted May 5, 2011.

The Commission is a creature of statute and only has the powers, duties, and authority that have been conferred expressly or impliedly to it by the Florida Legislature through statute. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973). Further, the Commission is barred from exercising a power when there is any reasonable doubt as to the lawful existence of that power. *See id.* The Florida Legislature specifically exempted wireless providers, including commercial mobile radio service providers, from the Commission's jurisdiction and, in 2011, deliberately removed a statutory provision that the Commission previously relied upon to grant ETC designation to wireless carriers. As such, contrary to TruConnect's arguments, the Florida Legislature has both expressly and impliedly barred the Commission from exercising jurisdiction over wireless providers, including commercial mobile radio service providers, through its promulgation of Section 364.011(4), F.S., and its removal of statutory language that could be construed to allow for such Commission oversight. Moreover, Section 364.011, F.S., provides that any exceptions to the statutory exemptions are delineated within Chapter 364, F.S. Staff notes that no other section of Chapter 364, F.S., contains language that permits the Commission to exercise jurisdiction over wireless providers for purposes of Lifeline-only ETC designation.

Ultimately, Florida law provides that wireless telecommunications, including commercial mobile radio service providers, are exempt from the Commission's oversight. In its Petition, TruConnect submits that it is a commercial mobile radio service provider. TruConnect is, therefore, exempt from the Commission's oversight. Accordingly, staff recommends that the Commission does not have jurisdiction to consider any potential request from TruConnect seeking ETC designation.

#### ***Section 364.01, F.S., Powers of the Commission, Legislative Intent***

TruConnect argues that the Commission is operating against the expressed legislative intent set forth in Section 364.01(3), F.S., by only evaluating wireline ETC applications. However, as previously addressed, the 2011 changes to Section 364.011, F.S., and the limitations on the definition of an ETC under Sections 364.02(13) and 364.10, F.S., are intended to clarify that the Commission should only evaluate wireline ETC applications.

While Section 364.01(3), F.S., contains the general intent of the Legislature to promote competition in the telecommunications industry, Sections 364.011, 364.02(13)(c), and 364.10, F.S., contain specific provisions that exclude commercial mobile radio service providers from the Commission's oversight. Accordingly, if the Commission finds that it lacks jurisdiction to consider any potential ETC designation application from TruConnect, such a decision would be in accordance with the requirements and intent of Chapter 364, F.S.

#### ***Federal Law Provisions***

TruConnect argues that the Commission must acknowledge that, regardless of the change in Florida Statutes, the FCC rules authorize the Commission to designate ETCs. Pursuant to Rule 28-105.001, F.A.C., a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders *over which the agency has authority*. Accordingly, staff recommends that the Commission deny TruConnect's petition to the extent TruConnect may be requesting the Commission interpret federal law. Moreover, staff recommends that the Commission should make clear that it is not providing any interpretation of federal law in its declaratory statement. However, in an effort to

address TruConnect's argument, staff makes the following observations regarding federal law that appear to support the interpretation that the Commission lacks jurisdiction over TruConnect under Florida law.

TruConnect correctly points out that, pursuant to 47 U.S.C. § 214(e)(2), a state commission shall designate carriers that meet certain requirements as ETCs. However, staff notes that 47 U.S.C. § 214(e)(6) provides that the FCC will make such ETC designations if the state commission lacks jurisdiction over the carrier requesting the designation.

Specifically, 47 U.S.C. § 214(e)(6) states that it will consider a common carrier's ETC application if the state does not have jurisdiction over that common carrier's telephone exchange service and exchange access. Under federal law, telephone exchange service is defined as:

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

47 U.S.C. § 153(54). Exchange access is defined as the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. 47 U.S.C. § 153(20).

Staff further notes that the courts have found that a state agency is not authorized to take administrative action based solely on federal statutes. *See Curtis v. Taylor*, 648 F.2d 946, 948 (5th Cir. 1980)(finding that a state administrative hearing officer lacks jurisdiction to consider federal constitutional issues or to consider the invalidity of state regulations under applicable federal statutes). Additionally, state agencies, as well as federal agencies, are only empowered by the statutes pursuant to which they were created. *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374-75 (1986); *Florida Public Service Commission v. Bryson*, 569 So. 2d 1253, 1254-55 (Fla. 1990); *Charlotte County v. General Development Utilities, Inc.*, 653 So. 2d 1081 (Fla. 1st DCA 1995).

As provided above, the Commission can only issue a declaratory statement concerning the applicability of statutory provisions, rules, or orders over which it has authority. Therefore, looking only to the controlling Florida Statutes, staff recommends that the Commission cannot consider commercial mobile radio service providers' applications for ETC designation because the Commission lacks jurisdiction and regulatory authority over such providers, pursuant to Sections 364.011(4), 364.02(13)(c), and 364.10, F.S.

**Conclusion**

While the Commission should find that TruConnect satisfies the requirements for the issuance of a declaratory statement, it should decline to issue the affirmative declaration requested by TruConnect. Instead, staff recommends that the Commission issue the following declaratory statement:

The Commission cannot and will not assert jurisdiction over TruConnect for the sole purpose of Lifeline-only ETC designation because TruConnect is a commercial mobile radio service provider exempted from the Commission's jurisdiction under Sections 364.011(4), 364.02(13)(c), and 364.10, F.S.

**Issue 3:** Should this docket be closed?

**Recommendation:** Yes. If the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed. (DuVal)

**Staff Analysis:** Whether the Commission grants or denies TruConnect's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

# Item 3

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:** February 18, 2021

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

**FROM:** Office of Industry Development and Market Analysis (Wendel, Deas, Fogleman)<sup>CH</sup>  
Office of the General Counsel (Weisenfeld, DuVal)<sup>TLT SC</sup>

**RE:** Docket No. 20200263-TX – Petition for expedited designation as an eligible telecommunications carrier in the State of Florida or, in the alternative, petition for expedited declaratory statement, by Conexon Connect, LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** June 7, 2021, for qualification for RDOF auction disbursement

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On December 24, 2020, Conexon Connect, LLC (Conexon) filed a petition with the Florida Public Service Commission (Commission) seeking designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (RDOF) support or, in the alternative, an expedited declaratory statement declining jurisdiction. Conexon is a fixed broadband and interconnected voice over internet protocol (VoIP) provider that participates in the Rural Electric Cooperative Consortium (RECC). The RECC is a collective of rural electric cooperatives operating throughout the United States that participated in the 2018 Federal Communication Commission (FCC) Connect America Fund Phase-II auction. On December 7, 2020, the RECC was selected as one of the winning bidders for the FCC's RDOF auction.

Consistent with the FCC's rules, the RECC assigned its winning bid to Conexon for its Florida census blocks.

The RDOF is a form of high-cost support and is funded through the federal universal service fund (USF). The FCC's RDOF initiative allocates up to \$20.4 billion through a two-phase competitive auction to help connect millions of unserved rural homes and small businesses to high-speed broadband. Phase I of the auction will provide up to \$16 billion to be used over a period of 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks.<sup>1</sup> In Florida, a total of eleven bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>2</sup> Conexon will receive \$82.5 million in phase I to be used in certain census blocks in Florida.<sup>3</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF for the Lifeline and High-Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services and offers qualifying households a discount on their monthly bills. The High-Cost program helps carriers provide voice and broadband service in remote and underserved communities. Although the FCC did not require RDOF auction participants to be designated as an ETC to apply, they did require winning bidders to obtain ETC designation within 180 days of being selected.

Conexon asserts that it meets all applicable federal requirements for designation as an ETC in Florida pursuant to 47 U.S.C. 214(e) and 47 C.F.R 54.201. In addition, Conexon acknowledges and asserts that if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.), and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline.

47 U.S.C. 214(e)(2) authorizes state commissions to designate common carriers as an ETC as follows:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

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<sup>1</sup> FCC, DA 20-1422, Public Notice, 904 Winning Bidders, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed February 1, 2021.

<sup>2</sup> *Id.*, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, accessed February 1, 2021.

<sup>3</sup> *Id.*, Attachment A, <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, accessed February 1, 2021.

47 U.S.C. 214(e)(6) provides that the FCC will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

The Commission's authority to designate a telecommunications company as an ETC is found in Section 364.10, F.S. However, pursuant to Section 364.011, F.S., the Commission does not have jurisdiction over wireless/satellite, or broadband service.

## Discussion of Issues

**Issue 1:** Should the Commission grant Conexon Connect, LLC ETC status in Florida to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services?

**Recommendation:** No. Staff recommends that the Commission lacks jurisdiction to grant Conexon Connect, LLC ETC status in Florida. Staff further recommends that, as a provider of non-jurisdictional fixed broadband service, Conexon should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission issue an order that it lacks jurisdiction, Conexon Connect, LLC's alternative request for a declaratory statement is moot. (Weisenfeld, DuVal, Fogleman, Wendel)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R 54.201(b), state commissions designate carriers as ETCs consistent with criteria set forth therein. Per 47 U.S.C. 214(e)(6), if a state lacks jurisdiction over a carrier, the FCC is to make such a designation. Section 364.011, F.S., identifies services that are exempt from Commission oversight. Included in these non-jurisdictional services are broadband and wireless telecommunications. Until 2011, there was an exception in Section 364.011, F.S., which permitted Commission oversight of a service if "specifically authorized by federal law." The legislature struck this exception by Section 3, Ch.2011-36, Laws of Florida. Thus, the Commission no longer grants ETC designations to broadband carriers.<sup>4</sup> Therefore, because the fixed broadband service provided by Conexon is exempt from Commission oversight, staff recommends that the Commission lacks jurisdiction to grant Conexon ETC designation in Florida.

Moreover, by Section 364.10(1)(a), F.S., the legislature defined an ETC as "a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201." Section 364.02(13), F.S., provides that a "telecommunications company" is an entity offering "two-way telecommunications service to the public for hire within [Florida] by the use of a telecommunications facility." Thus, whether a carrier is a telecommunications company offering a telecommunications service is also a threshold question for whether the Commission has jurisdiction to grant an ETC designation.<sup>5</sup> Conexon is not currently certificated in Florida, and therefore does not meet the Florida statutory definition of a telecommunications company under Section 364.02(13), F.S. As such, staff recommends that this is a reason to deny the Company's petition for ETC status.

In sum, staff recommends that the Commission lacks jurisdiction to grant Conexon Connect, LLC ETC status in Florida. Staff further recommends that, as a provider of non-jurisdictional

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<sup>4</sup> The Commission only has the powers, duties, and authority that have been conferred expressly or impliedly to it by the Florida Legislature through statute. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973). Further, the Commission is barred from exercising a power when there is any reasonable doubt as to the lawful existence of that power. *See id.*

<sup>5</sup> In this context, 364.02(14), F.S., provides that a "telecommunications facility" includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within [Florida]." "Service" is to be construed in its broadest and most inclusive sense;" however, the term "does not include broadband service or voice-over-Internet protocol service for purposes of regulation." *Id. at* (12).

fixed broadband service, Conexon should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission issue an order that it lacks jurisdiction, Conexon Connect, LLC's alternative request for a declaratory statement is moot.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Weisenfeld)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

# Item 4

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:** February 18, 2021

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

**FROM:** Office of Industry Development and Market Analysis (Deas, Fogleman, Wendel) *CH*  
Office of the General Counsel (Weisenfeld) *TLJ*

**RE:** Docket No. 20210011-TP – Application for designation as an eligible telecommunications carrier (ETC) for purposes of receiving rural digital opportunities fund support, or request to decline jurisdiction, and request for expedited consideration, by Starlink Services, LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** June 7, 2021, for qualification for RDOF action disbursement

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On January 4, 2021, Starlink Services, LLC (Starlink or Company) filed a petition with the Florida Public Service Commission (Commission) seeking designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (RDOF) support or, in the alternative, expedited consideration of an affirmative statement declining jurisdiction. Starlink is a wholly owned subsidiary of Space Exploration Technologies Corp. (SpaceX), which provides customers with voice over internet protocol (VoIP) and broadband services through satellite technologies. On December 7, 2020, SpaceX was selected as one of the winning bidders or the Federal Communications Commission's (FCC) RDOF auction. Consistent with the FCC's rules, SpaceX assigned its winning bid to Starlink.

The RDOF is a form of high-cost support and is funded through the federal universal service fund (USF). The FCC's RDOF initiative allocates up to \$20.4 billion through a two-phase competitive auction to help connect millions of unserved rural homes and small businesses to high-speed broadband. Phase I of the auction will provide up to \$16 billion to be used over a period of 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks.<sup>1</sup> In Florida, a total of eleven bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>2</sup> Starlink will receive \$33.6 million in phase I to be used in certain census blocks in Florida.<sup>3</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF dollars for the Lifeline and High-Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services, and offers qualifying households a discount on their monthly bills. The High-Cost program helps carriers provide voice and broadband service in remote and underserved communities. Although the FCC did not require RDOF auction participants to be designated as an ETC to apply, they did require winning bidders to obtain ETC designation within 180 days of being selected.

Starlink asserts it meets all applicable federal requirements for designation as an ETC in Florida pursuant to 47 U.S.C. 214(e) and 47 C.F.R. 54.201. In addition, Starlink acknowledges and asserts that if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.), and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline.

47 U.S.C. 214(e)(2) authorizes state commissions to designate common carriers as an ETC as follows:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

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<sup>1</sup> FCC, DA 20-1422, Public Notice, *Rural Digital Opportunity Fund; Connect America Fund*, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed February 1, 2021.

<sup>2</sup> FCC, Auction 904 Winning Bidders, Public Notice, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, released December 7, 2020, accessed February 1, 2021.

<sup>3</sup> FCC, Auction 904 Winning Bidders, Public Notice, Attachment A, <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, released December 7, 2020, accessed February 1, 2021.

47 U.S.C. 214(e)(6) provides that the Federal Communications Commission (FCC) will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

The Commission's authority to designate a telecommunications company as an ETC is found in Section 364.10, F.S. However, pursuant to Section 364.011, F.S., the Commission does not have jurisdiction over wireless/satellite, or broadband services.

## Discussion of Issues

**Issue 1:** Should the Commission grant Starlink Services LLC ETC status in Florida to receive Rural Digital Opportunity Fund Auction (Auction 904) support for Satellite voice and broadband services?

**Recommendation:** No. Staff recommends that the Commission lacks jurisdiction to grant Starlink Services, LLC ETC status in Florida. Staff further recommends that, as a facilities-based provider of non-jurisdictional satellite broadband service, Starlink Services, LLC should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission lacks jurisdiction, Starlink Services LLC's alternative request for an affirmative statement declining jurisdiction is moot. (Weisenfeld, Deas, Fogleman, Wendel)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R 54.201(b), state commissions designate carriers as ETCs consistent with criteria set forth therein. Per 47 U.S.C. 214(e)(6), if a state lacks jurisdiction over a carrier, the FCC is to make such a designation. Section 364.011, F.S., identifies services that are exempt from Commission oversight. Included in these non-jurisdictional services are broadband, VoIP, and wireless telecommunications. Until 2011, there was an exception in Section 364.011, F.S., which permitted Commission oversight of a service if "specifically authorized by federal law." The Commission relied upon this exception to grant ETC status to wireless carriers. The legislature struck this exception by Section 3, Ch. 2011-36, Laws of Florida. Thus, the Commission no longer grants ETC status to wireless carriers.<sup>4</sup> The wireless prohibition has recently been applied to a satellite carrier.<sup>5</sup> Similarly, because the satellite broadband service provided by Starlink is exempt from Commission oversight, staff recommends that the Commission lacks jurisdiction to grant Starlink a Florida ETC designation.

Moreover, by Section 364.10(1)(a), F.S., the legislature defined an ETC as "a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201." Section 364.02(13), F.S., provides that a "telecommunications company" is an entity offering "two-way telecommunications service to the public for hire within [Florida] by the use of a telecommunications facility." Thus, whether a carrier is a telecommunications company offering a telecommunications service is also a threshold question for whether the Commission has jurisdiction to grant an ETC designation.<sup>6</sup> Starlink is not currently certificated in Florida, and

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<sup>4</sup> The Commission only has the powers, duties, and authority that have been conferred expressly or impliedly to it by the Florida Legislature through statute. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973). Further, the Commission is barred from exercising a power when there is any reasonable doubt as to the lawful existence of that power. *See id.*

<sup>5</sup> Order No. PSC-2018-0531-PAA-TX, issued on November 13, 2018, in Docket No. 20180180-TX, *In re: Application for limited designation as an eligible telecommunications carrier (ETC) to receive Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services with request for expedited consideration by Viasat Carrier Services, Inc.*

<sup>6</sup> In this context, Section 364.02(14), F.S., provides that a "telecommunications facility" includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within [Florida]." "'Service' is to be construed in its broadest and most inclusive sense;" however,

therefore does not meet the Florida statutory definition of a telecommunications company under Section 364.02(13), F.S. As such, staff recommends that this is a reason to deny the Company's petition for ETC status.

In sum, staff recommends that the Commission lacks jurisdiction to grant Starlink Services, LLC ETC status in Florida. Staff further recommends that, as a facilities-based provider of non-jurisdictional satellite broadband service, Starlink Services, LLC should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission lacks jurisdiction, Starlink Services LLC's alternative request for an affirmative statement declining jurisdiction is moot.

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the term "does not include broadband service or voice-over-Internet protocol service for purposes of regulation." *Id.* at (12).

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (Weisenfeld)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

# Item 5

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:** February 18, 2021

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

**FROM:** Office of Industry Development and Market Analysis (Wendel, Deas, Fogleman)<sup>CH</sup>  
Office of the General Counsel (Passidomo)<sup>TLT</sup>

**RE:** Docket No. 20210012-TX – Application for limited designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (Auction 904) support for voice and broadband services and request for expedited consideration, by Hotwire Communications Ltd.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** June 7, 2021 for qualification for RDOF auction disbursement

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On January 5, 2021, Hotwire Communications, Ltd. (Hotwire) filed a petition with the Florida Public Service Commission (Commission) seeking designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (RDOF) support. On December 7, 2020, Hotwire was selected as one of the winning bidders of the Federal Communications Commission's (FCC) RDOF auction. Hotwire is a fixed broadband and voice over internet protocol (VoIP) provider operating in Florida that was granted competitive local exchange carrier certificate No. 8627 on May 22, 2006.<sup>1</sup> On January 29, 2021, Hotwire requested cancellation of its certificate,

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<sup>1</sup> Order No. PSC-06-0446-CO-TX, issued May 22, 2006, in Docket No. 20060101-TX, *Application for certificate to provide local exchange telecommunications service by Hotwire Communications, Ltd.*

which is scheduled to be processed on March 8, 2021.<sup>2</sup> On February 15, 2021, Hotwire provided supplemental information to staff which states that it provides broadband Internet, interconnected VoIP, and video services to residential and business customers.<sup>3</sup>

The RDOF is a form of high-cost support and is funded through the federal universal service fund (USF). The FCC's RDOF initiative allocates up to \$20.4 billion through a two-phase competitive auction to help connect millions of unserved rural homes and small businesses to high-speed broadband. Phase I of the auction will provide up to \$16 billion to be used over a period of 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks.<sup>4</sup> In Florida, a total of 11 bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>5</sup> Hotwire will receive \$5.2 million in phase I to be used in specified census blocks in Florida.<sup>6</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF support for the Lifeline and High-Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services and offers qualifying households a discount on their monthly bills. The High-Cost program helps carriers provide voice and broadband service in remote and underserved communities. Although the FCC did not require RDOF auction participants to be designated as an ETC to apply, they did require winning bidders to obtain ETC designation within 180 days of being selected.

Hotwire asserts that it meets all applicable federal requirements for designation as an ETC in Florida pursuant to 47 U.S.C. 214(e) and 47 C.F.R 54.201. In addition, Hotwire acknowledges and asserts that if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.), and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline.

47 U.S.C. 214(e)(2) authorizes state commissions to designate common carriers as an ETC as follows:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by

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<sup>2</sup> Docket No. 20210033-TX, *Request for cancellation of Certificate of Public Convenience and Necessity No. 8627 by Hotwire Communications Ltd., effective December 31, 2020.*

<sup>3</sup> DN 02077-2021 in Docket No. 20210012, filed February 15, 2021.

<sup>4</sup> FCC, DA 20-1422, Public Notice, 904 Winning Bidders, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed February 1, 2021.

<sup>5</sup> *Id.*, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, accessed February 1, 2021.

<sup>6</sup> *Id.*, Attachment A, <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, accessed February 1, 2021.

the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. 214(e)(6) provides that the FCC will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

The Commission's authority to designate a telecommunications company as an ETC is found at 364.10, F.S. However, pursuant to Section 364.011, F.S., the Commission does not have jurisdiction over wireless/satellite or broadband.

## Discussion of Issues

**Issue 1:** Should the Commission grant Hotwire Telecommunications Ltd. (Hotwire) ETC status in Florida to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services?

**Recommendation:** No. Staff recommends that the Commission lacks jurisdiction to grant Hotwire Telecommunications Ltd. ETC status in Florida. Staff further recommends that, as a facilities-based provider of non-jurisdictional broadband and VoIP services, Hotwire should apply directly to the FCC for a Florida ETC designation. (Passidomo, Wendel, Deas, Fogleman)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R 54.201(b), state commissions designate carriers as ETCs consistent with criteria set forth therein. If a state lacks jurisdiction over a carrier, the FCC is to make such a designation. 47 U.S.C. 214(e)(6). Section 364.011, F.S., identifies services that are exempt from Commission oversight. Included in these non-jurisdictional services are broadband and wireless telecommunications. Until 2011, there was an exception in Section 364.011, F.S., which permitted Commission oversight of a service if “specifically authorized by federal law.” The legislature struck this exception by Section 3, Ch.2011-36, Laws of Florida. Thus, the Commission no longer grants ETC designations to broadband carriers.<sup>7</sup>

There is a pivotal question regarding whether Hotwire meets the definition of a telecommunications company within 364.10, F.S. A “telecommunications company” is an entity offering “two-way telecommunications service to the public for hire within [Florida] by the use of a telecommunications facility.” Section 364.02(13), F.S. Hotwire does not provide switched access or interconnection services to any customers in the state of Florida. Hotwire only provides broadband Internet, interconnected VoIP, and video services to residential and business customers, services explicitly exempt from Section 364.02(12), F.S. As such, because Hotwire does not provide telecommunications “service” in Florida, it does not use or operate “telecommunications facilities” as provided by Section 364.02(14), F.S. Hotwire has not proven to the Commission that it meets this requirement by providing this service and therefore, staff recommends the Commission deny the Company’s petition for ETC status.

Currently, Hotwire is a certificated telecommunications company in Florida. By Section 364.10(1)(a), the legislature defined an ETC as “a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.” Section 364.02(13), F.S. Thus, whether a carrier is offering such a telecommunications service is also a threshold question for whether the Commission has jurisdiction to grant an ETC designation.<sup>8</sup> While Hotwire is currently a certificated

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<sup>7</sup> The Commission only has the powers, duties, and authority that have been conferred expressly or impliedly to it by the Florida Legislature through statute. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973). Further, the Commission is barred from exercising a power when there is any reasonable doubt as to the lawful existence of that power. *See id.*

<sup>8</sup> In this context, a “telecommunications facility” includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within [Florida].” 364.02(14). “Service” is to be construed in its broadest and most inclusive sense;” however, the term “does not include broadband service or voice-over-Internet protocol service for purposes of regulation.” *Id.* at (12).

telecommunications company in Florida, staff notes that Hotwire requested cancellation of its certificate, which is scheduled to be processed on March 8, 2021.<sup>9</sup> Cancellation of its certificate means that Hotwire will not meet the Florida statutory definition of a telecommunications company under Chapter 364.<sup>10</sup> However, whether Hotwire is a certificated telecommunication company in Florida will not assist the company in meeting the 364.02(13), F.S. definition of “telecommunication services”. Therefore, the pending certification cancellation is a compelling reason for staff to recommend denial of the Company’s petition for ETC status.

In conclusion, because Hotwire does not meet the appropriate definition of “telecommunication services” to be considered for an ETC designation, staff recommends that the Commission lacks jurisdiction to grant Hotwire Communications Ltd. ETC status in Florida. Staff further recommends that, as a facilities-based provider of non-jurisdictional broadband and VoIP services, Hotwire should apply directly to the FCC for a Florida ETC designation.

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<sup>9</sup> Docket No. 20210033-TX, *Request for cancellation of Certificate of Public Convenience and Necessity No. 8627 by Hotwire Communications Ltd., effective December 31, 2020.*

<sup>10</sup> See e.g., Sections 364.013 and 364.02(12) and (13), F.S.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Passidomo)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

# Item 6

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:** February 18, 2021

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

**FROM:** Office of Industry Development and Market Analysis (Deas, Fogleman, Wendel)<sup>CH</sup>  
Office of the General Counsel (Murphy)<sup>TLT</sup>

**RE:** Docket No. 20210013-TX – Application for designation as an eligible telecommunications carrier to receive rural digital opportunity fund auction (Auction 904) support for voice and broadband services and request for expedited consideration, by Bright House Networks Information Services (Florida), LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** June 7, 2021 for qualification for RDOF auction disbursement.

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On January 6, 2021, Bright House Networks Information Services (Florida), LLC (Bright House or Company) filed a petition with the Florida Public Service Commission (Commission) seeking designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (RDOF) support. Bright House was granted competitive local exchange carrier certificate No. 8015 in 2002 under the name “Time Warner Cable Information Services (Florida) LLC.”<sup>1</sup>

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<sup>1</sup> Order No. PSC-02-0070-CO-TX issued on January 10, 2002, in Docket No. 20011617-TX, Application for certificate to provide alternative local exchange telecommunications service by Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner Cable d/b/a Time Warner Communications (Consummating Order No PSC-2001-2467-PAA-TX). *See also* Order No. PSC-03-0989-FOF-TX., issued on September 3, 2003, in Docket No. 20030713-TX, In re: Request for name change on CLEC

Bright House is a majority-owned and wholly-controlled subsidiary of Charter Communications, Inc. (Charter). Charter provides customers with voice over internet protocol (VoIP) and broadband services under the brand name “Spectrum.” Bright House and its affiliates “offer a variety of services, some of which are regulated telecommunications services and some of which are not.” On December 7, 2020, Charter’s subsidiary CCO Holdings was selected as one of the winning bidders for the Federal Communications Commission’s (FCC) RDOF auction. Consistent with FCC rules, CCO Holdings assigned its winning bid to Bright House, its affiliate operating in Florida.

The RDOF is a form of high-cost support and is funded through the federal universal service fund (USF). The FCC’s RDOF initiative allocates up to \$20.4 billion through a two-phase competitive auction to help connect millions of unserved rural homes and small businesses to high-speed broadband. Phase I of the auction will provide up to \$16 billion to be used over a period of 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks.<sup>2</sup> In Florida, a total of eleven bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>3</sup> Bright House will receive \$22.5 million in phase I to be used in specified census blocks in Florida.<sup>4</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF dollars for the Lifeline and High-Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services, and offers qualifying households a discount on monthly bills. The High-Cost program helps carriers provide voice and broadband service in remote and underserved communities. Although the FCC did not require RDOF auction participants to be designated as an ETC to apply, the FCC did require winning bidders to obtain ETC designation within 180 days of being selected.

47 U.S.C. 214(e)(2) authorizes state commissions to designate common carriers as follows:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible

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Certificate No. 8015 from Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner Cable d/b/a Time Warner Communications to Bright House Networks Information Services (Florida), LLC.

<sup>2</sup> FCC, DA 20-1422, Public Notice, 904 Winning Bidders, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed February 1, 2021.

<sup>3</sup> *Id.*, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, accessed February 1, 2021.

<sup>4</sup> *Id.*, Attachment A (See CCO Holdings which has assigned its winning bid to its affiliate Bright House.) <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, accessed February 1, 2021.

telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. 214(e)(6) provides that the FCC will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

Bright House asserts that it meets all applicable federal requirements for designation as an ETC in Florida pursuant to 47 U.S.C. 214(e) and 47 C.F.R. 54.201. On February 9, 2021, Bright House filed Supplemental Authority in Support (Supplemental Filing) of its ETC application in which the Company clarified that, although its corporate affiliates offer a retail VoIP service that is not a telecommunications service, the Company offers switched access service and local interconnection service that are telecommunications services. The Company further clarified that these services are offered to the public for hire in Florida by the use of mixed-use facilities that also include telecommunications related equipment and facilities.

Bright House acknowledges and asserts that, if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.), and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline.

In addition to the federal rules and statutes discussion above, the Commission has jurisdiction in this matter pursuant to Section 364.10 F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant Bright House Networks Information Services (Florida), LLC ETC status in Florida to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services?

**Recommendation:** Yes. Bright House Networks Information Services (Florida), LLC is a telecommunications company certificated to provide service in Florida and meets all of the requirements for designation as an ETC under Section 364.10, F.S., and applicable federal law. The Company has acknowledged the requirement to comply with Sections 364.10 and 364.105, F.S., and Rule 25-4.0665, F.A.C., which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline. (Murphy, Deas, Fogleman, Wendel)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R. 54.201(b), state commissions have the primary responsibility to designate carriers as ETCs. In instances where a state lacks jurisdiction, the FCC is to make such a designation.<sup>5</sup> Section 364.10(1)(a), F.S., defines an ETC as “a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.” A “telecommunications company” is an entity offering “two-way telecommunications service to the public for hire within [Florida] by the use of a telecommunications facility.” Section 364.02(13), F.S. Thus, whether a carrier is offering a telecommunications service is the threshold question for whether the Commission is authorized to grant an ETC designation.<sup>6</sup> Staff recommends that, as clarified in its Supplemental Filing, Bright House is a telecommunications company for purposes of receiving an ETC designation in accordance with Section 364.10, F.S., and is certificated as a competitive local exchange carrier. Although the Commission does not have jurisdiction over VoIP providers<sup>7</sup> and “Spectrum Voice” service is an “information service” and not a “telecommunications service,”<sup>8</sup> because Bright House provides telecommunications services in Florida in addition to nonregulated services, the regulatory status of VoIP service is not relevant to the Commission’s decision in this docket.

To qualify as an ETC, telecommunications carriers must provide the services identified in 47 C.F.R. 54.101 as follows:

- (a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to emergency

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<sup>5</sup> 47 U.S.C. 214(e)(6)

<sup>6</sup> In this context, a “telecommunications facility” includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within [Florida]. 364.02(14). “Service” is to be construed in its broadest and most inclusive sense;” however, the term “does not include broadband service or voice-over-Internet protocol service for purposes of regulation. *Id.* at (12).

<sup>7</sup> Section 364.011(3), F.S.

<sup>8</sup> *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715, (Eighth Circuit 2018) *cert denied*, *Lipschultz v. Charter Advanced Services (MN) LLC*, 140 S.Ct. 6 (Supreme Court of the United States 2019). (The case involved a Bright House affiliate in Minnesota that had been created to offer only nonjurisdictional services).

services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.<sup>9</sup>

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband internet access services and not receiving Phase I frozen high-cost support must offer broadband services within the areas where it receives high-cost support consistent with the obligations set forth in this subpart and subparts D, K, L, and M of this part.<sup>10</sup>

(d) Any ETC must comply with subpart E of this part.

In addition, ETCs must advertise the availability of such services and the associated charges using media of general distribution.<sup>11</sup>

Staff has reviewed Bright House's petition for ETC designation in Florida, as well as additional documents filed with the Commission. Staff has confirmed that Bright House meets the above requirements to qualify as an ETC in Florida. In addition, the Company has demonstrated sufficient financial, managerial, and technical capabilities.

Furthermore, staff notes that the FCC awarded CCO Holdings, an affiliate of Bright House, as the winning RDOF bidder in the census blocks for which Bright House is seeking ETC designation. Each Carrier was required, as part of its bid, to acknowledge that it would meet the FCC's requirements for building out its network and meet the FCC's minimum broadband service obligations.

47 U.S.C. 214(e)(2) requires state commissions to determine if an ETC designation is consistent with the public interest, convenience, and necessity for rural areas. Bright House asserts granting its ETC designation will create significant public and private investment in Florida. Additionally, it will provide more access to high-speed broadband internet service in unserved communities. Based on staff's review, along with Bright House commitment to abide by both state and federal requirements, staff recommends that designating Bright House as an ETC meets this requirement.

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<sup>9</sup> Subpart E addresses Universal Service Support for Low-Income Consumers. *See* 47 C.F.R. §54,400 through §54,422.

<sup>10</sup> Subparts D, K, L, and M refer to rules regarding Universal Service Support for High Cost Areas, Interstate Common Line Support Mechanisms for Rate-of-Return Carriers, Mobility Fund and 5G Fund, and High-Cost Loop Support for Rate-of-Return Carriers, respectively.

<sup>11</sup> 47 U.S.C. §214(e)(1)(B)

In conclusion, Bright House meets all requirements for designation as an ETC under Section 364.10, F.S., and applicable federal law. Therefore, staff recommends Bright House Networks Information Services (Florida), LLC should be granted ETC designation in the census blocks listed in Attachment A of this recommendation. Staff further recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission and make a showing of public interest to maintain the Company's ETC designation.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Murphy)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS<sup>1</sup>

120010009011000	120174501023038	120174503042044	120174503043377
120010015171007	120174503023003	120174503042048	120174503043381
120010015171009	120174503023005	120174503042049	120174503043403
120010015171014	120174503023008	120174503042050	120174503043410
120010017023028	120174503023010	120174503042051	120174503043411
120010022201011	120174503023015	120174503042058	120174503043416
120010022201024	120174503023016	120174503042063	120174504001012
120010022201027	120174503023031	120174503042064	120174504001013
120010022201048	120174503023032	120174503042065	120174504001015
120010022201052	120174503023033	120174503042067	120174504001016
120010022201054	120174503023034	120174503042071	120174504001017
120174501021019	120174503023035	120174503042072	120174504001018
120174501021024	120174503023037	120174503042080	120174504001019
120174501021027	120174503023038	120174503042097	120174504001021
120174501021028	120174503023040	120174503042098	120174504001022
120174501021029	120174503023041	120174503042099	120174504001023
120174501021048	120174503023073	120174503043004	120174504001024
120174501021052	120174503023079	120174503043016	120174504001029
120174501021068	120174503023085	120174503043031	120174504001030
120174501021070	120174503023086	120174503043032	120174504001034
120174501021073	120174503023316	120174503043034	120174504001036
120174501021074	120174503042011	120174503043035	120174504001037
120174501021097	120174503042017	120174503043064	120174504001038
120174501023007	120174503042020	120174503043068	120174504001040
120174501023008	120174503042023	120174503043073	120174504001041
120174501023010	120174503042024	120174503043078	120174504001044
120174501023013	120174503042026	120174503043098	120174504001045
120174501023015	120174503042027	120174503043099	120174504001046
120174501023016	120174503042033	120174503043100	120174504001047
120174501023017	120174503042035	120174503043142	120174504001048
120174501023020	120174503042036	120174503043143	120174504001049
120174501023022	120174503042037	120174503043144	120174504001050
120174501023023	120174503042038	120174503043160	120174504001053
120174501023026	120174503042039	120174503043366	120174504001054
120174501023028	120174503042040	120174503043367	120174504001055
120174501023032	120174503042041	120174503043369	120174504001056
120174501023033	120174503042042	120174503043375	120174504001057

<sup>1</sup> This Exhibit A is intended to be a full and complete list of the RDOF Census Blocks assigned to CCO Holdings, LLC in Florida. To the extent there is any inconsistency between the list of RDOF Census Blocks on this Exhibit A and the list at the FCC's RDOF Dashboard (<https://auctiondata.fcc.gov/public/projects/auction904>), the list at the FCC's RDOF Dashboard shall control.

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120174504001058	120174504001129	120174504003079	120174512001063
120174504001059	120174504001130	120174504005011	120174512001066
120174504001061	120174504001131	120174504005013	120174512001071
120174504001063	120174504001134	120174504005027	120174512001072
120174504001064	120174504002006	120174504005032	120174512001076
120174504001065	120174504002011	120174504005037	120174513001002
120174504001066	120174504002016	120174504005039	120174513001004
120174504001067	120174504002017	120174504005040	120174513001006
120174504001068	120174504002019	120174504005055	120174513001007
120174504001069	120174504002023	120174504005064	120174513001010
120174504001070	120174504002026	120174504005066	120174513001012
120174504001071	120174504002032	120174504005067	120174513001013
120174504001072	120174504002034	120174504005069	120174513001014
120174504001075	120174504002036	120174504005071	120174513001015
120174504001076	120174504002038	120174504005080	120174513001016
120174504001077	120174504002041	120174504005085	120174513001017
120174504001078	120174504002050	120174504005087	120174513001020
120174504001079	120174504002052	120174504005089	120174513001022
120174504001080	120174504002054	120174504005095	120174513001032
120174504001081	120174504002055	120174507024021	120174513001037
120174504001082	120174504002060	120174507024032	120174513001038
120174504001084	120174504002062	120174507024048	120174513001039
120174504001085	120174504002063	120174507024049	120174513001040
120174504001086	120174504002064	120174507024050	120174513001041
120174504001088	120174504002067	120174507024053	120174513001044
120174504001089	120174504002069	120174507024056	120174513001047
120174504001090	120174504002070	120174508001002	120174513001048
120174504001091	120174504002077	120174508001006	120174513001049
120174504001094	120174504003027	120174508001010	120174513001050
120174504001095	120174504003040	120174508001013	120174513001051
120174504001098	120174504003044	120174508001021	120174513001055
120174504001099	120174504003046	120174508001022	120174513002000
120174504001100	120174504003047	120174508001024	120174513002001
120174504001104	120174504003049	120174508001026	120174513002004
120174504001106	120174504003051	120174508001029	120174513002005
120174504001107	120174504003054	120174508001036	120174513002008
120174504001109	120174504003055	120174508001037	120174514001107
120174504001110	120174504003057	120174508001038	120174514001120
120174504001112	120174504003058	120174512001051	120330036032014
120174504001116	120174504003061	120174512001052	120330036032015
120174504001117	120174504003062	120174512001053	120330036032028
120174504001118	120174504003063	120174512001056	120330036032080
120174504001119	120174504003066	120174512001058	120330036033016
120174504001120	120174504003069	120174512001059	120330036131007
120174504001125	120174504003078	120174512001061	120330036131012

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120330036131048	120330039003220	120350602061085	120350602071218
120330039003000	120330039003223	120350602061086	120350602071219
120330039003007	120330039003225	120350602061087	120350602071221
120330039003011	120330039003229	120350602061088	120350602071223
120330039003013	120330039003234	120350602061089	120350602071224
120330039003023	120330039003251	120350602061090	120350602071227
120330039003027	120330039003262	120350602061095	120350602071228
120330039003032	120330039003272	120350602061096	120350602071232
120330039003034	120330039003280	120350602061102	120350602071237
120330039003038	120330039003284	120350602061103	120350602071240
120330039003051	120330039003287	120350602061107	120350602071241
120330039003072	120330039003297	120350602061117	120350602071244
120330039003076	120330039003298	120350602061118	120350602071247
120330039003081	120330039003299	120350602061120	120350602071252
120330039003082	120330039003302	120350602061121	120350602071256
120330039003084	120330039003304	120350602061122	120350602071260
120330039003088	120330039003306	120350602061123	120350602071263
120330039003091	120330039003315	120350602061126	120350602071266
120330039003093	120330039003318	120350602061131	120350602071268
120330039003094	120330039003320	120350602071031	120350602071280
120330039003097	120330039003330	120350602071033	120530401011001
120330039003101	120330039003333	120350602071045	120530401011004
120330039003102	120330039003336	120350602071048	120530401011006
120330039003103	120330039003341	120350602071049	120530401011007
120330039003108	120330039003347	120350602071051	120530401011008
120330039003109	120330039003348	120350602071053	120530401011009
120330039003110	120330039003349	120350602071054	120530401011011
120330039003119	120330039003350	120350602071059	120530401011012
120330039003123	120330039003351	120350602071064	120530401011015
120330039003124	120330039003356	120350602071066	120530401011016
120330039003127	120330039003358	120350602071068	120530401011017
120330039003133	120330039003361	120350602071069	120530401011018
120330039003140	120330039003366	120350602071070	120530401011023
120330039003150	120330039003374	120350602071071	120530401011024
120330039003151	120330039003387	120350602071074	120530401011026
120330039003163	120330039004011	120350602071098	120530401011030
120330039003169	120330039004015	120350602071106	120530401011038
120330039003183	120330039004061	120350602071156	120530401011039
120330039003184	120330039004062	120350602071160	120530401011040
120330039003192	120330039004063	120350602071164	120530401011042
120330039003196	120330039004085	120350602071185	120530401011043
120330039003197	120330039004092	120350602071205	120530401011045
120330039003202	120350602061016	120350602071213	120530401011046
120330039003204	120350602061079	120350602071215	120530401011047
120330039003211	120350602061083	120350602071217	120530401011048

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120530401011049	120530401011124	120530401013028	120530403011032
120530401011050	120530401011126	120530401013052	120530403011034
120530401011053	120530401011127	120530401013055	120530403011036
120530401011055	120530401011128	120530401013060	120530403011037
120530401011056	120530401011132	120530401013061	120530403011038
120530401011062	120530401011134	120530401013107	120530403022018
120530401011063	120530401011151	120530402011002	120530403022038
120530401011065	120530401011155	120530402011003	120530403022039
120530401011067	120530401011156	120530402011005	120530403022040
120530401011068	120530401011158	120530402011011	120530403022042
120530401011070	120530401011159	120530402011019	120530403022043
120530401011072	120530401011160	120530402011020	120530403022044
120530401011075	120530401011163	120530402011022	120530403022045
120530401011078	120530401011164	120530402011023	120530403023000
120530401011080	120530401011175	120530402011026	120530403023001
120530401011081	120530401011177	120530402011035	120530403023005
120530401011082	120530401011178	120530402011036	120530403023011
120530401011083	120530401011179	120530402011038	120530407011002
120530401011084	120530401011180	120530402011040	120530407011006
120530401011088	120530401011181	120530402011056	120530407011017
120530401011090	120530401011182	120530402011069	120530407011020
120530401011091	120530401011183	120530402011072	120530407011021
120530401011092	120530401011184	120530402012001	120530407011022
120530401011093	120530401011185	120530402012005	120530407011026
120530401011095	120530401011187	120530402012006	120530407011028
120530401011096	120530401011188	120530402012008	120530407011032
120530401011099	120530401011191	120530402012013	120530407011040
120530401011102	120530401011193	120530402012015	120530407011042
120530401011103	120530401011194	120530402012018	120530407011043
120530401011104	120530401011195	120530402012019	120530407011044
120530401011105	120530401011196	120530402012020	120530407011045
120530401011107	120530401011197	120530402012021	120530407011046
120530401011108	120530401011198	120530402012022	120530407011049
120530401011109	120530401011199	120530402012023	120530407011050
120530401011110	120530401011200	120530402012024	120530407011051
120530401011112	120530401011220	120530402012025	120530407011053
120530401011113	120530401011224	120530402012029	120530407011056
120530401011114	120530401011228	120530402012031	120530407011057
120530401011115	120530401013000	120530402012036	120530407011058
120530401011116	120530401013012	120530402012037	120530407011059
120530401011117	120530401013023	120530402012039	120530407011060
120530401011118	120530401013024	120530403011020	120530407011061
120530401011121	120530401013025	120530403011021	120530407011062
120530401011122	120530401013026	120530403011030	120530407011064
120530401011123	120530401013027	120530403011031	120530407011065

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120530407011066	120530416003031	120632109003085	120690301021111
120530407011067	120530416003066	120632109003090	120690301021116
120530407011068	120570131001012	120632109003093	120690301021121
120530407011069	120570131002004	120632109003095	120690301023001
120530407011070	120570139031004	120632109003096	120690301023003
120530407011071	120570139031011	120632109003097	120690301023004
120530407011072	120570139031013	120632109003098	120690301023007
120530407011077	120570139031019	120632109003101	120690301023021
120530407011078	120570139032014	120632109003110	120690301023030
120530407011079	120570139032019	120632109003116	120690301023031
120530407011080	120570139072015	120632109003117	120690301023036
120530407011081	120570139072019	120632109003119	120690301023037
120530407011082	120570139072020	120632109003120	120690301023038
120530407011083	120570139072021	120632109003121	120690301023039
120530407011084	120570139072022	120632109003123	120690301023044
120530407011085	120570139072025	120632109003125	120690301023045
120530407011087	120570139072030	120632109003126	120690301023047
120530407011089	120570139072035	120632109003129	120690301023048
120530407011090	120570139072040	120632109003136	120690301023052
120530407011095	120570139072041	120632109003137	120690301023054
120530407011096	120632109003029	120632109003138	120690301023058
120530407011098	120632109003030	120632109003139	120690301023062
120530407011101	120632109003031	120632109003140	120690301023063
120530407011102	120632109003032	120632109003141	120690301023067
120530407011103	120632109003035	120632109003143	120690301023068
120530407011104	120632109003036	120632109003145	120690301023072
120530407011105	120632109003038	120632109003147	120690301023078
120530407011106	120632109003040	120632109003149	120690301023079
120530407011107	120632109003044	120632109003151	120690301023081
120530407011114	120632109003051	120632109003153	120690301023082
120530407011118	120632109003053	120632109003156	120690301023083
120530407011120	120632109003056	120632109003159	120690301023084
120530407011121	120632109003057	120690301021001	120690301023086
120530407011123	120632109003058	120690301021021	120690301023087
120530407011124	120632109003060	120690301021030	120690301023088
120530407011128	120632109003061	120690301021031	120690301023090
120530407011129	120632109003062	120690301021032	120690301023095
120530407011148	120632109003073	120690301021035	120690301023110
120530407011240	120632109003074	120690301021042	120690301023112
120530407011244	120632109003076	120690301021043	120690301023121
120530407011245	120632109003078	120690301021072	120690301023122
120530407011246	120632109003079	120690301021076	120690301023128
120530407011251	120632109003081	120690301021080	120690301023130
120530416003020	120632109003083	120690301021081	120690301023131
120530416003027	120632109003084	120690301021091	120690301023137

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120690301023144	120690301073094	120690310001039	120690311024081
120690301023147	120690301073095	120690310001042	120690311024083
120690301023152	120690301073097	120690310001047	120690311024096
120690301023155	120690301073103	120690310001048	120690311024123
120690301023157	120690301073104	120690310001056	120690311024136
120690301023158	120690301073120	120690310001057	120690311024156
120690301061022	120690301073121	120690310001064	120690311024189
120690301061023	120690301073122	120690310001065	120690311024219
120690301061024	120690301073124	120690310001069	120690311031006
120690301061034	120690301073126	120690310001070	120690311031008
120690301061038	120690301073129	120690311012071	120690311031009
120690301061042	120690301073130	120690311012076	120690311031010
120690301061045	120690301073143	120690311012091	120690311031040
120690301061062	120690301073151	120690311012093	120690311031059
120690301071007	120690301073154	120690311012099	120690311031062
120690301071008	120690303081030	120690311012112	120690311031072
120690301071009	120690303081032	120690311012117	120690311031076
120690301071010	120690304052005	120690311012118	120690311031078
120690301073004	120690304052006	120690311012134	120690311031086
120690301073006	120690304052009	120690311013032	120690311031093
120690301073007	120690304052019	120690311013038	120690311031095
120690301073008	120690304052020	120690311013039	120690311031100
120690301073014	120690304052023	120690311013053	120690311031102
120690301073024	120690304052028	120690311013054	120690311031106
120690301073032	120690304052039	120690311013057	120690311031109
120690301073036	120690304052053	120690311013068	120690311031112
120690301073037	120690304052085	120690311013076	120690311031113
120690301073038	120690309023018	120690311013084	120690311031122
120690301073041	120690309023036	120690311013086	120690311031123
120690301073043	120690309023041	120690311013093	120690311031128
120690301073044	120690309023043	120690311013111	120690311031136
120690301073045	120690309023049	120690311013112	120690311031147
120690301073049	120690309023051	120690311013119	120690311031148
120690301073052	120690309023054	120690311013177	120690311031149
120690301073075	120690309023056	120690311013192	120690311031161
120690301073077	120690309023059	120690311013195	120690311031162
120690301073078	120690309023061	120690311013205	120690311031167
120690301073080	120690310001002	120690311021029	120690311031179
120690301073083	120690310001007	120690311024020	120690312023031
120690301073086	120690310001008	120690311024022	120690312023032
120690301073088	120690310001029	120690311024027	120690312023047
120690301073089	120690310001031	120690311024028	120690312023048
120690301073090	120690310001032	120690311024062	120690312031000
120690301073092	120690310001035	120690311024067	120690312031001
120690301073093	120690310001037	120690311024079	120690312031002

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120690312031009	120690313113019	120759704001304	120830001001026
120690312031018	120690313113022	120759704001305	120830001001027
120690312031041	120690313113023	120759704001306	120830001001028
120690312031044	120690313113032	120759704001308	120830001001029
120690312031063	120759704001002	120759704001309	120830001001030
120690312031069	120759704001084	120759704001310	120830001001032
120690312031079	120759704001095	120759704001311	120830001001040
120690312031081	120759704001142	120759704001313	120830001001043
120690312031082	120759704001144	120759704001314	120830001001044
120690312031083	120759704001151	120759704001315	120830001001045
120690312031085	120759704001155	120759704001316	120830001001051
120690312031091	120759704001158	120759704001317	120830001001052
120690312031155	120759704001207	120759704001318	120830001001054
120690312031157	120759704001236	120759704001319	120830001001055
120690312031199	120759704001237	120759704001320	120830001001057
120690312032065	120759704001241	120759704001322	120830001001058
120690312032068	120759704001245	120759704001324	120830003013013
120690312032074	120759704001253	120759704001325	120830003013016
120690312032075	120759704001255	120759704001326	120830003013020
120690312032101	120759704001259	120759704001330	120830003013034
120690312032114	120759704001260	120759704001331	120830003022010
120690312032116	120759704001261	120759704001332	120830003022012
120690312032129	120759704001262	120759704001342	120830003022021
120690312032148	120759704001263	120759704001344	120830003022028
120690312041003	120759704001264	120759704001345	120830003022040
120690312041010	120759704001265	120759704001359	120830003022045
120690312041011	120759704001266	120759704001362	120830004012003
120690312041026	120759704001268	120759704001363	120830004012010
120690312041027	120759704001269	120759704001364	120830004012031
120690312041029	120759704001272	120759704001366	120830004012049
120690312041041	120759704001273	120759704001389	120830004012055
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120690312041063	120759704001276	120759704001399	120830004023001
120690312041091	120759704001277	120759704001414	120830004023003
120690312041355	120759704001281	120810020142019	120830004023016
120690313112007	120759704001286	120810020142020	120830004023017
120690313112010	120759704001288	120830001001001	120830004023022
120690313112019	120759704001289	120830001001004	120830004023028
120690313112027	120759704001292	120830001001010	120830004023029
120690313112029	120759704001293	120830001001013	120830004023030
120690313112030	120759704001295	120830001001015	120830004023038
120690313112036	120759704001297	120830001001017	120830004023040
120690313113006	120759704001299	120830001001019	120830004023041
120690313113010	120759704001301	120830001001020	120830004023042
120690313113011	120759704001302	120830001001024	120830004023043

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120830004023048	120830006041020	120830007012097	120830007012275
120830004023051	120830006041021	120830007012098	120830007012284
120830004023054	120830006041022	120830007012099	120830007012287
120830004023055	120830006041024	120830007012101	120830007012290
120830004023056	120830006041029	120830007012102	120830007012293
120830004023057	120830006041030	120830007012105	120830007012299
120830004023075	120830006041031	120830007012106	120830007012300
120830004023083	120830006041034	120830007012116	120830007012301
120830005021023	120830006041037	120830007012122	120830007012302
120830005021027	120830006041041	120830007012123	120830007012303
120830005021029	120830006041050	120830007012128	120830007012308
120830005021075	120830006041058	120830007012129	120830007012310
120830005021076	120830006041086	120830007012131	120830007012314
120830005021117	120830006041095	120830007012132	120830007012322
120830005021158	120830006041108	120830007012134	120830007012323
120830005021161	120830006041109	120830007012135	120830007012324
120830005021163	120830006041110	120830007012136	120830007012325
120830005021167	120830006041111	120830007012138	120830007012326
120830005021172	120830006041112	120830007012144	120830007012328
120830005021175	120830007012001	120830007012147	120830007012346
120830005021176	120830007012005	120830007012152	120830007012347
120830005021184	120830007012006	120830007012153	120830007012350
120830005021185	120830007012007	120830007012158	120830007012351
120830005021187	120830007012009	120830007012162	120830007012363
120830005021188	120830007012011	120830007012165	120830007012365
120830005021191	120830007012017	120830007012169	120830007012366
120830006041000	120830007012023	120830007012180	120830007012369
120830006041001	120830007012029	120830007012181	120830007012370
120830006041002	120830007012031	120830007012182	120830007012371
120830006041003	120830007012036	120830007012186	120830007012377
120830006041004	120830007012038	120830007012189	120830007012380
120830006041005	120830007012040	120830007012192	120830007012383
120830006041006	120830007012045	120830007012193	120830007012384
120830006041007	120830007012046	120830007012203	120830007012387
120830006041008	120830007012048	120830007012204	120830009022052
120830006041009	120830007012050	120830007012206	120830009022053
120830006041010	120830007012052	120830007012210	120830009022086
120830006041011	120830007012053	120830007012217	120830009022088
120830006041012	120830007012058	120830007012223	120830009022089
120830006041013	120830007012060	120830007012233	120830009022090
120830006041014	120830007012068	120830007012252	120830009022091
120830006041016	120830007012078	120830007012262	120830009022092
120830006041017	120830007012084	120830007012264	120830009022093
120830006041018	120830007012086	120830007012265	120830009022097
120830006041019	120830007012094	120830007012267	120830009022098

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120830009022099	120830010044074	120830010045052	120830012061048
120830009022101	120830010044077	120830010045054	120830012061049
120830009022102	120830010044080	120830010045056	120830012061050
120830009022107	120830010044082	120830010045057	120830012061052
120830009022108	120830010044085	120830010045058	120830012061053
120830009022111	120830010044086	120830010051014	120830012061054
120830009022113	120830010044088	120830010051018	120830012061063
120830009022117	120830010044089	120830010051056	120830012061064
120830009022121	120830010044090	120830010051086	120830012061066
120830009022126	120830010044091	120830010051087	120830012061067
120830009022134	120830010044093	120830010051088	120830012061069
120830009022138	120830010044186	120830010051089	120830012061072
120830009022139	120830010044192	120830010051108	120830012061073
120830009022141	120830010044193	120830010051145	120830012061074
120830009022143	120830010044195	120830010051324	120830012061075
120830009022145	120830010044196	120830010051354	120830012061076
120830009022146	120830010044197	120830010051355	120830012061077
120830009022147	120830010044198	120830010051359	120830012061078
120830009022156	120830010044199	120830010051360	120830012061079
120830009022157	120830010044200	120830010062001	120830012061081
120830009022163	120830010044201	120830010062021	120830012061082
120830009024007	120830010044202	120830010062056	120830012061083
120830009024008	120830010044206	120830010062057	120830012061085
120830009024011	120830010044208	120830010062112	120830012061086
120830010044000	120830010044212	120830010062114	120830012061088
120830010044007	120830010044222	120830010062120	120830012061092
120830010044010	120830010044227	120830010062129	120830012061093
120830010044013	120830010044270	120830010062135	120830012061097
120830010044016	120830010044285	120830010062155	120830012061100
120830010044034	120830010044287	120830010072031	120830012061118
120830010044038	120830010044288	120830010082006	120830012061126
120830010044047	120830010044293	120830010082033	120830012072079
120830010044048	120830010044299	120830012052001	120830013023000
120830010044051	120830010044300	120830012052003	120830026012000
120830010044052	120830010045010	120830012052008	120830026012002
120830010044053	120830010045025	120830012052013	120830026012004
120830010044055	120830010045026	120830012061025	120830026012005
120830010044057	120830010045034	120830012061034	120830026012007
120830010044059	120830010045036	120830012061036	120830026012009
120830010044060	120830010045044	120830012061040	120830026012010
120830010044062	120830010045045	120830012061042	120830026012011
120830010044065	120830010045046	120830012061043	120830026012013
120830010044066	120830010045047	120830012061045	120830026012021
120830010044068	120830010045048	120830012061046	120830026012024
120830010044072	120830010045050	120830012061047	120830026012034

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120830026012035	120830026013256	120830026041045	120830026041104
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120830026012045	120830026013258	120830026041051	120830026041106
120830026012046	120830026013263	120830026041052	120830026041107
120830026013002	120830026013264	120830026041053	120830026041108
120830026013003	120830026013265	120830026041054	120830026041109
120830026013005	120830026013268	120830026041055	120830026041110
120830026013009	120830026013270	120830026041056	120830026041111
120830026013011	120830026013274	120830026041057	120830026041112
120830026013012	120830026013275	120830026041058	120830026041113
120830026013015	120830026013280	120830026041059	120830026041114
120830026013016	120830026013281	120830026041060	120830026041116
120830026013026	120830026013282	120830026041061	120830026041117
120830026013032	120830026013284	120830026041062	120830026041119
120830026013037	120830026013285	120830026041063	120830026041121
120830026013047	120830026013286	120830026041064	120830026041123
120830026013049	120830026013287	120830026041065	120830026041124
120830026013050	120830026013288	120830026041066	120830026041125
120830026013052	120830026013289	120830026041068	120830026041126
120830026013074	120830026013290	120830026041069	120830026041127
120830026013086	120830026013291	120830026041070	120830026041128
120830026013088	120830026013294	120830026041071	120830026041129
120830026013090	120830026013296	120830026041072	120830026041130
120830026013093	120830026013297	120830026041073	120830026041131
120830026013095	120830026013299	120830026041074	120830026041132
120830026013097	120830026013300	120830026041077	120830026041133
120830026013098	120830026013301	120830026041080	120830026041134
120830026013105	120830026041013	120830026041081	120830026041135
120830026013115	120830026041014	120830026041082	120830026041136
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120830026013155	120830026041016	120830026041087	120830026041138
120830026013156	120830026041018	120830026041088	120830026041139
120830026013161	120830026041019	120830026041090	120830026041140
120830026013163	120830026041020	120830026041091	120830026041141
120830026013182	120830026041021	120830026041092	120830026041142
120830026013229	120830026041022	120830026041093	120830026041144
120830026013232	120830026041029	120830026041094	120830026041145
120830026013236	120830026041033	120830026041095	120830026041146
120830026013248	120830026041037	120830026041096	120830026041147
120830026013249	120830026041038	120830026041097	120830026041148
120830026013250	120830026041039	120830026041098	120830026041149
120830026013251	120830026041040	120830026041099	120830026041150
120830026013252	120830026041041	120830026041100	120830026041151
120830026013253	120830026041042	120830026041101	120830026041152
120830026013254	120830026041043	120830026041103	120830026041154

BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

120830026041155	120830026041218	120830027011003	120830027011076
120830026041158	120830026041221	120830027011005	120830027011078
120830026041161	120830026041222	120830027011006	120830027011079
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BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

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BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

CENSUS BLOCKS

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### FLORIDA: ASSIGNED RDOF CENSUS BLOCKS



Legend:  
■ - BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC

4

Charter  
COMMUNICATIONS

# Item 7

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:** February 18, 2021

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

**FROM:** Division of Engineering (Lewis, Ramos) *TB*  
Division of Accounting and Finance (Cicchetti, Richards, D. Brown) *ALM*  
Division of Economics (Bethea) *JGH*  
Office of the General Counsel (Passidomo) *TLJ*

**RE:** Docket No. 20200168-WU – Application for staff-assisted rate case in Polk County, and request for interim rate increase, by McLeod Gardens Utilities, LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action Except for Issue Nos. 12, 13, 14 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

McLeod Gardens Utilities, LLC (McLeod or Utility) is a Class C utility serving approximately 96 residential water customers in Polk County. On November 27, 2001, the Florida Public Service Commission (Commission) approved the Utility's application for an Original Certificate to provide water service under the name McLeod Gardens Water Company.<sup>1</sup> The Utility was transferred to the present operator in 2017.<sup>2</sup> McLeod's rates and charges were approved in its last staff-assisted rate case (SARC) in 2002 when the Utility was still known as McLeod Gardens Water Company.<sup>3</sup> Subsequent to the Utility's last rate case, its rates have been amended through five price index increases. According to McLeod's 2019 Annual Report, total gross revenue was \$33,563 and total operating expense was \$41,418.

On June 19, 2020, McLeod filed an application for a staff-assisted rate case. Staff selected a test year ended December 31, 2019, for the instant case. The Commission approved an interim rate increase of \$2,608 (7.7 percent) for the Utility's water system on September 21, 2020.<sup>4</sup> Due to the COVID-19 pandemic, Commission staff conducted a virtual customer meeting on December 16, 2020, but no customers attended. Representatives from the Utility and Office of Public Counsel (OPC) were in attendance.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, 367.091, and 367.121, Florida Statutes (F.S.).

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<sup>1</sup>Order No. PSC-01-2317-PAA-WU, issued November 27, 2001, in Docket No. 20001381-WU, *In re: Application for certificate to operate water utility in Polk County by Tevalo, Inc. d/b/a McLeod Gardens Water Company.*

<sup>2</sup>Order No. PSC-2017-0367-PAA-WU, issued September 29, 2017, in Docket No. 20160193-WU, *In re: Application for approval of transfer of certain water facilities and Certificate No. 619-W from McLeod Gardens Water Company to McLeod Gardens Utilities, LLC, in Polk County.*

<sup>3</sup>Order No. PSC-02-1733-PAA-WU, issued December 9, 2002, in Docket No. 20011677-WU, *In re: Application for staff-assisted rate case in Polk County by Tevalo, Inc. d/b/a McLeod Gardens Water Company.*

<sup>4</sup>Order No. PSC-2020-0317-PCO-WU, issued September 21, 2020, in Docket No. 20200168-WU, *In re: Application for staff-assisted rate case in Polk County, and request for interim rate increase, by McLeod Gardens Utilities, LLC.*

## Discussion of Issues

**Issue 1:** Is the quality of service provided by McLeod satisfactory?

**Recommendation:** Yes. The Utility is passing all Department of Environmental Protection (DEP) primary and secondary standards and has been responsive to its customer complaints. Therefore, the quality of service provided by McLeod should be considered satisfactory. (Lewis)

**Staff Analysis:** Pursuant to Section 367.081(2)(a), F.S., and Rule 25-30.433(1), Florida Administrative Code (F.A.C.), the Commission, in every rate case, shall make a determination of the quality of service provided by the utility by evaluating the quality of the utility's product (water) and the utility's attempt to address customer satisfaction (water and wastewater). The Rule states that the most recent chemical analyses, outstanding citations, violations, and consent orders on file with the state's DEP and the county health departments, along with any DEP and county health department officials' testimony concerning quality of service shall be considered. In addition, any customer testimony, comments, or complaints shall also be considered. The operating condition of the water system is addressed in Issue 2.

### Quality of Utility's Product

In evaluating McLeod's product quality, staff reviewed the Utility's compliance with the DEP primary and secondary drinking water standards. Primary standards protect public health, while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water. The most recent chemical analyses were performed on July 18, 2018, and the results were in compliance with the DEP's standards. These chemical analyses are performed every three years; therefore, the next scheduled analysis should be completed in 2021.

### The Utility's Attempt to Address Customer Satisfaction

Staff reviewed the complaints filed in the Commission's Consumer Activity Tracking System (CATS) for the test year and four years prior. The Commission received one billing complaint in October 2019, which the Utility responded to and the complaint was subsequently closed. The DEP received three complaints during the same five-year period. There were two complaints in 2017 regarding a leaky chlorine line. The third complaint received in June 2018, regarded smelly water, which was due to an irrigation line that did not have backflow prevention and affected three homes. The complaints were investigated and closed with no further action. Furthermore, three complaints were reported directly to the Utility for the same time period; two of which were received in 2017 regarding the placement of a meter and a broken service line, and one in 2019 regarding a misread meter.

Due to the ongoing COVID-19 pandemic, staff conducted a virtual customer meeting on December 16, 2020. No customers attended the customer meeting. Representatives from the Utility and OPC were in attendance. The video recording of the meeting, which includes a brief presentation of the SARC process by staff, was placed in the docket file. No customer comments have been filed in the docket file.

**Conclusion**

Based on the above, the quality of service provided by the Utility should be considered satisfactory. The Utility is passing all DEP primary and secondary standards and has been responsive to its customer complaints. Therefore, the quality of service provided by McLeod should be considered satisfactory.

**Issue 2:** Are the infrastructure and operating conditions of McLeod's water system in compliance with the DEP regulations?

**Recommendation:** Yes. The Utility's water treatment facilities are currently in compliance with DEP regulations. (Lewis)

**Staff Analysis:** Rule 25-30.225(2), F.A.C., requires each water and wastewater utility to maintain and operate its plant and facilities by employing qualified operators in accordance with the rules of the DEP. Rule 25-30.433(2), F.A.C., requires consideration of whether the infrastructure and operating conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission must consider testimony of the DEP and county health department officials, sanitary surveys for water systems and compliance evaluation inspections for wastewater systems, citations, violations, and consent orders issued to the utility, customer testimony, comments, and complaints, and utility testimony and responses to the aforementioned items.

### **Water System Operating Conditions**

McLeod's water system has a permitted design capacity of 712,800 gallons per day (gpd). The Utility's water system has two wells with a combined pumping capacity of 495 (425 and 70) gallons per minute. The treated water is pumped into a 10,000 gallon hydropneumatic storage tank before entering the distribution system. A review of the DEP records did not show any consent orders against the Utility. Staff reviewed the sanitary surveys conducted by the DEP in 2018, 2019, and 2020. The 2018 survey listed three deficiencies, two for not having records on site, and the third for not having vacuum breakers on the point of entry tap and other taps at the plant. The 2019 survey stated that the water treatment plant (WTP) was in compliance and there were no deficiencies indicated by the 2020 sanitary surveys.

Additionally, the DEP issued a Warning Letter on February 17, 2017, which stated that the Utility had failed to properly clean and paint the interior of the hydropneumatic tank. There were no DEP enforcement actions listed in 2018 and 2019, and there are not any enforcement actions pending in 2020. Therefore, since the Utility's last three sanitary surveys did not indicate any deficiencies, and since there are no enforcement actions pending, the Utility's WTP is in compliance.

### **Conclusion**

Based on the above, McLeod's water treatment facilities are currently in compliance with DEP regulations.

**Issue 3:** What are the used and useful (U&U) percentages of McLeod's WTP and water distribution system?

**Recommendation:** McLeod's WTP and water distribution system should be considered 100 percent U&U. There appears to be no excessive unaccounted for water (EUW); therefore, staff recommends that no adjustment be made to operating expenses for chemicals and purchased power. (Lewis)

**Staff Analysis:** McLeod's WTP has two wells rated at a combined 495 gallons per minute (gpm). The Utility's water system does not have a storage tank, but has one hydropneumatic tank totaling 10,000 gallons in capacity. The distribution system is composed of approximately 3,280 feet of 6 and 8 inch polyvinyl chloride (PVC) pipes.

### **Water Treatment Plant Used and Useful**

Rule 25-30.4325, F.A.C., addresses the method by which the U&U of a water system is determined. The formula for calculating U&U for the WTP is given by  $[2 \times (\text{Maximum Day Peak Demand} - \text{EUW}) / 1,440 + \text{Fire Flow} + \text{Growth}] / \text{Firm Reliable Capacity}$ . Peak demand is based on a peak hour for a water treatment system with no storage capacity. The formula for calculating peak hour demand is given by  $[(\text{SMD} - \text{EUW}) / 1,440] \times 2$ , SMD is the single maximum day in the test year where there is no unusual occurrence on that day, such as a fire or line break. Based on the Monthly Operating Reports that the Utility files with the DEP, the SMD in the test year was 88,000 gpd, which occurred on July 2, 2019.

As discussed below, there appears to be no EUW. Subsequently, the peak hour demand is calculated to be 122 gpm  $[(88,000 \text{ gpd} - 0) / 1,440 \text{ min/day}] \times 2$ . The Utility has fire hydrants and the required Fire Flow is 350 gpm. Growth allowance is based on the requirements outlined in Rule 25-30.431, F.A.C., which states that a linear regression analysis using average equivalent residential connections (ERCs) for the last five years should be used to determine growth. Staff obtained data for the period of 2015-2019 to perform a linear regression over five years, and the growth in customer gallonage was calculated to be 22,917 gpd or 15.9 gpm. Firm Reliable Capacity assumes loss of the largest capacity well (425 gpm) and is therefore 70 gpm. This calculation results in a U&U greater than 100 percent; as such, staff recommends the WTP be considered 100 percent U&U. In addition, in the 2001 rate case, the Commission deemed the U&U for the system as 100 percent.<sup>5</sup>

### **Water Distribution System Used and Useful**

The water distribution system is evaluated based on ERCs consisting of growth, customer demand, and system capacity. During the test year, 96 customer lots were being served. The Utility provided system maps that indicated 176 lots would be served in the planned development. Several planned roads have not been constructed. Therefore, the service territory should not be considered built out. However, the Commission previously deemed the U&U of the distribution system as 100 percent. Considering all of the water mains are required to adequately serve the existing customers, and consistent with prior Commission practice, staff recommends the distribution system be considered 100 percent U&U.

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<sup>5</sup>Order No. PSC-01-2317-PAA-WU, issued November 27, 2001, in Docket No. 20001381-WU, *In re: Application for certificate to operate water utility in Polk County by Tevalo, Inc. d/b/a McLeod Gardens Water Company*.

### **Excessive Unaccounted for Water**

Rule 25-30.4325, F.A.C., additionally provides factors to be considered in determining whether adjustments to operating expenses are necessary for EUW. EUW is defined as "unaccounted for water in excess of 10 percent of the amount produced." Unaccounted for water is all water produced that is not sold, metered, or accounted for in the records of the Utility.

The Monthly Operating Reports (MORs) indicated that the Utility pumped 13,511,000 gallons during the test year. The MORs did not indicate any line breaks or fire use during the test year. The data from the 2019 Annual Report indicates 7,037,000 gallons were utilized for flushing of the system, which represents 52 percent of the water treated.<sup>6</sup> According to the staff audit report, the Utility sold 6,469,049 gallons of water for the test year. The resulting calculation ( $(13,511,000 - 7,037,000 - 6,469,049) / 13,511,000$ ) for unaccounted for water is 0.04 percent; therefore, there is no EUW. Staff recommends no adjustments to purchased power and chemicals.

### **Conclusion**

McLeod's WTP and water distribution system should both be considered 100 percent U&U. There appears to be no EUW; therefore, staff recommends that no adjustment be made to operating expenses for chemicals and purchased power.

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<sup>6</sup>In response to staff's third data request, the Utility indicated that it conducts significant flushing due to the high amount of hydrogen sulfide in its source water, which may cause a sulfur smell in the water product. The Utility has engaged with the Florida Rural Water Association and is exploring treatment options to mitigate the sulfur smell which may reduce flushing.

**Issue 4:** What is the appropriate average test year rate base for McLeod?

**Recommendation:** The appropriate average test year rate base for McLeod is \$47,179. (Richards, Lewis)

**Staff Analysis:** The appropriate components of the Utility's rate base include utility plant in service (UPIS), land, accumulated amortization, contributions-in-aid-of-construction (CIAC), accumulated amortization of CIAC, and working capital. The Utility's net book value was established as part of its transfer proceeding in Docket No. 20160193-WU.<sup>7</sup> Staff selected the test year ended December 31, 2019, for the instant rate case. Commission audit staff determined that the Utility's books and records are in compliance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA). A summary of each component and the recommended adjustments are discussed below.

### **Utility Plant in Service (UPIS)**

The Utility recorded \$240,330 for UPIS. Audit staff made an adjustment decreasing UPIS by \$26 to reflect appropriate Commission-ordered adjustments to Account 334 – Meters and Meter Installation.<sup>8</sup>

The Utility did not record a balance in UPIS account 341 – Transportation Equipment to reflect the allocated portion of vehicles owned by Florida Utility Services 1, LLC (FUS1) and used by the Utility. The Utility submitted documentation supporting five vehicles with a cost of \$87,904.<sup>9</sup> After McLeod's 3 percent allocation, staff increased UPIS by \$2,637 to account for the appropriate amount of Transportation Equipment. Because these vehicles were purchased prior to the start of the test year, staff did not include an averaging adjustment to these amounts. However, staff did make an averaging adjustment increasing UPIS by \$13 to reflect test year beginning and ending UPIS average balance. Further, staff increased UPIS by \$17,829 to reflect pro forma additions, offset by a decrease of \$8,846 for pro forma retirements.

As described above and summarized in Table 4-1, staff's adjustments to UPIS result in an increase of \$11,633 ( $\$2,637 + \$13 + \$17,829 - \$8,846$ ). Therefore, staff recommends an average UPIS balance of \$251,937 ( $\$240,330 - \$26 + \$11,633$ ).

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<sup>7</sup>Order No. PSC-2017-0367-PAA-WU, issued September 29, 2017, in Docket No. 20160193-WU, *In re: Application for approval of transfer of certain water facilities and Certificate No. 619-W from McLeod Gardens Water Company, to McLeod Gardens Utilities, LLC, in Polk County.*

<sup>8</sup>Ibid.

<sup>9</sup>Document No. 11980-2020, filed on November 13, 2020.

**Table 4-1**  
**Adjustments to UPIS**

<b>Adjustment</b>	<b>Water</b>
To reflect allocated amount for vehicles.	\$2,637
To reflect an averaging adjustment.	13
To reflect pro forma additions.	17,829
To reflect pro forma retirements	(8,846)
<b>Total adjustments to UPIS</b>	<b>\$11,633</b>

Source: Utility response to staff data requests.

The Utility requested replacement of the well house protecting its water treatment equipment. An engineering consulting firm reviewed the condition of the well house building and found the structure unrepairable; therefore, the consulting firm recommended complete replacement of the building. The Utility obtained two bids (\$16,000 and \$14,113) to replace the well house building.<sup>10</sup> The lowest bid was selected. The Utility's request of \$14,113 appears to be necessary and prudent.

Additionally, the Utility indicated that several of its meters have been in service for a considerable amount of time and that 43 of the Utility's 98 total residential meters have recorded over a million gallons each. Therefore, the Utility requested recovery of costs associated with a meter replacement program. Staff believes the meter replacement program should improve the accuracy of water usage metering and Utility revenues. The Utility indicated that it anticipates replacing 30 meters the first year at a cost of \$3,100, 30 the second year at a cost of \$3,100, and 38 in the third and final year at a cost of \$3,927. The total cost of this meter replacement program is approximately \$10,127. Consistent with Section 367.018(2)(a)2, F.S., staff believes that it is appropriate to include one year's worth of meters in rate base since these meters will be completed within 24 months of the test year. Accordingly, staff has included the cost of the 30 meters the Utility plans on replacing during 2021. Staff's adjustments include adjustments to UPIS and accumulated depreciation, as well as corresponding adjustments to depreciation expense and taxes as discussed above and in Issue 8. Staff notes that the Utility has the option of coming back to the Commission after completion of the meter replacement program to request that the additional two years of meters and associated costs be added to rate base.

### **Land and Land Rights**

The Utility recorded a test year land value of \$7,000. The Commission approved a land balance of \$7,000 in the Utility's 2016 transfer docket.<sup>11</sup> There have been no additions to land since the transfer; therefore, no adjustments are necessary. Staff recommends a land and land rights balance of \$7,000.

### **Used and Useful**

As discussed in Issue 3, McLeod's WTP and distribution system are considered 100 percent U&U. Therefore, no U&U adjustments are necessary.

<sup>10</sup>Document No. 13003-2020 filed November 30, 2020.

<sup>11</sup>Order No. PSC-2017-0367-PAA-WU, issued September 29, 2017, in Docket No. 20160193-WU, *In re: Application for approval of transfer of certain water facilities and Certificate No. 619-W from McLeod Gardens Water Company, to McLeod Gardens Utilities, LLC, in Polk County.*

### **Accumulated Depreciation**

The Utility recorded an accumulated depreciation balance of \$164,389. As a result of the staff audit, staff increased accumulated depreciation by \$2,327. Staff increased accumulated depreciation using the prescribed depreciation rates set forth in Rule 25-30.140, F.A.C., associated with plant additions during the test year. Staff increased accumulated depreciation by \$828 to reflect the allocated portion of vehicles added to UPIS account 341 – Transportation Equipment. Staff decreased accumulated depreciation by \$4,391 to reflect an averaging adjustment, and further decreased accumulated depreciation by \$8,347 to reflect pro forma additions and net retirements. Staff recommends an accumulated depreciation balance of \$154,806 ( $164,389 + 2,327 + 828 - 4,391 - 8,347$ ).

### **Contributions in Aid of Construction (CIAC)**

The Utility recorded a test year CIAC balance of \$123,776. Staff believes that a \$115 meter installation charge, and a \$275 plant capacity charge were incorrectly recorded as miscellaneous revenue. Based on staff's review, these two amounts should be recorded as CIAC. Staff increased CIAC by \$390 ( $115 + 275$ ) to reflect this adjustment. Additionally, staff decreased CIAC by \$195 to reflect an averaging adjustment. Therefore, staff recommends the appropriate CIAC balance is \$123,971 ( $123,776 + 390 - 195$ ).

### **Accumulated Amortization of Contributions in Aid of Construction**

The Utility recorded accumulated amortization of CIAC as \$73,900. As a result of the staff audit, an adjustment was made to decrease accumulated amortization of CIAC by \$409. Staff also increased accumulated amortization of CIAC by \$17 to reflect the meter installation charge and plant capacity charge in accordance with Rule 25-30.140(2), F.A.C. Additionally, staff decreased accumulated amortization of CIAC by \$2,097 to reflect an averaging adjustment. Therefore, staff recommends an accumulated amortization of CIAC balance of \$71,411 ( $73,900 - 409 + 17 - 2,097$ ).

### **Acquisition Adjustment (Net)**

The Utility's books reflect an acquisition adjustment of \$14,551 and accumulated amortization of the acquisition adjustment of \$5,331. This resulted in a net acquisition adjustment recorded by the Utility of \$9,223 ( $14,554 - 5,331$ ). Staff made no adjustments to this account. Therefore, staff recommends the appropriate net acquisition balance is \$9,223.

### **Working Capital Allowance**

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses. Consistent with Rule 25-30.433(3), F.A.C., staff used the one-eighth of the operation and maintenance expense (less rate case expense) formula for calculating the working capital allowance. Section 367.081(9), F.S., prohibits a utility from earning a return on the unamortized balance of rate case expense. As such, staff removed the rate case expense balance of \$332 for this calculation, resulting in an adjusted O&M expense balance of \$38,640 ( $38,972 - 332$ ). Applying this formula, staff recommends a working capital allowance of \$4,830 ( $38,640 \div 8$  years).

**Rate Base Summary**

Based on the foregoing, staff recommends that the appropriate average test year rate base is \$47,179. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B.

**Issue 5:** What is the appropriate return on equity and overall rate of return for McLeod?

**Recommendation:** The appropriate return on equity (ROE) is 7.85 percent with a range of 6.85 percent to 8.85 percent. The traditional rate of return does not apply in this case due to rate base being less than 125 percent of O&M expenses. As such, the Operating Ratio method is being used in this case. (Richards)

**Staff Analysis:** As discussed in Issue 9, staff is recommending the Operating Ratio methodology be used in this case. Although the traditional rate of return does not apply in this case due to rate base being less than 125 percent of O&M expenses, staff recommends that an ROE still be established for this Utility.

The Utility has no long-term debt, \$28,995 in equity, and \$2,730 in customer deposits. In response to an email by staff, the Utility stated its equity consists of \$21,568 paid in capital, \$34,503 in negative retained earnings, and related party debt totaling \$41,930.<sup>12</sup> It is Commission practice to treat related party debt as equity when no interest or scheduled payments for principal are being made.<sup>13</sup> As such, staff adjusted the Utility's capital structure to reflect the related party debt as common equity. Therefore, the beginning equity balance for McLeod is \$28,995 (\$21,568 - \$34,503 + \$41,930).

The Utility's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE for the Utility is 7.85 percent based upon the Commission-approved leverage formula currently in effect.<sup>14</sup> Staff recommends an ROE of 7.85 percent, with a range of 6.85 percent to 8.85 percent. The ROE is shown on Schedule No. 2. The traditional rate of return does not apply in this case due to rate base being less than 125 percent of O&M expenses. As such, the Operating Ratio method is being used in this case.

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<sup>12</sup>Document No. 13281-2020, filed on December 9, 2020.

<sup>13</sup>Order No. PSC-2013-0140-PAA-WS, issued March 25, 2013, in Docket No. 20120183-WU, *In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.*; Order No. PSC-2014-0195-PAA-WS, issued May 1, 2014, in Docket No. 20130211-WS, *In re: Application for staff-assisted rate case in Polk County by S.V. Utilities, Ltd.*; Order No. PSC-2016-0583-PAA-WS, issued December 29, 2016, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*; Order No. PSC-2018-0549-PAA-WS, issued November 19, 2018, in Docket No. 20170219-WS, *In re: Application for staff-assisted rate case in Polk County by River Ranch Water Management, LLC.*

<sup>14</sup>Order No. PSC-2020-0222-PAA-WS, issued June 29, 2020, in Docket No. 20200006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utility pursuant to Section 367.081(4)(f), F.S.*

**Issue 6:** Should the Commission approve an Allowance for Funds Used During Construction (AFUDC) rate for McLeod?

**Recommendation:** Yes. The appropriate AFUDC rate for McLeod is 7.51 percent. The appropriate monthly compounding rate to achieve an annual rate of 7.51 percent is 0.605314 percent. (Cicchetti, Richards)

**Staff Analysis:** On November 12, 2020, McLeod submitted a request that the Commission establish an AFUDC rate in this proceeding. In its request, the Utility stated “FUS1 plans to file a petition for approval of Capital Project Improvement Plans for a majority of its systems with the Commission.”<sup>15</sup> According to the Utility, FUS1 has engaged the engineering services of the Florida Rural Water Association (FRWA) to prepare an analysis report evaluating each of its systems and recommend corrective actions along with funding sources. The Utility further stated that it believes “most, if not all, of the proposed capital projects will qualify for AFUDC treatment as authorized by Rule 25-30.116, F.A.C.”<sup>16</sup> McLeod is not currently authorized to accrue AFUDC and does not have a Commission-approved AFUDC cost rate. Staff believes it is appropriate to establish an AFUDC rate for the Utility.

Staff used the capital structure proposed in Issue 5 to calculate the annual AFUDC rate and monthly compounding rate for McLeod. Based on its review, staff believes an AFUDC rate of 7.51 percent is appropriate and recommends Commission approval. Staff also recommends a monthly compounding rate of 0.605314 percent to achieve an annual AFUDC rate of 7.51 percent.

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<sup>15</sup>Document No. 11981-2020, filed on November 13, 2020.

<sup>16</sup>Ibid

**Issue 7:** What are the appropriate test year revenues for McLeod?

**Recommendation:** The appropriate test year revenues for McLeod Gardens are \$34,222. (Bethea)

**Staff Analysis:** The Utility recorded total test year revenues of \$33,563. The water revenues included \$31,790 of service revenues and \$1,773 of miscellaneous revenues. The Utility had a rate increase subsequent to the test year as a result of a price index adjustment. Staff annualized revenues to reflect the change in rates. By applying the rates subsequent to the end of the test year along with the test year billing determinants, staff determined test year service revenues to be \$32,839. This results in an increase of \$1,049 ( $\$32,839 - \$31,790$ ) to test year service revenues. Staff also made an adjustment to miscellaneous revenues to remove \$390 of service availability charges that were erroneously reflected in miscellaneous revenues. This results in miscellaneous revenues of \$1,383 ( $\$1,773 - \$390$ ). Based on the above, the appropriate test year revenues for McLeod are \$34,222 ( $\$32,839 + \$1,383$ ).

**Issue 8:** What is the appropriate test year operating expense for McLeod?

**Recommendation:** The appropriate amount of operating expense for McLeod is \$46,107. (Richards)

**Staff Analysis:** The Utility recorded operating expense of \$41,417. The test year O&M expenses have been reviewed by staff, including invoices and other supporting documentation. Staff has made several adjustments to the Utility's operating expenses as described below.

### **Operation and Maintenance Expenses**

Previously, the Commission approved common O&M expenses be shared by all utilities under the parent company, FUS1.<sup>17</sup> O&M common costs are allocated among all of the utilities in the FUS1 system based on each utility's number of customers relative to the total number of customers receiving service under FUS1. Based on the number of customers for McLeod, the allocation of FUS1 common costs for this utility is 3 percent.

#### **Salaries and Wages – Employees (601)**

The Utility recorded salaries and wages expense for employees of \$7,638. Staff increased this amount by \$2,221 to reflect the Utility's allocated portion of a \$74,046 increase approved in Docket No. 20200152-WS.<sup>18</sup> This amount included salary increases for eight positions and the addition of one new Compliance Technician position. Therefore, staff's recommendation for salaries and wages expense for the test year is \$9,859 (\$7,638 + \$2,221).

#### **Salaries and Wages – Officers and Directors (603)**

The Utility recorded salaries and wages expense for officers and directors of \$2,373. Staff made no adjustments, and therefore recommends salaries and wages expense for officers and directors of \$2,373.

#### **Employee Pensions and Benefits (604)**

The Utility recorded employee pensions and benefits expense of \$179. Staff made no adjustments, and therefore recommends employee pensions and benefits expense of \$179.

#### **Purchased Power (615)**

The Utility recorded purchased power expense of \$2,008. Staff made no adjustments, and therefore recommends purchased power expense of \$2,008.

#### **Fuel for Power Production (616)**

The Utility recorded fuel for power production expense of \$261. Staff made no adjustments, and therefore recommends fuel for power production expense of \$261.

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<sup>17</sup>Order No. PSC-2019-0503-PAA-SU, issued November 25, 2019, in Docket No. 201802020-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

<sup>18</sup>Order No. PSC-2020-0396-PAA-WS, issued October 22, 2020, in Docket No. 20200152-WS, *In re: Application for a limited alternative rate increase proceeding in Polk and Marion Counties, by Alturas Water, LLC. Sunrise Water, LLC. Pinecrest Utilities, LLC. and East Marion Utilities, LLC.*

***Chemicals (618)***

The Utility recorded chemicals expense of \$1,990. Staff made no adjustments, and therefore recommends chemicals expense of \$1,990.

***Materials and Supplies (620)***

The Utility recorded materials and supplies expense of \$1,438. Staff made no adjustments, and therefore recommends materials and supplies expense of \$1,438.

***Contractual Services – Professional (631)***

The Utility recorded contractual services – professional expense of \$538. Staff increased this amount by \$65 ( $\$325 \div 5$  years) to reflect the cost of two sets of engineering plans for the well house amortized over five years. Therefore, staff recommends contractual services – professional expense of \$603 ( $\$538 + \$65$ ).

***Contractual Services – Testing***

The Utility recorded contractual services – testing expense of \$2,928. Staff made no adjustments, and therefore recommends contractual services – testing expense of \$2,928.

***Contractual Services – Other***

The Utility recorded contractual services – other expense of \$8,201. Staff increased this amount by \$40 to reflect the allocated portion of replacing an air conditioning system at FUS1’s New Port Richey office. The total cost for the system was \$6,650. The Commission approved the expense of the air conditioning system in Docket No. 20200152-WS, and determined that the cost should be amortized over five years.<sup>19</sup> As such, staff increased contractual services – other for all FUS1 systems by \$1,330 ( $\$6,650 \div 5$  years) in that docket. The allocated portion attributable to McLeod is \$40. Therefore, staff recommends contractual services – other expense of \$8,241 ( $\$8,201 + \$40$ ).

***Rents (640)***

The Utility recorded rent expense of \$1,154. Staff made no adjustments to rent, and therefore recommends rent expense of \$1,154.

***Transportation Expense (650)***

The Utility recorded transportation expense of \$1,155. Staff made no adjustments to transportation expense, and therefore recommends transportation expense of \$1,155.

***Insurance Expense (655)***

The Utility recorded insurance expense of \$1,865. Staff increased this amount by \$241 to reflect the allocated portion of an increase of \$7,130 approved by the Commission in Docket No. 20200152-WS.<sup>20</sup> This increase covers auto insurance based on the premium for the policy period November 2019 through November 2020 as reflected in support documentation in that docket. The amount also includes a \$200 increase for workman’s compensation insurance for the period November 2019 to November 2020. Therefore, staff recommends insurance expense of \$2,079 ( $\$1,865 + \$214$ ).

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<sup>19</sup>Ibid

<sup>20</sup>Ibid

### **Regulatory Commission Expense (665)**

McLeod recorded regulatory commission expense of \$1,059 to reflect the Utility's four-year amortization of regulatory commission expense related to legal, consulting, and filing fees associated with the Utility's transfer docket.<sup>21</sup> Staff believes that the amount should be included in the instant docket since it has not been recovered in rates to date. The Utility did not record any additional expense.

Regarding the instant case, the Utility is required by Rule 25-22.0407, F.A.C., to mail notices of the rate case overview, the interim rates as approved by Order No. PSC-2020-0317-PCO-WU, final rates, and four-year rate reduction. Staff calculated noticing costs to be \$326. Staff did not include any travel expense as the customer meeting was held remotely and the Commission Conference is currently scheduled to be held remotely. Additionally, the Utility paid a \$1,000 filing fee.<sup>22</sup> Staff recommends noticing costs and filing fee of \$1,326 (\$326 + \$1,000), which amortized over four years is \$332 ( $\$1,326 \div 4$  years) per year. Therefore, staff recommends a regulatory commission expense of \$1,391 ( $\$1,059 + \$332$ ).

### **Bad Debt Expense (670)**

The Utility recorded bad debt expense of \$57. In response to staff's second data request, the Utility updated the bad debt expense for 2018, 2019, and 2020.<sup>23</sup> The Utility stated the bad debt expense for 2018 was \$27, the bad debt expense for 2019 was \$57, and the bad debt expense for 2020 was \$220. It is Commission practice to calculate bad debt expense using a three-year average, which staff calculated as \$101 ( $(\$27 + \$57 + \$220) \div 3$ ). Using the three-year average, staff increased bad debt expense by \$44 ( $\$101 - \$57$ ). Therefore, staff recommends a bad debt expense of \$101 ( $\$57 + \$44$ ).

### **Miscellaneous Expense (675)**

The Utility recorded miscellaneous expense of \$3,212. Staff made no adjustments, and therefore recommends miscellaneous expense of \$3,212.

### **Operation and Maintenance Expense Summary**

The Utility recorded O&M expenses of \$36,056 for the test year. Based on the above adjustments, staff recommends the O&M expense balance be increased by \$2,916, resulting in a total O&M expense of \$38,972 ( $\$36,056 + \$2,916$ ). Staff's recommended adjustments to O&M expenses are shown on Schedule No. 3-C.

### **Depreciation Expense**

The Utility recorded depreciation expense of \$8,342. Using the prescribed rates set forth in Rule 25-30.140, F.A.C., staff increased depreciation expense by \$440 to reflect the depreciation on the allocated portion of vehicles owned by FUS1 and used by the Utility. Staff further increased depreciation expense by \$499 to reflect pro forma additions. Therefore, staff recommends depreciation expense of \$9,281 ( $\$8,342 + \$440 + \$499$ ).

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<sup>21</sup>Order No. PSC-2017-0367-PAA-WU, issued September 29, 2017, in Docket No. 20160193-WU, *In re: Application for approval of transfer of certain water facilities and Certificate No. 619-W from McLeod Gardens Water Company, to McLeod Gardens Utilities, LLC, in Polk County.*

<sup>22</sup>Document No. 04286-2020, filed on August 7, 2020.

<sup>23</sup>Document No. 11553-2020, filed on October 27, 2020.

### **Amortization Expense**

The Utility recorded an amortization expense of \$5,775. Staff increased this amount by \$17 to reflect the CIAC adjustments which were discussed in Issue 4. Therefore, staff recommends an amortization expense of \$5,792 ( $\$5,775 + \$17$ ).

### **Taxes Other Than Income (TOTI)**

The Utility recorded TOTI of \$2,794. As a result of the staff audit, an adjustment was made to decrease TOTI by \$46. In addition, staff increased TOTI by \$12 to reflect the appropriate Regulatory Assessment Fees (RAFs) based on corrected Utility test year revenues. Staff further increased TOTI by \$141 to reflect the appropriate taxes associated with pro forma plant additions. These adjustments by staff total an increase in TOTI of \$107 ( $\$12 - \$46 + \$141$ ).

As discussed in Issue 7, revenues have been increased by \$16,562 to reflect the change in revenue required to cover expenses and allow an opportunity to earn the recommended rate of return. As a result, TOTI should be increased by \$745 to reflect RAFs of 4.5 percent of the change in revenues. Therefore, staff recommends TOTI of \$3,647 ( $\$2,794 + \$107 + \$745$ ).

### **Income Taxes**

McLeod is a sole proprietorship, and therefore did not record any income tax for the test year. As such, staff recommends no adjustments to income tax expense.

### **Operating Expenses Summary**

The Utility recorded operating expenses of \$41,417. The application of staff's recommended adjustments to the Utility's operating expenses result in a total operating expense of \$46,107. Operating expenses are shown on Schedule No. 3-A, and the related adjustments are shown on Schedule No. 3-B.

**Issue 9:** Does McLeod meet the criteria for the application of the Operating Ratio Methodology?

**Recommendation:** Yes. McLeod meets the requirement for application of the operating ratio methodology for calculating the revenue requirement. The margin should be 12 percent of O&M expenses. (D. Brown)

**Staff Analysis:** Rule 25-30.4575(2), F.A.C., provides that, in rate cases processed under Rule 25-30.455, F.A.C., the Commission will use the operating ratio methodology to establish the utility's revenue requirement when the utility's rate base is no greater than 125 percent of O&M expenses and the use of the operating ratio methodology does not change the utility's qualification for a SARC. Under the operating ratio methodology, instead of calculating the utility's revenue requirement based on a rate of return on the utility's rate base, the revenue requirement is calculated using a margin of 12 percent of O&M expenses, not to exceed \$15,000. Purchased water and wastewater expenses, if any, must be removed from O&M expense prior to calculating the margin of 12 percent.

As discussed in Issues 4 and 8, staff has recommended a rate base of \$47,179, and O&M expense of \$38,972. Based on the recommended amounts, McLeod's rate base is only 121 percent of its O&M expense. In addition, the application of the operating ratio methodology does not change the Utility's qualification for a SARC. As such, McLeod meets the criteria for the operating ratio methodology established in Rule 25-30.4575(2), F.A.C. Therefore, staff recommends the application of the operating ratio methodology at a margin of 12 percent of O&M expense for determining the revenue requirement.

**Issue 10:** What is the appropriate revenue requirement for McLeod?

**Recommendation:** The appropriate revenue requirement is \$50,784, resulting in an annual increase of \$16,562 (48.40 percent). (D. Brown)

**Staff Analysis:** McLeod should be allowed an annual increase of \$16,562 (48.40 percent). This should allow the Utility the opportunity to recover its expenses and a 12 percent operating margin on its O&M expenses. The calculations are shown in Table 10-1:

**Table 10-1  
Revenue Requirement**

Adjusted O&M Expense	\$38,972
Operating Margin (%)	<u>x 12.00%</u>
Operating Margin (\$)	\$4,677
Adjusted O&M Expense	38,972
Depreciation Expense (Net)	3,489
Taxes Other Than Income	<u>3,647</u>
Revenue Requirement	<u>\$50,784</u>
Less Adjusted Test Year Revenues	<u>34,222</u>
Annual Increase	<u>\$16,562</u>
Percent Increase	<u>48.40%</u>

**Issue 11:** What are the appropriate rate structure and rates for McLeod's water systems?

**Recommendation:** The recommended rate structure and monthly water rates are shown on Schedule No. 4. 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), F.A.C. In addition, the approved rates should not be implemented until 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. (Bethea)

**Staff Analysis:** McLeod is located in Polk County within the Southwest Florida Water Management District. The Utility provides water service to approximately 96 residential customers. Approximately 13 percent of the residential customer bills during the test year had 1,000 gallons or less in usage, indicating a non-seasonal customer base. The average residential water demand is 5,640 gallons per month. The average water demand for customer bills greater than 1,000 gallons is 6,440 gallons per month. Currently, the Utility's water rate structure consists of a monthly base facility charge (BFC) and uniform gallonage charge for the residential and general service customers.

Staff performed an analysis of the Utility's billing data in order to evaluate the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the Utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

The average people per household served by the water system is 3; therefore, based on the number of people per household, 50 gallons per day per person, and the number of days per month, the non-discretionary usage threshold should be 5,000 gallons per month.<sup>24</sup> Staff's review of the billing analysis indicates that the discretionary usage above 5,000 represents 40 percent of the bills, which account for approximately 38 percent of the water demand. This is considered high discretionary usage for this customer base.

In this case, staff recommends that 35 percent of the water revenues be generated from the BFC due to the high discretionary usage, which will provide sufficient revenues to design gallonage charges that send pricing signals to customers using above the non-discretionary level. Staff recommends a BFC and a three-tier inclining block rate structure, which includes separate gallonage charges for non-discretionary and discretionary usage for residential water customers. The rate blocks are: (1) 0-5,000 gallons; (2) 5,001-10,000 gallons; and (3) all usage in excess of 10,000 gallons per month. This rate structure sends the appropriate pricing signals because it targets customers with high consumption levels and minimizes price increases for customers at non-discretionary levels. In addition, the third tier provides an additional pricing signal to customers using in excess of 10,000 gallons of water per month, which represents approximately

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<sup>24</sup>Average person per household was obtained from [www.census.gov/quickfacts/polkcountyflorida](http://www.census.gov/quickfacts/polkcountyflorida).

16 percent of the usage. General service customers should be billed a BFC and uniform gallonage charge.

Based on the customer billing data provided by the Utility, approximately 38 percent of total residential consumption is discretionary and subject to the effects of repression. Customers will typically reduce their discretionary consumption in response to a price increase, while non-discretionary consumption remains relatively unresponsive. Based on a recommended revenue increase of 50.4 percent for water, which excludes miscellaneous revenues, the residential consumption can be expected to decline by 697,000 gallons, resulting in anticipated average residential demand of 5,032 gallons per month. Staff recommends a 10.8 percent reduction in test year gallons for rate setting purposes and corresponding reductions of \$216 for purchased power, \$214 for chemicals, and \$20 for RAFs to reflect the anticipated repression. This results in a post repression revenue requirement of \$48,950.

The recommended rate structure and monthly water rates are shown on Schedule No. 4. 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), F.A.C. In addition, the approved rates should not be implemented until 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 12:** What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense?

**Recommendation:** The rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. Pursuant to Section 367.081(8), F.S., the decrease in rates should become effective immediately following the expiration of the rate case expense recovery period. McLeod should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, the Utility shall file separate data for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Bethea, D. Brown) (Procedural Agency Action)

**Staff Analysis:** Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the recovery period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense and the gross-up for RAFs. The total reduction is \$347.

Staff recommends that the rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. McLeod should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, the Utility shall file separate data for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

**Issue 13:** Should the recommended rates be approved for McLeod on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the Utility?

**Recommendation:** Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the Utility. McLeod 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), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Office of Commission Clerk no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (D. Brown) (Procedural Agency Action)

**Staff Analysis:** This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the utility, staff recommends that the recommended rates be approved as temporary rates. McLeod 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), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the Utility should be subject to the refund provisions discussed below.

McLeod should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of \$11,164. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

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 prior written authorization 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.

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.

The Utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

**Issue 14:** Should McLeod be required to notify the Commission within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

**Recommendation:** Yes. McLeod should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. McLeod should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all applicable National Association of Regulatory and Utility Commissioners' Uniform System of Accounts (NARUC USOA) primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed not less than seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (D. Brown) (Procedural Agency Action)

**Staff Analysis:** McLeod should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. McLeod should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed not less than seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

**Issue 15:** Should this docket be closed?

**Recommendation:** No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a consummating order should be issued. 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. Once these actions are complete, this docket should be closed administratively. (Passidomo)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. 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. Once these actions are complete, this docket should be closed administratively.

:

<b>MCLEOD GARDENS UTILITIES, LLC</b>		<b>SCHEDULE NO. 1-A</b>		
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200168-WU</b>		
<b>SCHEDULE OF WATER RATE BASE</b>				
<b>DESCRIPTION</b>	<b>BALANCE PER UTILITY</b>	<b>STAFF ADJ.</b>	<b>BALANCE PER STAFF</b>	
1. UTILITY PLANT IN SERVICE	\$240,330	\$11,607		\$251,937
2. LAND & LAND RIGHTS	7,000	0		7,000
3. ACCUMULATED DEPRECIATION	(164,389)	9,583		(154,806)
4. CIAC	(123,776)	(195)		(123,971)
5. ACCUMULATED AMORTIZATION OF CIAC	73,900	(2,489)		71,411
6. ACQUISITION ADJUSTMENT (NET)	(9,223)	0		(9,223)
7. WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>4,830</u>		<u>4,830</u>
8. WATER RATE BASE	<u>\$23,842</u>	<u>\$23,337</u>		<u>\$47,179</u>

:

<b>MCLEOD GARDENS UTILITIES, LLC TEST YEAR ENDED 12/31/2019 ADJUSTMENTS TO RATE BASE</b>	<b>SCHEDULE NO. 1-B DOCKET NO. 20200168-WU</b>
	<b>WATER</b>
<b><u>UTILITY PLANT IN SERVICE</u></b>	
1. To reflect an auditing adjustment.	(\$26)
2. To reflect allocated percentage of vehicles.	2,637
3. To reflect an averaging adjustment.	13
4. To reflect pro forma additions.	17,829
5. To reflect pro forma retirement.	<u>(8,846)</u>
Total	<u>\$11,607</u>
<b><u>ACCUMULATED DEPRECIATION</u></b>	
1. To reflect an auditing adjustment.	(\$2,327)
2. To reflect allocated percentage of vehicles.	(828)
3. To reflect an averaging adjustment.	4,391
4. To reflect pro forma adjustments.	<u>8,347</u>
Total	<u>\$9,583</u>
<b><u>CIAC</u></b>	
1. To reflect meter installation charge.	(\$115)
2. To reflect plant capacity charge.	(275)
3. To reflect an averaging adjustment.	<u>195</u>
Total	<u>(\$195)</u>
<b><u>ACCUMULATED AMORTIZATION OF CIAC</u></b>	
1. To reflect an auditing adjustment.	(\$409)
2. To reflect meter installation charge.	7
3. To reflect plant capacity charge.	10
4. To reflect an averaging adjustment.	<u>(2,097)</u>
Total	<u>(\$2,489)</u>
<b><u>WORKING CAPITAL ALLOWANCE</u></b>	
To reflect 1/8 of test year O&M expenses.	<u>\$4,830</u>

:

<b>MCLEOD GARDENS UTILITIES, LLC</b>					<b>SCHEDULE NO. 2</b>	
<b>TEST YEAR ENDED 12/31/2019</b>					<b>DOCKET NO. 20200168-WU</b>	
<b>SCHEDULE OF CAPITAL STRUCTURE</b>						
<b>CAPITAL COMPONENT</b>	<b>BALANCE PER UTILITY</b>	<b>PRO RATA ADJUST- MENTS</b>	<b>BALANCE PER STAFF</b>	<b>PERCENT OF TOTAL</b>	<b>COST</b>	<b>WEIGHTED COST</b>
1. LONG-TERM DEBT	\$0	\$0	\$0	0.00%	0.00%	0.00%
2. SHORT-TERM DEBT	0	0	0	0.00%	0.00%	0.00%
3. COMMON EQUITY	28,995	15,454	44,449	94.21%	7.85%	7.40%
4. CUSTOMER DEPOSITS	2,730	0	2,730	5.79%	2.00%	0.12%
5. DEFERRED INCOME TAXES	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
TOTAL CAPITAL	<u>\$31,725</u>	<u>\$15,454</u>	<u>\$47,179</u>	<u>100.00%</u>		<u>7.51%</u>
<b>RANGE OF REASONABLENESS</b>					<b><u>LOW</u></b>	<b><u>HIGH</u></b>
RETURN ON EQUITY					6.85%	8.85%
OVERALL RATE OF RETURN					6.57%	8.45%

:

<b>MCLEOD GARDENS UTILITIES, LLC</b>		<b>SCHEDULE NO. 3-A</b>				
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200168-WU</b>				
<b>SCHEDULE OF WATER OPERATING INCOME</b>						
	<b>TEST YR PER UTILITY</b>	<b>STAFF ADJ</b>	<b>STAFF ADJ TEST YEAR</b>	<b>ADJ FOR INC.</b>	<b>REV REQ</b>	
1.	<b>TOTAL OPERATING REVENUE</b>	<u>\$33,563</u>	<u>\$659</u>	<u>\$34,222</u>	<u>\$16,562</u> 48.40%	<u>\$50,784</u>
	<b>OPERATING EXPENSES</b>					
2.	OPERATION & MAINTENANCE	\$36,056	\$2,916	\$38,972	\$0	\$38,972
3.	DEPRECIATION (NET)	8,342	939	9,281	0	9,281
4.	AMORTIZATION (NET)	(5,775)	(17)	(5,792)	0	(5,792)
5.	TAXES OTHER THAN INCOME	2,794	107	2,902	745	3,647
6.	INCOME TAXES	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<b>TOTAL OPERATING EXPENSES</b>	<u>\$41,417</u>	<u>\$3,945</u>	<u>\$45,362</u>	<u>\$745</u>	<u>\$46,107</u>
7.	<b>OPERATING INCOME / (LOSS)</b>	<u>(\$7,854)</u>		<u>(\$11,140)</u>		<u>\$4,677</u>
8.	<b>WATER RATE BASE</b>	<u>\$23,842</u>		<u>\$23,337</u>		<u>\$47,179</u>
9.	<b>OPERATING MARGIN</b>					<u>12.00%</u>

<b>MCLEOD GARDENS UTILITIES, LLC</b>		<b>SCHEDULE NO. 3-B</b>
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200168-WU</b>
<b>ADJUSTMENTS TO OPERATING INCOME</b>		
		<b>WATER</b>
<b>OPERATING REVENUES</b>		
1.	To reflect an auditing adjustment to Service Revenues.	\$397
2.	To reflect the appropriate test year Service Revenues.	652
3.	To reflect the appropriate test year Miscellaneous Revenues.	<u>(390)</u>
	Total	<u>\$659</u>
<b>OPERATION AND MAINTENANCE EXPENSE</b>		
1.	Salaries and Wages – Employees (601) To reflect allocated pro forma increase per Docket No. 20200152-WS.	<u>\$2,221</u>
2.	Contractual Services – Professional (631) To reflect engineering plans for well house amortized over five years.	<u>\$65</u>
3.	Contractual Services – Other (636) To reflect allocated pro forma increase per Docket No. 20200152-WS.	<u>\$40</u>
4.	Insurance Expense (655) To reflect allocated pro forma increase per Docket No. 20200152-WS.	<u>\$214</u>
5.	Regulatory Commission Expense (665) To reflect 1/4 rate case expense.	<u>\$332</u>
6.	Bad Debt Expense (670) To reflect three-year average bad debt expense.	<u>\$44</u>
	<b>TOTAL OPERATING AND MAINTENANCE ADJUSTMENTS</b>	<u>\$2,916</u>
<b>DEPRECIATION EXPENSE</b>		
1.	To reflect allocated portion of vehicles.	\$440
2.	To reflect pro forma additions.	499
	Total	<u>\$939</u>
<b>AMORTIZATION EXPENSE (NET)</b>		
	To reflect CIAC adjustment to Service Revenues.	<u>(\$17)</u>
<b>TAXES OTHER THAN INCOME</b>		
1.	To reflect an auditing adjustment.	(\$46)
2.	To reflect appropriate test year RAFs.	12
3.	To reflect property taxes associated with pro forma plant additions.	141
	Total	<u>\$107</u>
	<b>TOTAL OPERATING EXPENSE</b>	<u>\$3,945</u>

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MCLEOD GARDENS UTILITIES, LLC TEST YEAR ENDED 12/31/2019 ANALYSIS OF WATER O&M EXPENSE		SCHEDULE NO. 3-C DOCKET NO. 20200168-WU		
ACCT. #	DESCRIPTION	TOTAL PER UTILITY	STAFF ADJUST- MENTS	TOTAL PER STAFF
601	Salaries and Wages – Employees	\$7,638	\$2,221	\$9,859
603	Salaries and Wages – Officers and Directors	2,373	0	2,373
604	Employee Pensions and Benefits	179	0	179
615	Purchased Power	2,008	0	2,008
616	Fuel for Power Production	261	0	261
618	Chemicals	1,990	0	1,990
620	Materials and Supplies	1,438	0	1,438
631	Contractual Services – Professional	538	65	603
635	Contractual Services – Testing	2,928	0	2,928
636	Contractual Services – Other	8,201	40	8,241
640	Rents	1,154	0	1,154
650	Transportation Expense	1,155	0	1,155
655	Insurance Expense	1,865	214	2,079
665	Regulatory Commission Expense	1,059	332	1,391
670	Bad Debt Expense	57	44	101
675	Miscellaneous Expense	<u>3,212</u>	<u>0</u>	<u>3,212</u>
	Total O&M Expense	<u>\$36,056</u>	<u>2,916</u>	<u>\$38,972</u>
	Working Capital is 1/8 of O&M Less RCE			\$4,830

<b>MCLEOD GARDEN UTILITIES LLC.</b>		<b>SCHEDULE NO. 4</b>		
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200168-WU</b>		
<b>MONTHLY WATER RATES</b>				
	<b>UTILITY CURRENT RATES</b>	<b>COMMISSION APPROVED INTERIM RATES*</b>	<b>STAFF RECOMMENDED RATES</b>	<b>4 YEAR RATE REDUCTION</b>
<b><u>Residential and General Service</u></b>				
Base Facility Charge by Meter Size				
5/8"X3/4"	\$11.88	\$12.61	\$14.94	\$0.11
3/4"	\$17.82	\$18.92	\$22.41	\$0.17
1"	\$29.70	\$31.53	\$37.35	\$0.28
1-1/2"	\$59.40	\$63.05	\$74.70	\$0.55
2"	\$95.04	\$100.88	\$119.52	\$0.88
3"	\$190.08	\$201.76	\$239.04	\$1.76
4"	\$297.00	\$315.25	\$373.50	\$2.75
6"	\$594.03	\$630.50	\$747.00	\$5.50
Charge per 1,000 gallons - Residential				
All gallons	\$2.97	\$3.15	N/A	N/A
0 - 5,000 gallons	N/A	N/A	\$4.56	\$0.03
5,001 - 10,000 gallons	N/A	N/A	\$6.84	\$0.05
Over 10,000 gallons	N/A	N/A	\$9.13	\$0.06
Charge per 1,000 gallons - General Service				
	\$2.97	\$3.15	\$5.51	\$0.04
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>				
5,000 Gallons	\$26.73	\$28.36	\$37.74	
10,000 Gallons	\$41.58	\$50.42	\$71.94	
15,000 Gallons	\$56.43	\$59.86	\$117.59	
*Interim rates became effective January 9, 2021.				

# Item 8

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:** February 18, 2021

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

**FROM:** Division of Engineering (Buys, King, Kistner, Ramos) *TB*  
Division of Accounting and Finance (Cicchetti, D. Brown, Richards) *ALM*  
Division of Economics (Sibley, Hudson) *JGH*  
Office of the General Counsel (Murphy) *TLT*

**RE:** Docket No. 20200169-WS – Application for staff-assisted rate case in Lake County, and request for interim rate increase, by Lake Yale Utilities, LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action Except for Issue Nos. 14, 15, 16 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

Lake Yale Utilities, LLC (Lake Yale or Utility) is a Class C utility providing water and wastewater services to approximately 298 residential customers and one general service customer in Lake County. The Utility also provides irrigation service to 88 of its residential customers. The service area is located in the Southwest Florida Water Management District. The Utility's rates were last set by the Florida Public Service Commission (Commission) in an original certificate proceeding in 1994.<sup>1</sup> This is the Utility's first staff-assisted rate case; however, its rates have been amended through eight price index rate increases. The Utility was transferred to the present operator in 2018.<sup>2</sup> According to Lake Yale's 2019 Annual Report, total gross water revenue was \$68,906, total gross wastewater revenue was \$55,021, total water operating expense was \$62,611, and total wastewater operating expense was \$64,539.

On June 19, 2020, Lake Yale filed its application for a staff-assisted rate case and interim rate relief. Staff selected the test year ended December 31, 2019, for the instant case. By Order, dated September 14, 2020, the Commission approved an interim rate increase of \$9,966 (18.11 percent) for the Utility's wastewater system.<sup>3</sup> Due to the COVID-19 pandemic, Commission staff conducted a virtual customer meeting on December 16, 2020. Two representatives spoke on behalf of the customers of the Lake Yale Estates and Sandpiper Manor subdivisions. Representatives from the Utility and Office of Public Counsel (OPC) were also in attendance.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, 367.091, and 367.121, Florida Statutes (F.S.).

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<sup>1</sup>Order No. PSC-94-0171-FOF-WS, issued February 10, 1994, in Docket No. 19930133-WS, *In re: Application for Water and Wastewater Certificates in Lake County by LAKE YALE CORPORATION d/b/a LAKE YALE UTILITY COMPANY*.

<sup>2</sup>Order No. PSC-2018-0554-PAA-WS, issued November 20, 2018, in Docket No. 20170220-WS, *In re: Application for approval of transfer of Lake Yale Treatments Associates, Inc. water and wastewater systems and Certificate Nos. 560-W and 488-S in Lake County to Lake Yale Utilities, LLC*.

<sup>3</sup>Order No. PSC-2020-0310-PCO-WS, issued September 14, 2020, in Docket No. 20200169-WS, *In re: Application for staff-assisted rate case in Lake County, and request for interim rate increase, by Lake Yale Utilities, LLC*.

## Discussion of Issues

**Issue 1:** Is the quality of service provided by Lake Yale satisfactory?

**Recommendation:** Yes. The Utility is passing all Department of Environmental Protection (DEP) primary and secondary standards and has been responsive to its customer complaints. Therefore, the quality of service provided by Lake Yale should be considered satisfactory. (Kistner)

**Staff Analysis:** Pursuant to Section 367.081(2)(a)1, F.S., and Rule 25-30.433(1), Florida Administrative Code (F.A.C.), the Commission, in every rate case, shall make a determination of the quality of service provided by the utility by evaluating the quality of utility's product (water) and the utility's attempt to address customer satisfaction (water and wastewater). The Rule requires that the most recent chemical analyses, outstanding citations, violations, and consent orders on file with the DEP and the county health department, along with any DEP and county health department officials' testimony concerning quality of service shall be considered. In addition, any customer testimony, comments, or complaints shall also be considered. The operating condition of the water and wastewater systems are addressed in Issue 2.

### Quality of Utility's Product

In evaluating Lake Yale's product quality, staff reviewed the Utility's compliance with the DEP primary and secondary drinking water standards. Primary standards protect public health, while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water. The most recent comprehensive chemical analyses were performed in October 2018 and additional primary standard testing was done in June 2019 and March 2020 for both systems, Lake Yale Estates and Sandpiper. All results were in compliance with the DEP's standards.

### The Utility's Attempt to Address Customer Satisfaction

Staff reviewed the complaints filed in the Commission's Consumer Activity Tracking System (CATS) for the test year and four years prior. The Commission received seven complaints from the Utility's customers: four were made in December 2020, one in June 2019, one in September 2018, and one in December 2017. The four complaints filed in December 2020 included the following issues: replacement of damaged fences, low water pressure, wastewater facility smell, poor customer service, poor secondary water quality standards, and excess foliage in the retention pond. The complaint from June 2019 raises similar issues to the four December 2020 complaints. The complaints from September 2018 and December 2017 are in regard to the now repaired fences that were damaged by a hurricane. The Utility provided responses to these identified customer complaints in CATS and these complaints have been closed.

DEP received no complaints during the test year and four years prior regarding Lake Yale. Additionally, staff requested all complaints received by the Utility for the same time period. The Utility received a total of 20 customer complaints during this timeframe. Most of the complaints were related to meter leaks or customer questions on meter accuracy. None of these complaints make reference to poor water quality. One complaint references low water pressure, the cause was found to be due to a smashed valve that was repaired the next day. The Utility also responded to these customer complaints. Table 1-1 summarizes the number of complaints by source and subject for the test year and four years prior.

**Table 1-1  
 Number of Complaints by Source and Subject**

<b>Subject of Complaint</b>	<b>CATS Records</b>	<b>DEP Records</b>	<b>Utility Records</b>	<b>Total</b>
Water Quality	5	-	-	5
Wastewater Facility Noise	1	-	-	1
Wastewater Facility Odor	3	-	-	3
Facility Fencing	7	-	-	7
Pond Maintenance	3	-	-	3
Water pressure	3	-	1	4
Meter Leak	-	-	8	8
Meter Accuracy	-	-	2	2
Billing	-	-	1	1
Other	-	-	8	8
<b>Total*</b>	<b>22</b>	<b>-</b>	<b>20</b>	<b>42</b>

\*A single customer complaint may be counted multiple times if it fits into multiple categories.

Due to the ongoing COVID-19 pandemic, staff held a virtual customer meeting on December 16, 2020. Representatives from the Utility and OPC were in attendance. Two customers spoke representing the two communities (Lake Yale Estates and Sandpiper). Comments included their dissatisfaction with the water taste and smell, water pressure, retention pond maintenance, wastewater treatment facility smell and noise, customer service, and installation of a chain link fence instead of a vinyl fence. The video recording of the meeting, which includes a brief presentation of the SARC process by staff, was placed in the docket file. The Commission has received correspondence from 65 customers in the instant docket. The majority of these comments were regarding the overall rate increase, dissatisfaction with the water product taste and smell, and the smell from the wastewater treatment plant.

Staff sent the Utility a data request asking how customer concerns were addressed. The fencing, retention pond, wastewater treatment facility smell, and noise complaints will be addressed in Issue 2. In regard to complaints on secondary water quality standards, the Utility states that this may be related to the change from gas to liquid chlorine for disinfection. As previously stated, the Utility is passing DEP's primary and secondary drinking water standards and has only received one water quality complaint prior to this rate case. As for low water pressure the Utility states that during times of routine maintenance, there can be low water pressure otherwise it has only been noted once before this rate case.

**Conclusion**

Based on the above, the quality of service provided by Lake Yale should be considered satisfactory. The Utility is passing all DEP primary and secondary standards and has been responsive to its customer complains. Therefore, the quality of service provided by Lake Yale should be considered satisfactory.

**Issue 2:** Are the infrastructure and operating conditions of Lake Yale’s water and wastewater systems in compliance with DEP regulations?

**Recommendation:** Yes. The Utility’s water and wastewater treatment facilities are currently in compliance with DEP regulations. (Kistner)

**Staff Analysis:** Rule 25-30.225(2), F.A.C., requires each water and wastewater utility to maintain and operate its plant and facilities by employing qualified operators in accordance with the rules of the DEP. Rule 25-30.433(2), F.A.C., requires consideration of whether the infrastructure and operating conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission must consider testimony of the DEP and county health department officials, sanitary surveys for water systems and compliance evaluation inspections for wastewater systems, citations, violations, and consent orders issued to the utility, customer testimony, comments, and complaints, and utility testimony and responses to the aforementioned items.

### **Water and Wastewater System Operating Conditions**

Lake Yale’s water system has a permitted design capacity of 468,000 gallons per day (gpd) for Lake Yale Estates and 162,000 gpd for Sandpiper. The Utility’s water system has three wells, two for Lake Yale Estates and one for Sandpiper with a combined pumping capacity of 663 gallons per minute (gpm), and two hydropneumatic storage tanks with a combined 15,000 gallon capacity. Staff reviewed the sanitary surveys conducted by the DEP for both systems to determine the Utility’s overall water facility compliance. A review of the surveys conducted on May 13, 2018, and August 30, 2018, indicated that Lake Yale Estates’ water treatment facility was missing permitting for a change in its disinfection process and for a permanent interconnection between the two systems. In addition, on October 16, 2019, the DEP issued a Consent Order which determined that the drinking water facility at Lake Yale Estates had inadequate security for its wellheads and pumping facilities and required that they be enclosed by lockable access. This Consent Order was based on three inspections where the Utility failed to correct these issues. Based on the Consent Order’s case closure letter, dated February 26, 2020, and the recent November 16, 2020 sanitary survey, these issues have since been resolved. The Utility also paid a fine of \$6,349 for failure to timely correct the previously discussed deficiencies for the Utility’s water system and the deficiencies discussed below for the Utility’s wastewater system. This DEP fine will not be recovered through rates. Both Lake Yale Estates’ and Sandpiper’s water systems are currently in compliance with the DEP’s rules and regulations.

Lake Yale’s wastewater system is a 55,000 gpd design capacity extended aeration domestic wastewater treatment plant (WWTP). Staff reviewed the Utility’s compliance evaluation inspections conducted by the DEP to determine the Utility’s overall wastewater facility compliance. A review of the inspection conducted on June 22, 2018, and the October 16, 2019 Consent Order, indicated that Lake Yale’s wastewater treatment facility was not in compliance with the DEP’s rules and regulations. DEP found excess vegetation growth in the rapid infiltration basins and excessive noise coming from the WWTP. This Consent Order was based on three inspections where the Utility failed to correct the issues, as discussed above for the Utility’s water system. The Consent Order’s case closure letter dated February 26, 2020, indicated that the wastewater facility was then in compliance and, as discussed above, a fine of

\$6,349 was paid for failure to timely correct the noted deficiencies and will not be recovered through rates. However, on November 16, 2020, DEP conducted another inspection of the WWTP and found that there was excess vegetation growth in the rapid infiltration basins. The Utility quickly fixed this issue and submitted proof of the corrective action to DEP. During these recent inspections, DEP found no violations in regard to facility fencing, smell, or noise.

**Conclusion**

Based on the above, Lake Yale's water and wastewater treatment facilities are in compliance with DEP regulations.

**Issue 3:** What are the used and useful (U&U) percentages of Lake Yale's water treatment plant (WTP), WWTP, water distribution system, and wastewater collection system?

**Recommendation:** Lake Yale's WTP, WWTP, water distribution system, and wastewater collection system should be considered 100 percent U&U. Additionally, staff recommends no adjustment to purchased power and chemicals should be made for excessive unaccounted for water (EUW) or excessive infiltration and inflow (I&I). (P. Buys)

**Staff Analysis:** Lake Yale's water treatment system consists of two water plants, Lake Yale Estates and Sandpiper. Both water plants are interconnected and work with virtual telemetry to control the lead/lag alternating setup. Together, there are three wells with pumping capacities of 451, 156, and 56 gpm and two hydro-pneumatic storage tanks with 10,000 and 5,000 gallon capacities. Lake Yale's water distribution system is composed of 1,110 feet of 2-inch polyvinyl chloride (PVC) pipe, 32,934 feet of 4-inch PVC pipe, 4,085 feet of 6-inch PVC pipe, and 5,364 feet of 8-inch PVC pipe.

Lake Yale's wastewater treatment system has a permitted capacity of 55,000 gpd. The wastewater collection system is composed of PVC pipes and four lift stations. The Utility's wastewater collection system comprises 600 feet of 3-inch PVC force mains, 2,712 feet of 4-inch PVC force mains, 600 feet of 6-inch PVC force mains, 2,009 feet of 4-inch PVC collecting mains, 2,210 feet of 6-inch PVC collecting mains, and 6,287 feet of 8-inch PVC collecting mains. There are approximately 29 manholes in the service area.

### **Water Treatment Plant Used and Useful**

Lake Yale's rates were last set in its original certificate Docket No. 19930133-WS; however, the U&U percentages were not determined in that docket. Rule 25-30.4325, F.A.C., addresses the method by which the U&U of a water system is determined. The formula for calculating U&U for the WTP is given by  $[2 \times (\text{Maximum Day Peak Demand} - \text{EUW}) + \text{Fire Flow} + \text{Growth}] / \text{Firm Reliable Capacity}$ . This calculation is based on a water treatment system with no storage, as hydropneumatic storage tanks are not considered usable pursuant to Rule 25-30.4325(8), F.A.C. The maximum day peak demand is the single maximum day in the test year where there is no unusual occurrence, such as a fire or line break. Based on Lake Yale's Monthly Operating Reports, the maximum day peak demand during the test year was 173,000 gpd or 120 gpm, which occurred in July 2019. As discussed below, there appears to be no EUW. The Utility has 12 fire hydrants and the fire flow is 650 gpm. Growth allowance is based on the requirements outlined in Rule 25-30.431, F.A.C., which requires the Commission to consider the rate of growth in equivalent residential connections (ERCs), in its determination of U&U. Based on staff's review, the growth for the WTP is approximately 1 gpm. Firm reliable capacity assumes loss of the largest capacity well (451 gpm) and is therefore 212 gpm. This calculation results in a U&U greater than 100 percent, as such, staff recommends the WTP be considered 100 percent U&U.

### **Wastewater Treatment Plant Used and Useful**

Rule 25-30.432, F.A.C., addresses the method by which the U&U of a wastewater system is determined. The formula for calculating U&U for the WWTP is given by (Customer Demand Flow – I&I + Growth)/ Permitted Capacity. In this calculation, customer demand is measured on the same basis as permitted capacity. The permitted capacity for the WWTP is 55,000 gpd annual average daily flow (AADF). The customer demand AADF for 2019 was 6,000 gpd. As discussed below, there appears to be no I&I. Based on staff's review, the growth for the WWTP is 30 gpd. This calculation results in a U&U less than 100 percent. However, the Utility indicated that only 16 vacant lots remain with facilities in place to serve new customers.<sup>4</sup> Additionally, the historical customer counts appear to be constant for the past 5 years. Due to the few vacant lots remaining, minimal growth of 30 gpd, and stable customer count, staff recommends the Utility's system be considered built-out. This is consistent with Rule 25-30.432, F.A.C., which states that the Commission will also consider other factors such as the extent to which the area served by the plant is built out when determining the U&U of a wastewater system. Based on the above, staff recommends the WWTP be considered 100 percent U&U.

### **Water Distribution and Wastewater Collection Systems Used and Useful**

The water distribution and wastewater collection systems are evaluated based on ERCs consisting of growth, customer demand, and system capacity. The growth for the water distribution system is 3 ERCs and the growth for the wastewater collection system is 2 ERCs. The Utility served an average of 300 ERCs during the test year. The Utility's transmission and distribution lines were constructed to serve 318 ERCs. This results in 95 percent U&U for the water distribution system and 94 percent U&U for the wastewater collection system. However, based on the discussion above, staff recommends the system is built-out. Therefore, staff also recommends the Utility's distribution and collection systems be considered 100 percent U&U.

### **Excessive Unaccounted for Water**

Rule 25-30.4325, F.A.C., additionally provides factors to be considered in determining whether adjustments to operating expenses are necessary for EUW. EUW is defined as "unaccounted for water in excess of 10 percent of the amount produced." Unaccounted for water is all water produced that is not sold, metered, or accounted for in the records of the Utility.

EUW is calculated by subtracting both the gallons sold to customers and the gallons used for other services, such as flushing, from the total gallons pumped for the test year. Based on staff's review, Lake Yale produced 13,190,000 gallons of water for 2019. Per the audit completed by staff, the Utility sold 10,537,411 gallons of water to customers. The Utility documented 2,114,000 gallons of water usage for other uses in its 2019 annual report. The resulting calculation  $([13,190,000 - 10,537,411 - 2,114,000] / 13,190,000)$  for unaccounted for water is 4.1 percent; therefore, there is no EUW. Staff recommends no adjustments should be made to purchased power and chemicals.

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<sup>4</sup>Document Nos. 11735-2020, filed on November 4, 2020, and 13030-2020, filed on December 1, 2020.

### **Infiltration and Inflow**

Infiltration typically results from groundwater entering a wastewater collection system through broken or defective pipes and joints; whereas, inflow results from water entering a wastewater collection system through manholes or lift stations. By convention, the allowance for infiltration is 500 gpd per inch diameter pipe per mile, and an additional 10 percent of residential water billed is allowed for inflow. Rule 25-30.432, F.A.C., provides that in determining the WWTP amount of U&U, the Commission will consider I&I.

Since all wastewater collection systems experience I&I, the conventions noted above provide guidance for determining whether the I&I experienced at a WWTP is excessive. Staff calculates the allowable infiltration based on system parameters, and calculates the allowable inflow based on water sold to customers. The sum of these amounts is the allowable I&I. Staff next calculates the estimated amount of wastewater returned from customers. The estimated return is determined by summing 80 percent of the water sold to residential customers with 90 percent of the water sold to non-residential customers. Adding the estimated return to the allowable I&I yields the maximum amount of wastewater that should be treated by the wastewater system without incurring adjustments to operating expenses. If this amount exceeds the actual amount treated, no adjustment is made. If it is less than the gallons treated, then the difference is the excessive amount of I&I.

For 2019, the allowance for infiltration was calculated as 3,036,136 gallons, and the allowance for inflow was calculated as 655,813 gallons; therefore, the total I&I allowance was calculated as 3,691,950 gallons. Based on staff's audit, the total water sold to residential customers was 6,547,754 gallons. The Utility also sold 10,380 gallons to its one general service customer. Therefore, the estimated amount of wastewater returned from customers was calculated as 5,247,545 ( $[6,547,754 * 0.8] + [10,380 * 0.9]$ ) gallons. Summing the estimated return and the allowable I&I results in a maximum of 8,939,495 ( $3,691,950 + 5,247,545$ ) gallons of wastewater that should be treated by the wastewater system without incurring adjustments to operating expenses. Based on the Utility's discharge monitoring reports, the actual amount of wastewater treated was 2,187,000 gallons for 2019. Therefore, the excessive I&I is -6,752,495 gallons, or 0 percent. Staff is not recommending an adjustment to purchased power and chemicals.

### **Conclusion**

Lake Yale's WTP, WWTP, water distribution system and wastewater collection system should be considered 100 percent U&U. Additionally, staff recommends no adjustment to purchased power and chemicals should be made for EUW or excessive I&I.

**Issue 4:** What is the appropriate average test year water rate base and wastewater rate base for Lake Yale?

**Recommendation:** The appropriate average test year rate bases for Lake Yale are \$117,040 for water and \$34,494 for wastewater. (Richards, P. Buys)

**Staff Analysis:** The appropriate components of the Utility's rate base include utility plant in service (UPIS), land, accumulated amortization, contributions-in-aid-of-construction (CIAC), accumulated amortization of CIAC, and working capital. The Utility's net book value was established as part of its transfer proceeding in Docket No. 20170220-WS.<sup>5</sup> Staff selected the test year ended December 31, 2019, for the instant rate case. Commission audit staff determined that the Utility's books and records are in compliance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA). A summary of each component and the recommended adjustments follows.

### **Utility Plant in Service (UPIS)**

The Utility recorded \$396,485 and \$438,790 for water and wastewater, respectively, for UPIS. Staff made several adjustments described below resulting in a net increase of \$6,030 for water and \$9,827 for wastewater.

The Utility did not record a balance in UPIS accounts 341 and 391 – Transportation Equipment to reflect the allocated portion of vehicles owned by Florida Utility Services 1, LLC (FUS1) and used by the Utility. The Utility submitted documentation supporting five vehicles with a cost of \$87,904.<sup>6</sup> After Lake Yale's 12 percent allocation, staff increased UPIS by \$10,548 to correctly reflect the amount of Transportation Equipment. Staff split the amount between water and wastewater, thereby increasing UPIS by \$5,274 for water and \$5,274 for wastewater. Since these vehicles were purchased prior to the start of the test year, staff did not include an averaging adjustment to these amounts.

The Utility stated that old wooden fences surrounding the Sandpiper water plant and the Lake Yale wastewater plant were destroyed in a storm. Staff increased UPIS by \$2,577 for water and \$527 for wastewater to reflect replacement of the fences originally expensed to accounts 620 and 720. The Utility originally booked these costs as expenses, but staff believes these items should be capitalized. In addition, the Utility requested \$848 for labor to repair the fences. Since the individuals performing the fence repairs are paid employees of FUS1, staff did not include any additional amount for labor.<sup>7</sup>

Table 4-1 shows Lake Yale's requested pro forma plant additions. Lake Yale requested three projects as pro forma, as the projects were completed outside the test year. The Utility added a second lift station pump on March 31, 2020 as there was only one operating pump<sup>8</sup> and made

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<sup>5</sup>Order No. PSC-2018-0554-PAA-WS, issued November 20, 2018, in Docket No. 20170220-WS, *In re: Application for approval of transfer of Lake Yale Treatments Associates, Inc. water and wastewater systems and Certificate Nos. 560-W and 488-S in Lake County to Lake Yale Utilities, LLC.*

<sup>6</sup>Document No. 11980-2020, filed on November 13, 2020.

<sup>7</sup>Document No. 00534-2021, filed on January 6, 2021.

<sup>8</sup>Document Nos. 13030-2020, filed on December 1, 2020, and 11735-2020, filed on November 4, 2020.

emergency repairs to another lift station on December 21, 2020 to install new starters and a new phase monitor module.<sup>9</sup> Lake Yale also replaced the master flow meter at the Sandpiper water treatment plant on October 19, 2020 as the master flow meter was not registering water pumping through the system.<sup>10</sup> The aforementioned pro forma plant additions were necessary and time-sensitive. Due to the nature and completion of these additions, staff did not require the Utility to provide bids; however, staff did reviewed paid invoices from the Utility for the above projects. In addition to the three projects, FUS1 purchased a vehicle on September 29, 2020, which is outside the test year.<sup>11</sup> The vehicle cost was \$31,142 and the 12 percent allocation to Lake Yale is \$3,737. Staff allocated half of the vehicle cost to water and half to wastewater. Staff recommends the approval of the pro forma plant additions identified in Table 4-1.

**Table 4-1  
 Pro Forma Plant Items**

<b>Project</b>	<b>Acct. No.</b>	<b>Description</b>	<b>Amount</b>
Lift Station Pump	360	To replace a lift station pump	\$5,959
Lift Station Pump	360	Retirement	(\$4,469)
Repairs to Lift Station	360	Emergency repairs to a lift station	\$1,725
Repairs to Lift Station	360	Retirement	(\$1,294)
Master Flow Meter	309	To replace the master flow meter at the Sandpiper WTP	\$2,065
Master Flow Meter	309	Retirement	(\$1,549)
Vehicle	341	2020 Ford Transit Connect allocation	\$1,869
Vehicle	391	2020 Ford Transit Connect allocation	\$1,869

Source: Responses to staff's data requests.

Staff decreased UPIS by \$4,206 for water and increased UPIS by \$236 for wastewater to reflect an averaging adjustment. Staff further made an adjustment increasing UPIS by \$3,934 for water and \$9,553 for wastewater to reflect pro forma plant additions offset by a decrease of \$1,549 for water and \$5,763 for wastewater to reflect pro forma plant retirements.

As described above, and summarized in Table 4-2, staff's adjustments to UPIS result in an increase of \$6,030 (\$5,274 + \$2,577 - \$4,206 + \$3,934 - \$1,549) for water and an increase of \$9,827 (\$5,274 + \$527 + \$236 + \$9,553 - \$5,763) for wastewater. Therefore, staff recommends an average UPIS balance of \$402,515 (\$396,485 + 6,030) for water and \$448,617 (\$438,790 + \$9,827) for wastewater.

<sup>9</sup>Document No. 13806-2020, filed December 30, 2020.

<sup>10</sup>Document Nos. 11552-2020, filed October 27, 2020, and 11735-2020, filed on November 4, 2020.

<sup>11</sup>Document No. 11980-2020, filed on November 13, 2020.

**Table 4-2  
 Adjustments to UPIS**

<b>Adjustment</b>	<b>Water</b>	<b>Wastewater</b>
To reflect allocated amount for vehicles.	\$5,274	\$5,274
To reflect adjustment from O&M accts 620 & 720 for fence repairs.	\$2,577	\$527
To reflect an averaging adjustment.	(\$4,206)	\$236
To reflect pro forma additions.	\$3,934	\$9,553
To reflect pro forma retirements.	(\$1,549)	(\$5,763)
<b>Total adjustments to UPIS.</b>	<b>\$6,030</b>	<b>\$9,827</b>

Source: Utility response to staff data requests.

### **Land and Land Rights**

The Utility does not own any land. In the 2017 transfer docket, the seller and the Utility entered into an assignment and assumption of agreements as of June 28, 2017. This document includes a 99-year lease dated January 1, 1999, for land associated with the Utility’s water and wastewater treatment plants, its water transmission and distribution system, and its wastewater collection system. Therefore, the land balance as of June 30, 2017, is \$0.<sup>12</sup> There have been no additions to land since the transfer; therefore, no adjustments are necessary.

### **Used and Useful**

As discussed in Issue 3, Lake Yale’s WTP and distribution system, as well as its WWTP and collection system are considered 100 percent U&U. Therefore, no U&U adjustments are necessary.

### **Accumulated Depreciation**

Lake Yale recorded a test year accumulated depreciation balance of \$279,366 for water and \$409,804 for wastewater. Audit staff made an adjustment decreasing accumulated depreciation by \$3,430 and \$4,538 for water and wastewater, respectively. Staff increased accumulated depreciation using the prescribed depreciation rates set forth in Rule 25-30.140(2), F.A.C., associated with plant additions during the test year. These additions reflect the inclusion of the allocated portion of vehicles used by FUS1, representing an increase of \$1,656 to accumulated depreciation for both water and wastewater. Staff also increased accumulated depreciation by \$95 for water and \$53 for wastewater due to the fence repairs.

Staff decreased accumulated depreciation by \$5,954 for water and \$5,006 for wastewater to reflect an averaging adjustment. Further, staff decreased accumulated depreciation by \$1,221 for water and \$5,380 for wastewater to reflect net pro forma additions and retirements.

As shown in Table 4-3, staff’s adjustments result in a net decrease to accumulated depreciation of \$8,854 (\$3,430 - \$1,656 - \$95 + \$5,954 + \$1,221) for water and a net decrease of \$13,215 (\$4,538 - \$1,656 - \$53 + \$5,006 + \$5,380) for wastewater. Therefore, staff recommends an

<sup>12</sup>Order No. PSC-2018-0554-PAA-WS, issued November 20, 2018, in Docket No. 20170220-WS, *In re: Application for approval of transfer of Lake Yale Treatments Associates, Inc. water and wastewater systems and Certificate Nos. 560-W and 488-S in Lake County to Lake Yale Utilities, LLC.*

average accumulated depreciation balance of \$270,512 (\$279,366 - \$8,854) for water and \$396,589 (\$409,804 - \$13,215) for wastewater.

**Table 4-3**  
**Adjustments to Accumulated Depreciation**

<b>Adjustments</b>	<b>Water</b>	<b>Wastewater</b>
To reflect an auditing adjustment.	\$3,430	\$4,538
To reflect allocated amount for vehicles.	(\$1,656)	(\$1,656)
To reflect fence repairs.	(\$95)	(\$53)
To reflect an averaging adjustment.	\$5,954	\$5,006
To reflect pro forma adjustments.	<u>\$1,221</u>	<u>\$5,380</u>
Total adjustments to accumulated depreciation.	<u>\$8,854</u>	<u>\$13,215</u>

Source: Utility response to staff data requests.

### **Contributions in Aid of Construction (CIAC)**

The Utility recorded a test year CIAC balance of \$132,607 for water and \$121,125 for wastewater. Staff believes that a \$125 meter installation charge for the water system, and plant capacity charges of \$250 and \$425 in the water and wastewater systems, respectively, was incorrectly recorded as miscellaneous revenue. Based on staff's review, these amounts should be recorded as CIAC. Staff increased CIAC by \$375 (\$125 + \$250) for water and \$425 for wastewater to reflect these adjustments. Additionally, staff decreased CIAC by \$188 and \$213 to reflect averaging adjustments for water and wastewater, respectively. Therefore, staff recommends appropriate CIAC balances of \$132,795 (\$132,607 + \$375 - \$188) for water and \$121,338 (\$121,125 + \$425 - \$213) for wastewater.

### **Accumulated Amortization of Contributions in Aid of Construction**

Lake Yale recorded \$111,539 of accumulated amortization of CIAC for water and \$96,300 for wastewater. Staff increased accumulated amortization of CIAC by \$16 for water to reflect the meter installation charge and plant capacity charge in accordance with Rule 25-30.140(2), F.A.C. Staff also increased accumulated amortization of CIAC by \$16 for wastewater to reflect the plant capacity charge. Additionally, staff decreased accumulated amortization of CIAC by \$1,936 and \$1,522 to reflect an averaging adjustment for water and wastewater, respectively. Therefore, staff recommends an accumulated amortization of CIAC balance of \$109,620 (\$111,539 + \$16 - \$1,936) for water and \$94,794 (\$96,300 + \$16 - \$1,522) for wastewater.

### **Working Capital Allowance**

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses. Consistent with Rule 25-30.433(3), F.A.C., staff used one-eighth of the operation and maintenance (O&M) expense (less rate case expense) formula for calculating the working capital allowance. Section 367.081(9), F.S., prohibits a utility from earning a return on the unamortized balance of rate case expense. As such, staff removed the unamortized balance of rate case expense of \$377 for water and \$252 for wastewater. Staff recommends a working capital allowance of \$8,212 (\$65,696 ÷ 8) for water based on the adjusted O&M expense of \$65,696 (\$66,073 - \$377). Further, staff recommends a working capital allowance of \$9,009 (\$72,070 ÷ 8) for wastewater based on the adjusted O&M expense of \$72,070 (\$72,322 - \$252).

**Rate Base Summary**

Based on the foregoing, staff recommends that the appropriate average test year rate base is \$117,040 for water and \$34,494 for wastewater. Rate base is shown on Schedule Nos. 1-A and 1-B. The related adjustments are shown on Schedule No. 1-C.

**Issue 5:** What is the appropriate return on equity and overall rate of return for Lake Yale?

**Recommendation:** The appropriate return on equity (ROE) is 10.55 percent with a range of 9.55 percent to 11.55 percent. The appropriate overall rate of return is 6.85 percent. The traditional rate of return does not apply to the Utility's wastewater system in this docket. The Operating Ratio method is employed due to rate base being less than 125 percent of O&M expenses. (Richards)

**Staff Analysis:** The Utility has \$135,124 in long-term debt, \$31,619 in equity, and \$50 in customer deposits. In response to an email by staff, the Utility stated its equity consists of \$368 paid in capital, \$65,277 in negative retained earnings, and related party debt totaling \$96,528.<sup>13</sup> It is Commission practice to treat related party debt as equity when no interest or scheduled payments for principal are being made.<sup>14</sup> As such, staff adjusted the utility's capital structure to reflect the related-party debt as common equity. Therefore, the total equity balance for Lake Yale is \$31,619 (\$368 - \$65,277 + \$96,528).

The Utility's capital structure has been reconciled with staff's recommended water and wastewater rate bases. The appropriate ROE for the Utility is 10.55 percent based upon the Commission-approved leverage formula currently in effect.<sup>15</sup> Staff recommends an ROE of 10.55 percent, with a range of 9.55 percent to 11.55 percent, and an overall rate of return of 6.85 percent. The ROE and overall rate of return are shown on Schedule No. 2. The traditional rate of return does not apply to the Utility's wastewater system in this docket. The Operating Ratio method is employed due to rate base being less than 125 percent of O&M expenses.

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<sup>13</sup>Document No. 13282-2020, filed on December 9, 2020.

<sup>14</sup>Order No. PSC-2013-0140-PAA-WS, issued March 25, 2013, in Docket No. 20120183-WU, *In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.*; Order No. PSC-2014-0195-PAA-WS, issued May 1, 2014, in Docket No. 20130211-WS, *In re: Application for staff-assisted rate case in Polk County by S.V. Utilities, Ltd.*; Order No. PSC-2016-0583-PAA-WS, issued December 29, 2016, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*; Order No. PSC-2018-0549-PAA-WS, issued November 19, 2018, in Docket No. 20170219-WS, *In re: Application for staff-assisted rate case in Polk County by River Ranch Water Management, LLC.*

<sup>15</sup>Order No. PSC-2020-0222-PAA-WS, issued June 29, 2020, in Docket No. 20200006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utility pursuant to Section 367.081(4)(f), F.S.*

**Issue 6:** Should the Commission approve an Allowance for Funds Used During Construction (AFUDC) rate for Lake Yale?

**Recommendation:** Yes. The appropriate AFUDC rate for Lake Yale is 6.85 percent. The appropriate monthly compounding rate to maintain an annual rate of 6.85 percent is 0.553265 percent. (Cicchetti, Richards)

**Staff Analysis:** On November 12, 2020, Lake Yale submitted a request that the Commission establish an AFUDC rate in this proceeding. In its request, the Utility stated “FUS1 plans to file a petition for approval of Capital Project Improvement Plans for a majority of its systems with the Commission.”<sup>16</sup> According to the Utility, FUS1 has engaged the engineering services of Florida Rural Water Association (FRWA) to prepare an analysis report evaluating each of its systems and recommend corrective actions along with funding sources. The Utility further stated that it believes “most, if not all, of the proposed capital projects will qualify for AFUDC treatment as authorized by Rule 25-30.116, F.A.C.”<sup>17</sup> Lake Yale is not currently authorized to accrue AFUDC and does not have a Commission-approved AFUDC cost rate. Staff believes it is appropriate to establish an AFUDC rate for this Utility.

Staff used the capital structure proposed in Issue 5 to calculate the annual AFUDC rate and monthly compounding rate for Lake Yale. Based on its review, staff believes an AFUDC rate of 6.85 percent is appropriate and recommends Commission approval. Staff also recommends a monthly compounding rate of 0.553265 percent to achieve an annual AFUDC rate of 6.85 percent.

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<sup>16</sup>Document No. 11980-2020, filed on November 13, 2020.

<sup>17</sup>Ibid

**Issue 7:** What are the appropriate amounts of test year revenues for Lake Yale?

**Recommendation:** The appropriate test year revenues for Lake Yale are \$68,461 for water and \$57,090 for wastewater. (Sibley)

**Staff Analysis:** The Utility recorded total test year revenues of \$68,906 for water and \$55,021 for wastewater. The water revenues included \$66,875 of service revenues and \$2,031 of miscellaneous revenues. The wastewater revenues included \$55,021 of service revenues and no miscellaneous revenues.

Subsequent to the test year, Lake Yale was approved for a price index rate adjustment, which was effective June 5, 2020. As a result, staff annualized the test year revenues. Based on staff's review of the Utility's billing determinants and the service rates in effect as of June 5, 2020, staff determined test year service revenues should be \$67,846 for water and \$56,474 for wastewater. This results in test year revenue increases of \$971 (\$67,846 – \$66,875) for water and \$1,453 (\$56,474 – \$55,021) for wastewater.

Staff also made adjustments to the miscellaneous revenues for water and wastewater. Staff decreased Lake Yale's water miscellaneous revenues by \$800 to remove water and wastewater service availability charges that were erroneously reflected in miscellaneous revenues. This results in miscellaneous revenues of \$1,231 (\$2,031 - \$800). The Utility recorded all miscellaneous revenues to the water system. When both water and wastewater services are provided, only a single miscellaneous service charge is appropriate. Since the customers are the same for both water and wastewater, staff allocated the miscellaneous revenues equally between the two systems. Therefore, staff determined miscellaneous revenues to be \$615 for the water system and \$616 for the wastewater system.

Based on the above, the appropriate test year revenues for Lake Yale are \$68,461 (\$67,846 +\$615) for water and \$57,090 (\$56,474 +\$616) for wastewater.

**Issue 8:** What are the appropriate amounts of operating expenses for Lake Yale Utility?

**Recommendation:** The appropriate amounts of operating expenses are \$81,646 for water and \$90,079 for wastewater. (Richards, P. Buys)

**Staff Analysis:** The Utility recorded operating expense of \$79,501 for water and \$81,871 for wastewater. The test year O&M expenses have been reviewed by staff, including invoices and other supporting documentation. Staff has made several adjustments to the Utility's operating expenses as discussed below.

### **Operation and Maintenance Expense**

Previously, the Commission approved common O&M expenses be shared by all utilities operating under the parent company, FUS1.<sup>18</sup> O&M common costs are allocated among all of the utilities in the FUS1 system based on each utility's number of customers relative to the total number of customers receiving service under FUS1. Based on the number of customers for Lake Yale, the allocation of FUS1 common costs for this Utility is 12 percent. Those costs are then split evenly between Lake Yale's water and wastewater systems, resulting in an allocation of 6 percent for water and 6 percent for wastewater.

#### **Salaries and Wages – Employees (601 / 701)**

The Utility recorded salaries and wages expense for employees of \$21,682 for water and \$21,682 for wastewater. Staff increased this amount by \$4,443 for both water and wastewater to reflect the Utility's allocated portion of a \$74,046 increase approved in Docket No. 20200152-WS.<sup>19</sup> This amount included salary increases for eight positions and the addition of one new Compliance Technician position. Therefore, staff's recommendation for salaries and wages expense for the test year is \$26,125 (\$21,682 + \$4,443) for water and \$26,125 (\$21,682 + \$4,443) for wastewater.

#### **Salaries and Wages – Officers and Directors (603 / 703)**

The Utility recorded salaries and wages expense for officers and directors of \$4,800 for both water and wastewater. Staff made no adjustments to salaries and wages for officers and directors. Therefore, staff recommends salaries and wages expense for officers and directors of \$4,800 for water and \$4,800 for wastewater.

#### **Employees' Pension and Benefits (604 / 704)**

The Utility recorded employee pension and benefits of \$1,080 for both water and wastewater. Staff made no adjustment to employee pension and benefits. Therefore, staff recommends employee pension and benefits of \$1,080 for water and \$1,080 for wastewater.

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<sup>18</sup>Order No. PSC-2019-0503-PAA-SU, issued November 25, 2019, in Docket No. 20180202-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

<sup>19</sup>Order No. PSC-2020-0396-PAA-WS, issued on October 22, 2020, in Docket No. 20200152-WS, *In re: Application for a limited alternative rate increase proceeding in Polk and Marion Counties, by Alturas Water, LLC. Sunrise Water, LLC. Pinecrest Utilities, LLC. and East Marion Utilities, LLC.*

***Sludge Removal Expense (711)***

The Utility recorded sludge removal expense of \$4,686 for wastewater. Staff made no adjustments, and therefore recommends sludge removal expense of \$4,686 for wastewater.

***Purchased Power (615 / 715)***

The Utility recorded purchased power expense of \$3,355 for water and \$7,095 for wastewater. Staff increased purchased power for water by \$152 to reflect the actual amount spent during the test year, less any reimbursements. Additionally, staff increased purchased power for wastewater by \$1,304 to reflect an increase in energy usage due to the installation of a second pump for the lift station. Therefore, staff recommends purchased power expense of \$3,507 (\$3,355 + \$152) for water and \$8,399 (\$7,095 + \$1,304) for wastewater.

***Chemicals (618 / 718)***

The Utility recorded chemicals expense of \$3,892 for water and \$2,594 for wastewater. Staff reviewed the Utility's chemicals expense during the test year and found that the Utility purchased an average of \$541 in chemicals per month. However, during October of the test year, the Utility purchased \$857 in chemicals. In response to staff's second data request, the Utility indicated that the increase in purchased chemicals for the month of October was at the request of the plant operator.<sup>20</sup> The Utility also confirmed with staff that the monthly chemicals expense is typically not that high. Staff believes October was an anomaly, and is recommending an adjustment of \$268 to chemicals. This adjustment reduces the chemicals expense for October 2019 from \$857 to \$590. Staff reduced the chemicals expense for this month to \$590, to reflect the second highest monthly chemicals expense (December 2019) recorded during the test year, to account for a portion of the increase, and normalize the anomaly in the chemicals O&M expense recommended for the Utility on a prospective basis. Because chemicals expense is allocated 60 percent to water and 40 percent to wastewater, staff recommends reducing chemicals expense by \$161 (\$267 x 60 percent) for water and \$107 (\$267 x 40 percent) for wastewater. Therefore, staff recommends chemicals expense of \$3,731 (\$3,892 - \$161) for water and \$2,487 (\$2,594 - \$107) for wastewater.

***Materials and Supplies (620 / 720)***

The Utility recorded materials and supplies expense of \$5,794 for water and \$2,683 for wastewater. Staff decreased materials and supplies expense by \$2,577 for water and \$527 for wastewater to reclassify and capitalize to Accounts 304 and 354, the costs to repair the fences around the water plant and wastewater plant that had been destroyed in a storm.

In June 2019, the Utility entered into a service contract with Aquatic Systems Inc. to perform weed and grass management around three ponds located at Lake Yale Utilities. Due to weed and grass management now being handled by Aquatic Systems, Inc., staff removed \$39 from both water and wastewater, which the Utility incurred prior to entering the contract as "spray for ponds."

Further, staff reduced materials and supplies by \$864 for water and \$402 for wastewater to reflect the five-year amortization of certain non-recurring expenses. In total, staff reduced materials and supplies for water by \$3,480 (\$2,577 + \$39 + \$864) and \$968 (\$527 + \$39 + \$402)

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<sup>20</sup>Document No. 11735-2020, filed on November 4, 2020.

for wastewater. Therefore, staff recommends materials and supplies expense of \$2,314 (\$5,794 - \$3,480) for water and \$1,715 (\$2,683 - \$968) for wastewater.

**Contractual Services – Professional (631 / 731)**

The Utility recorded contractual services – professional expense of \$1,256 for water and \$835 for wastewater. Staff made no adjustments, and therefore recommends contractual services – professional expense of \$1,256 for water and \$835 for wastewater.

**Contractual Services – Testing (635 / 735)**

The Utility recorded contractual services – testing expense of \$3,493 for water and \$3,180 for wastewater. Audit staff made an adjustment reducing contractual services – testing for wastewater by \$15 because an invoice was overstated in the general ledger. Additionally, the Utility incorrectly recorded \$195 for sewer phosphorus analysis in February 2019, when the actual cost was \$90.<sup>21</sup> Staff made an adjustment decreasing contractual services – testing for wastewater of \$105 (\$195 - \$90) to reflect the correct cost of the phosphorus analysis. Staff made no adjustments for water. Therefore, staff recommends contractual services – testing expense of \$3,493 for water and \$3,060 (\$3,180 - \$15 - \$105) for wastewater.

**Contractual Services – Other (636 / 736)**

The Utility recorded contractual services – other expense of \$6,511 for water and \$5,583 for wastewater. Staff increased this amount by \$80 for both water and wastewater to reflect the allocated portion of replacing an air conditioning system at FUS1’s New Port Richey office. The total cost for the system was \$6,650. The Commission approved the expense of the air conditioning system in Docket No. 20200152-WS, and determined that the cost should be amortized over five years.<sup>22</sup> As such, staff increased contractual services – other for all FUS1 systems by \$1,330 ( $\$6,650 \div 5$  years). The allocated portion attributable to Lake Yale is \$80 each for water and wastewater.

During January and February of the test year, the Utility recorded a water operations expense of \$377.50 each month. Beginning in March, the amount recorded was \$385, reflecting an increase of \$7.50 for monthly plant inspections. Staff increased contractual services – other expense for water by \$15 to capture the on-going increase in water operations.

After converting the well at Lake Yale from gas chlorine to liquid chlorine, the Utility was required by DEP to obtain permits for doing so. In response to staff’s first data request, the Utility provided an invoice dated June 18, 2019, from Florida Rural Water Association for \$500 to obtain the permit and final certification packages for the conversion.<sup>23</sup> In addition to the \$500 for the permit, the Utility provided an invoice dated July 23, 2018, in the amount of \$431 for the necessary map to be drawn. As these are non-recurring expenses, staff has amortized both costs over five years. Therefore, staff recommends an increase in contractual services – other of \$100 ( $\$500 \div 5$  years) to water for the permits and \$86 ( $\$431 \div 5$  years) to water for the maps.

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<sup>21</sup>Document No. 11735-2020, filed on November 4, 2020.

<sup>22</sup>Order No. PSC-2020-0396-PAA-WS, issued October 22, 2020, in Docket No. 20200152-WS, *In re: Application for a limited alternative rate increase proceeding in Polk and Marion Counties, by Alturas Water, LLC. Sunrise Water, LLC. Pinecrest Utilities, LLC. and East Marion Utilities, LLC.*

<sup>23</sup>Document No. 05043-2020, filed on August 25, 2020.

The Utility contracts with Aquatic Services, Inc. which provides algae and aquatic weed management, shoreline grass management to the water’s edge, and management reporting for Lake Yale’s wastewater treatment plant rapid infiltration basins (RIBs). The Utility entered into this contract beginning June 1, 2019, at a rate of \$122 per month, which totaled \$854 (\$122 x 7 months). Beginning January 1, 2020, the monthly rate for the contract increased to \$126 per month, which totals \$1,512 (\$126 x 12) annually. As the services provided by Aquatic Services, Inc., help the Utility manage the vegetation at the RIBs, staff believes the necessity and cost of the contract are appropriate. Therefore, staff increased contractual services – other for wastewater by \$658 (\$1,512 - \$854) to reflect a twelve-month period at the increased contract price.

As described above and summarized in Table 8-1 below, staff’s adjustments to contractual services – other result in an increase of \$281 (\$80 + \$15 + \$100 + \$86) for water and an increase of \$738 (\$80 + \$658) for wastewater. Therefore, staff recommends contractual services – other expense of \$6,791 (\$6,511 + \$281) for water and \$6,320 (\$5,583 + \$738) for wastewater.

**Table 8-1**  
**Adjustments to Contractual Services - Other**

Adjustment	Water	Wastewater
Allocated portion of air conditioning unit.	\$80	\$80
Increase in water operations.	\$15	\$0
Five-year amortization of well conversion permits.	\$100	\$0
Five-year amortization of map for permits.	\$86	\$0
Increase in monthly pond maintenance contract.	\$0	\$658
<b>Total increase for Contractual Services - Other</b>	<b>\$281</b>	<b>\$738</b>

Source: Utility response to staff data requests.

**Rents (640 / 740)**

The Utility recorded rent expense of \$1,944 for both water and wastewater. Staff made no adjustment to rent expense. Therefore, staff recommends rent expense of \$1,944 for water and \$1,944 for wastewater.

**Transportation Expense (650 / 750)**

The Utility recorded transportation expense of \$2,313 for both water and wastewater. Staff made no adjustment to transportation expense. Therefore, staff recommends transportation expense of \$2,313 for water and \$2,313 for wastewater.

**Insurance Expense (655 / 755)**

The Utility recorded insurance expense of \$3,082 for water and \$3,082 for wastewater. Staff increased insurance expense by \$428 for both water and wastewater to reflect the allocated portion of a \$7,130 increase approved by the Commission in Docket No. 20200152-WS.<sup>24</sup> This increase covers auto insurance based on the premium for the policy period November 2019 through November 2020, as reflected in support documentation in that docket. The amount also

<sup>24</sup>Order No. PSC-2020-0396-PAA-WS, issued October 22, 2020, in Docket No. 20200152-WS, *In re: Application for a limited alternative rate increase proceeding in Polk and Marion Counties, by Alturas Water, LLC. Sunrise Water, LLC. Pinecrest Utilities, LLC. and East Marion Utilities, LLC.*

includes a \$200 increase for workman's compensation insurance for November 2019 to November 2020.

During the test year, the Utility was covered under a commercial insurance policy through Philadelphia Indemnity, which was recorded to water in the amount of \$1,921 and wastewater in the amount of \$1,921. Effective October 23, 2020, the cost of that policy was reduced to \$1,882 for each system.<sup>25</sup> Staff decreased insurance expense by \$39 (\$1,921 - \$1,882) for both water and wastewater to reflect the reduction in price. Therefore, staff recommends an insurance expense of \$3,471 (\$3,082 + \$428 - \$39) for water and \$3,471 (\$3,082 + \$428 - \$39) for wastewater.

### **Regulatory Commission Expense (665 / 765)**

Lake Yale recorded regulatory commission expense of \$843 for both water and wastewater, to reflect the four-year amortization of regulatory commission expense incurred as part of the 2018 transfer.<sup>26</sup> Staff believes that the amounts should be included in the instant docket since they have not been recovered in rates to date. The Utility did not record any additional rate case expense.

Regarding the instant case, the Utility is required by Rule 25-22.0407, F.A.C., to mail notices of the rate case overview, the interim rates as approved by Order No. PSC-2020-0310-PCO-WS, final rates, and four-year rate reduction. Staff calculated noticing costs to be \$1,016, which should be split evenly between water and wastewater. Staff did not include any travel expense, as the customer meeting was held remotely, and the Commission Conference is currently scheduled to be held remotely. Additionally, the Utility paid a \$1,000 filing fee for water and a \$500 filing fee for wastewater.<sup>27</sup> Staff recommends noticing costs and filing fee for water of \$1,508 (\$508 + \$1,000), which amortized over four years is \$377 ( $\$1,508 \div 4$  years). Additionally, staff recommends noticing costs and filing fee for wastewater of \$1,008 (\$508 + \$500), which amortized over four years is \$252 ( $\$1,008 \div 4$  years). Therefore, staff recommends regulatory commission expense of \$1,220 (\$843 + \$377) for water and \$1,095 (\$843 + \$252) for wastewater.

### **Bad Debt Expense (670 / 770)**

The Utility recorded bad debt expense of \$391 for water and \$0 for wastewater. In response to staff's second data request, the Utility updated the bad debt expense for 2018, 2019, and 2020 as detailed in Table 8-2.<sup>28</sup> Bad debt expense for 2020 was further clarified by the Utility in response to staff's fourth data request.<sup>29</sup> It is Commission practice to calculate bad debt expense using a three-year average, which staff calculated as \$94 for water and \$94 for wastewater. Using the three-year average, staff decreased bad debt expense for water by \$297 (\$391 - \$94), and

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<sup>25</sup>Document No. 11185-2020, filed on October 14, 2020.

<sup>26</sup>Order No. PSC-2018-0554-PAA-WS, issued November 20, 2018, in Docket No. 20170220-WS, *In re: Application for approval of transfer of Lake Yale Treatments Associates, Inc. water and wastewater systems and Certificate Nos. 560-W and 488-S in Lake County to Lake Yale Utilities, LLC.*

<sup>27</sup>Document No. 04296-2020, filed on August 7, 2020.

<sup>28</sup>Document No. 11552-2020, filed on October 27, 2020.

<sup>29</sup>Document No. 00470-2021, filed on January 5, 2021.

increased bad debt expense for wastewater by \$94. Therefore, staff recommends bad debt expense of \$94 (\$391 - \$297) for water and \$94 for wastewater.

**Table 8-2**  
**Three-year Average Bad Debt Expense**

Year	Water	Wastewater
2018	\$70	\$70
2019	\$196	\$196
2020	\$14	\$14
3-Year Avg	\$94	\$94

Source: Utility response to staff data requests

### **Miscellaneous Expense (675 / 775)**

The Utility recorded miscellaneous expense of \$3,935 for water and \$3,899 for wastewater. Staff made no adjustments, and therefore recommends miscellaneous expense of \$3,935 for water and \$3,899 for wastewater.

### **Operation and Maintenance Expense Summary**

The Utility recorded O&M expenses of \$64,371 for water and \$66,299 for wastewater for the test year. Based on the above adjustments, staff recommends that the O&M expense balance be increased by \$1,703 and \$6,024 for water and wastewater, respectively. This increase results in a total O&M expense of \$66,074 (\$64,371 + \$1,703) for water and \$72,323 (\$66,299 + 6,024) for wastewater.

### **Depreciation Expense**

The Utility recorded depreciation expense of \$11,530 for water and \$13,045 for wastewater. Using the prescribed rates set forth in Rule 25-30.140, F.A.C., staff increased depreciation expense for both water and wastewater by \$879 to reflect depreciation on the allocated portion of vehicles owned by FUS1 used by the Utility. Staff further increased depreciation expense by \$95 for water and \$53 for wastewater to reflect the depreciation in the fence repairs to the water and wastewater plants. Additionally, staff increased depreciation expense by \$328 for water and \$383 for wastewater to reflect pro forma additions. In total, staff increased depreciation expense for water by \$1,302 (\$879 + \$95 + \$328) for water and \$1,315 (\$879 + \$53 + \$383) for wastewater. Therefore, staff recommends depreciation expense of \$12,832 (\$11,530 + \$1,302) for water and \$14,360 (\$13,045 + \$1,315) for wastewater.

### **Amortization Expense**

The Utility recorded amortization expense of \$2,056 for water and \$2,504 for wastewater. As a result of the staff audit, increases of \$1,801 and \$1,097 were made to water and wastewater amortization expense, respectively. Additionally, staff increased both water and wastewater by \$16 to reflect the CIAC adjustments previously discussed in Issue 4. Therefore, staff recommends an amortization expense of \$3,873 (\$2,056 + \$1,801 + \$16) for water and \$3,617 (\$2,504 + \$1,097 + \$16) for wastewater.

### **Taxes Other Than Income (TOTI)**

The Utility recorded TOTI of \$5,657 for water and \$5,032 for wastewater. As a result of the staff audit, an adjustment was made to decrease the water amount by \$25 and increase the wastewater

Date: February 18, 2021

amount by \$21. Staff further decreased TOTI by \$14 for water and increased TOTI by \$53 for wastewater to reflect the appropriate Regulatory Assessment Fees (RAFs) based on corrected Utility test year revenues. Additionally, staff increased TOTI by \$35 for water and \$7 for wastewater to reflect the appropriate property taxes on the new fences surrounding the water and wastewater plants. Staff also increased TOTI by \$7 for water and \$26 for wastewater to reflect the appropriate taxes associated with pro forma plant additions. These adjustments by staff total an increase in TOTI of \$3 ( $\$35 + \$7 - \$25 - \$14$ ) for water and an increase in TOTI of \$107 ( $\$7 + \$26 + \$21 + \$53$ ) for wastewater.

As discussed in Issue 7, revenues have been increased by \$21,199 for water and \$41,668 for wastewater to reflect the change in revenue required to cover expenses and allow an opportunity to earn the recommended rate of return for water, and allow an opportunity to recover the operating margin on wastewater. As a result, TOTI should be increased by \$954 for water and \$1,875 for wastewater to reflect RAFs of 4.5 percent of the change in revenues. Therefore, staff recommends TOTI of \$6,614 ( $\$5,657 + \$3 + \$954$ ) for water and \$7,014 ( $\$5,032 + \$107 + \$1,875$ ) for wastewater.

### **Income Taxes**

Lake Yale is a sole proprietorship, and therefore did not record any income tax expense for the test year. As such, staff recommends no adjustment to income tax expense.

### **Operating Expenses Summary**

The Utility recorded operating expenses of \$79,501 for water and \$81,871 for wastewater. The application of staff's recommended adjustments to the Utility's test year operating expenses result in a total operating expense of \$81,646 for water and \$90,079 for wastewater. Operating expenses are shown on Schedule Nos. 3-A and 3-B for water and wastewater. The related adjustments are shown on Schedule No. 3-C.

**Issue 9:** Does Lake Yale meet the criteria for the application of the Operating Ratio Methodology?

**Recommendation:** Yes. Lake Yale meets the requirement for application of the Operating Ratio methodology for calculating the wastewater revenue requirement. The margin should be 12 percent of wastewater O&M expenses. (D. Brown)

**Staff Analysis:** Rule 25-30.4575(2), F.A.C., provides that, in rate cases processed under Rule 25-30.455 F.A.C., the Commission will use the Operating Ratio methodology to establish the utility's revenue requirement when the utility's rate base is no greater than 125 percent of O&M expenses and the use of the Operating Ratio methodology does not change the utility's qualification for a SARC. Under the Operating Ratio methodology, instead of calculating the utility's revenue requirement based on a rate of return on the utility's rate base, the revenue requirement is calculated using a margin of 12 percent of O&M expenses, not to exceed \$15,000. Purchased water and wastewater expense, if any, must be removed from O&M expenses prior to calculating the margin of 12 percent.

As discussed in Issues 4 and 8, staff has recommended a rate base of \$117,040 for water and \$34,494 for wastewater, and O&M expense of \$66,073 for water and \$72,322 for wastewater. Based on the recommended amounts, Lake Yale's water rate base exceeds 125 percent of O&M expense, and as a result does not qualify for the Operating Ratio methodology. Wastewater rate base on the other hand is only 47.69 percent of its O&M expense. In addition, the application of the operating ratio methodology does not change the wastewater system's qualification for a SARC. As such, Lake Yale's wastewater system meets the criteria for the Operating Ratio methodology established in Rule 25-30.4575(2), F.A.C. Therefore, staff recommends the application of the Operating Ratio methodology at a margin of 12 percent of O&M expense for determining the wastewater revenue requirement.

**Issue 10:** What are the appropriate revenue requirements for Lake Yale?

**Recommendation:** The appropriate revenue requirements are \$89,660 and \$99,758 for water and wastewater, respectively. These revenue requirements result in annual increases of \$21,199 (30.97 percent) for water and \$41,668 (72.99 percent) for wastewater. (D. Brown)

**Staff Analysis:** Lake Yale should be allowed annual increases of \$21,199 (30.97 percent) for water and \$41,668 (72.99 percent) for wastewater. This should allow the Utility the opportunity to recover its expenses and earn a 6.85 percent return on its water system investment and a 12.00 percent margin on wastewater O&M. The calculations for water and wastewater are shown in Tables 10-1 and 10-2, respectively:

**Table 10-1  
Water Revenue Requirement**

Rate Base	\$117,040
Rate of Return (%)	<u>x 6.85%</u>
Return on Rate Base	\$8,014
O&M Expense	66,073
Depreciation Expense (Net)	8,959
Taxes Other Than Income	<u>6,614</u>
Revenue Requirement	<u>\$89,660</u>
Less Adjusted Test Year Revenues	<u>68,461</u>
Annual Increase	<u>\$21,199</u>
Percent Increase	<u>30.97%</u>

**Table 10-2**  
**Wastewater Revenue Requirement**

O&M Expense	\$72,322
Operating Margin (%)	<u>x 12.00%</u>
Operating Margin	\$8,679
O&M Expense	72,322
Depreciation Expense (Net)	10,743
Taxes Other Than Income	<u>7,014</u>
Revenue Requirement	<u>\$98,758</u>
Less Adjusted Test Year Revenues	<u>57,090</u>
Annual Increase	<u>\$41,668</u>
Percent Increase	<u>72.99%</u>

**Issue 11:** What are the appropriate rate structures and rates for Lake Yale?

**Recommendation:** The recommended rate structures and monthly water and wastewater rates are shown on Schedule Nos. 4-A and 4-B. 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), F.A.C. In addition, the approved rates should not be implemented until 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. (Sibley)

**Staff Analysis:**

**Water Rates**

Lake Yale is located in Lake County within the Southwest Florida Water Management District. The Utility provides water service to approximately 298 residential customers of which 88 customers have separate meters for residential irrigation. In addition, Lake Yale has one general service customer. Approximately 44 percent of the residential customer bills during the test year had 1,000 gallons or less, indicating a seasonal customer base. The average residential water demand is 2,279 gallons per month. The average water demand for customer bills greater than 1,000 gallons is 3,947 gallons per month. Currently, the Utility's water rate structure consists of a monthly base facility charge (BFC) and uniform gallonage charge for the residential and general service customers.

Staff performed an analysis of the Utility's billing data in order to evaluate the appropriate rate structure for the residential customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the Utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

Since the customer base is seasonal coupled with low average consumption, staff recommends that 55 percent of the water revenues be generated from the BFC, which will provide revenue stability and sufficient revenues to design gallonage charges that send pricing signals to customers using above the non-discretionary level. The average people per household served by the water system is 3; therefore, based on the number of people per household, 50 gallons per day per person, and the number of days per month, the non-discretionary usage threshold should be 5,000 gallons per month.<sup>30</sup> Staff recommends a BFC and a two-tier inclining block rate structure, which includes separate gallonage charges for non-discretionary and discretionary usage for residential water customers. The rate blocks are: (1) 0-5,000 gallons and (2) all usage in excess of 5,000 gallons per month. This rate structure sends the appropriate pricing signals because it targets customers with high consumption levels and minimizes price increases for customers at non-discretionary levels. In addition, the second tier provides an additional pricing signal to customers using in excess of 5,000 gallons of water per month, which includes

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<sup>30</sup>Average person per household was obtained from [www.census.gov/quickfacts/lakecountyflorida](http://www.census.gov/quickfacts/lakecountyflorida).

approximately 23 percent of the water demand. General service customers should be billed a BFC and uniform gallonage charge.

Based on the customer billing data provided by the Utility, approximately 23 percent of total residential consumption is discretionary and subject to the effects of repression. Customers will typically reduce their discretionary consumption in response to a price increase, while non-discretionary consumption remains relatively unresponsive. Based on a recommended revenue increase of 31.2 percent for water, which excludes miscellaneous revenues, the residential consumption can be expected to decline by 831,000 gallons resulting in anticipated average residential demand of 2,099 gallons per month. Staff recommends a 7.9 percent reduction in test year residential gallons for rate setting purposes and corresponding reductions of \$276 for purchased power, \$294 for chemicals, and \$27 for RAFs to reflect the anticipated repression, which results in a post-repression revenue requirement of \$88,448.

### **Wastewater Rates**

The Utility provides wastewater service to 298 residential customers and 1 general service customer. Currently, the residential wastewater rate structure consists of a uniform BFC for all meter sizes and a gallonage charge with a 10,000 gallonage cap. The general service rate structure consists of a uniform BFC for all meter sizes and a gallonage charge that is 1.2 times higher than the residential gallonage charge.

Staff performed an analysis of the Utility's billing data to evaluate various BFC cost recovery percentages and gallonage caps for the residential customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the Utility's customers; and (3) implement a gallonage cap that considers approximately the amount of water that may return to the wastewater system.

Consistent with Commission practice, staff allocated 50 percent of the wastewater revenue to the BFC due to the capital intensive nature of wastewater plants.<sup>31</sup> Lake Yale's current residential wastewater cap is 10,000 gallons per month. It is Commission practice to set the wastewater cap at approximately 80 percent of residential water gallons sold, which typically results in gallonage caps of 6,000, 8,000, or 10,000.

The wastewater gallonage cap recognizes that not all water used by the residential customers is returned to the wastewater system. However, due to the seasonality and low average consumption of the Utility's customer base, 80 percent of the total water sold is captured at 3,000 gallons, which is lower than gallonage caps typically approved for wastewater. Although staff typically bases its recommended residential wastewater cap on 80 percent of the total water sold, in this case, it would yield an exceptionally low residential wastewater cap. In addition, staff believes that lowering the gallonage cap below 6,000 gallons would have an adverse effect on the residential gallonage charge and resulting customer bills. Further, since the utility has a separate irrigation meter, a higher percentage of usage measured by its primary meter is returning to the wastewater system. Therefore, staff believes that 6,000 gallons per month is a reasonable residential wastewater cap. Additionally, staff recommends that the general service

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<sup>31</sup>Order No. PSC-2020-0119-PAA-WS, issued April 20, 2020, in Docket No. 20190113-WS, *Application for staff-assisted rate case in Manatee County by Heather Hills Utilities, LLC*.

gallage charge be 1.2 times greater than the residential gallage charge which is consistent with Commission practice.

Wastewater rates are calculated based on customers' water demand; if those customers' water demand is expected to decline, then the billing determinants used to calculate wastewater rates should also be adjusted. However, in this instance, the water demand between 0 and 6,000 gallons, with 5,000 gallons being the non-discretionary usage, includes a significant amount of irrigation usage, which is measured through a separate water meter. This irrigation usage does not return to the wastewater system and is not used as billing determinants to calculate wastewater rates. As a result of the Utility's low average water consumption and the irrigation usage, the repression adjustment in this case would be de minimis. Therefore, staff recommends no repression adjustment for wastewater.

### **Conclusion**

Based on the above, the recommended rate structures and monthly water and wastewater rates are shown on Schedule Nos. 4-A and 4-B. 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), F.A.C. In addition, the approved rates should not be implemented until 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 this notice.

**Issue 12:** What are the appropriate initial customer deposits for Lake Yale's water and wastewater systems?

**Recommendation:** The appropriate initial customer deposits for the residential 5/8 inch x 3/4 inch meter size should be \$37 for water and \$61 for wastewater. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved initial customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved deposits until authorized to change them by the Commission in a subsequent proceeding. (Sibley)

**Staff Analysis:** Rule 25-30.311, F.A.C., provides the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. An initial customer deposit ensures that the cost of providing service is recovered from the cost causer. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill. Currently, the Utility's initial customer deposit for the 5/8 inch x 3/4 inch meter size is \$28 for water and \$33 for wastewater. For the general service meter sizes, initial customer deposits are two times the average estimated bill. However, these amounts do not cover two months' average bills based on staff's recommended rates. The Utility's anticipated post-repression average monthly residential usage is 2,099 gallons per customer. Therefore, the average residential monthly bill is approximately \$18.46 for water and \$30.67 for wastewater service based on the staff's recommended rates.

Staff recommends the appropriate initial customer deposits for the residential 5/8 inch x 3/4 inch meter size should be \$37 for water and \$61 for wastewater. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved initial customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved deposits until authorized to change them by the Commission in a subsequent proceeding.

**Issue 13:** Should Lake Yale be authorized to collect Non-Sufficient Funds (NSF) charges?

**Recommendation:** Yes. Lake Yale should be authorized to collect NSF charges. Staff recommends that Lake Yale revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Sibley)

**Staff Analysis:** Section 367.091, F.S., requires that rates, charges, and customer service policies be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Lake Yale should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

1. \$25, if the face value does not exceed \$50.
2. \$30, if the face value exceeds \$50 but does not exceed \$300.
3. \$40, if the face value exceeds \$300, or 5 percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.<sup>32</sup> Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, staff recommends that Lake Yale revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the NSF charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

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<sup>32</sup>Order Nos. PSC-202-0402-PAA-WU, issued October 26, 2020, in Docket No. 20200155-WU, *In re: Application for certificate to operate water utility in Okaloosa County and application for pass through increase of regulatory assessment fees, by Okaloosa Waterworks, Inc.*; and PSC-2020-0086-PAA-WU, issued in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*

**Issue 14:** What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense?

**Recommendation:** The rates should be reduced as shown on Schedule No. 4-A and 4-B to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. Lake Yale should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, the Utility shall file separate data for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Sibley, D. Brown) (Procedural Agency Action)

**Staff Analysis:** Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the recovery period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense and the gross-up for RAFs. The total reductions are \$395 for water and \$264 for wastewater.

Staff recommends that the rates should be reduced as shown on Schedule No. 4-A and 4-B to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. Lake Yale should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, the Utility shall file separate data for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

**Issue 15:** Should the recommended rates be approved for Lake Yale on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility?

**Recommendation:** Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the Utility. Lake Yale 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), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Office of Commission Clerk no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (D. Brown) (Procedural Agency Action)

**Staff Analysis:** This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the utility, staff recommends that the recommended rates be approved as temporary rates. Lake Yale 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), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the Utility should be subject to the refund provisions discussed below.

Lake Yale should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of \$14,141 for water and \$27,795 for wastewater. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

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 prior written authorization 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.

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.

The Utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

**Issue 16:** Should the Utility be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision?

**Recommendation:** Yes. Lake Yale should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Lake Yale should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all applicable National Association of Regulatory and Utility Commissioners Uniform System of Accounts (NARUC USOA) primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed not less than seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (D. Brown) (Procedural Agency Action)

**Staff Analysis:** Lake Yale should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Lake Yale should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed not less than seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

**Issue 17:** Should this docket be closed?

**Recommendation:** No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a consummating order should be issued. 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. Once these actions are complete, this docket should be closed administratively. (Murphy)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. 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. Once these actions are complete, this docket should be closed administratively.

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 SCHEDULE OF WATER RATE BASE</b>		<b>SCHEDULE NO. 1-A DOCKET NO. 20200169-WS</b>		
<b>DESCRIPTION</b>	<b>BALANCE PER UTILITY</b>	<b>STAFF ADJ.</b>	<b>BALANCE PER STAFF</b>	
1. UTILITY PLANT IN SERVICE	\$396,485	\$6,030	\$402,515	
2. LAND & LAND RIGHTS	0	0	0	
3. ACCUMULATED DEPRECIATION	(279,366)	8,854	(270,512)	
4. CIAC	(132,607)	(188)	(132,795)	
5. ACCUMULATED AMORTIZATION OF CIAC	111,539	(1,919)	109,620	
6. ACQUISITION ADJUSTMENT	0	0	0	
7. WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>8,212</u>	<u>8,212</u>	
8. WATER RATE BASE	<u>\$96,051</u>	<u>\$20,989</u>	<u>\$117,040</u>	

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 SCHEDULE OF WASTEWATER RATE BASE</b>		<b>SCHEDULE NO. 1-B DOCKET NO. 20200169-WS</b>		
<b>DESCRIPTION</b>	<b>BALANCE PER UTILITY</b>	<b>STAFF ADJ.</b>	<b>BALANCE PER STAFF</b>	
1. UTILITY PLANT IN SERVICE	\$438,790	\$9,827	\$448,617	
2. LAND & LAND RIGHTS	0	0	0	
3. ACCUMULATED DEPRECIATION	(409,804)	13,215	(396,589)	
4. CIAC	(121,125)	(213)	(121,338)	
5. ACCUMULATED AMORTIZATION OF CIAC	96,300	(1,506)	94,794	
6. ACQUISITION ADJUSTMENT	0	0	0	
7. WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>9,009</u>	<u>9,009</u>	
8. WASTEWATER RATE BASE	<u>\$4,161</u>	<u>\$30,333</u>	<u>\$34,494</u>	

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 ADJUSTMENTS TO RATE BASE</b>		<b>SCHEDULE NO. 1-C DOCKET NO. 20200169-WS</b>	
	<b><u>WATER</u></b>	<b><u>WASTEWATER</u></b>	
<b><u>UTILITY PLANT IN SERVICE</u></b>			
1.	To reflect allocated amount for vehicles.	\$5,274	\$5,274
2.	To reflect fence repairs.	2,577	527
3.	To reflect an averaging adjustment.	(4,206)	236
4.	To reflect pro forma addition.	3,934	9,553
5.	To reflect pro forma retirement.	<u>(1,549)</u>	<u>(5,763)</u>
	Total	<u>\$6,030</u>	<u>\$9,827</u>
<b><u>ACCUMULATED DEPRECIATION</u></b>			
1.	To reflect an auditing adjustment.	\$3,430	\$4,538
2.	To reflect allocated amount for vehicles.	(1,656)	(1,656)
3.	To reflect fence repairs.	(95)	(53)
4.	To reflect an averaging adjustment.	5,954	5,006
5.	To reflect pro forma adjustments.	<u>1,221</u>	<u>5,380</u>
	Total	<u>\$8,854</u>	<u>\$13,215</u>
<b><u>CIAC</u></b>			
1.	To reflect meter installation.	(\$125)	\$0
2.	To reflect plant capacity charge.	(250)	(425)
3.	To reflect an averaging adjustment.	188	213
	Total	<u>(\$188)</u>	<u>(\$213)</u>
<b><u>ACCUMULATED AMORTIZATION CIAC</u></b>			
1.	To reflect meter installation.	\$7	\$0
2.	To reflect plant capacity charge.	9	16
3.	To reflect an averaging adjustment.	<u>(1,936)</u>	<u>(1,522)</u>
	Total	<u>(\$1,919)</u>	<u>(\$1,506)</u>
<b><u>WORKING CAPITAL ALLOWANCE</u></b>			
	To reflect 1/8 test year O&M expenses.	<u>\$8,212</u>	<u>\$9,009</u>

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 SCHEDULE OF CAPITAL STRUCTURE</b>					<b>SCHEDULE NO. 2 DOCKET NO. 20200169-WS</b>	
<b>CAPITAL COMPONENT</b>	<b>BALANCE PER UTILITY</b>	<b>PRO RATA ADJUST- MENTS</b>	<b>BALANCE PER STAFF</b>	<b>PERCENT OF TOTAL</b>	<b>COST</b>	<b>WEIGHTED COST</b>
1. LONG-TERM DEBT	\$135,124	(\$12,366)	\$122,758	81.01%	5.98%	4.85%
2. SHORT-TERM DEBT	0	0	0	00.00%	0.00%	0.00%
3. COMMON EQUITY	31,619	(2,894)	28,725	18.96%	10.55%	2.00%
4. CUSTOMER DEPOSITS	50	0	50	0.03%	2.00%	0.00%
5. DEFERRED INCOME TAXES	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
TOTAL CAPITAL	<u>\$166,793</u>	<u>(\$15,260)</u>	<u>\$151,533</u>	<u>100.00%</u>		<u>6.85%</u>
<b><u>RANGE OF REASONABLENESS</u></b>					<b><u>LOW</u></b>	<b><u>HIGH</u></b>
RETURN ON EQUITY					<u>9.55%</u>	<u>11.55%</u>
OVERALL RATE OF RETURN					<u>6.66%</u>	<u>7.04%</u>

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 SCHEDULE OF WATER OPERATING INCOME</b>		<b>SCHEDULE NO. 3-A DOCKET NO. 20200169-WS</b>			
	<b>TEST YEAR PER UTILITY</b>	<b>STAFF ADJUST- MENTS</b>	<b>STAFF ADJ TEST YR</b>	<b>ADJ FOR INC.</b>	<b>REV REQ.</b>
1. <b>TOTAL OPERATING REVENUES</b>	<u>\$68,906</u>	<u>(\$445)</u>	<u>\$68,461</u>	<u>\$21,192</u> 30.97%	<u>\$89,660</u>
<b>OPERATING EXPENSES:</b>					
2. OPERATION & MAINTENANCE	\$64,371	\$1,703	\$66,073	\$0	\$66,073
3. DEPRECIATION (NET)	11,530	1,302	12,832	0	12,832
4. AMORTIZATION	(2,056)	(1,817)	(3,873)	0	(3,873)
5. TAXES OTHER THAN INCOME	5,657	3	5,660	954	6,614
6. INCOME TAXES	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTAL OPERATING EXPENSES</b>	<u>\$79,501</u>	<u>\$1,191</u>	<u>\$80,692</u>	<u>\$954</u>	<u>\$81,646</u>
7. <b>OPERATING INCOME / LOSS</b>	<u>(\$10,595)</u>		<u>(\$12,231)</u>		<u>\$8,014</u>
8. <b>WATER RATE BASE</b>	<u>\$96,051</u>		<u>\$20,989</u>		<u>\$117,040</u>
9. <b>RATE OF RETURN</b>					<u>6.85%</u>

<b>LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 SCHEDULE OF WASTEWATER OPERATING INCOME</b>		<b>SCHEDULE NO. 3-B DOCKET NO. 20200169-WS</b>			
	<b>TEST YEAR PER UTILITY</b>	<b>STAFF ADJUST- MENTS</b>	<b>STAFF ADJ TEST YR</b>	<b>ADJ FOR INC.</b>	<b>REV REQ.</b>
1. <b>TOTAL OPERATING REVENUES</b>	<u>\$55,021</u>	<u>\$2,069</u>	<u>\$57,090</u>	<u>\$41,668</u> 72.99%	<u>\$98,758</u>
<b>OPERATING EXPENSES:</b>					
2. OPERATION & MAINTENANCE	\$66,299	\$6,024	\$72,322	\$0	\$72,322
3. DEPRECIATION (NET)	13,045	1,315	14,360	0	14,360
4. AMORTIZATION	(2,504)	(1,113)	(3,617)	0	(3,617)
5. TAXES OTHER THAN INCOME	5,032	107	5,139	1,875	7,014
6. INCOME TAXES	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTAL OPERATING EXPENSES</b>	<u>\$81,871</u>	<u>\$6,333</u>	<u>\$88,204</u>	<u>\$1,875</u>	<u>\$90,079</u>
7. <b>OPERATING INCOME / LOSS</b>	<u>(\$26,850)</u>		<u>(\$31,114)</u>		<u>\$8,679</u>
8. <b>WASTEWATER RATE BASE</b>	<u>\$4,161</u>		<u>\$30,333</u>		<u>\$34,494</u>
9. <b>OPERATING MARGIN</b>					<u>12.00%</u>

<b>LAKE YALE UTILITIES, LLC.</b>		<b>SCHEDULE NO. 3-C</b>	
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200169-WS</b>	
<b>ADJUSTMENTS TO OPERATING INCOME</b>		<b>PAGE 1 OF 2</b>	
		<b><u>WATER</u></b>	<b><u>WASTEWATER</u></b>
<b>OPERATING REVENUES</b>			
1.	To reflect an auditing adjustment to Service Revenues.	(\$132)	\$893
2.	To reflect the appropriate test year Service Revenues.	1,103	560
3.	To reflect the appropriate test year Miscellaneous Revenues.	<u>(1,416)</u>	<u>616</u>
	Total	<u>(\$445)</u>	<u>\$2,069</u>
<b>OPERATION AND MAINTENANCE EXPENSE</b>			
1.	Salaries and Wages – Employees (601 / 701) To reflect pro forma increase per Docket No. 20200152-WS	<u>\$4,443</u>	<u>\$4,443</u>
2.	Purchased Power (615 / 715)		
	a. To reflect actual amount spent less reimbursement.	\$152	\$0
	b. To reflect an increase in energy usage.	<u>0</u>	<u>1,304</u>
	Subtotal	<u>\$152</u>	<u>\$1,304</u>
3.	Chemicals Expense (618 / 718) To reflect actual amount spent on chemicals.	<u>(\$161)</u>	<u>(\$107)</u>
4.	Materials and Supplies (620 / 720)		
	a. To reflect reassignment of materials for fence repairs.	(\$2,577)	(\$527)
	b. To reflect removal of pond maintenance supplies.	(39)	(39)
	c. To reflect five-year amortization for non-recurring expenses.	<u>(864)</u>	<u>(402)</u>
	Subtotal	<u>(\$3,480)</u>	<u>(\$968)</u>
5.	Contractual Services – Testing (635 / 735)		
	a. To reflect an auditing adjustment.	\$0	(\$15)
	b. To reflect actual testing costs.	<u>0</u>	<u>(105)</u>
	Subtotal	<u>\$0</u>	<u>(\$120)</u>
6.	Contractual Services – Other (636 / 736)		
	a. To reflect pro forma increase per Docket No. 20200152-WS	\$80	\$80
	b. To reflect an increase in water operations.	15	0
	c. To reflect five-year amortization of permit for well conversion.	100	0
	d. To reflect five-year amortization of map for well conversion.	86	0
	e. To reflect increase in monthly pond maintenance contract.	<u>0</u>	<u>658</u>
	Subtotal	<u>\$281</u>	<u>\$738</u>
7.	Insurance Expense (655 / 755)		
	a. To reflect pro forma increase per Docket No. 20200152-WS	\$428	\$428
	b. To reflect decrease in commercial insurance premium.	<u>(39)</u>	<u>(39)</u>
	Subtotal	<u>\$389</u>	<u>\$389</u>
8.	Regulatory Commission Expense (665 / 765) To reflect 1/4 rate case expense.	<u>\$377</u>	<u>\$252</u>
9.	Bad Debt Expense (670/770) To reflect three-year average of bad debt expense.	<u>(\$297)</u>	<u>\$94</u>
<b>TOTAL OPERATION AND MAINTENANCE ADJUSTMENTS</b>		<u>\$1,703</u>	<u>\$6,024</u>

<b>LAKE YALE UTILITIES, LLC.</b>		<b>SCHEDULE NO. 3-C</b>	
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200169-WS</b>	
<b>ADJUSTMENTS TO OPERATING INCOME</b>		<b>PAGE 2 OF 2</b>	
		<b><u>WATER</u></b>	<b><u>WASTEWATER</u></b>
<b>DEPRECIATION EXPENSE</b>			
1.	To reflect allocated portion of vehicles.	\$879	\$879
2.	To reflect depreciation for fence repairs.	95	53
3.	To reflect pro forma additions.	<u>328</u>	<u>383</u>
	Total	<u>\$1,302</u>	<u>\$1,315</u>
<b>AMORTIZATION EXPENSE (NET)</b>			
1.	To reflect an auditing adjustment.	(\$1,801)	(\$1,097)
2.	To reflect CIAC adjustment to Service Revenues.	<u>(16)</u>	<u>(16)</u>
	Total	<u>(\$1,817)</u>	<u>(\$1,113)</u>
<b>TAXES OTHER THAN INCOME</b>			
1.	To reflect an auditing adjustment.	(\$25)	\$21
2.	To reflect appropriate test year RAFs.	(14)	53
3.	To reflect 2019 property taxes.	35	7
4.	To reflect property taxes associated with pro forma plant additions.	<u>7</u>	<u>26</u>
	Total	<u>\$3</u>	<u>\$107</u>
<b>TOTAL OPERATING EXPENSE</b>		<u>\$1,191</u>	<u>\$6,333</u>

<b>LAKE YALE UTILITIES, LLC.</b>		<b>SCHEDULE NO. 3-D</b>		
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200169-WS</b>		
<b>ANALYSIS OF WATER O&amp;M EXPENSE</b>				
<b>ACCT. #</b>	<b>DESCRIPTION</b>	<b>TOTAL PER UTILITY</b>	<b>STAFF ADJUST- MENT</b>	<b>TOTAL PER STAFF</b>
601	Salaries and Wages – Employees	\$21,682	\$4,443	\$26,125
603	Salaries and Wages – Officers and Directors	4,800	0	4,800
604	Employee Pensions and Benefits	1,080	0	1,080
615	Purchased Power	3,355	152	3,507
618	Chemicals	3,892	(161)	3,731
620	Materials and Supplies	5,794	(3,480)	2,314
631	Contractual Services – Professional	1,256	0	1,256
635	Contractual Services – Testing	3,493	0	3,493
363	Contractual Services – Other	6,511	281	6,791
640	Rents	1,944	0	1,944
650	Transportation Expense	2,313	0	2,313
655	Insurance Expense	3,082	389	3,471
665	Regulatory Commission Expense	843	377	1,220
670	Bad Debt Expense	391	(297)	94
675	Miscellaneous Expense	<u>3,935</u>	<u>0</u>	<u>3,935</u>
	Total O&M Expense	<u>\$64,371</u>	<u>\$1,703</u>	<u>\$66,073</u>
	Working Capital is 1/8 O&M Less RCE			\$8,212

<b>LAKE YALE UTILITIES, LLC.</b>		<b>SCHEDULE NO. 3-E</b>		
<b>TEST YEAR ENDED 12/31/2019</b>		<b>DOCKET NO. 20200169-WS</b>		
<b>ANALYSIS OF WASTEWATER O&amp;M EXPENSE</b>				
<b>ACCT. #</b>	<b>DESCRIPTION</b>	<b>TOTAL PER UTILITY</b>	<b>STAFF ADJUST- MENT</b>	<b>TOTAL PER STAFF</b>
701	Salaries and Wages – Employees	\$21,682	\$4,443	\$26,125
703	Salaries and Wages – Officers and Directors	4,800	0	4,800
704	Employee Pensions and Benefits	1,080	0	1,080
711	Sludge Removal Expense	4,686	0	4,686
715	Purchased Power	7,095	1,304	8,399
718	Chemicals	2,594	(107)	2,487
720	Materials and Supplies	2,683	(968)	1,715
731	Contractual Services – Professional	835	0	835
735	Contractual Services – Testing	3,180	(120)	3,060
736	Contractual Services – Other	5,583	738	6,320
740	Rents	1,944	0	1,944
750	Transportation Expense	2,313	0	2,313
755	Insurance Expense	3,082	389	3,471
765	Regulatory Commission Expense	843	252	1,095
770	Bad Debt Expense	0	94	94
775	Miscellaneous Expense	<u>3,899</u>	<u>0</u>	<u>3,899</u>
	Total O&M Expense	<u>\$66,299</u>	<u>\$6,024</u>	<u>\$72,322</u>
	Working Capital is 1/8 O&M Less RCE			\$9,009

LAKE YALE UTILITIES, LLC. TEST YEAR ENDED 12/31/2019 MONTHLY WATER RATES		SCHEDULE NO. 4-A DOCKET NO. 20200169-WS	
	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
<b><u>Residential and General Service</u></b>			
Base Facility Charge by Meter Size			
5/8"X3/4"	\$10.35	\$10.50	\$0.05
3/4"	\$15.53	\$15.75	\$0.08
1"	\$25.88	\$26.25	\$0.13
1-1/2"	\$51.75	\$52.50	\$0.25
2"	\$82.80	\$84.00	\$0.40
3"	\$165.60	\$168.00	\$0.80
4"	\$258.75	\$262.50	\$1.25
6"	\$517.50	\$525.00	\$2.50
8"	\$828.00	\$840.00	\$4.00
Charge per 1,000 gallons - Residential Service			
All gallons	\$1.89	N/A	N/A
0 - 5,000 gallons	N/A	\$3.79	\$0.02
Over 5,000 gallons	N/A	\$5.68	\$0.03
Charge per 1,000 gallons - General Service			
	\$1.89	\$4.10	\$0.02
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>			
3,000 Gallons	\$16.02	\$21.87	
6,000 Gallons	\$21.69	\$35.13	
8,000 Gallons	\$25.47	\$46.49	

<b>LAKE YALE UTILITIES, LLC</b>		<b>SCHEDULE NO. 4-B</b>		
<b>TEST YEAR ENDED DECEMBER 31, 2019</b>		<b>DOCKET NO. 20200169-WS</b>		
<b>MONTHLY WASTEWATER RATES</b>				
	<b>UTILITY CURRENT RATES</b>	<b>COMMISSION APPROVED INTERIM RATES*</b>	<b>STAFF RECOMMENDED RATES</b>	<b>4 YEAR RATE REDUCTION</b>
<b><u>Residential Service</u></b>				
Base Facility Charge - All Meter Sizes	\$10.86	\$12.60	\$13.75	\$0.04
Charge per 1,000 gallons 10,000 gallon cap	\$2.77	\$3.21	N/A	N/A
Charge per 1,000 gallons 6,000 gallon cap	N/A	N/A	\$8.06	\$0.02
<b><u>General Service</u></b>				
Base Facility Charge by Meter Size				
5/8"X3/4"	\$10.86	\$12.60	\$13.75	\$0.04
3/4"	\$16.29	\$18.90	\$20.63	\$0.06
1"	\$27.15	\$31.50	\$34.38	\$0.10
1-1/2"	\$54.30	\$63.00	\$68.75	\$0.20
2"	\$86.88	\$100.80	\$110.00	\$0.32
3"	\$173.76	\$201.60	\$220.00	\$0.64
4"	\$271.50	\$315.00	\$343.75	\$1.00
6"	\$543.00	\$630.00	\$687.50	\$2.00
8"	\$868.80	\$1,008.00	\$1,100.00	\$3.20
Charge per 1,000 gallons	\$3.30	\$3.83	\$9.67	\$0.03
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>				
3,000 Gallons	\$19.17	\$22.23	\$37.93	
6,000 Gallons	\$27.48	\$31.86	\$62.11	
8,000 Gallons	\$33.02	\$38.28	\$62.11	
*Interim rates were implemented January 9, 2021.				

# Item 9

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:** February 18, 2021

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

**FROM:** Division of Engineering (M. Watts) *TB*  
Division of Accounting and Finance (D. Andrews, Norris) *ALM*  
Division of Economics (Sibley) *JGH*  
Office of the General Counsel (Lherisson) *JSC*

**RE:** Docket No. 20200195-WU – Application of Lake Talquin Waterworks, Inc. for grandfather water certificate in Leon County and pass through of regulatory assessment fees.

**AGENDA:** 03/02/21 - Regular Agenda – Proposed Agency Action for Issues 1, 4, 5, and 6 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** 03/02/21 (90-Day Statutory Deadline to Address Rule Waiver, waived to 03/02/21 by the Utility.)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for profit water and wastewater utilities in Leon County to the Florida Public Service Commission (Commission). Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in Leon County became subject to the provisions of Chapter 367, Florida

Statutes (F.S.). By Commission Order No. PSC-2017-0357-FOF-WS, the Commission acknowledged the Resolution.<sup>1</sup>

Pursuant to Section 367.171(2)(b), F.S., each utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day the chapter becomes applicable to the utility. On November 30, 2017, Lake Talquin Water Company, Inc. (LTWC) filed an application for a certificate under grandfather rights to provide water service in Leon County pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, Florida Administrative Code (F.A.C.). Docket No. 20170253-WU<sup>2</sup> was established to process LTWC's grandfather application. On March 30, 2020, Seminole Waterworks, Inc. (Seminole) acquired the utility from LTWC. Seminole transferred the utility to Lake Talquin Waterworks, Inc. (Lake Talquin or Utility) on the same date. Accordingly, the prior docket (20170253-WU) was closed and the current docket (20200195-WU) was opened to address the grandfather application filed by Lake Talquin Waterworks, Inc.

On August 4, 2020, Lake Talquin filed an application for a certificate under grandfather rights to provide water service in Leon County pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. In its application, the Utility simultaneously filed a request for approval of a pass through increase for regulatory assessment fees (RAFs) pursuant to Section 367.081(4)(b), F.S. Lake Talquin's application was found to be deficient, and staff sent a deficiency letter to the Utility on September 14, 2020. The Utility cured the deficiencies on October 27, 2020.

On August 14, 2020, the Utility filed a petition for waiver or variance of Rule 25-30.120, F.A.C., which requires that RAFs be paid for any year during which a utility is subject to the Commission's jurisdiction as of December 31 of that year. The Commission has 90 days to grant or deny the waiver pursuant to Section 120.542(8), F.S. The Utility agreed to waive the statutory deadline to March 2, 2021.

Lake Talquin provides water service to approximately 237 residential customers, in single family and mobile homes, located next to Lake Talquin in southwest Leon County. Wastewater service is provided by septic tank. The Utility's service area is located in the Northwest Florida Water Management District.

This recommendation addresses the application for a grandfather water certificate, rates and charges, the petition for a variance or waiver of Rule 25-30.120, F.A.C., the approval of a revised late fee and initial customer deposit, and approval of a non-sufficient funds (NSF) charge. The Commission has jurisdiction pursuant to Section 367.171, F.S.

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<sup>1</sup>Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.*

<sup>2</sup>*In re: Application for grandfather water certificate in Leon County by Lake Talquin Water Company, Inc.*

## Discussion of Issues

**Issue 1:** Should the Commission approve Lake Talquin Waterworks, Inc.’s request for waiver or variance of Rule 25-30.120, F.A.C.?

**Recommendation:** Yes. The Utility has demonstrated that the underlying purpose of the statute will be or has been achieved by other means, and that strict application of the rule would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve Lake Talquin Waterworks, Inc.’s request for a waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission’s vote on the waiver, whichever occurs first. (Lherisson)

**Staff Analysis:** On August 14, 2020, Lake Talquin filed a Petition seeking waiver or variance of a requirement of Rule 25-30.120, F.A.C., which requires that RAFs be paid for any year during which a utility is subject to the Commission’s jurisdiction as of December 31 of that year. The Utility requests the waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S. Rule 25-30.120(2), F.A.C., provides that “[t]he obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission’s jurisdiction on or before December 31 of that year or for any part of that year.” The effect of this request would be to permanently waive any RAFs that would have been otherwise due for 2020 up until the time the Application is considered by the Commission.

Section 120.542(2), F.S., authorizes the Commission to grant waivers or variances from agency rules where the petitioner subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that a strict application of the rule would cause the applicant substantial hardship or would violate the principles of fairness. “Substantial hardship,” as defined in this section, means demonstrated economic, technological, legal, or other hardship. A violation of the “principles of fairness” occurs when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

As acknowledged in Order No. PSC-2017-0357-FOF-WS,<sup>3</sup> issued September 20, 2017, the Board of County Commissioners of Leon County on June 20, 2017, passed and adopted Resolution No. R17-12, transferring regulation of the privately-owned for profit water and wastewater utilities in the County to the Florida Public Service Commission. Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in Leon County became subject to the provisions of Chapter 367, F.S.

On August 4, 2020, Lake Talquin filed its application for a grandfather certificate pursuant to Section 367.171(2), F.S., and Rule 25-30.035, F.A.C. Also, in the same filing the Utility filed its

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<sup>3</sup>Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Order Acknowledging Resolution of the Board of County Commissioners of Leon County Declaring Leon County Subject to the Provisions of Chapter 367, Florida Statutes.*

request for approval of a pass through increase for RAFs pursuant to Section 367.081(4)(b), F.S. That portion of the request was in relation to the RAFs required under Section 367.145, F.S., and Rule 25-30.120, F.A.C.

Section 367.081(4)(b), F.S., states that:

[t]he approved rates of any utility shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the utility's costs for any specified expense item have changed. . . . The new rates authorized shall reflect, on an amortized or annual basis, as appropriate, the cost of or the amount of change in the cost of the specified expense item. The new rates, however, shall not reflect the costs of any specified expense item already included in a utility's rates. Specified expense items that are eligible for automatic increase or decrease of a utility's rates include, but are not limited to: . . . [t]he regulatory assessment fees imposed upon the utility by the commission.

The underlying statutory provision pertaining to RAFs and Rule 25-30.120, F.A.C., are Sections 367.145(1) and (3), F.S., which state that:

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);

....

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

Pass through items authorized by Section 367.081(4)(b), F.S., cannot be approved without "approved rates" by the Commission. Further, the Commission's RAFs are not included in the current existing rates for Lake Talquin since the Utility was not regulated by the Commission prior to June 2017. The Utility notes that a pass through of the RAFs is not permissible until such time as the Utility receives its Grandfather Certificate and its rates are approved (grandfathered in). For that reason, the Utility argues it is placed at an unfair financial disadvantage due to its inability to collect those RAFs.

The purpose of assessing RAFs is to defray the cost of utility regulation. The Utility contends that there have been minimal to no costs of regulating Lake Talquin under Chapter 367, F.S., absent the review of its grandfather application. The Utility also notes that it has paid the applicable filing fee of \$1,000 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its grandfather filing.

Based on the foregoing analysis and the information provided within the Utility's petition, staff believes that Lake Talquin has met the requirements of Section 120.542, F.S., and has

demonstrated that the purpose of the underlying statute will be or has been achieved by other means, because minimal regulation has been required at this point and the Utility has been very cooperative with staff's requests. Further, the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on the Utility by requiring the Utility to pay regulatory expenses for which it is not compensated through rates. Therefore, staff recommends that the Commission approve the Utility's requested waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission's vote on the waiver, whichever occurs first.

**Issue 2:** Should Lake Talquin Waterworks, Inc.'s application for a grandfather water certificate in Leon County be acknowledged?

**Recommendation:** Yes. Lake Talquin's application should be acknowledged and the Utility should be issued Certificate No. 678-W, effective August 4, 2020, to serve the territory described in Attachment A. The resultant order should serve as Lake Talquin's certificate and should be retained by the Utility. (M. Watts, D. Andrews)

**Staff Analysis:** The Utility's application for a certificate under grandfather rights to provide water service in Leon County is in compliance with Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. The application contains a warranty deed as proof of ownership of the land on which the Utility's facilities are located, an accurate territory description, and adequate service territory and system maps. The territory description is provided in Attachment A.

As stated in the case background, Lake Talquin serves approximately 237 residential customers located in Leon County. The Utility does not currently have any outstanding citations, violations, or consent orders on file with the Florida Department of Environmental Protection.

The Utility is aware of its obligation to submit its 2020 Annual Report pursuant to Rule 25-30.110, F.A.C., and is also aware of its obligation to pay RAFs pursuant to Rule 25-30.120, F.A.C. In addition, the Utility is aware that it must maintain its books and records according to the National Association of Regulatory Utility Commissioners' Uniform System of Accounts.

Based on the above, staff recommends that Lake Talquin be granted Certificate No. 678-W to serve the territory described in Attachment A. The resultant order should serve as Lake Talquin's certificate and should be retained by the Utility.

**Issue 3:** What rates and charges should be approved for Lake Talquin Waterworks, Inc.?

**Recommendation:** The Utility's monthly service rates and charges that were in effect when Leon County transferred jurisdiction to the Commission, shown on Schedule No. 1, should be approved. The Utility's revised late payment charge and initial customer deposit, and non-sufficient funds charge, are separately addressed in Issues 4, 5, and 6. The rates and charges should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding. (Sibley)

**Staff Analysis:** According to the Utility's application, Lake Talquin's current rates, charges, and customer deposits were established in 2016 by Lake Talquin Water Company, Inc. and have been assessed by Lake Talquin since the acquisition. The Utility's current monthly service rates consist of a base facility charge and a gallonage charge per 1,000 gallons. In addition, the Utility has miscellaneous service charges, a late payment charge of \$10, a service availability charge, and customer deposits. Staff believes the Utility's current monthly rates and charges except for the late payment charge and customer deposits are reasonable and should be approved. Staff's recommendation with respect to the late payment charge is discussed in Issue 4 and customer deposits in Issue 6. Further, the Utility requests to implement non-sufficient funds (NSF) charges, which is addressed in Issue 5.

Based on the above, the Utility's monthly service rates and charges that were in effect when Leon County transferred jurisdiction to the Commission, except for customer deposits and the late payment charge, shown on Schedule No. 1, should be approved. Those charges are addressed separately in Issues 6 and 4, respectively. Approval of a new, non-sufficient funds charge is also addressed in Issue 5. The rates and charges should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding.

**Issue 4:** Should Lake Talquin Waterworks, Inc. late payment charge be revised?

**Recommendation:** Yes. Lake Talquin’s late payment charge should be revised to \$6.50. The Utility should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Sibley)

**Staff Analysis:** Lake Talquin is requesting a \$6.50 late payment charge to recover the cost of labor, supplies, postage, and RAFs associated with processing late payment notices. Lake Talquin’s current late payment charge is \$10.00. Lake Talquin is requesting \$6.50 for its late payment charge, which is consistent with recent Commission practice and is the same charge approved by the Commission for its sister utilities managed by U.S. Water.<sup>4</sup> The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers. Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charge. The processing of delinquent accounts for Lake Talquin are done by U.S. Water, the managing company; as a result staff believes the request to revise the late payment charge is reasonable and should be approved.

Based on the above, Lake Talquin’s late payment charge should be revised to \$6.50. The Utility should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

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<sup>4</sup>Order Nos. PSC-2020-0267-PAA-WS, issued July 27, 2020, in Docket No. 20190195-WS, *In re: Application for transfer of water and wastewater systems of Regency Utilities, Inc., and transfer of Certificate Nos. 641-W and 551-S to Duval Waterworks, Inc., in Duval County*; PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.*

**Issue 5:** Should Lake Talquin Waterworks, Inc. be authorized to collect NSF charges?

**Recommendation:** Yes. Lake Talquin should be authorized to collect NSF charges. Staff recommends that the Utility revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by 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:** Lake Talquin currently does not have NSF charges in place. Section 367.091, F.S., requires rates, charges, and customer service policies to be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Lake Talquin should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

1. \$25, if the face value does not exceed \$50,
2. \$30, if the face value exceeds \$50 but does not exceed \$300,
3. \$40, if the face value exceeds \$300, or
4. five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.<sup>5</sup> Furthermore, NSF charges place the cost on the cost causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, Lake Talquin should be authorized to collect NSF charges. Staff recommends that Lake Talquin revise its tariff sheets to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the NSF charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

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<sup>5</sup>Order Nos. PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory fees, by Seminole Waterworks, Inc.*; PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 20140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.*; and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

**Issue 6:** Should Lake Talquin Waterworks, Inc.'s initial customer deposit be revised?

**Recommendation:** Yes. Lake Talquin's initial customer deposit should be revised to reflect \$86 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Sibley)

**Staff Analysis:** Rule 25-30.311, F.A.C., provides the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. An initial customer deposit ensures that the cost of providing service is recovered from the cost causer. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill. Currently, the Utility's initial customer deposit for the 5/8 inch x 3/4 inch meter size is \$125 for water and is not consistent with Commission practice. The Utility's average monthly residential usage is 3,000 gallons per customer. Therefore, the average residential monthly bill is approximately \$43 based on the existing rates.

Based on the above, Lake Talquin's initial customer deposit should be revised to reflect \$86 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

**Issue 7:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively. (Lherisson)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively.

DESCRIPTION OF TERRITORY SERVED

Those lands located in Township 1 South, Range 4 West, Leon County, Florida, more particularly described as follows:

The South 1,750 feet of Section 11;

And

All of Section 14 lying North of Blountstown Highway;

And

The West  $\frac{3}{4}$  of Section 15 lying North of Blountstown Highway;

And

The East  $\frac{1}{2}$  of Section 16.

**FLORIDA PUBLIC SERVICE COMMISSION**

**authorizes  
Lake Talquin Waterworks, Inc.  
pursuant to  
Certificate Number 678-W**

to provide water service in Leon County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20200195-WU	Grandfather Certificate

\*Order Number and date to be provided at time of issuance

**Lake Talquin Water Company, Inc.  
Monthly Water Rates**

**Residential and General Service**

Base Facility Charge	\$34.00
Gallage Charge per 1,000 gallons	\$3.00

**Miscellaneous Service Charges**

Initial Connection Charge	\$45.00
Violation Reconnection Charge	\$40.00

**Service Availability Charge**

System Capacity Charge	\$1,000.00
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# Item 10

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:** February 18, 2021

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

**FROM:** Division of Accounting and Finance (M. Andrews, D. Buys, Hightower, Mouring) **ALM**  
Division of Economics (Coston, Forrest) **JGH**  
Office of the General Counsel (Trierweiler, Osborn) **JSC**

**RE:** Docket No. 20200241-EI – Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Sally, by Gulf Power Company.

**AGENDA:** 03/02/21 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 03/02/21 (Requested Implementation Date)

**SPECIAL INSTRUCTIONS:** This Item should be taken up immediately before staff's recommendation in Docket No. 20200242-EI

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### Case Background

On November 10, 2020, Gulf Power Company (Gulf or Company) filed a petition for a limited proceeding seeking authority to implement an interim storm restoration recovery charge to recover incremental storm restoration costs related to Hurricane Sally. Gulf estimates a total of \$206 million for incremental restoration costs related to Hurricane Sally. In its petition, Gulf asserts that prior to Hurricane Sally, Gulf's Storm Reserve was fully depleted and in a deficit position, primarily due to incremental costs incurred from Hurricane Michael. Gulf filed its petition pursuant to the provisions of the Stipulation and Settlement Agreement (SSA) approved by the Commission in Order No. PSC-2017-0178-S-EI.<sup>1</sup> Pursuant to Paragraph 7(a) of the SSA, Gulf can

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<sup>1</sup> Order No. PSC-2017-0178-S-EI, issued May 16, 2017, in Docket No. 160186-EI, *In re: Petition for rate increase by Gulf Power Company*; and Docket No. 160170-EI, *In re: Petition for approval of 2016 depreciation and*

Docket No. 20200241-EI

Date: February 18, 2021

recover storm costs, not exceeding \$4.00/1,000 kilowatt hour (kWh) on monthly residential customer bills, on an interim basis, beginning 60 days following the filing of a petition for recovery. In addition, pursuant to Paragraph 7(b), Gulf may petition the Commission to allow for a charge greater than \$4.00/1,000 kWh, or a period longer than 12 months, if costs exceed \$100 million in a calendar year. In its petition, Gulf has requested an interim storm restoration charge applicable to all rate classes, effective March 1, 2021. For residential customers, the proposed charge would be \$3.00 on a 1,000 kWh bill. On December 16, 2020, Gulf agreed to waive the 60-day time frame set forth in the SSA and requested that the Commission approve the storm restoration recovery charge to become effective March 2, 2021.

The Office of Public Counsel's intervention in this docket was acknowledged in Order No. PSC-2020-0484-PCO-EI, issued December 9, 2020.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes.

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*dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.*

## Discussion of Issues

**Issue 1:** Should the Commission authorize Gulf to implement an interim storm restoration recovery charge?

**Recommendation:** Yes. The Commission should authorize Gulf to implement an interim storm restoration recovery charge, subject to refund. Once the total actual storm costs are known, Gulf should be required to file documentation of the storm costs for Commission review and true up of any excess or shortfall. (M. Andrews)

**Staff Analysis:** As stated in the Case Background, Gulf filed its petition for a limited proceeding seeking authority to implement an interim storm restoration recovery charge applicable to all rate classes to recover an estimated total of \$206 million for incremental restoration costs related to Hurricane Sally. In addition, the \$206 million also includes \$900,000 of interest on the unamortized storm reserve balance. Also, Gulf's Storm Reserve is fully depleted, primarily due to the incremental costs incurred from Hurricane Michael. Gulf has requested an interim storm restoration recovery charge of 0.3 cents per kWh, which equates to \$3.00 on a 1,000 kWh residential electric bill, effective March 2, 2020. As discussed in Issue 2, the interim storm charge would vary by rate class. Gulf estimates that the interim charge collected from all rate classes will yield approximately \$24 million per year. Gulf residential customer bills currently reflect a monthly Hurricane Michael storm recovery charge of \$8.00 on a 1,000 kWh to be in effect till September 2023.<sup>2</sup> The combination of the Hurricane Michael recovery charge and the Hurricane Sally interim recovery charge sum to \$11.00 on a 1,000 kWh residential electric bill. Once Gulf has fully recovered the Hurricane Michael storm costs, Gulf proposes to seek Commission authority to increase the Hurricane Sally storm restoration recovery charge to \$10.00 on a 1,000 kWh residential electric bill and for this level to remain in place until the Hurricane Sally costs are fully recovered and the Storm Reserve is replenished to approximately \$41 million.

In its petition, Gulf asserts that it incurred total retail recoverable costs of approximately \$206 million as a result of Hurricane Sally. Gulf represents that this amount was calculated in accordance with the Incremental Cost and Capitalization Approach (ICCA) methodology prescribed in Rule 25-6.0143, Florida Administrative Code (F.A.C.).

The approval of an interim storm restoration recovery charge is preliminary in nature and is subject to refund pending a further review once the total actual storm restoration costs are known. After the actual costs are reviewed for reasonableness and prudence, and are compared to the actual amount recovered through the interim storm restoration recovery charge, a determination will be made whether any over/under recovery has occurred. The disposition of any over/under recovery, and associated interest, would be considered by the Commission at a later date.

Based on a review of the information provided by Gulf in its petition, staff recommends that the Commission authorize Gulf to implement an interim storm restoration recovery charge, subject to

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<sup>2</sup> Order No. PSC-2020-0349-S-EI, issued October 8, 2020, in Docket No. 20190038-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael, by Gulf Power Company.*

refund. Once the total actual storm costs are known, Gulf should be required to file documentation of the storm costs for Commission review and true up of any excess or shortfall.

**Issue 2:** Should the Commission approve Gulf's proposed interim storm restoration recovery charge tariff as shown in Attachment A to the recommendation?

**Recommendation:** Yes. The Commission should approve Gulf's proposed interim storm restoration recovery charge tariff as shown in Attachment A to the recommendation. The proposed tariff should become effective March 2, 2021. (Forrest)

**Staff Analysis:** In its petition, Gulf proposed to begin applying the interim storm restoration recovery charge to customer bills on March 2, 2021, and to include the charge in the non-fuel energy surcharge on customer bills. In support of its rate calculations, Gulf provided Exhibit 3 to the petition, which illustrates the computation of the proposed interim storm restoration recovery charge for each rate class. Gulf represented that it followed the methodology for allocation of storm costs among rate classes consistent with the cost of service study filed in its 2016 rate case in Docket No. 20160186-EI. Staff reviewed Gulf's calculations and believes the allocation methodology to be appropriate and reasonable.

Application of the allocation methodology for the residential customer rate class results in a proposed interim storm recovery charge of 0.3 cents per kWh, which equates to \$3.00 on a 1,000 kWh residential electric bill. The proposed interim charges for all rate classes are presented in Original Sheet No. 6.25.1, which is included in Attachment A to this recommendation.

Based on its review of the information provided by Gulf, staff recommends the Commission approve Gulf's proposed interim storm restoration recovery charge tariff as shown in Attachment A to the recommendation. The proposed tariff should become effective March 2, 2021.

**Issue 3:** What is the appropriate security to guarantee the amount collected subject to refund through the interim storm restoration recovery charge?

**Recommendation:** The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking. (Hightower, D. Buys)

**Staff Analysis:** Staff recommends that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed Gulf's financial statements to determine if the Utility can support a corporate undertaking to guarantee the funds collected for recovery of incremental storm restoration costs related to Hurricane Sally. Gulf's 2019, 2018 and 2017 financial statements were used to determine the financial condition of the Company. Gulf's financial performance demonstrates adequate levels of liquidity, ownership equity, profitability, and interest coverage to guarantee the potential refund.

Staff believes Gulf has adequate resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that a corporate undertaking is acceptable. This brief financial analysis is only appropriate for deciding if the Company can support a corporate undertaking in the amount proposed and should not be considered a finding regarding staff's position on other issues in this proceeding.

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

**Recommendation:** No. This docket should remain open pending final reconciliation of actual recoverable Hurricane Sally storm costs with the amount collected pursuant to the interim storm restoration recovery charge, and the calculation of a refund or additional charge if warranted. (Trierweiler)

**Staff Analysis:** No, this docket should remain open pending final reconciliation of actual recoverable Hurricane Sally storm costs with the amount collected pursuant to the interim storm restoration recovery charge, and the calculation of a refund or additional charge if warranted.



**Gulf Power**

Section No. VI  
Original Sheet No. 6.25.1

**RATE SCHEDULE STORM**  
**INTERIM STORM RESTORATION RECOVERY**

PAGE  
1 of 1

EFFECTIVE DATE  
March 1, 2021

**APPLICABILITY:**

Applicable to each filed retail schedule under which a Customer receives service.

**DETERMINATION OF INTERIM STORM RESTORATION RECOVERY SURCHARGE**

The Interim Storm Restoration Recovery Surcharge is designed to recover incremental storm-related costs incurred by the Company related to Hurricane Sally. The factor is applicable to the Energy Charge under the Company's various rate schedules.

Interim Storm Restoration Recovery Surcharge factors are shown below:

<u>Rate Schedule</u>	<u>¢/kWh</u>
<u>RS, RSVP</u>	<u>0.300</u>
<u>GS</u>	<u>0.329</u>
<u>GSD, GSDT, GSTOU</u>	<u>0.167</u>
<u>LP, LPT</u>	<u>0.130</u>
<u>PX, PXT, RTP, SBS</u>	<u>0.087</u>
<u>OS-I/II</u>	<u>0.239</u>
<u>OS-III</u>	<u>0.239</u>

Service under this rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

**ISSUED BY: Tiffany Cohen**

# Item 11

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:** February 18, 2021

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

**FROM:** Division of Accounting and Finance (Snyder, M. Andrews, Mouring, Sowards) **ALM**  
Division of Economics (Coston, Forrest, Haas, Wu) **JGH**  
Division of Engineering (P. Buys, Knoblauch, Phillips) **TB**  
Office of the General Counsel (Stiller, J. Crawford) **JSC**

**RE:** Docket No. 20200242-EI – Petition for approval of regulatory assets related to the retirements of the coal generation assets at Plant Crist Units 4, 5, 6, and 7, by Gulf Power Company.

Docket No. 20210007-EI – Environmental Cost Recovery Clause

**AGENDA:** 3/2/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** April 19, 2021 (90-day deadline to act on Petition for , Waiver per Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** This Item should be taken up immediately after staff's recommendation in Docket No. 20200241-EI

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### Case Background

On November 10, 2020, Gulf Power Company (Gulf or Company) filed a petition seeking approval to create two regulatory assets and defer recovery of amounts related to the retirement of Plant Crist Units 4, 5, 6, and 7 (Units) and for a Mid-Course Correction to its 2021 Environmental Cost Recovery Clause (ECRC) factors reflecting the impact of the early retirement of the coal generation assets and capability at Plant Crist Units 4-7. The decision to

retire Units 4-7 was based on damage sustained to these Units as a result of Hurricane Sally on September 16, 2020. As of retirement of the Units on October 15, 2020, the Net Book Value (NBV) of the Units was approximately \$462 million. The reduction to the ECRC factors requested by Gulf would reduce rates by \$3.71 per 1,000 kilowatt-hour (kwh). In conjunction with its request for a reduction to its ECRC factors, Gulf has filed a petition to implement an interim storm restoration recovery charge to recover incremental storm restoration costs related to damage caused by Hurricane Sally.<sup>1</sup>

The Office of Public Counsel is listed as an interested person in this docket.

This recommendation addresses the creation of two regulatory assets and the deferral of their recovery to a future proceeding and Gulf's request for approval of a Mid-Course Correction to its 2021 ECRC factors reflecting the impact of the retirement of the coal generation assets and capability at Plant Crist Units 4-7. This recommendation also addresses a rule waiver requested by Gulf to address the timing of this request relative to the proposed early retirement date of the Units. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.06, Florida Statutes (F.S.).

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<sup>1</sup> See Docket No. 20200241-EI

## Discussion of Issues

**Issue 1:** Should the Commission approve Gulf's Petition for Waiver of a portion of Rule 25-6.0436(7)(a), Florida Administrative Code (F.A.C.)?

**Recommendation:** Yes. The portion of Rule 25-6.0436(7)(a), F.A.C., from which Gulf requests a waiver requires that a utility obtain Commission approval for authority to make adjustments for unrecovered investments associated with the retirement of major installations prior to the date of such retirement. Staff recommends that Gulf has demonstrated that applying the rule in this docket and making the Company's Petition subject to denial solely because of timing would impose a substantial hardship on the Company. Gulf has also demonstrated that the purposes of the statutes underlying the portion of the Rule being waived will be served by other means during the upcoming base rate proceeding. (Stiller, J. Crawford)

**Staff Analysis:** Gulf is seeking a waiver from the portion of Rule 25-6.0436(7)(a), F.A.C., which requires Commission approval for authority to address unrecovered investments related to the retirement of major installations prior to the date of their retirement.

### **The Waiver Request**

In its Petition filed November 10, 2020, Gulf requested authority to establish two regulatory assets (one in rate base and one in the Environmental Cost Recovery Clause) related to the unrecovered investments associated with the early retirement of the coal generation assets and capability at Plant Crist Units 4-7, and to defer the recovery of such regulatory assets until base rates are reset in a general base rate proceeding. Gulf also requested Commission approval for a corresponding Mid-Course Correction to its 2021 Environmental Cost Recovery Clause factors.

Because Gulf has requested Commission approval for this authority after the proposed early retirement date of the major installations,<sup>2</sup> the Company is seeking a waiver of the first clause of Rule 25-6.0436(7)(a), F.A.C., underscored below:

Prior to the date of retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

Gulf has not requested a waiver of any other portion of Rule 25-6.0436(7)(a), F.A.C., or any other Commission rule.

The Company's original request for a waiver was contained in paragraph six of its Petition. However, the request was unclear and failed to comply with the requirements of Section 120.542, F.S. Accordingly, staff requested that if Gulf wished to waive a portion of the

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<sup>2</sup> The proposed early retirement date of the relevant major installations is October 15, 2020.

Commission's rules, it should file a petition consistent with the requirements of Section 120.545, F.S., and Rule 28-104.002, F.A.C. Gulf subsequently submitted a stand-alone Petition for Waiver, which was filed in this docket on January 19, 2021. Pursuant to Section 120.542(6), F.S., notice of Gulf's Waiver Petition was published in the January 22, 2021 edition of the Florida Administrative Register, Vol. 47, No. 14. No comments were submitted on the Waiver Petition.

### ***Legal Standard for Rule Variances and Waivers***

Section 120.542(1), F.S., states that the purpose of a rule variance or waiver<sup>3</sup> is to provide relief to persons subject to regulation in cases where strict application of rule requirements can lead to unreasonable, unfair, and unintended results in particular circumstances. Section 120.542(2), F.S., sets forth a two-prong test for granting variances or waivers to rules. If the petitioner satisfies both prongs of the test, the agency must grant the variance or waiver.

First, the petitioner must show that "application of [the] rule would create a substantial hardship or would violate principles of fairness." A "substantial hardship" is a "demonstrated economic, technological, legal, or other type of hardship." Principles of fairness are violated when "the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." Second, the petitioner must demonstrate that it will achieve the purpose of the underlying statutes by other means.

Each petitioner for rule variance or waiver has the burden of proving its entitlement to a variance or waiver under its particular circumstances. Thus, the Commission's determination as to whether a petitioner should be granted a variance or waiver is based on whether the legal test has been met under the specific circumstances of each petitioner.

### ***Substantial Hardship***

The 2020 Gulf and Florida Power & Light Company Ten-Year Site Plan set forth the Company's anticipated timeframes for the conversion of Plant Crist Units 6 and 7 from coal-fired generation to natural-gas fired generation<sup>4</sup> as well as for the corresponding retirement of coal generation assets and capability at Plant Crist Units 4-7. The Site Plan slated the conversion of Plant Crist Units 6 and 7 to natural gas for fourth quarter 2020 or first quarter 2021. The coal assets associated with Plant Crist Units 4-7 were scheduled to be retired December 31, 2021.

On September 26, 2020, Hurricane Sally damaged Plant Crist. Gulf represents that this damage was significant, and that it caused the Company to assess the benefits of converting Plant Crist Units 6 and 7 to natural gas instead of making the repairs necessary to return these Units to coal-burning generation. This comparison demonstrated greater cost benefits by completing an early conversion of Plant Crist Units 6 and 7 to natural gas instead of repairing and temporarily returning them to coal operations. This conclusion lead Gulf to file the instant Petition for authority to address the unrecovered investments associated with the coal operation assets and capability of Plant Crist Units 4-7.

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<sup>3</sup> A waiver is a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Section 120.52(22), F.S. A variance is an agency decision to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Section 120.52(21), F.S.

<sup>4</sup> Plant Crist Units 4 & 5 has previously been converted from coal to natural gas.

Gulf states that prior to Hurricane Sally, it had planned to file with the Commission a request for approval of regulatory assets or capital recovery schedules associated with the retirement of coal operations at Plant Crist Units 4-7 in 2021 by separate petition or with its planned base rate case filing. However, the timing of the proposed retirement was accelerated unforeseeably by the damage caused by Hurricane Sally. Gulf asserts that the Petition, though admittedly filed after the proposed date of retirement of Plant Crist Units 4-7, was submitted as soon as practicable after completion of post-Hurricane Sally assessments and analyses. The Company argues that because the timing and extent of damage from Hurricane Sally were unforeseen, application of Rule 25-6.0436(7)(a), F.A.C., to categorically prohibit it from reacting to this significant change by accelerating planned conversions imposes a substantial hardship. Gulf notes that the conversion of Plant Crist Units 6 and 7 was anticipated within the next calendar year, and that the creation of the regulatory assets and Mid-Course Correction will result in an estimated savings to ratepayers of \$3.6 million. Gulf projects the Mid-Course Correction will enable a decrease of \$3.71/1,000 kWh on a monthly residential bill. The alternative, continues Gulf, was to repair Plant Crist Units 6 and 7, operate on coal for the short-term, and then complete the conversion to natural gas operations later in 2021, all while foregoing these projected savings. Such an alternative would pose a substantial hardship in terms of financial costs and operational inefficiencies.

### **Purpose of the Underlying Statute**

Rule 25-6.0436(7)(a), F.A.C., implements three statutes. The first is Section 350.115, F.S., which provides the Commission authority to “prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges.” The second statute implemented is Section 366.04,(2)(f), F.S., which grants the Commission authority to “prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.” The third statute implemented by the Rule is Section 366.06(1), F.S., which requires, *inter alia*, that the Commission “keep a current record of the net investment of each public utility company” and establish adequate, fair, and reasonable depreciation rates and charges.

Gulf notes that nothing in its waiver request alters its substantive reporting requirements or affects Commission jurisdiction. Gulf asserts that the Commission can fully address all issues related to establishing adequate, fair, and reasonable depreciation rates and charges, and the appropriate treatment of unrecovered investments during a general base rate proceeding.

### **Conclusion**

Staff believes Gulf has demonstrated that applying the Rule in this docket would impose a substantial hardship on the Company. Gulf has also demonstrated that the purposes of the statutes underlying the portion of the Rule being waived will be served by other means. Staff notes that the Commission has previously waived a separate time requirement in Rule 25-6.0436, F.A.C., on a request from another utility that had experienced damage from a hurricane.<sup>5</sup> Staff

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<sup>5</sup> Order No. PSC-2019-0322-PAA-EI, issued August 7, 2019, in Docket No. 20190130-EI, *In re: Petition for waiver of depreciation study filing requirement in Rule 25-6.0436(4)(a), F.A.C., by Florida Public Utilities Company.*

therefore recommends that the Commission approve Gulf's Petition for Waiver of a portion of Rule 25-6.0436(7)(a), F.A.C.

**Issue 2:** Should the Commission approve Gulf's request to create two regulatory assets related to the retirement of Plant Crist Units 4, 5, 6 and 7 and defer the recovery of the regulatory assets to a future proceeding?

**Recommendation:** Yes. The Commission should approve Gulf's request to create two regulatory assets related to the early retirement of coal generation assets and capability at Plant Crist Units 4, 5, 6 and 7 and defer the recovery of the regulatory assets to a future proceeding. Further, the Commission should find that the approval to record the regulatory assets for accounting purposes does not limit the Commission's ability to review the amounts and recovery period for reasonableness in a future proceeding in which the regulatory assets are included. (Snyder, P. Buys)

**Analysis:** On November 10, 2020, Gulf filed a petition seeking approval to create two regulatory assets, representing an unrecovered \$67.6 million in base rate capital investment and \$394.5 million in ECRC capital investments (\$462.2 million in total), due to the early retirement of coal generation assets and capability at Plant Crist Units 4, 5, 6 and 7. Gulf seeks to defer base rate and ECRC recovery of the regulatory assets, and determination of the associated amortization periods, until Gulf's base rates are next reset in a general base rate proceeding. Gulf's decision to retire the Units early was based on significant damage caused to the Units by Hurricane Sally. Gulf had originally planned to convert Crist Units 6 and 7 from coal to natural gas generation in the fourth quarter 2020 to first quarter 2021 timeframe, maintain Crist Units 6 and 7 as available capacity during 2021, and retire the coal generation assets and capability of Crist Units 4-7 on or about December 31, 2021, upon the completion of other investments to provide power to Gulf customers. As of retirement of Crist Units 4-7 on October 15, 2020, the Net Book Value of the Units was approximately \$462 million. The following table contains the start of service year and previously scheduled retirement year for each of the Units.

Unit #	Start of Service Year	Previous Retirement Year
4	1959	2024
5	1961	2026
6	1970	2035
7	1973	2038

In the last proceeding in which the Commission reviewed the depreciation rates of Crist Units 4-7, the estimated retirement dates ranged from 2024 through 2038.<sup>6</sup> In February 2019, Gulf's management approved a plan to switch the primary fuel type from coal to natural gas, with the coal generation assets remaining available until December 2021 to serve as a back-up fuel

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<sup>6</sup> See Order No. PSC-2017-0178-S-EI, issued May 16, 2017, in Docket No. 20160170-EI, *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.*

option. In its filings in the 2020 Fuel Docket, Gulf had already ceased using coal at Crist Units 4 and 5, and planned to use coal at Crist Units 6 and 7 until October 2020.<sup>7</sup>

On September 16, 2020, Hurricane Sally caused significant damage to the Plant Crist site. Due to the hurricane damage sustained at Crist Units 4-7, Gulf decided to retire the coal generation assets and capability at an even earlier date, October 15, 2020, instead of repairing the coal generation assets of Crist Units 4-7. This left approximately 240,000 tons of coal unburned and located either at Plant Crist or at the Alabama State Docks. In its petition, Gulf supported its decision by providing a cumulative present value of revenue requirements (CPVRR) analysis evaluating the cost effectiveness of repairing the coal generation assets of the Crist Units and retiring them in December 2021, versus the October 2020 retirement of the coal generating assets. The CPVRR analysis provided three scenarios on the disposition of the remaining 240,000 tons of unburned coal, which would either be burned over a six month period or sold. The retirement option was more cost effective in each scenario, producing an estimated savings of between \$3.6 million and \$4.9 million. In response to staff's data request, Gulf provided an analysis of a fourth scenario, in which the unburned coal would be burned over a shorter three-month period. The estimated savings in this scenario was reduced to \$1.7 million. The primary driver of savings is the differential between coal and natural gas fuel prices and the additional operational costs of the coal generation assets.

Based on this preliminary analysis, shifting the early retirement date from December 2021 to October 2020 appears to generate customer savings. However, the Commission has not reviewed either the conversion to natural gas, which allows the early retirement of the coal generation assets, or the early retirement date of December 2021, against which the cost-effectiveness analysis was conducted. Gulf has also provided no information supporting either the conversion to natural gas or the December 2021 early retirement date used in the CPVRR analysis.

Based on these factors, staff recommends that the Commission not make a final prudence determination of whether the October 2020 early retirement of the coal generating assets and capability is reasonable at this time. The next opportunity to review the full record to determine the prudence of the retirement of the coal generation assets and capability at Plant Crist Units 4-7 would be Gulf's next general base rate proceeding.

Because these Units are being retired early, certain entries must be made to Gulf's books and records. Rule 25-6.0436(6), Florida Administrative Code (F.A.C.), requires a utility to compile an annual depreciation status report showing changes to categories of depreciation that will require a revision. In addition, Rule 25-6.0436(7)(a), F.A.C., provides that:

Prior to the date of retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

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<sup>7</sup> See Document No. 11785-2020 in Docket 20200001-EI.

Gulf's current depreciation rates are based on retirement dates of 2024, 2026, 2035, and 2038 for these Units. Therefore, the investment in these Units will not be recovered through the normal depreciation process due to the early retirement of these Units.

The retirement and deferral of recovery for these Units affects Gulf's ECRC factors. In Attachment AE-1 of its petition, Gulf provides capital recovery schedules for these Units for both base and clause recovery. The NBV for the portion of Units 4-7 recovered through the ECRC is \$394,547,432 and the accumulated depreciation is \$204,005,124. With the retirement and deferral of recovery of these Units, the resulting ECRC factors would reduce Gulf's revenue requirement by \$30,051,492.

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. If the subject costs are significant, the alternative would be for a company to seek a rate proceeding each time it experiences an exogenous event. In staff's opinion, it is appropriate to create the requested regulatory assets for the amounts associated with the early retirement of the coal generation assets and capability at Plant Crist and defer recovery until the amounts can be addressed in a future proceeding. Further, the Commission should find that the approval to record the regulatory assets for accounting purposes does not limit the Commission's ability to review the amounts and recovery period for reasonableness in a future proceeding in which the regulatory assets are included. On January 11, 2021, FPL filed a request for approval of a base rate proceeding.<sup>8</sup> Gulf formally merged into FPL in January 2021, with operational consolidation to be essentially complete by January 2022.

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<sup>8</sup> See Docket No. 20210015-EI

**Issue 3:** Should the Commission approve Gulf's petition to reduce its currently-approved 2021 Environmental Cost Recovery Clause (ECRC) factors and tariff for the period March through December 2021 to reflect the early retirement of the coal generation assets and capability at Plant Crist Units 4-7?

**Recommendation:** Yes. The Commission should approve Gulf's petition to revise the currently-approved 2021 ECRC factors and tariff for the period March through December 2021, to reflect the early retirement of the coal generation assets and capability at Plant Crist Units 4-7. The proposed tariff, as shown in Attachment A to the recommendation, should go into effect March 2, 2021. (Forrest)

**Staff Analysis:** Gulf stated in its petition that the early retirement of the Plant Crist Units 4-7 will reduce the projected amount identified for collection through the ECRC. As such, the Company has requested that the 2021 ECRC factors be reduced to reflect the retirement of the Plant Crist assets. As discussed in Issue 2, Gulf stated that approval of the requested Mid-Course Correction to the ECRC factors would reduce the Company's annual revenue requirement by \$30,051,492.

The current residential ECRC factor is 1.992 cents per kilowatt-hour ( $\text{¢/kWh}$ ). The residential factor with the proposed ECRC revenue reduction would be 1.621  $\text{¢/kWh}$ . This proposal would reduce a 1,000 kWh residential bill by \$3.71. Gulf stated the allocation method used to calculate this reduction is consistent with the cost of service methodology approved in the Company's last rate case.

Staff recommends that the Commission approve tariff sheet No. 6.36 to revise the currently-approved 2021 ECRC factors and tariff for the period March through December 2021 to reflect the early retirement of the coal generation assets and capability at Plant Crist Units 4-7. The proposed tariff, as shown in Attachment A to the recommendation, should go into effect March 2, 2021.

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

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Stiller)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.



Section No. VI  
Twenty-Ninth Revised Sheet No. 6.36  
Canceling Twenty-Eighth Revised Sheet No. 6.36

## RATE SCHEDULE ECR ENVIRONMENTAL COST RECOVERY CLAUSE

PAGE 1 of 1	EFFECTIVE DATE March 1, 2021
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**APPLICABILITY:**

Applicable as a modification of each filed rate of the Company in which reference is made to Rate ECR.

**DETERMINATION OF ENVIRONMENTAL COST RECOVERY FACTOR:**

The purpose of the Environmental Cost Recovery Clause is the recovery of costs associated with certain environmental investment and expenses. Costs are classified and allocated to the rate classes using an allocation method consistent with the cost of service methodology approved in the Company's last rate case.

The monthly charge of each rate schedule shall be increased or decreased \$0.00001 (1/100 of a mill) per kilowatt-hour for each \$0.00001 (1/100 of a mill) increase or decrease in projected environmental costs per kilowatt-hour. The total cost recovery factor per kWh applicable to energy delivered will include, when applicable, a true-up, with interest, to prior actual costs, and will be determined in accordance with the formula and procedures specified by the Florida Public Service Commission. Such increase or decrease shall be adjusted for taxes which are based upon revenues.

Environmental Cost Recovery Clause factors are shown below:

<u>Rate Schedule</u>	<u>Environmental Cost Recovery Factor ¢/kWh</u>
RS, RSVP	1.621
GS	1.649
GSD, GSDT, GSTOU	1.322
LP, LPT	1.157
PX, PXT, RTP, SBS	1.138
OS-I/II	0.354
OS-III	1.043

Service under this rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

**ISSUED BY:** Tiffany Cohen



Section No. VI  
~~Twenty-Eighth~~Twenty-Ninth Revised Sheet No. 6.36  
 Canceling ~~Twenty-Seventh~~Twenty-Eighth Revised Sheet No. 6.36

## RATE SCHEDULE ECR ENVIRONMENTAL COST RECOVERY CLAUSE

PAGE 1 of 1	EFFECTIVE DATE <u>January-March 1, 2021</u>
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**APPLICABILITY:**

Applicable as a modification of each filed rate of the Company in which reference is made to Rate ECR.

**DETERMINATION OF ENVIRONMENTAL COST RECOVERY FACTOR:**

The purpose of the Environmental Cost Recovery Clause is the recovery of costs associated with certain environmental investment and expenses. Costs are classified and allocated to the rate classes using an allocation method consistent with the cost of service methodology approved in the Company's last rate case.

The monthly charge of each rate schedule shall be increased or decreased \$0.00001 (1/100 of a mill) per kilowatt-hour for each \$0.00001 (1/100 of a mill) increase or decrease in projected environmental costs per kilowatt-hour. The total cost recovery factor per kWh applicable to energy delivered will include, when applicable, a true-up, with interest, to prior actual costs, and will be determined in accordance with the formula and procedures specified by the Florida Public Service Commission. Such increase or decrease shall be adjusted for taxes which are based upon revenues.

Environmental Cost Recovery Clause factors are shown below:

<u>Rate Schedule</u>	<u>Environmental Cost Recovery Factor ¢/kWh</u>
RS, RSVP	<del>1.992</del> <u>1.621</u>
GS	<del>2.025</del> <u>1.649</u>
GSD, GSDT, GSTOU	<del>1.628</del> <u>1.322</u>
LP, LPT	<del>1.428</del> <u>1.157</u>
PX, PXT, RTP, SBS	<del>1.405</del> <u>1.138</u>
OS-I/II	<del>0.446</del> <u>0.354</u>
OS-III	<del>1.290</del> <u>1.043</u>

Service under this rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

**ISSUED BY:** Tiffany Cohen

# Item 12

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:** February 18, 2021

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

**FROM:** Division of Accounting and Finance (Norris, Sowards) **ALM**  
Office of the General Counsel (Lherisson, J. Crawford) **JSC**

**RE:** Docket No. 20190170-WS – Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action – Reconsideration requested on the Commission’s own motion – Participation is at the Commission’s discretion

**COMMISSIONERS ASSIGNED:** Clark, Graham, Brown, Fay

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

On August 29, 2018, Royal Waterworks, Inc. (Royal or Utility) filed an application for transfer of Certificate Nos. 259-W and 199-S from Royal Utility Company. The Commission approved the transfer in Order No. PSC-2020-0458-PAA-WS, issued November 23, 2020, and consummated by Order No. PSC-2020-0506-CO-WS, issued December 18, 2020. Following the issuance of the Consummating Order, an error was discovered regarding the calculation of the utility plant in service (UPIS) balances and the resulting net book value (NBV).

This recommendation addresses whether reconsideration is appropriate to correct the UPIS balances and the resulting NBV. The Commission has jurisdiction pursuant to Sections 367.071, 367.091, and 367.121, Florida Statutes.

## Discussion of Issues

**Issue 1:** Should the Commission reconsider its decision made in Order No. PSC-2020-0458-PAA-WS, regarding the utility plant in service balances and the calculation of net book value?

**Recommendation:** Yes. The Commission should reconsider its decision with respect to the UPIS balances and the calculation of NBV. The correct UPIS balances of the water and wastewater systems are \$3,313,569 and \$1,873,194, respectively, as of July 1, 2019. The NBV of the water and wastewater systems are \$867,332 and \$467,593, respectively, as of July 1, 2019. Royal should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the 2020 Annual Report when filed. (Sewards)

### **Staff Analysis:**

#### Standard of Review

The appropriate standard of review for reconsideration is whether a point of fact or law was overlooked or that the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981).

The doctrine of administrative finality provides that there must be a terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein. A decision, once final, may only be modified if there is a significant change in circumstances or if modification is required in the public interest. *Florida Power Corp. v. Garcia*, 780 So. 2d 34 (Fla. 2001); *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966).

However, the Florida Supreme Court has also found that the Commission has the inherent power and the statutory duty to correct errors in its orders to protect the interests of the public. *Reedy Creek Utilities Co. v. FPSC*, 418 So. 2d 249 (Fla. 1982). For example, in *Reedy Creek*, the Court affirmed that the Commission correctly amended an erroneous order, two and half months after its issuance, where the appellant "did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence." *Reedy Creek*, 418 So.2d at 254; *see also Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966) ("We have no doubt that such powers [to regulate public utilities] may, in proper instances, be exercised on the initiative of the commission.").

#### Analysis

By Order No. PSC-2020-0458-PAA-WS, issued November 23, 2020, the Commission approved the transfer of the water and wastewater certificates to Royal. After the Consummating Order had been issued, staff was notified by the Utility that it was unable to reconcile the Commission ordered adjustments to the total UPIS balances. Upon further review, staff discovered a calculation error was made in its October 22, 2020 recommendation, resulting in an overstated UPIS balance, as well as an overstated NBV.

The Commission approved water and wastewater UPIS balances of \$3,389,692 and \$1,944,996, respectively. However, staff inadvertently included the water and wastewater land balances of \$76,123 and \$71,802, respectively, in its calculation of UPIS. As a result, the UPIS balances were overstated. Correction of this calculation error results in water and wastewater UPIS balances of \$3,313,569 and \$1,873,194, respectively. The correct UPIS balances are shown in Schedule No. 1, with the correct amounts bolded and highlighted.

The Commission approved a water and wastewater system NBV of \$943,455 and \$539,395, respectively. Staff's calculation of NBV is comprised of UPIS, land and land rights, accumulated depreciation, contributions in aid of construction (CIAC), and accumulated amortization of CIAC. As discussed above, the land balances were inadvertently included in the UPIS balances, as well as the land and land rights balances. This resulted in a doubling of the land amounts and an overstatement of the NBVs of both the water and wastewater systems. Correction of this calculation error results in a water and wastewater system NBV of \$867,332 and \$467,593, respectively. The correct NBV shown in Schedule No. 1, with the correct amounts bolded and highlighted.

Staff notes that the changes in the UPIS balances and NBV have no effect on the Commission's other decisions reached in Order No. PSC-2020-0458-PAA-WS.

### **Conclusion**

Staff recommends that the Commission should reconsider on its own motion its vote at the November 3, 2020 Agenda Conference, with respect to the UPIS balances and the calculation of NBV. Staff recommends that the correct UPIS balances of the water and wastewater systems are \$3,313,569 and \$1,873,194, respectively, as of July 1, 2019. The NBV of the water and wastewater systems are \$867,332 and \$467,593, respectively, as of July 1, 2019. Royal should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the 2020 Annual Report when filed.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively after the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision. (Lherisson)

**Staff Analysis:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively after the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision.

**Royal Waterworks, Inc.**  
**Schedule of Net Book Value as of July 1, 2019**

**Water System**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>	<u>Staff Recommended</u>
Utility Plant In Service	\$3,187,937	<b>\$125,632</b>	<b>\$3,313,569</b>
Land & Land Rights	76,123	0	76,123
Accumulated Depreciation	(2,437,158)	(49,202)	(2,522,360)
CIAC	(571,643)	0	(571,643)
Amortization of CIAC	<u>579,047</u>	<u>(7,404)</u>	<u>571,643</u>
Total	<u>\$798,306</u>	<b><u>\$69,026</u></b>	<b><u>\$867,332</u></b>

**Wastewater System**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>	<u>Staff Recommended</u>
Utility Plant In Service	\$1,814,757	<b>\$58,437</b>	<b>\$1,873,194</b>
Land & Land Rights	71,802	0	71,802
Accumulated Depreciation	(1,471,604)	(5,799)	(1,477,403)
CIAC	(238,921)	0	(238,921)
Amortization of CIAC	<u>206,294</u>	<u>32,627</u>	<u>238,921</u>
Total	<u>\$382,328</u>	<b><u>\$85,265</u></b>	<b><u>\$467,593</u></b>

**Explanation of Staff's Recommended Adjustments  
To Net Book Value as of July 1, 2019**

<b><u>Explanation</u></b>	<b><u>Water</u></b>	<b><u>Wastewater</u></b>
Utility Plant in Service To reflect the appropriate amount of utility plant in service	<b><u>\$125,632</u></b>	<b><u>\$58,437</u></b>
Accumulated Depreciation To reflect the appropriate amount of accumulated depreciation	<b><u>(\$49,202)</u></b>	<b><u>(\$5,799)</u></b>
Amortization of CIAC To reflect the appropriate amount of amortization of CIAC	<b><u>(\$7,404)</u></b>	<b><u>\$32,627</u></b>
Total Adjustments	<b><u>\$69,026</u></b>	<b><u>\$85,265</u></b>

**Royal Waterworks, Inc.**  
**Schedule of Staff's Recommended Account Balances as of July 1, 2019**  
**Water System**

<b>Account</b>			<b>UPIS</b>	<b>Accumulated</b>
<b><u>No.</u></b>	<b><u>Description</u></b>			<b><u>Depreciation</u></b>
302	Franchises		\$713	(\$494)
304	Structure and Improvements		542,157	(404,877)
307	Wells and Springs		23,683	(23,683)
309	Supply Mains		48,267	(48,267)
310	Power Generation Equipment		11,948	(7,169)
311	Pumping Equipment		735,632	(728,171)
320	Water Treatment Equipment		224,484	(55,242)
330	Distribution Reservoirs and Standpipes		9,100	(9,100)
331	Transmission and Distribution Mains		974,103	(569,917)
333	Services		168,098	(131,089)
334	Meters and Meter Installations		335,937	(339,645)
335	Hydrants		68,439	(47,249)
339	Other Plant / Misc Equipment		60,527	(46,978)
340	Office Furniture and Equipment		11,693	(11,692)
341	Transportation Equipment		13,029	(13,029)
343	Tools, Shop and Garage Equipment		10,370	(10,370)
344	Laboratory Equipment		5,856	(5,856)
347	Misc Equipment		25,650	(25,650)
348	Other Tangible Plant		<u>43,883</u>	<u>(43,883)</u>
	Total		<b><u>\$3,313,569</u></b>	<b><u>\$2,522,360</u></b>

**Royal Waterworks, Inc.**  
**Schedule of Staff's Recommended Account Balances as of July 1, 2019**  
**Wastewater System**

<b>Account</b>			<b>Accumulated</b>
<b><u>No.</u></b>	<b><u>Description</u></b>	<b><u>UPIS</u></b>	<b><u>Depreciation</u></b>
354	Structure and Improvements	\$145,709	\$103,668
355	Power Generation Equipment	37,368	18,987
360	Collection Sewers-Force	120,328	120,328
361	Collection Sewers-Gravity	1,007,571	728,031
364	Flow Measuring Devices	81,227	81,227
371	Pumping Equipment	273,926	221,187
389	Other Plant/Misc Equipment	121,758	121,758
390	Office Furniture & Equipment	11,276	11,276
391	Transportation Equipment	13,029	13,029
393	Tools, Shop, and Garage Equipment	22,947	22,947
394	Laboratory Equipment	26,858	23,768
398	Other Tangible Plant	11,197	11,197
	Total	<b><u>\$1,873,194</u></b>	<b><u>\$1,477,403</u></b>