

# WATER & WASTEWATER INDUSTRY QUARTERLY REPORT

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Keeping You Informed About Florida

September 2017



## **Appointments Made to Florida Public Service Commission By Susan Clark**

On September 15, 2017, Governor Rick Scott made three appointments to the Florida Public Service Commission (FPSC).

Mr. Gary F. Clark of Chipley, Florida, was appointed to fill the current vacancy created by the resignation of Commissioner Jimmy Patronis. Mr. Clark was the Deputy Secretary of Land and Recreation for the Florida Department of Environmental Protection. His term runs from September 15, 2017 to January 2019.

Commissioner Art Graham was reappointed to a four-year term beginning January 2018 and ending January 2022.

Mr. David “Ritch” Workman, a former member of the Florida House of Representatives, was also appointed to a four-year term beginning January 2018 and ending January 2022. He succeeds current Commissioner Ronald Brisé.

The appointments are subject to confirmation by the Senate in the next regular legislative session.

## **Florida Public Service Commission Regulatory Plan By Susan Clark**

At the Florida Public Service Commission’s (FPSC) September 7, 2017, Internal Affairs Meeting, the Commissioners approved the FPSC’s 2017 Regulatory Plan. Section 120.74(1), Florida Statutes, requires state agencies to file an annual regulatory plan that includes:

1. A listing of laws enacted or amended during the previous 12 months that create or modify the duties or authority of the agency, a statement of whether rule adoption is required to implement the law, and, if so, whether a notice of rule development has been published, an identification of the date by which the agency expects to publish the notices for proposed rulemaking for the required rules, and if rulemaking is not required, a concise statement as to why the law can be implemented without rulemaking;
2. A listing of each law (other than a law enacted or amended in the last 12 months) that the agency expects to implement by rulemaking before the following July along with a statement “whether rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce costs or delete obsolete, unnecessary or redundant rules;”
3. The identification and listing of laws that were in a prior year’s regulatory plan as requiring rulemaking to implement, but for which a notice of proposed rule has not been published; and

## Florida Public Service Commission Regulatory Plan (continued)

4. A certification by the agency head and the legal advisor to the agency head that each has reviewed the regulatory plan and regularly reviews all its rules.

The FPSC's Regulatory Plan listed no new or amended laws requiring rulemaking and no laws listed in the prior year's regulatory plan for which a notice of rulemaking had not been published.

There were a number of rules affecting water and wastewater utilities that the FPSC expects to address in rulemaking before July 2018. Those rules are:

Rule 25-30.0371, F.A.C., *Acquisition Adjustments*, to update rule to address current industry practices.

Rule 25-30.130, F.A.C., *Record of Complaints*, to update for consistency with current agency practice of policy and Chapter 120, F.S., and rulemaking requirements and to delete obsolete, unnecessary, or duplicative rule provisions.

Rule 25-30.335, F.A.C., *Customer Billing*, to update for consistency with current agency practice of policy and Chapter 120, F.S., and rulemaking requirements and to delete obsolete, unnecessary, or duplicative rule provisions.

Rule 25-30.4325, F.A.C., *Water Treatment and Storage Used and Useful Calculations*, to update methodology for used and useful calculations.

Rule 25-30.433, F.A.C., *Rate Case Proceedings*, to codify the operating ratio methodology and to address the current industry conditions and current Commission practice in review of utility quality of service.

Rule 25-30.455, F.A.C., *Staff Assistance in Rate Cases*, to update the threshold for staff assisted rate proceedings pursuant to Section 367.0814(1), F.S.

Rule 25-30.456, F.A.C., *Staff Assistance in Alternative Rate Setting*, to update the threshold for staff assisted alternative rate settings pursuant to Section 367.0814(1), F.S.

Rule 25-30.457, F.A.C., *Limited Alternative Rate Increase*, to update the threshold for limited alternative rate increase pursuant to Section 367.0814(1), F.S.

During the discussion of the Regulatory Plan, Commissioner Art Graham expressed his interest in Rule 25-30.433, F.A.C., and the issue of what items should be considered in quality of service for a water or wastewater utility.

The Commission had no updates to the 2016 Regulatory Plan, or laws listed in that plan for which a notice of rulemaking had not been issued, to report pursuant to Section 120.74(1), F.S.

The 2017 Regulatory Plan will be posted on the FPSC's website and filed with the Joint Administrative Procedures Committee by October 2017.

The Commission had no updates to the 2016 Regulatory Plan.

On September 21, 2017, the FPSC published notice in the Florida Administrative Register that the 2017 Regulatory Plan was posted on the FPSC's website.

## Summaries of PSC Orders Filed since July 2017

**PSC-2017-0286-CO-WS**—Date Filed: 7/24/2017

Consummating Order makes effective and final Order No. PSC-17-0249-PAA-WS establishing the authorized range of returns on common equity for water and wastewater utilities (Docket No. 20170006-WS).

**PSC-2017-0311-FOF-WU**—Date Filed: 8/7/2017

Order approves the transfer of County-Wide Utility Co., Inc.'s water system in Marion County to Southwest Ocala Utility, Inc. (Utility), effective July 13, 2017. All existing rates and charges remain in effect. The Commission declined to make a determination as to net book value and an acquisition adjustment, finding that these issues should be taken up in the Utility's next rate case (Docket No. 20150012-WU).

**PSC-2017-0334-PAA-WS**—Date Filed: 8/23/2017

Proposed Agency Action Order approves a rate increase for LP Waterworks (Utility) for water and wastewater service in Highlands County in a staff assisted rate case (SARC). The overall quality of service was found to be satisfactory. The water treatment plant, wastewater treatment plant, water storage facilities, water distribution system and wastewater collection system were all found to be 100% used and useful (U&U). Adjustments were made to rate base and operating revenues and expenses. The return on equity (ROE) was set at 9.27% based on the Commission-approved leverage formula. A revenue increase of 13.9% for water service and a 28.28% increase was approved. An "across the board increase to the Utility's existing rates" was found to be appropriate "based on the low revenue requirement percentage increase," and the existing rate structure was maintained with no repression included in the rate calculation. Increases in certain miscellaneous charges were also approved (initial connection, normal reconnection, violation reconnection, and premise visit). A Non Sufficient Funds charge consistent with Section 68.065, F.S., and service availability charges were approved (Docket No. 20160222-WS).

**PSC-2017-0353-CO-WS**—Date Filed: 9/18/2017

Consummating order makes effective and final Order No. PSC-2017-0334-PAA-WS approving a rate increase for water and wastewater service in Highlands County by LP Waterworks, Inc. in a staff assisted rate case (SARC) (Docket No. 20160222-WS).

**PSC-2017-0357-FOF-WS**—Date Filed: 9/20/2017

Order acknowledges the resolution of the Leon County Board of Commissioners transferring jurisdiction of all non-exempt water and wastewater systems in Leon County to the Florida Public Service Commission (Docket No. 20170171-WS).

**PSC-2017-0361-FOF-WS**—Date Filed: 9/25/2017

Order approves in part requested increases in water and wastewater rates for water and wastewater systems of Utilities, Inc. of Florida (UIF or Utility) in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. Quality of service for each system that was part of the rate request was evaluated. For some systems found to have marginal quality of service a 50 basis point reduction in the approved return on equity (ROE) for those systems was approved; for the system with an unsatisfactory quality of service a 100 point reduction was approved. Adjustments were made to rate base and operating expenses and revenues, and the Commission addressed the allocation of the regulatory asset associated with UIF's "Project Phoenix Financial/Customer Care Billing System." Several proforma plant additions were approved. Nine water systems had excessive unaccounted for water (EUW) and three wastewater systems had excessive infiltration and/or inflow (I&I) which resulted on adjustments to certain expenses. Pursuant to stipulation by the parties all water treatment facilities, water storage facilities and water distribution systems and wastewater collection system were found to be 100% used and useful (U&U). Varying percentages of U&U for wastewater treatment plant facilities were established. The ROE was set at 10.40 percent based on the Commission-approved formula. However, the ROE was set lower for those systems with marginal or unsatisfactory quality of service. A consolidated capital structure of 49.27% common equity and 50.73 % debt (long and short-term) was used for rate setting purposes. A total revenue requirement for all water systems of \$15,662,276 and all wastewater systems of \$18,840,298 was approved (recognizing revenue requirements associated with reduced ROEs for some systems). All water systems and all wastewater systems were consolidated into single rate structures. The residential rate structure

## Summaries of PSC Orders Filed since July 2017 (continued)

for water service includes a base facility charge (BFC) designed to recover 35% of the revenue requirement and a three-tier inclining rate structure. The general service rate structure for water service includes a BFC and a uniform gallonage charge. A repression adjustment was included in the calculation rates. For the residential wastewater service a BFC designed to recover 51.8% of the revenue requirement was approved along with a gallonage cap of 8,000 gallons. For those wastewater customers currently on a flat rate, a flat rate approximately equal to the BFC plus the average gallonage for consumption-based rates was approved. A repression adjustment was also included in the calculation of wastewater rates. Miscellaneous services charges (initial connection, normal reconnection, violation reconnection and premise visit), a late payment charge of \$6.40, and a meter installation charge were approved, and customer deposit amounts were set. Pursuant to stipulation by the parties, a BFC of \$7.64 and a gallonage charge of \$1.45 per 1,000 gallons was approved for reuse service. The customer connection charge for all water and wastewater systems was required to be “at actual cost” and existing main extension and plant capacity charges remained unchanged. The existing charges for “Allowance for Funds Prudently Invested” for each system remain in effect (exceptions apply). Refunds of interim rates for some systems were required (Docket No. 20160101-WS). (Order No. PSC-2017-0361A-FOF-WS corrects a refund amount for Labrador Utilities in Table 64, page 221).

### **PSC-2017-0365-PAA-WU**—Date Filed: 9/27/2017

Order approves the transfer of Oak Springs, LLC’s water system in Orange and Lake Counties to Oak Springs MHC, LLC. The current rates and charges remain in effect. Net book value for the transferred system was established; no acquisition adjustment was requested and none was approved (Docket No. 20160075-WU).

### **PSC-2017-0366-PAA-SU**—Date Filed: 9/27/2017

Proposed Agency Action Order approves the transfer of the wastewater system of Colony Park Development Utilities, LLC in Brevard County to Merritt Island Utility Company, Inc. (Utility). The Net Book Value for the transferred system was established and a negative acquisition adjustment of \$175 was approved. Existing rates and charges remain in effect (Docket No. 20170018-SU).

### **PSC-2017-0367-WU**—Date Filed: 9/29/17

Proposed Agency Action Order approves the transfer of the water system of McLeod Gardens Water Company in Polk County to McLeod Gardens Utilities, LLC (McLeod Gardens). Net Book Value for the transferred assets was established a negative acquisition adjustment was made because the purchase price was less than 80% of the net book value of the utility plant at the time of transfer. Existing rates and charges for service remain in effect. Non-Sufficient Fund charges consistent with s. 68.065(2), F.S., and a meter tampering charge, were approved (Docket No. 20160193-WU).



### Upcoming Events - Mark Your Calendars

Date	Event Name	Event	Location
11/8/2017	Staff Workshop	Docket No. 20170006-WS—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.	Room 105
11/12-15/2017	NARUC	NARUC’s 129th Annual Meeting and Education Conference	Hilton Baltimore, Baltimore, MD

### Trivia By Pam Keillor

Public water supplies must meet or exceed certain standards. The kind of standards that are used differ for each country. Many public water supplies consistently supply water that is much better than the minimum standards.



<http://www.stateoflorida.com/facts.aspx>



**FPSC W/W Dockets OPENED (since July 2017)**

**20170151-WS**—Date Opened: 7/5/2017

Application for authority to transfer water and wastewater Certificate Nos. 577-W and 498-S in Manatee County, from Heather Hills Estates Utilities, LLC to Heather Hills Utilities., LLC

**20170152-SU**—Date Opened: 7/14/2017

Request for approval of a late payment charge in Volusia County, by North Peninsula Utilities Corporation.

**20170155-WS**—Date Opened: 7/19/2017

Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.

**20170166-WS**—Date Opened: 7/27/2017

Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.

**20170173-SU**—Date Opened: 8/8/2017

Application for authority to transfer Certificate No. 538-S in Okeechobee County from Zachary Taylor Camping & Lodge, Inc. to Coastal Income Properties - Zachary Taylor LLC.

**20170174-SU**—Date Opened: 8/9/2017

Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.

**20170178-WS**—Date Opened: 8/21/2017

Application for original certificates of authorization for existing utility currently charging for water and wastewater service in Polk County, by The Harbor.

**20170200-WU**—Date Opened: 9/7/2017

Initiation of show cause proceedings against Kincaid Hills Water Company, in Alachua County, for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, Florida Statutes, and Rule 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code.

**FPSC W/W Dockets CLOSED (since July 2017)**

**20140188-SU**—Date Opened: 9/30/2014—Date Closed: 8/22/2017  
Application for approval of transfer of Certificate No. 538-S from Zachary Taylor Camping & Lodge, Inc. to Taylor Arcade, Inc. d/b/a Zachary Taylor RV Resort in Okeechobee County.

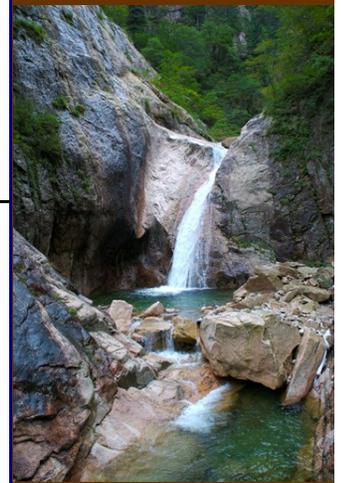
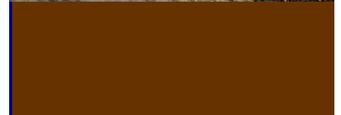
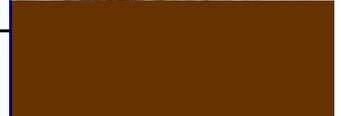
**20150012-WU**—Date Opened: 1/2/2015—Date Closed: 8/7/2017  
Application for transfer of Certificate No. 390-W from County-Wide Utility Co., Inc. to Southwest Ocala Utility, Inc. in Marion County.

**20150071-SU**—Date Opened: 3/3/2015—Date Closed: 8/28/2017  
Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

**20160219-SU**—Date Opened: 10/7/2016—Date Closed: 7/12/2017  
Application for certificate to provide wastewater service in Manatee County by Sunny Shores Water Co.

**20160222-WS**—Date Opened: 10/17/2016—Date Closed: 9/27/2017  
Application for staff-assisted rate case in Highland County by LP Waterworks, Inc.

**20170171-WS**—Date Opened: 8/7/2017—Date Closed: 9/20/2017  
Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.



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## Experience.Service.Success.

The Radey Law Firm 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

## Radey Family News

We are pleased to announce that Donna Blanton and Drew Parker have been named to **Florida Trend's 2017 Legal Elite**. Both were selected in the area of Government and Administrative law.

Also, Donna Blanton, Christopher Lunny, Rex Ware, and David Yon were recognized in the 2017 **Florida Super Lawyers** publication. Donna was recognized in the area of Administrative law, Chris was recognized in the area of Employment & Labor, Rex was recognized in the tax area and David was recognized in the area of Insurance Coverage.

We congratulate Donna Blanton, Susan Clark, Bert Combs, Travis Miller, Harry Thomas, Rex Ware, and David Yon for their being selected by their peers for inclusion in the prestigious 24th Edition of **The Best Lawyers in America 2018**: Donna for her work in Administrative / Regulatory Law and Government Relations Practice; Susan for her work in Utilities Law; Bert, Travis, Harry and David for their work in Insurance Law; and Rex for his work in Litigation and Controversy—Tax and Tax Law. Rex was also recognized as a “Lawyer of the Year” award recipient.

Donna Blanton was dubbed a “Titan of Administrative Law” in The Florida Bar’s June newsletter. Donna “reveals herself to be diligent, conscientious towards detail, and dedicated to consistently creating an excellent work product.”

The Radey Law Firm has once again received acknowledgment by the foremost legal guide **Chambers USA**. The 2017 edition features three Radey attorneys as leaders in their fields – Travis Miller and David Yon in insurance law and Rex Ware in state and local tax matters. Travis Miller was recognized for his experience in insurance regulatory matters as well as his additional expertise in corporate law and administrative law; Rex Ware was noted for his expertise in appearing before state and federal courts and described as an “excellent litigator;” and David Yon was praised for his deep regulatory expertise“ and one who “seeks resolution rather than getting stuck in the quicksand.”



**Lauren Thompson and Jordann Allen**, both graduates of FSU Law School, have joined the Firm as associates. Thompson’s focus will be on commercial litigation and Allen will focus on labor and employment law and commercial litigation.

