

# WATER & WASTEWATER INDUSTRY

## QUARTERLY REPORT

Volume 4, Issue 1

Keeping You Informed About Florida

March 2013

**RADEY | THOMAS | YON | CLARK**  
Attorneys & Counselors at Law

### New PSC Rulemaking

By: Susan Clark

On February 28, 2013, the staff of the Florida Public Service Commission (FPSC) held a second rule development workshop for revisions to rules affecting water and wastewater utilities (Docket No. 120246-WS). On March 28, 2013, the staff issued a recommendation proposing amendments to Rule 25-30.335, F.A.C., *Customer Billing*, Rule 25-30.350, F.A.C., *Backbilling*, and the adoption of Rule 25-30.351, F.A.C., *Unauthorized Use*. The amendments to 25-30.335: authorize an estimated bill if the utility is unable to obtain an actual meter read; require that the bill indicate it is an estimated bill; require the utility to timely correct problems within its control causing the need for an estimated bill; prohibit the use of an estimated bill more than four times on a 12-month period for circumstances within the utility's control; require the utility provide a written explanation upon the issuance of a second estimated bill within a six-month period together with utility contact information and the FPSC's toll-free complaint number; and require the utility maintain records for two years regarding estimated bills.

[continued on next page]



Upcoming Events - Mark Your Calendars

### Trivia

By Pam Keillor

A single tree will give off 70 gallons of water per day in evaporation.

<http://www.lenntech.com/water-trivia-facts.htm>

Date	Event Name	Event	Location
4-3-13	FPSC Workshop	<i>Undocketed - Annual Hurricane Preparedness Workshop</i>	FPSC-Room 148
4-24-13	Customer Meeting	<i>Docket No. 120270-SU - Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.</i>	Lakeland
4-25-13	Customer Meeting	<i>Docket No. 120269-WU - Application for staff-assisted rate case in Polk County by Pinecrest Utilities, LLC.</i>	Bartow
5-3-13	Session Ends		



**"The Study Committee was established by Chapter 2012-187, Laws of Florida."**



Commissioner Julie Brown

## New PSC Rulemaking, cont'd

The amendments to Rule 25-30.350 retitle the rule "Underbillings and Overbillings for Water and Wastewater Service" and provide the method for recalculating a bill when a customer is un-

derbilled and for refund of the overcharge to a customer in the event of overbilling and allow a customer to elect a one-time refund (if the refund is in excess of \$20) or as a credit to future billings.

Proposed new rule 25-30.351 addresses billing a customer for the unauthorized or fraudulent use of service or meter tampering.

### Report from Study Committee on Investor-Owned Water & Wastewater Systems By: Susan Clark

On February 12, 2013, FPSC Commissioner Julie Brown made a presentation to the Energy & Utilities Subcommittee of the Florida House of Representatives on the Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee). The Study Committee was established by Chapter 2012-187, Laws of Florida, enacted in the 2012 legislative session. She described the recommendations of the Study Committee regarding each issue identified in the legislation. Those issues and recommendations were:

**Issue:**

- ◆ Inability of small utilities to take advantage of quantity discounts for equipment and materials.

**Recommendations:**

- ◆ That the Legislature direct the Department of Management Services (DMS) to authorize investor-owned utilities as eligible users under state purchasing contracts.
- ◆ That the Florida Rural Water Association develop an online exchange for new and/or used equipment, materials, and supplies.

**Issue:**

- ◆ Inability of small utilities to attract capital at reasonable cost to fund aging infrastructure replacement and to comply with water quality standards.

**Recommendations:**

- ◆ That the Legislature open the availability of the State Revolving Fund (SRF) to all investor-owned water utilities; (requires legislative change);
- ◆ That DEP investigate possibility of streamlining its process for the SRF.

- ◆ That the Legislature amend section 367.081(4)(b), F.S., and the FPSC amend its rules to allow pass-through of loan service fees related to loans for infrastructure needs for existing customers.

- ◆ That the Legislature send a Memorial to Congress encouraging action to relax restrictions on tax-exempt private activity bonds

- ◆ (PAB) for water and wastewater infrastructure projects, and to allow investor-owned wastewater utilities access to wastewater loan programs.

- ◆ Increase the allocation of PABs in Florida to increase allocation of water and wastewater projects.

**Issue:**

- ◆ Small investor-owned water and wastewater utilities do not have tax exemptions or incentives that government-owned or non-profit utilities currently enjoy.

**Recommendations:**

- ◆ Extend ad valorem and property tax exemptions to investor-owned water and wastewater utilities.
- ◆ Extend sales tax exemptions to investor-owned water and wastewater utilities.

**Issue:**

- ◆ Impact on customer rates when utility purchases an existing water or wastewater utility system. Rates do

**Report from Study Committee on Investor-Owned Water & Wastewater Systems, cont'd**  
**By: Susan Clark**

not change at the time of transfer, but can increase at the next rate proceeding.

**Recommendation:**

After extensive discussion regarding rate impacts, acquisition adjustments, customer notification of needed improvements and preference to local governments, the Committee voted to recommend no change to current law.

**Issue:**

- ♦ Since many resellers are exempt from regulation and cannot recover the cost of meter reading or billing, they are often reluctant to install meters to measure service.

**Recommendation:**

- ♦ That FPSC-exempt resellers be allowed to charge up to 9 percent to recover meter reader and billing costs, and still retain exempt status.

An issue additional to those identified in the legislation for which a recommendation was made related to financing for small water and wastewater utility systems. The issue and recommendation were:

Availability of affordable and accessible financing is an ongoing issue for small systems.

**Recommendation:**

- ♦ Statutory authorization be given for FPSC rulemaking to create infrastructure repair and replacement reserve account. FPSC would establish criteria for a reserve fund account.



**"Committee  
considered  
seven proposals  
for changes to  
the current  
process."**

READ UP-TO AND MAIL PROMPTLY

DETACH HERE

Water Meter Reading

DIGITAL READ

Electric Meter Reading

DIGITAL READ

Please mark the reading on the polar diagram just as it appears on the meter and mail in once. An estimated bill will be rendered if not returned promptly. Grand Island Utilities Department

Account No. \_\_\_\_\_  
Name \_\_\_\_\_  
Account No. \_\_\_\_\_  
Date \_\_\_\_\_

RADEY | THOMAS | YON | CLARK  
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## **Summaries of PSC Orders filed since January 2013**

**By Susan F. Clark**

**PSC-12-0443A-PAA-WS—Date Filed: 2/6/2013**

Amendatory Order replacing Schedule No. 3 on page 15 with Revised Schedule No. 3 to reflect rates are monthly rates, not quarterly rates.

**PSC-13-0005-PCO-WS—Date Filed: 1/2/2013**

Order establishes 2013 docket number for the annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

**PSC-13-0006-PCO-WS—Date Filed: 1/2/2013**

Order establishes 2013 docket number for annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

**PSC-13-0019-PHO-WU—Date Filed: 1/11/2013**

Prehearing Order for the rate increase request by Water Management Services, Inc. (WMSI) for water service in Franklin County.

**PSC-13-0024-CO-WS—Date Filed: 1/14/2013**

Consummating Order makes effective and final Order No. PSC-12-0662-TRF-WS approving the request of Aqua Utilities of Florida (AUF) for residential wastewater only rates for rate band one and for rate band two.

**PSC-13-0032-PCO-WU—Date Filed: 1/15/2013**

Order denies Water Management Services, Inc.'s (WMSI) Motion for Protective Order based on WMSI's failure to request confidential treatment of the documents at the time the documents were provided to PSC staff.

**PSC-13-0033-PCO-WU—Date Filed: 1/15/2013**

Order grants Water Management Services, Inc.'s (WMSI) motion for temporary protective order for certain documents. The Order denies the motion for certain documents that had previously been provided without a timely request for confidentiality.

**PSC-13-0041-CO-WS—Date Filed: 1/22/2013**

Consummating Order makes effective and final Order No. PSC-12-0667-PAA-WS granting, in part, the application by Utilities, Inc. of Pennbrooke for an increase in water and wastewater rates for service in Lake County.

**PSC-13-0044-PAA-WU—Date Filed: 1/24/2013**

Proposed Agency Action Order (PAA) approving a rate increase in a staff-assisted rate case (SARC) for Joyland Water System (JWS) for water service in Gadsden County. There had been no prior rate case for this utility. The quality of service was found to be satisfactory. The water treatment plant and distribution system were found to be 100% used and useful (U&U). Adjustments to rate base were made, including an imputation for contributions-in-aid-of-construction (CIAC). The return on equity (ROE) was set at 8.74% based on the Commission-approved leverage formula; however, an Operating Ratio Margin of 10% was used to set rates for the utility. Adjustments were made to operating expenses. A three-tier inclining block rate structure was approved for residential customers and for the one non-residential customer the base facility charge (BFC)/gallonage charge rate structure was continued. A repression adjustment was applied to water consumption over 5,000 gallons per month and the Utility was required to file reports on consumption billed and revenues billed on a monthly basis. The revenue allocation to base facility charges for residential and non residential classes was set at \$30%. A late payment charge of \$5.25 was approved.

**PSC-13-0045-PCO-WU—Date Filed: 1/24/2013**

Order denies Water Management Services, Inc.'s (WMSI) Motion for Order Prohibiting Interference with Financing by the Office of Public Counsel (OPC). The Motion was denied by the Prehearing Officer (Brown) based on a finding that there was no statutory authority to issue injunctions against non-regulated entities.

## **Summaries of PSC Orders filed since January 2013 (continued)**

### **PSC-13-0064-PCO-WU—Date Filed: 1/29/2013**

Order suspends Alturas' proposed tariff amendment to charge customers who opt to pay their water bill by debit or credit card.

### **PSC-13-0065-PCO-WU—Date Filed: 1/29/2013**

Order suspends Sunrise's proposed tariff amendment to charge customers who opt to pay their water bill by debit or credit card.

### **PSC-13-0066-PCO-WS—Date Filed: 1/29/2013**

Order suspends Four Points' proposed tariff amendment to charge customers who opt to pay their water bill by debit or credit card.

### **PSC-13-0083-PAA-WS—Date Filed: 2/13/2013**

Proposed Agency Action (PAA) Order establishes the 2013 price index for water and wastewater utilities at 1.63 percent. Protests and prefiled direct testimony were due February 27, 2013.

### **PSC-13-0085-PAA-WS—Date Filed: 2/14/2013**

Proposed Agency Action (PAA) Order approving an increase in rates and charges for Sanlando Utilities Corporation (SUC) for water and wastewater service in Seminole County. The quality of service was found to be satisfactory. Sanlando agreed to several adjustments to rate base and net operating expense based on staff's audit report. Adjustments were also made to the allocation of costs to SUC for the Phoenix Project (the computer system implemented by the parent company, Utilities, Inc.) However, if there is an upward or downward adjustment to the approved revenue requirement for the Phoenix Project as a result of the generic docket (Docket No. 120161) relating to the Phoenix Project, SUC is authorized to create a regulatory asset or liability and to accrue interest until SUC's next rate proceeding. The water and wastewater treatment plants, the ground storage tanks, the water distribution and wastewater collection systems and the reuse facilities were all found to be 100% used and useful (U&U). Based on the existing Commission-approved leverage formula the return on equity (ROE), was set at 10.60 percent and the weighted cost of capital was set at 8.16 percent. "Given the tumultuous state of the economy" the SUC's salary expense was decreased. Rate case expense was also decreased by \$65,491. A revenue increase of 13.53 percent for water service and 34.71 percent for wastewater was approved. The inclining block rate structure for residential water service was continued. The base facilities charge (BFC) uniform gallon charge was continued for non-residential water service (\$625,000 in costs related to the reuse system were allocated to water customers through the gallonage charge). For wastewater service the current BFC/gallonage charge rate structure for all classes of service was continued, with the BFC set to recover 50% of the revenue requirement. A reparation adjustment was made to water revenues and SUC was required to file reports on consumption billed and revenues billed on a monthly basis. No refund to interim rates was required.

### **PSC-13-0086-PCO-SU—Date Filed: 2/14/2013**

Order suspends West Lakeland's proposed tariff amendment to charge customers who opt to pay their water bill by debit or credit card.

### **PSC-13-0087-PCO-WU—Date Filed: 2/14/2013**

Order suspends Pinecrest's proposed tariff amendment to charge customers who opt to pay their water bill by debit or credit card.

### **PSC-13-0092-CO-WU—Date Filed: 2/19/2013**

Consummating Order makes effective final Order PSC-13-0044-PAA-WU approving a rate increase for Joyland Water Systems (JWS) for water service in Gadsden County.

### **PSC-13-0097-PSC-WS—Date Filed: 2/21/2013**

Order grants Utilities, Inc. (UI) and OPC's joint motion to extend informal investigatory period in the generic docket relating to UI's financial accounting and customer service computer system (the Phoenix Project). The investigatory period is extended through April 30, 2013.

### **PSC-13-0105-FOF-WS—Date Filed: 2/28/2013**

Order approves the joint application of Aqua Utilities of Florida, Inc.'s (AUF) and YES Companies LLC's for expedited approval of

## **Summaries of PSC Orders filed since January 2013 (continued)**

the transfer of AUF's water and wastewater facilities serving the Arrendondo Farms Mobile Home Park in Alachua County to YES companies, an exempt entity under s. 367.022(5), F.S. Certificate No. 479-S is cancelled and Certificate No. 549-W is amended to delete transferred territory.

### **PSC-13-0117-CO-WS—Date Filed: 3/11/2013**

Order makes effective and final Order PSC-13-0085-PAA-WS approving an increase in rates and charges for Sanlando Utilities Corporation for water and wastewater service in Seminole County.

### **PSC-13-0119-CO-WS—Date Filed: 3/11/2013**

Order makes effective and final Order PSC-13-0083-PAA-WS establishing the 2013 price index for water and wastewater utilities at 1.63 percent.

### **PSC-13-0121-PAA-WS—Date Filed: 3/11/2013**

Proposed Agency Action Order approves the transfer of water and wastewater certificates (Certificate Nos. 606-W and 522-S) from Plantation Landings to GCP Plantation Landings LLC (GCP), for water and wastewater service in Polk County. The order also establishes net book value for the transferred assets; a positive acquisition adjustment was not requested and no positive acquisition adjustment was made.

### **PSC-13-0122-FOF-WU—Date Filed: 3/12/2013**

Order approves amendment to Raintree Harbor Utilities' (RHU) Certificate No. 539-W to add adjacent parcel of land in Lake County where water service is not otherwise available to RHU's service territory.

### **PSC-13-0126-PAA-SU—Date Filed: 3/14/2013**

Proposed Agency Action (PAA) Order approving an increase in rates and charges for TKCB Utility (TKCB or Utility) for wastewater service in Brevard County in a staff-assisted rate case (SARC). The quality of product, operating conditions of the facilities and the Utility's attempt to address customer service were found to be satisfactory. The wastewater treatment plant and collection system were found to be 100% used and useful. A rate base had not previously been established for this utility. Several adjustments were made to operating expenses. The return on equity (ROE) was set at 8.74 percent based on the Commission-approved leverage formula; however, an operating ratio margin of 10 percent of O&M expense was used for determining revenue requirements. The rate structure of a base facilities charge (BFC) and gallonage charge was continued; however, the gallonage cap of 12,000 gallons was changed to 6,000 gallons. Although the Utility has no non-residential customers a rate for such customers was established.

### **PSC-13-0127-FOF-WS—Date Filed: 3/14/2013**

Order acknowledges resolution of the Board of County Commissioners of Charlotte County transferring regulation of privately-owned water and wastewater utilities in the County to the Florida Public Service Commission.

### **PSC-13-0137-PAA-SU—Date Filed: 3/22/2013**

Proposed Agency Action (PAA) Order approves an extension of time for S&L Utilities in Marion County to replace air blowers that were part of the pro forma plant additions included in Phase II rates. The date for completion of the plant additions was extended from November 1, 2012, to November 1, 2013. In addition the revenue requirement for Phase II additions was increased based on actual incurred costs that were found to be reasonable and the revenue requirement for the air blowers was approved as a new Phase III rate increase to be implemented once the replacement of the air blowers has been completed. In addition, an initial customer deposit of \$136 was approved.

### **PSC-13-0140-PAA-WU—Date Filed: 3/25/2013**

Proposed Agency Action (PAA) Order approves a rate increase for TLP Water, Inc. (TLP or Utility) for water service in Lake County in a staff-assisted rate case (SARC). The water quality was found to be satisfactory; however, the quality of service was found to be marginal given the outstanding Department of Environmental (DEP) violations concerning the water distribution system. Within six months of the PAA Order, the Utility must provide a detailed report on efforts to obtain USDA funding to replace the distribution system and obtain appropriate DEP permitting. The water treatment plant and distribution system were found to be 100% used and useful (U&U). The return on equity (ROE) was set at 8.74 using the Commission-approved leverage formula. Until such time as the Utility is able to begin making payments to repay a related-party loan, the loan made to the Utility will be treated as equity for ratemaking purposes. Several adjustments were made to operating expenses. A rate increase of 17.19% was approved. The existing rate structure of permanent and seasonal flat rates for unmetered residential and general service customers was continued. A base facilities charge (BFC) and uniform gallonage charge was approved for metered general service customers. No repression adjustment was made. An initial customer deposit was authorized.

## FPSC W/W Dockets OPENED (since January 2013)

**130005-WS**—Docketed: 1-2-2013

Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

**130006-WS**—Docketed: 1-2-2013

Annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

**130010-WS**—Docketed: 1-2-2013

Application for increase in water rates in Lee County and wastewater rates in Pasco by Ni Florida, LLC.

**130025-WU**—Docketed: 1-24-2013

Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.

**130047-WS**—Docketed: 2-11-2013

Application for amendment of water and wastewater Certificate Nos. 631-W and 540-S, to extend service area in Sumter County by Central Sumter Utility Company, LLC.

**130049-WS**—Docketed: 2-18-2013

Resolution of the Board of County Commissioners of Charlotte County transferring regulation of privately-owned for profit water and wastewater utilities to the FPSC.

**130050-WS**—Docketed: 2-18-2013

Joint notice of application for approval of transfer of certain water and wastewater facilities of Aqua Utilities Florida, Inc. (AUF) in Alachua, Hardee, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole and Volusia Counties, to the Florida Governmental Utility Authority (FGUA), and request for cancellation of certificates.

**130052-WU**—Docketed: 2-26-2013

Application for grandfather certificate to operate water utility in Charlotte County by Little Gasparilla Water Utility, Inc.

**130053-SU**—Docketed: 2-26-2013

Application for grandfather certificate to operate wastewater utility in Charlotte County by Utilities, Inc. of Sandalhaven.

**130055-WS**—Docketed: 2-28-2013

Application for approval of transfer of LP Utilities Corporation's water and wastewater systems and Certificate Nos. 620-W and 533-S, to LP Waterworks, Inc., in Highlands County.

**130065-SU**—Docketed: 3-19-2013

Application for name change on Certificate No. 515-S in Polk County from West Lakeland Wastewater, Inc. to West Lakeland Wastewater, LLC



**FPSC W/W Dockets CLOSED (since January 2013)**

**110141-WS**—Docketed: 5-10-2011—Date Closed: 3-5-2013

Application for staff-assisted rate case in Polk County by Grenelife Resort Utility, Inc.



**110208-WS**—Docketed: 6-20-2011—Date Closed: 1-15-2013

Application for staff-assisted rate case in Highlands County by L.P. Utilities Corporation.



**120006-WS**—Docketed: 1-3-2012—Date Closed: 1-2-2013

Annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.



**120076-SU**—Docketed: 4-4-2012—Date Closed: 3-1-2013

Investigation of rates of Mid-County Services, Inc. in Pinellas County for possible overearnings.



**120157-WS**—Docketed: 5-16-2012—Date Closed: 1-14-2013

Request by Aqua Utilities Florida, Inc. to establish residential wastewater only rates.



**120284-WU**—Docketed: 11-8-2012—Date Closed: 3-12-2013

Application for amendment of Certificate No. 539-W to extend service area in Lake County by Raintree Harbor Utilities, Inc.



**130005-WS**—Docketed: 1-2-2013—Date Closed: 3-11-2013

Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.



**130049-WS**—Docketed: 2-18-2013—Date Closed: 3-14-2013

Resolution of the Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of 367, F.S.

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## 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.

### RTYC Family News



Tom Crabb has become a shareholder in the firm. Tom practices in the firm's civil and administrative litigation and regulated industries sections.

Susan Clark, Firm shareholder and former Chairman of the Florida Public Service Commission, participated in a panel discussion on public utility regulation at the 40th Annual Public Utility Research Center Conference at the University of Florida. The panel discussed current regulatory and policy environments and whether existing regulatory models are appropriate.



Firm shareholders, Donna Blanton and Travis Miller, recently were guest lecturers at the Florida State University College of Law's Insurance Law and Regulation class. Donna and Travis combined to educate the FSU law students about the application of Florida administrative law to various aspects of the insurance industry. Class members asked a series of insightful questions at the end, including questions about the impact of the Affordable Care Act on state regulation and budget issues and about legislative proposals for Citizens Property Insurance Corporation. Donna and Travis are both board certified by the Florida Bar in State and Federal Government and Administrative Practice.



Terry Deason, special consultant at Radey, Thomas, Yon and Clark and former Chairman of the Florida Public Service Commission, made a presentation at the Nuclear Energy Institute's Communicating Nuclear Issues Conference in Naples, Florida on February 19, 2013. The Nuclear Energy Institute is the policy organization of the nuclear energy and technologies industry and assembled a full range of speakers on nuclear energy policy, politics and advocacy for the Naples Conference.

Mr. Deason appeared as a panelist to address actions taken at the state level that impact policy at the national level. Mr. Deason addressed Florida's long history of promoting fuel diversity in electric generation and nuclear's role as a key component of those efforts. He also addressed Florida's experience with legislation adopted in 2006 to promote new nuclear generation in Florida and current issues arising regarding this initiative.

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