

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-

DATE: February 18, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (M. Watts) *TB*
Division of Accounting and Finance (D. Andrews, Norris) *ALM*
Division of Economics (Sibley) *JGH*
Office of the General Counsel (Lherisson) *JSC*

RE: Docket No. 20200195-WU – Application of Lake Talquin Waterworks, Inc. for grandfather water certificate in Leon County and pass through of regulatory assessment fees.

AGENDA: 03/02/21 - Regular Agenda – Proposed Agency Action for Issues 1, 4, 5, and 6 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 03/02/21 (90-Day Statutory Deadline to Address Rule Waiver, waived to 03/02/21 by the Utility.)

SPECIAL INSTRUCTIONS: None

Case Background

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for profit water and wastewater utilities in Leon County to the Florida Public Service Commission (Commission). Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in Leon County became subject to the provisions of Chapter 367, Florida

Statutes (F.S.). By Commission Order No. PSC-2017-0357-FOF-WS, the Commission acknowledged the Resolution.¹

Pursuant to Section 367.171(2)(b), F.S., each utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day the chapter becomes applicable to the utility. On November 30, 2017, Lake Talquin Water Company, Inc. (LTWC) filed an application for a certificate under grandfather rights to provide water service in Leon County pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, Florida Administrative Code (F.A.C.). Docket No. 20170253-WU² was established to process LTWC's grandfather application. On March 30, 2020, Seminole Waterworks, Inc. (Seminole) acquired the utility from LTWC. Seminole transferred the utility to Lake Talquin Waterworks, Inc. (Lake Talquin or Utility) on the same date. Accordingly, the prior docket (20170253-WU) was closed and the current docket (20200195-WU) was opened to address the grandfather application filed by Lake Talquin Waterworks, Inc.

On August 4, 2020, Lake Talquin filed an application for a certificate under grandfather rights to provide water service in Leon County pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. In its application, the Utility simultaneously filed a request for approval of a pass through increase for regulatory assessment fees (RAFs) pursuant to Section 367.081(4)(b), F.S. Lake Talquin's application was found to be deficient, and staff sent a deficiency letter to the Utility on September 14, 2020. The Utility cured the deficiencies on October 27, 2020.

On August 14, 2020, the Utility filed a petition for waiver or variance of Rule 25-30.120, F.A.C., which requires that RAFs be paid for any year during which a utility is subject to the Commission's jurisdiction as of December 31 of that year. The Commission has 90 days to grant or deny the waiver pursuant to Section 120.542(8), F.S. The Utility agreed to waive the statutory deadline to March 2, 2021.

Lake Talquin provides water service to approximately 237 residential customers, in single family and mobile homes, located next to Lake Talquin in southwest Leon County. Wastewater service is provided by septic tank. The Utility's service area is located in the Northwest Florida Water Management District.

This recommendation addresses the application for a grandfather water certificate, rates and charges, the petition for a variance or waiver of Rule 25-30.120, F.A.C., the approval of a revised late fee and initial customer deposit, and approval of a non-sufficient funds (NSF) charge. The Commission has jurisdiction pursuant to Section 367.171, F.S.

¹Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.*

²*In re: Application for grandfather water certificate in Leon County by Lake Talquin Water Company, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve Lake Talquin Waterworks, Inc.’s request for waiver or variance of Rule 25-30.120, F.A.C.?

Recommendation: Yes. The Utility has demonstrated that the underlying purpose of the statute will be or has been achieved by other means, and that strict application of the rule would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve Lake Talquin Waterworks, Inc.’s request for a waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission’s vote on the waiver, whichever occurs first. (Lherisson)

Staff Analysis: On August 14, 2020, Lake Talquin filed a Petition seeking waiver or variance of a requirement of Rule 25-30.120, F.A.C., which requires that RAFs be paid for any year during which a utility is subject to the Commission’s jurisdiction as of December 31 of that year. The Utility requests the waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S. Rule 25-30.120(2), F.A.C., provides that “[t]he obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission’s jurisdiction on or before December 31 of that year or for any part of that year.” The effect of this request would be to permanently waive any RAFs that would have been otherwise due for 2020 up until the time the Application is considered by the Commission.

Section 120.542(2), F.S., authorizes the Commission to grant waivers or variances from agency rules where the petitioner subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that a strict application of the rule would cause the applicant substantial hardship or would violate the principles of fairness. “Substantial hardship,” as defined in this section, means demonstrated economic, technological, legal, or other hardship. A violation of the “principles of fairness” occurs when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

As acknowledged in Order No. PSC-2017-0357-FOF-WS,³ issued September 20, 2017, the Board of County Commissioners of Leon County on June 20, 2017, passed and adopted Resolution No. R17-12, transferring regulation of the privately-owned for profit water and wastewater utilities in the County to the Florida Public Service Commission. Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in Leon County became subject to the provisions of Chapter 367, F.S.

On August 4, 2020, Lake Talquin filed its application for a grandfather certificate pursuant to Section 367.171(2), F.S., and Rule 25-30.035, F.A.C. Also, in the same filing the Utility filed its

³Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Order Acknowledging Resolution of the Board of County Commissioners of Leon County Declaring Leon County Subject to the Provisions of Chapter 367, Florida Statutes.*

request for approval of a pass through increase for RAFs pursuant to Section 367.081(4)(b), F.S. That portion of the request was in relation to the RAFs required under Section 367.145, F.S., and Rule 25-30.120, F.A.C.

Section 367.081(4)(b), F.S., states that:

[t]he approved rates of any utility shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the utility's costs for any specified expense item have changed. . . . The new rates authorized shall reflect, on an amortized or annual basis, as appropriate, the cost of or the amount of change in the cost of the specified expense item. The new rates, however, shall not reflect the costs of any specified expense item already included in a utility's rates. Specified expense items that are eligible for automatic increase or decrease of a utility's rates include, but are not limited to: . . . [t]he regulatory assessment fees imposed upon the utility by the commission.

The underlying statutory provision pertaining to RAFs and Rule 25-30.120, F.A.C., are Sections 367.145(1) and (3), F.S., which state that:

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);

....

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

Pass through items authorized by Section 367.081(4)(b), F.S., cannot be approved without "approved rates" by the Commission. Further, the Commission's RAFs are not included in the current existing rates for Lake Talquin since the Utility was not regulated by the Commission prior to June 2017. The Utility notes that a pass through of the RAFs is not permissible until such time as the Utility receives its Grandfather Certificate and its rates are approved (grandfathered in). For that reason, the Utility argues it is placed at an unfair financial disadvantage due to its inability to collect those RAFs.

The purpose of assessing RAFs is to defray the cost of utility regulation. The Utility contends that there have been minimal to no costs of regulating Lake Talquin under Chapter 367, F.S., absent the review of its grandfather application. The Utility also notes that it has paid the applicable filing fee of \$1,000 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its grandfather filing.

Based on the foregoing analysis and the information provided within the Utility's petition, staff believes that Lake Talquin has met the requirements of Section 120.542, F.S., and has

demonstrated that the purpose of the underlying statute will be or has been achieved by other means, because minimal regulation has been required at this point and the Utility has been very cooperative with staff's requests. Further, the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on the Utility by requiring the Utility to pay regulatory expenses for which it is not compensated through rates. Therefore, staff recommends that the Commission approve the Utility's requested waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission's vote on the waiver, whichever occurs first.

Issue 2: Should Lake Talquin Waterworks, Inc.'s application for a grandfather water certificate in Leon County be acknowledged?

Recommendation: Yes. Lake Talquin's application should be acknowledged and the Utility should be issued Certificate No. 678-W, effective August 4, 2020, to serve the territory described in Attachment A. The resultant order should serve as Lake Talquin's certificate and should be retained by the Utility. (M. Watts, D. Andrews)

Staff Analysis: The Utility's application for a certificate under grandfather rights to provide water service in Leon County is in compliance with Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. The application contains a warranty deed as proof of ownership of the land on which the Utility's facilities are located, an accurate territory description, and adequate service territory and system maps. The territory description is provided in Attachment A.

As stated in the case background, Lake Talquin serves approximately 237 residential customers located in Leon County. The Utility does not currently have any outstanding citations, violations, or consent orders on file with the Florida Department of Environmental Protection.

The Utility is aware of its obligation to submit its 2020 Annual Report pursuant to Rule 25-30.110, F.A.C., and is also aware of its obligation to pay RAFs pursuant to Rule 25-30.120, F.A.C. In addition, the Utility is aware that it must maintain its books and records according to the National Association of Regulatory Utility Commissioners' Uniform System of Accounts.

Based on the above, staff recommends that Lake Talquin be granted Certificate No. 678-W to serve the territory described in Attachment A. The resultant order should serve as Lake Talquin's certificate and should be retained by the Utility.

Issue 3: What rates and charges should be approved for Lake Talquin Waterworks, Inc.?

Recommendation: The Utility's monthly service rates and charges that were in effect when Leon County transferred jurisdiction to the Commission, shown on Schedule No. 1, should be approved. The Utility's revised late payment charge and initial customer deposit, and non-sufficient funds charge, are separately addressed in Issues 4, 5, and 6. The rates and charges should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding. (Sibley)

Staff Analysis: According to the Utility's application, Lake Talquin's current rates, charges, and customer deposits were established in 2016 by Lake Talquin Water Company, Inc. and have been assessed by Lake Talquin since the acquisition. The Utility's current monthly service rates consist of a base facility charge and a gallonage charge per 1,000 gallons. In addition, the Utility has miscellaneous service charges, a late payment charge of \$10, a service availability charge, and customer deposits. Staff believes the Utility's current monthly rates and charges except for the late payment charge and customer deposits are reasonable and should be approved. Staff's recommendation with respect to the late payment charge is discussed in Issue 4 and customer deposits in Issue 6. Further, the Utility requests to implement non-sufficient funds (NSF) charges, which is addressed in Issue 5.

Based on the above, the Utility's monthly service rates and charges that were in effect when Leon County transferred jurisdiction to the Commission, except for customer deposits and the late payment charge, shown on Schedule No. 1, should be approved. Those charges are addressed separately in Issues 6 and 4, respectively. Approval of a new, non-sufficient funds charge is also addressed in Issue 5. The rates and charges should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding.

Issue 4: Should Lake Talquin Waterworks, Inc. late payment charge be revised?

Recommendation: Yes. Lake Talquin's late payment charge should be revised to \$6.50. The Utility should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Sibley)

Staff Analysis: Lake Talquin is requesting a \$6.50 late payment charge to recover the cost of labor, supplies, postage, and RAFs associated with processing late payment notices. Lake Talquin's current late payment charge is \$10.00. Lake Talquin is requesting \$6.50 for its late payment charge, which is consistent with recent Commission practice and is the same charge approved by the Commission for its sister utilities managed by U.S. Water.⁴ The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers. Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charge. The processing of delinquent accounts for Lake Talquin are done by U.S. Water, the managing company; as a result staff believes the request to revise the late payment charge is reasonable and should be approved.

Based on the above, Lake Talquin's late payment charge should be revised to \$6.50. The Utility should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

⁴Order Nos. PSC-2020-0267-PAA-WS, issued July 27, 2020, in Docket No. 20190195-WS, *In re: Application for transfer of water and wastewater systems of Regency Utilities, Inc., and transfer of Certificate Nos. 641-W and 551-S to Duval Waterworks, Inc., in Duval County*; PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.*

Issue 5: Should Lake Talquin Waterworks, Inc. be authorized to collect NSF charges?

Recommendation: Yes. Lake Talquin should be authorized to collect NSF charges. Staff recommends that the Utility revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Sibley)

Staff Analysis: Lake Talquin currently does not have NSF charges in place. Section 367.091, F.S., requires rates, charges, and customer service policies to be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Lake Talquin should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

1. \$25, if the face value does not exceed \$50,
2. \$30, if the face value exceeds \$50 but does not exceed \$300,
3. \$40, if the face value exceeds \$300, or
4. five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.⁵ Furthermore, NSF charges place the cost on the cost causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, Lake Talquin should be authorized to collect NSF charges. Staff recommends that Lake Talquin revise its tariff sheets to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the NSF charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

⁵Order Nos. PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory fees, by Seminole Waterworks, Inc.*; PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 20140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.*; and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

Issue 6: Should Lake Talquin Waterworks, Inc.'s initial customer deposit be revised?

Recommendation: Yes. Lake Talquin's initial customer deposit should be revised to reflect \$86 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Sibley)

Staff Analysis: Rule 25-30.311, F.A.C., provides the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. An initial customer deposit ensures that the cost of providing service is recovered from the cost causer. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill. Currently, the Utility's initial customer deposit for the 5/8 inch x 3/4 inch meter size is \$125 for water and is not consistent with Commission practice. The Utility's average monthly residential usage is 3,000 gallons per customer. Therefore, the average residential monthly bill is approximately \$43 based on the existing rates.

Based on the above, Lake Talquin's initial customer deposit should be revised to reflect \$86 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

Issue 7: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively. (Lherisson)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively.

DESCRIPTION OF TERRITORY SERVED

Those lands located in Township 1 South, Range 4 West, Leon County, Florida, more particularly described as follows:

The South 1,750 feet of Section 11;

And

All of Section 14 lying North of Blountstown Highway;

And

The West $\frac{3}{4}$ of Section 15 lying North of Blountstown Highway;

And

The East $\frac{1}{2}$ of Section 16.

FLORIDA PUBLIC SERVICE COMMISSION

**authorizes
Lake Talquin Waterworks, Inc.
pursuant to
Certificate Number 678-W**

to provide water service in Leon County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20200195-WU	Grandfather Certificate

*Order Number and date to be provided at time of issuance

**Lake Talquin Water Company, Inc.
Monthly Water Rates**

Residential and General Service

Base Facility Charge	\$34.00
Gallage Charge per 1,000 gallons	\$3.00

Miscellaneous Service Charges

Initial Connection Charge	\$45.00
Violation Reconnection Charge	\$40.00

Service Availability Charge

System Capacity Charge	\$1,000.00
------------------------	------------