

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:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Accounting and Finance (Snyder, Mouring) [ALM](#)  
Office of the General Counsel (Murphy, Tan) [TLT](#)

**RE:** Docket No. 20200215-WS – Petition for approval to defer legal expenses in Marion County, by East Marion Utilities, LLC.

**AGENDA:** 1/5/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

East Marion Utilities, LLC (East Marion or utility) is a Class C water and wastewater utility that serves approximately 106 water customers and 96 wastewater customers in Marion County. According to East Marion's 2019 Annual Report, total gross revenue was \$76,109 and total operating expense was \$85,515, resulting in a net loss of \$9,406.

On September 14, 2020, East Marion filed a petition for approval to defer legal costs incurred in 2020. The total legal costs associated with this petition are \$6,594. All legal costs were associated with a settlement agreement with the Florida Department of Environmental Protection (FDEP).

The Commission has jurisdiction in this case pursuant to Section 367.011, Florida Statutes.

## Discussion of Issues

**Issue 1:** Should the Commission approve East Marion Utilities, LLC's petition to defer legal expenses?

**Recommendation:** Yes. The Commission should approve the petition by East Marion to defer legal expenses for consideration in the utility's next rate proceeding. (Snyder)

**Staff Analysis:** On September 14, 2020, East Marion filed a letter seeking approval to defer legal expenses incurred in 2020. All legal expenses were associated with a settlement agreement with the FDEP. The total cost to date of all legal expenses is \$6,594.

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. The alternative would be for the company to seek a rate case each time it experiences an exogenous event. The costs in this docket are related to legal fees incurred by the utility in trying to resolve possible violations alleged by FDEP and negotiating a settlement agreement to resolve the possible violations. The Commission has previously allowed legal expenses from defending fines and violations from FDEP to be recovered by utilities.<sup>1</sup> The Commission has previously recognized that these types of legal expenses could serve to avoid or reduce fines, or eliminate or postpone large system improvements.<sup>2</sup> Therefore, staff recommends the Commission approve the petition by East Marion to defer these legal expenses for consideration in the utility's next rate proceeding.

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<sup>1</sup> Order No. PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS, *In re: Application for rate increase in Duval, Nassau, and St. Johns Counties by United Water Florida Inc.*

<sup>2</sup> Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS, *In re: Application for a Rate Increase in Lee County by Lehigh Utilities, Inc.*

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

**Recommendation:** Yes. If a person whose substantial interests are affected by the proposed agency action does not file a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (Murphy)

**Staff Analysis:** If a person whose substantial interests are affected by the proposed agency action does not file a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.