

WATER & WASTEWATER INDUSTRY QUARTERLY REPORT

Volume 1, Issue 2

Keeping You Informed About Florida

December 2010

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FPSC Adopts New Acquisition Adjustment Policy

By: Terry Deason

At its September 14, 2010, Agenda Conference, the Florida Public Service Commission voted to initiate a rulemaking proceeding and propose a rule which revises its long-standing policy on the treatment of acquisition adjustments. While maintaining its desire to continue its policy of encouraging the acquisition of smaller and often higher-cost systems, by larger and well-managed companies with greater access to capital, the Commission proposed adoption of a revised rule to avoid “unintended consequences of negative acquisition adjustments in certain circumstances where inequities would result to the ratepayers.”

By **Order PSC-10-0668-FOF-WS**, issued November 3, 2010, the Commission adopted **Rule 25-30.0371, F.A.C.**, making several changes to its policy on negative acquisition adjustments. The Commission’s previous policy established two distinct paths to determine negative acquisition adjustments: contested and uncontested. If a negative acquisition adjustment was contested, the contesting party had the burden to demonstrate extraordinary circumstances. If the negative acquisition adjustment was not contested, the previous rule provided for no recognition of negative acquisition adjustments where purchase price was greater than 80% net book value. For negative acquisition adjustments where purchase price was less than 80% of net book value, there was recognition of the amount of the difference in excess of 20% of net book value. However, the negative acquisition adjustment was not recorded on the utility’s books and was not used to set rates, unless the purchasing utility filed for a rate

increase within five years, which was the amortization period prescribed by the previous rule.

The Commission’s newly adopted rule became effective on November 22, 2010. It does away with the contested and uncontested paths for negative acquisition adjustments. Instead, the new rule declares that there will be no recognition of negative acquisition adjustments where purchase price is greater than 80% of net book value. Where purchase price is less than 80% of net book value, the new rule distinguishes between situations where purchase price is greater or lower than 50% of net book value. Where the purchase price is less than 80% of net book value but higher than 50% of net book value, the new rule follows the previous rule by not reflecting the negative acquisition adjustment in rates, unless the acquiring utility files for a rate increase during the amortization period. However, the new rule extends the amortization period from 5 to 7 years. Where the purchase price is less than 50% of net book value, the new rule calls for one-half of the negative acquisition adjustment to be amortized over 7 years and the remaining half to be amortized over the remaining life of the acquired assets. This approach will almost certainly require that at least a portion of the negative acquisition adjustment will be recognized in rates at some point before it is fully amortized.

The Commission’s new rule also addresses positive acquisition adjustments and adds a provision requiring the Commission to consider whether the purchase creating the positive acquisition adjustment was made as part of an arms-length transaction.

2011 Florida Legislation begins: Bills of Interest

By: Susan Clark

S 0212 General Bill by Fasano, filed December 3, 2010

Public Service Commission: Revises the standards of conduct for commissioners of the Public Service Commission. Requires that commissioners observe and abide by the Code of Judicial Conduct while conducting docketed proceedings. Prohibits a commissioner or the commissioner’s direct reporting staff from initiating, engaging in, or considering prohibited communications in any proceeding other than an undocketed workshop or an internal affairs meeting, etc. Effective Date July 1, 2011

Citations: 350.041, 350.042, 350.0605, 350.61

Inside this issue:

| | |
|--|---|
| Meet the new Commissioners | 2 |
| Upcoming Events | 2 |
| Summaries of PSC Orders filed since October 2010 | 3 |
| Dockets Opened | 7 |
| Dockets Closed | 8 |

Meet the New Commissioners

By: Susan F. Clark



Eduardo E. Balbis

On November 29, 2010, Governor Charlie Crist named Eduardo E. Balbis to the PSC to fill the vacancy created by former Chair Nancy Argenziano, when she resigned in October 2010. Commissioner Balbis attended and participated in the November 30, 2010, Agenda Conference.



Julie I. Brown

Julie Brown began her four-year appointment as a PSC Commissioner on January 2, 2011. Under Florida law, Governor-elect Rick Scott can recall her appointment. Her appointment is also subject to Senate confirmation.

Commissioner Balbis' interim appointment expired January 1, 2011. His regular four-year appointment began January 2, 2011. Under Florida law, Governor-elect Rick Scott can recall his appointment. His appointment is also subject to Senate confirmation.

Art Graham Elected Chairman

By: Susan F. Clark

Art Graham was elected Chairman of the Florida Public Service Commission on October 26, 2010. Chairman Graham stated in a FPSC News Release: "Serving as the PSC Chairman is an honor, and I'm looking forward to the challenge."



Upcoming Events - Mark Your Calendars

| Date | Event Name | Event | Location |
|--------------|--------------------------------------|--|-----------------|
| 1/28/2011 | 2011 Session Date Reminder | Deadline for submitting requests for drafts of general bills and joint resolutions, including requests for companion bills. | |
| 2/2-3/2011 | 38th Annual PURC Conference | The February event in Gainesville brings together key leaders in industry and academia, primarily from Florida and the Southeast | Gainesville, FL |
| 2/13-17/2011 | 2011 NARUC Winter Committee Meetings | Policy makers from all over the utility spectrum, including energy, telecommunications, and water will attend. | Washington, DC |
| 3/4/2011 | 2011 Session Date Reminder | Deadline for approving final drafts of general bills and joint resolutions, including companion bills. | |
| 3/8/2011 | 2011 Session Date Reminder | Regular Session convenes and deadline for filing bills for introduction. | |

Summaries of PSC Orders filed since October 2010

PSC-10-0602-TRF-WS - Filed 10/1/2010

Order approving Aqua Utilities of Florida's (AUF) petition for reduction in reuse rate available to a single customer, South Seas Island Resort (SSIR) located on Captiva Island in Lee County. Rate was reduced to zero, alternative costs for effluent disposal would outweigh cost of setting reuse rate at zero. PSC staff directed to work with AUF to determine if delivery of effluent to SSIR could be treated as gift-in-kind or in some other manner such that there would be a tax benefit to AUF and its customers.

PSC-10-0606-PAA-WS - Filed 10/4/2010

PAA Order approving (in a staff-assisted rate case) an increase in water and wastewater rates and charges for Palm Valley Utilities located in Seminole County.

PSC-10-0611-PCO-WU - Filed 10/4/2010

Order denying OPC's motion to strike portions of WMSI's rebuttal testimony; Prehearing Officer found testimony did not constitute an impermissible modification of WMSI case and was proper rebuttal.

PSC-10-0613-FOF-SU - Filed 10/11/2010

Order approving North Peninsula's amendment application of Certificate 249-S to extend territory (consisting of a single home) in Volusia County. Utility to charge customer in the added territory the rates and charges contained in its current tariff until authorized to be changed by Commission.

PSC-10-0613A-FOF-SU - Filed 10/13/2010

Amendatory Order amending Order PSC-10-0613-FOF-SU to correct page 2 of 2 of Attachment A.

PSC-10-0620-FOF-WU - Filed 10/18/2010

Order acknowledging transfer of Crystal Springs water territory and facilities to Pasco County and cancellation of Certificate No. 235-W, effective 7/1/10; Crystal Springs required to pay all outstanding regulatory assessment fees from 1/1/10 through 7/1/10 by 3/31/11.

PSC-10-0623-FOF-WU - Filed 10/18/2010

Order acknowledging abandonment of San Sebastian Water LLC's water system and appointment of Brevard County as receiver. Cancels Certificate No. 439-W. Utility is required to pay regulatory assessment fees based on actual revenues through 7/23/10.

PSC 10-0624-FOF-WS - Filed 10/19/2010

Order grants FL-Service Management LLC's motion to dismiss Aquarina Utility Association's petition for order to show cause. Association failed to identify any statute, rule or order of the Commission that FL-Service had violated or identified any facts supporting any violation.

PSC-10-0625-CO-WS - Filed 10/20/2010

Consummating Order makes Order PSC-10-0585-PAA-WS, granting Utilities, Inc. of Florida application for rate increase in Marion, Orange, Pasco, Pinellas and Seminole Counties, effective and final.

PSC-10-0630-NOR-WS - Filed 10/22/2010

Order noticing rulemaking to repeal Rules 25-10.026 (Location and Preservation of Records) and 25-10.111 (Customer Billing), F.A.C.

PSC-10-0637-PCO-WS - Filed 10/25/2010 (also amended order PSC-10-0637A-PCO-WS - Filed 11/2/2010)

Order consolidates for hearing two dockets: Docket Nos. 090445-WS - Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Indian River, Okeechobee and St. Lucie counties by Glove Land Utilities, LLC and 090459-WS—Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Martin and St. Lucie Counties by Bluefield Utilities, LLC. Both applicants are wholly owned subsidiaries of the same company, Evans Utilities Company. Consolidation done in the interest of administrative efficiency and the congruence between issues and parties in the two dockets.

Summaries of PSC Orders filed since October 2010 (continued)

PSC-10-0638-CO-WS - Filed 10/26/2010

Consummating Order for Order PSC-10-0602-TRF-WS (see information on Order PSC-10-0602-TRF-WS).

PSC-10-0655-PAA-WU - Filed 11/1/2010

PAA Order denies O&S's request for a payment plan for past due Regulatory Assessment Fees (RAFs), based on O&S's potential overearnings, and its failure to pay RAFs due in 2010 and to make monthly payments since November 2009 for other past due RAF amounts.

PSC-10-0656-FOF-WU - Filed 11/1/2010

The Order opens a formal overearnings investigation of O&S Water Company, a Class A water company located in Osceola County. FPSC used the current leverage formula to determine the ROE to use in deciding on the amount of earnings that would be subject to refund (\$50,961). The utility was required to provide a letter of credit, surety bond or escrow account to secure the potential refund amount.

PSC-10-0658-PCO-WS - Filed 11/1/2010

Order suspended proposed miscellaneous charges and late payment fees for Pluris Wedgefield, Inc., a Class A Water and Wastewater Company in Orange County. FPSC stated proposed miscellaneous service charges for connection, reconnections and premise visits and late payment fees were similar to those approved by FPSC, but more information in support of the proposed charges and fees was needed.

PSC-10-0668-FOF-WS - Filed 11/3/2010

Notice of adoption of amendments to Rule 25-30.0371, F.A.C., relating to acquisition adjustments - Rule effective 11/22/2010.

PSC-10-0673-FOF-WS - Filed 11/9/2010

Final Order approves transfer of utility from North Fort Myers Utility, Inc., in Charlotte and Lee counties to Florida Governmental Authority and cancels Certificate Nos. 353-W and 247-S, effective 7/29/10.

PSC-10-0679-FOF-WU - Filed 11/15/2010

Final Order acknowledges transfer of Sunshine Utilities to Marion County, as a matter of right and amends Certificate No. 363-W to reflect deleted territory, effective 8/2/10.

PSC-10-0679-A-FPF-WU - Filed 11/16/2010

Amendatory Order amends Order PSC-10-0679-FOF-WU to reflect Sunshine Utilities of Central Florida, Inc. as the name of utility in order title; Order PSC-10-0679-FOF-WU is affirmed and reaffirmed in all other respects.

PSC-10-0680-PAA-SU - Filed 11/15/2010

PAA Order approves the proposed settlement of Mid-County Services in Pinellas County, a subsidiary of Utilities, Inc. The utility agreed to withdraw 2010 index application, refund and reduce rates by the amount of the previously approved 2009 index, and refund any overearnings above the 2009 index amount concurrent with the 2009 index refund.

PSC-10-0681-PAA-WU - Filed 11/15/2010

PAA Order approves in a staff-assisted rate case, an increase in water rates for Pinecrest Ranches Inc., a Class C water company in Polk County.

PSC-10-0682-PAA-WS - Filed 11/15/2010

PAA Order approves a rate increase for Cypress Lakes Utility, a subsidiary of Utilities Inc., providing water and wastewater service in Polk County. Cypress Lakes filed an application for a limited proceeding to address: additions to ratebase for modifications to plant and information customer service and computer systems; taxes other than income, rate case expense and increases in sludge hauling expenses. Commission also granted temporary rates subject to refund in the event of a protest to the PAA Order.

Summaries of PSC Orders filed since October 2010 (continued)**PSC-10-0693-FOF-SU** - Filed 11/18/2010

Final Order approves as a matter of right the transfer of C & H Utilities Inc. in Highland County to the City of Avon Park and cancels Certificate No. 423-S.

PSC-10-0699-TRF-WS - Filed 11/29/2010

Order approves miscellaneous service charges and after-hour charges for water and wastewater operations for Heather Hills Estates Utilities in Manatee County.

PSC-10-0706-FOF-SU - Filed 11/29/2010

Order denies Venture Out at Cudjo Cay, Inc.'s request for a wastewater certificate in Monroe County. Commission found that a not-for-profit condominium association that provides wastewater service solely to members who own or control the condominium is exempt from regulation. Commission is without authority to regulate an exempt entity even if that entity expressly requests Commission regulation.

PSC-10-0707-FOF-WS - Filed 11/29/2010

Order suspends Aqua Utilities Florida's (AUF) proposed final rates and approves interim rates for water/wastewater rates in Alachua, Brevarad, DeSoto, Hardee, Highland, Lake, Lee, Marion, Orange, Palm Beach; approved interim rates for Pasco, Polk, Seminole, Sumter, Volusia, and Washington counties.

PSC-10-0716-PCO-SU - Filed 12/8/2010

Order suspends request by West Lakeland Wastewater Inc., a Class C wastewater utility in Polk County, for approval of a late payment fee.

PSC-10-0719-FOF-SU - Filed 12/9/2010

Final Order acknowledges the transfer of Alafaya's wastewater facilities and territory to the City of Oviedo as a matter of right.

PSC-10-0720-CO-SU - Filed 12/9/2010

Consummating Order makes Order PSC-10-0680-PAA-SU effective and final.

PSC-10-0721-CO-WU - Filed 12/9/2010

Consummating Order makes Order PSC-10-0681-PAA-WU effective and final.

PSC-10-0727-CO-WS - Filed 12/13/2010

Consummating Order makes Order PSC-10-0682-WS, approving a rate increase for water and wastewater customers of Cypress Lakes Utilities in Polk County, effective and final.

PSC-10-0728-PCO-WS - Filed 12/13/2010

Order by Prehearing Officer Commissioner Brise grants the emergency stipulated motion for abatement of Grove Land Utilities, LLC and Bluefield Utilities pending the Commission's decision on Skyland Utilities, LLC's application for original certificates to provide service in Hernando and Pasco Counties (Docket No. 0904780WS).

PSC-10-0731-PCO-WS - Filed 12/15/2010

Order suspends proposed water and wastewater rates of Tradewinds Utilities for water and wastewater customers in Marion County and grants interim rates.

PSC-10-0732-PCO-WS - Filed 12/15/2010

Order grants Hernando County's motion to strike Skyland Utilities LLC's emergency motion to defer; grants Pasco County's response and motion to strike Skyland's emergency motion to defer. Skyland had filed an application for original certificates to operate a water and wastewater utility in Hernando and Pasco and for approval of initial rates and charges, and a Commission hearing on the application had been held. Skyland requested the Commission defer considering staff's recommendation until January 2011 based on the changing membership of the PSC and the panel deciding the case.

Summaries of PSC Orders filed since October 2010 (continued)

Chairman Graham, as prehearing officer, granted the motions to strike based on procedural posture of case and “potential prejudice to other parties resulting from” the pleading.

PSC-10-0735-TRF-WS - Filed 12/20/2010

Order approves application of Pluris Wedgefield approval of miscellaneous fees for water and wastewater customers in Orange County. If tariffs are protested, tariffs remain in effect with all increased charges held subject to refund pending resolution of protest; docket to remain open pending staff verification and approval that the revised sheets and customer notice have been filed.

PSC-10-0739-PCO-WU - Filed 12/20/2010

Order suspends application of CFAT-H20, Inc.’s application for a rate increase for water customers in Marion County and grants interim rate increase subject to refund.

PSC-10-0740-PCO-WU - Filed 12/21/2010

Order establishes procedure for hearing on application of Black Bear Reserve Water Company for a certificate to operate a water utility in Lake County.

PSC-10-0745-CO-WS - Filed 12/27/2010

Consummating Order makes Order PSC-10-0699-WS, approving miscellaneous service charges and after-hour charges for Heather Hills Estates Utilities, effective and final; docket to remain open.

PSC-10-0749-FOF-WS - Filed 12/28/1010

Order Notes repeal of Rules 25-10.026, F.A.C., relating to Location and Preservation of Records and 25-10.111, F.A.C., relating to Customer Billing, effective January 17, 2011.



FPSC W&W Dockets Opened (since October 2010)



100413-SU—Docketed: 10/1/2010

Request for approval of tariff amendment to include a late fee of \$14.00 in Polk County by West Lakeland Wastewater.

100423-SU—Docketed: 10/12/2010

Application for amendment of Certificate No. 189-S to add territory in Seminole County by Sanlando Utilities Corporation and amendment of Certificate No. 232-S to delete terri-

100426-WS—Docketed: 10/22/2010

Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.

100439-WS—Docketed: 11/12/2010

Application for approval of revised service availability policy and charges by Rainbow Springs Utilities, L.C.

100440-WU—Docketed: 11/15/2010

Application for transfer of water facilities in Osceola County from O & S Water Company, Inc., to Tohopekaliga Water Authority and cancellation of Certificate No. 510-W.

100442-SU—Docketed: 11/16/2010

Application for certificate to provide wastewater service in Brevard County by TKCB.

100446-SU—Docketed: 11/22/2010

Settlement proposal for possible overearnings by Tierra Verde Utilities, Inc. in Pinellas County.

100452-SU—Docketed: 12/1/2010

Application for transfer of majority organizational control of Hunters Ridge Utility Co. of Lee County to Hunters Ridge Community Association, Inc., and request for cancellation of Certificate No. 472-S.

100453-SU—Docketed: 12/2/2010

Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

100456-WS—Docketed: 12/10/2010

Application for transfer of water and wastewater facilities to North Sumter County Utility Dependent District, and cancellation of Certificate Nos. 618-W and 532-S, by North Sumter Utility Company, L.L.C.

100471-SU—Docketed: 12/22/2010

Application for staff-assisted rate case in Marion County by S & L Utilities, Inc.

100472-WS—Docketed: 12/28/2010

Application for staff-assisted rate case in Manatee County by Heather Hills Estates Utilities LLC.

FPSC W&W Dockets Closed (since October 2010)

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| <p>090182-SU—Docketed: 4/10/2009—Date Closed: 11/15/2010 Application for increase in wastewater rates in Pasco County by Ni Florida, LLC.</p> |
| <p>090381-SU—Docketed: 7/22/2009—Date Closed: 12/9/2010 Application for increase in wastewater rates in Seminole County by Utilities Inc. of Longwood.</p> |
| <p>090366-WU—Docketed: 7/14/2009—Date Closed: 10/15/2010 Application for certificate to operate water utility in Marion County by Arma Water Service, LLC.</p> |
| <p>090392-WS—Docketed: 07/29/2009—Date Closed: 12/10/2010 Application for increase in water and wastewater rates in Lake County by Utilities Inc. of Pennbrooke.</p> |
| <p>100038-WU—Docketed: 1/20/2010—Date Closed: 9/28/2010 Application to implement a backflow maintenance program by Sunny Shores Water Co.</p> |
| <p>100049-WS—Docketed: 1/22/2010—Date Closed: 10/26/2010 Petition for approval of change in reuse rate by Aqua Utilities Florida, Inc.</p> |
| <p>100317-SU—Docketed: 6/7/2010—Date Closed: 10/1 1/2010 Application for amendment of Certificate No. 249-S to extend territory in Volusia County by North Peninsula Utilities Corp.</p> |
| <p>100334-WU—Docketed: 6/18/2010—Date Closed: 10/18/2010 Notice of abandonment of water system by San Sebastian Water, LLC in Brevard County, FL.</p> |
| <p>100338-WS—Docketed: 6/25/2010—Date Closed: 11/3/2010 Initiation of rulemaking to amend Rule 25-30.037, F.A.C., pertaining to Acquisition Adjustments for water and wastewater utilities.</p> |
| <p>100366-WU—Docketed: 7/26/2010—Date Closed: 10/18/2010 Joint application for acknowledgement of sale of land and facilities located in Pasco and Hillsborough Counties, Florida to Pasco County, and cancellation of Certificate No. 235-W, by C. S. Water Company, Inc.</p> |
| <p>100377-WU—Docketed: 8/17/2010—Date Closed: 11/15/2010 Application for transfer of water facilities to Marion County, and amendment of Certificate No. 363-W, by Sunshine Utilities of Central Florida, Inc.</p> |
| <p>100380-WS—Docketed 8/23/2010—Date Closed: 12/28/2010 Proposed repeal of Rule 25-10.026, F.A.C., Location and Preservation of Records; and Rule 25-10.111, F.A.C., Customer Billing.</p> |
| <p>100387-SU—Docketed 8/27/2010—Date Closed: 11/18/2010 Application for transfer of wastewater facilities to City of Avon Park, In Highlands County, and cancellation of Certificate No. 423-S, by C & H Utilities, Inc.</p> |
| <p>100388-WS—Docketed: 8/27/2010—Date Closed: 11/9/2010 Application for transfer of water and wastewater facilities to Florida Governmental Utility Authority, and cancellation of Certificate Nos. 353-W and 247-S, by North Fort Myers Utility, Inc. in Lee County.</p> |
| <p>100402-WS—Docketed: 9/21/2010—Date Closed: 12/9/2010 Application for transfer of wastewater facilities in Seminole County from Alfaya Utilities, Inc. to City of Oviedo and cancellation of Certificate No. 379-S.</p> |



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Attorneys & Counselors at Law

Experience. Service. Success.

Radey Thomas Yon & Clark, P.A. believes that service to clients must be efficient and dedicated. Our location in Tallahassee, Florida, provides us the opportunity to be at the heart of the regulatory, legislative, and judicial arenas. The Water & Wastewater Industry Quarterly Report is provided to our clients and friends in a condensed summary format and should not be relied upon as a complete report nor be considered legal advice or opinion.

Congratulations to some of our own



Donna E. Blanton has been named the Best Lawyers' 2011 Tallahassee Administrative Lawyer of the Year. Only a single lawyer in each specialty in each community is being honored as the "Lawyer of the Year." Best Lawyers is the oldest and most respected peer-review publication in the legal profession.

Harry O. Thomas and **David A. Yon**, also of the Radey Thomas Yon & Clark family, were selected for inclusion in the 2011 edition of The Best Lawyers in America in the practice area of Insurance Law.



Harry O. Thomas



David A. Yon

Trivia

By: Pam Keillor

Frozen water is 9% lighter than water, which is why ice floats on water.

www.lenntech.com/water-trivia-facts

