

State of Florida



Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 29, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Young) *YJC*
Division of Economic Regulation (Linn, Brown, Maurey) *CRB*

RE: Docket No. 100128-WU – Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.

AGENDA: 01/11/11 – Regular Agenda – Decision on Suspension of Rates (Issue 1) – Request for Rule Waiver (Proposed Agency Action, Issue 2) - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 1/11/11 (Statutory deadlines for suspension of rates and request for rule waiver, waived until this date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\GCO\WP\2010\100128.RCM.DOC

Case Background

Lighthouse Utilities Company, Inc. (Lighthouse or Utility) is a Class B utility serving approximately 1,361 water customers in Gulf County. Rates were last established for this Utility in 1988.¹ On September 1, 2010, Lighthouse filed an application with the Florida Public Service Commission (PSC) for an increase in its rates and charges for water service. Accompanying the Utility's application were MFR schedules (MFRs or schedules) required by Section 367.081,

¹ See Order No. 18897, issued February 22, 1988, in Docket No. 870627-WU, In re: Application of Lighthouse Utilities Company, Inc. for a staff-assisted rate case in Gulf County.

DOCUMENT NUMBER-DATE

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Florida Statutes (F.S.), and Rule 25-30.437, Florida Administrative Code (F.A.C.). Additional schedules were filed September 22, 2010.

The Utility had several deficiencies in the MFRs. As of the filing of this recommendation, those deficiencies remain outstanding. The Utility requested that the application be processed using the Proposed Agency Action (PAA) procedure and did not request interim rates. The test year established for final rates is the simple average period ended December 31, 2009.

On September 27, 2010, Lighthouse filed a petition seeking a waiver for the filing of portions of the MFR schedules incorporated in Rule 25-30.437, F.A.C., entitled Class B Water and/or Wastewater Utilities Financial Rate and Engineering Minimum Filing Requirements. Rule 25-30.437, F.A.C., implements Section 367.081, F.S., which requires a rate application to be accompanied by MFRs which are a series of schedules that require information on a utility's accounting and engineering costs, rate structures, and billing practices for a test year. The Utility is not seeking a waiver of the schedules in whole, but, as explained in its petition, it is seeking a waiver of the amount of information to be included on some of the schedules. Specifically, the schedules for which Lighthouse seeks a partial waiver are as follows:

- Schedule A-4 - Plant in Service Balances;
- Schedule A-8 - Accumulated Depreciation;
- Schedule A-11 - Contributions in Aid of Construction ("CIAC");
- Schedule A-13 - Accumulated Amortization of CIAC; and
- Schedule B-7 - Comparison of Current and Prior Operations and Maintenance (O & M) Expense.

For the "A" schedules listed, the instructions require the Company to provide annual balances for each year back to the last rate case, which is 1988 for Lighthouse. The "B" schedule (B-7) requires a comparison of current and prior test year O&M expense or current and five years of information if there has been no rate case. The schedule also requires an explanation of all differences not attributable to customer growth or the consumer price index-urban (CPI-U). The Utility is requesting that the requirement to include balances back to the last rate case – 22 years of information – be waived and that the schedules as filed with information going back 5 years be accepted.

Pursuant to Section 120.542, F.S., notice of the rule waiver petition for Rule 25-30.437, F.A.C., was filed in the Florida Administrative Weekly (FAW) on October 6, 2010; and subsequently published on October 15, 2010. Comments on Lighthouse's petition for waiver of Rule 25-30.437, F.A.C., were due on October 29, 2010. No written comments were received and the time for filing such comments has expired.

By letter dated December 16, 2010, the original 60-day statutory deadline for the Commission to suspend the Utility's requested final rates was waived through January 11, 2011. Also, in that letter the Utility waived the 90-day statutory deadline for the Commission to take action on its petition for rule waiver through January 11, 2011.

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This recommendation addresses the suspension of Lighthouse's requested final rates and petition for waiver of Rule 25-30.437, F.A.C. The Commission has jurisdiction pursuant to Sections 120.542 and 367.081, F. S.

Discussion of Issues

Issue 1: Should the Utility's proposed final water rates be suspended?

Recommendation: Yes. Lighthouse's proposed final water rates should be suspended. (Linn, Brown)

Staff Analysis: Section 367.081(6), F.S., provides that the Commission may, for good cause, withhold consent to the implementation of the requested rates within 60 days after the date the rate request is filed. Further, Section 367.081(8), F.S., permits the proposed rates to go into effect (secured and subject to refund) at the expiration of five months from the official date of filing if: (1) the Commission has not acted upon the requested rate increase; or (2) if the Commission's PAA action is protested by a party other than the Utility.

Staff has reviewed the filing and has considered the information filed in support of the rate application and the proposed final rates. Staff recommends that it is necessary to require further investigation of this information, including on-site investigations by staff accountants and engineers. Based on the foregoing, staff recommends suspension of the Utility's proposed rate increase.

Issue 2: Should the Commission grant Lighthouse Utilities Company, Inc.'s petition for waiver of the amount of information to be included on some of the schedules as required in Rule 25-30.437, F.A.C.?

Recommendation: Yes, the Commission should grant Lighthouse Utilities Company, Inc.'s petition for waiver of the amount of information to be included on some of the schedules as required in Rule 25-30.437, F.A.C. (Young)

Staff Analysis: Rule 25-30.437, F.A.C., entitled Financial, Rate, Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase, implements Section 367.081, F.S. Rule 25-30.437, F.A.C., requires that an application for increase in rates and charges be accompanied by MFRs which are a series of schedules that require information on a utility's accounting and engineering costs, rate structures and billing practices for a given test year. The Commission then uses said information in its analysis and consideration of the utility's application for increase in rates and charges.

Section 120.542, F.S., authorizes the Commission to grant variances or waivers to the requirements of its rules where the party subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the party substantial hardship or violate principles of fairness. "Substantial hardship," as defined in this section, means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provision pertaining to Rule 25-30.437, F.A.C., is Section 367.081, F.S. Section 367.081, F.S., entitled "Rates; procedures for fixing and changing" provides the procedures and subject matter which the Commission follow when fixing rates which are just, reasonable, compensatory, and not unfairly discriminatory.

In its petition, Lighthouse asserts that its request for waiver of Rule 25-30.437, F.A.C., should be granted because of the economic hardship associated with fully complying with the Commission rule. In its petition, Lighthouse contends that it is specifically not seeking a waiver of the schedules, but a waiver of the amount of information to be included on some of the schedules. As stated above, the Utility is seeking a waiver of the amount of information to be included on the following schedules:

- Schedule A-4 - Plant in Service Balances;
- Schedule A-8 - Accumulated Depreciation;
- Schedule A-11 - Contributions in Aid of Construction ("CIAC");
- Schedule A-13 - Accumulated Amortization of CIAC; and
- Schedule B-7 - Comparison of Current and Prior Operations and Maintenance ("O&M") Expense.

Lighthouse asserts that for the "A" schedules listed above, the instructions require the Utility to provide annual balances for each year back to the last rate case. For Lighthouse, this would be 1988, the date of its last rate case. The "B" schedules require a comparison of current and prior test year O&M expense or current and five years of information if there has been no

rate case. The schedule also requires an explanation of all differences not attributable to customer growth or the CPI-U. The Utility is requesting that the requirement to include balances back to the last rate case (22 years of information) be waived and that the schedules as filed with information going back 5 years be accepted.

Lighthouse asserts that it is a small company with only 4 employees and approximately 1,380 customers. The Utility contends that it does not have the personnel or resources to prepare the application and schedules associated with a rate application in-house and relies upon the assistance of outside professionals to perform this activity. Moreover, many of the records are not available electronically and would require manual review, which will result in increased expenses and a time delay of approximately 2 additional weeks associated with the preparation of the schedules without the said waiver. Thus, to require the Utility to revise the schedules to include balances for 22 years would result in an economic hardship to the Utility and its customers.

Staff has analyzed the Utility's petition for waiver and believes that the Utility has demonstrated that strict application of the rule would cause the Utility a substantial hardship. The Utility has alleged a prima facie demonstration of economic hardship as defined under Section 120.542, F.S. Lighthouse does not have the personnel or resources to prepare the application and schedules associated with a rate application in-house, and must rely upon the assistance of outside professionals to perform this activity. As stated, the Utility only has 4 employees. Also, many of the records are not available electronically and would require manual review, which will result in an increase in rate case expense and a time delay of approximately 2 additional weeks associated with the preparation of the schedules.

Moreover, staff believes that the Utility's petition should be granted because the underlying purpose of Section 367.081, F.S., will be achieved by other means. As stated, the purpose of Section 367.081, F.S., is to provide the procedures and subject matter which the Commission will follow and consider when fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory. One particular set of documents that the Commission uses when fixing rates are the MFRs which contains the information regarding a utility's finances. The Commission reviews and analyzes the underlying data in the MFRs associated with a utility's requested rate increase. By granting the Utility's requested waiver, the Commission will not impair its review or diminish the amount of information available to the Commission when analyzing Lighthouse's application for increase in rates and charges. Staff believes that five years of data provides sufficient information for the Commission to make a reasoned decision concerning the Utility's application for increase in rates and charges for water services.

Also, in an application for increase in rates and charges, the Commission routinely conducts an audit of the Utility and frequently obtains additional information and data through the use of data requests and, in some instances, formal discovery. In this docket, Lighthouse has provided many pages of documents in response to data requests from staff. Staff has scheduled an on-site visit and audit of the Utility's books, records, and facilities. Also, in its petition, Lighthouse has stated that it will make available to staff for review all records which it has for all accounts. Therefore, staff believes it will have the ability to verify and track the necessary

information, and the Commission will have adequate information available to it upon which it can base a decision.

Staff would note that the Commission has previously granted petitions for rule waivers for companies filing certain MFRs when doing so would be impractical and unduly burdensome.²

Accordingly, staff recommends that Lighthouse's petition for waiver of Rule 25-30.437, F.A.C., as to the amount of information to be included on the schedules stated above be granted. Staff believes that the Utility has demonstrated that the underlying purpose of the statute will be achieved by other means, and strict application of the rule would cause Lighthouse substantial hardship.

² See Order No. PSC-01-0255-PCO-GU, issued January 29, 2001, in Docket No. 001447-GU, In re: Request for rate increase by St. Joe Natural Gas Company, Inc.; and Order No. PSC-03-1112-PCO-EI, issued October 6, 2003, in Docket No. 030438-EI, In re: Petition for rate increase by Florida Public Utilities Company.

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Issue 3: Should this docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action order on Issue 2, the Order granting the rule waiver will become final upon the issuance of a Consummating Order. Docket No. 100128-WU should remain open pending the Commission's final action on Lighthouse Utilities Company, Inc.'s application for increase in rates and charges for water service. (Young)

Staff Analysis: If no timely protest is received to the proposed agency action order on Issue 2, the Order granting the rule waiver will become final upon the issuance of a Consummating Order. Docket No. 100128-WU should remain open pending the Commission's final action on Lighthouse Utilities Company, Inc.'s application for increase in rates and charges for water service.