

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Marion County, and request for interim rate increase, by Leighton Estates Utilities, LLC.

DOCKET NO. 20220026-WU
ORDER NO. PSC-2022-0142-PCO-WU
ISSUED: April 12, 2022

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

ORDER GRANTING INTERIM REVENUE INCREASE

BY THE COMMISSION:

Case Background

Leighton Estates Utilities, LLC (Leighton Estates or utility) is a Class C utility serving approximately 80 residential customers in Marion County. We approved the last set rates in an original certificate proceeding in 2010 when the utility was known as Arma Water Service, LLC.¹ Subsequently, the utility's rates have been amended through two price index rate increases. The utility was transferred to the present operator in 2021.² The utility has never had a staff-assisted rate case. According to Leighton Estates' 2021 Annual Report, its total gross water revenue was \$28,105 and total water operating expense was \$45,069. On January 27, 2022, Leighton Estates filed its application for a staff-assisted rate case. On February 15, 2022, the utility requested to waive the 60 day statutory deadline for interim rates.³ The utility has requested a test year ended December 31, 2021, for purposes of interim and final rates.

This Order addresses the utility's request for interim rates. We have jurisdiction pursuant to Sections 367.082 and 367.0814(4), Florida Statutes (F.S).

¹Order No. PSC-2010-0552-PAA-WU, issued September 3, 2010, in Docket No. 20090366-WU, *In re: Application for certificate to operate water utility in Marion County by Arma Water Service, LLC.*

²Order No. PSC-2021-0408-PAA-WU, issued November 01, 2021, in Docket No. 20210043-WU, *In re: Application to transfer facilities and water Certificate No. 652-W in Marion County from Arma Water Service, LLC to Leighton Estates Utilities, LLC.*

³Document No. 01370-2022

Review and Decision

I. Approval of Interim Revenue Increase

On January 27, 2022, Leighton Estates filed an application requesting an interim revenue increase in its water rates. Section 367.0814(4), F.S., details the criteria for evaluating a request for an interim rate increase for staff-assisted rate cases.

Section 367.0814(4), F.S., states:

The Commission may, upon its own motion, or upon petition from the regulated utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Water Utilities (1996) of the National Association of Regulatory Utility Commissioners.

We have reviewed the utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the utility's filing, we find that Leighton Estates has demonstrated a *prima facie* entitlement to an interim rate increase in accordance with Section 367.0814(4), F.S.

In order to establish interim rate relief as prescribed by Section 367.0814(4), F.S., we used the utility's revenues reflected in its revised application dated January 31, 2022, for the test year ended December 31, 2021.⁴ The test year revenues are \$27,605, which includes \$27,240 from water service rates and \$365 from miscellaneous service revenues. The test year O&M expenses are \$30,543. The difference between the utility's reported revenues and O&M expenses is \$2,938.

In addition, the interim rate increase shall be grossed up to include regulatory assessment fees (RAFs). We have previously determined that it would be inappropriate to approve an increase in a utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.⁵ Furthermore, by approving an interim rate increase that allows for the payment of RAFs, the utility shall be able to fully cover its O&M expenses. The RAFs associated with the interim increase equal \$138.

In total, Leighton Estates shall be allowed an interim revenue increase of \$3,076 (\$2,938 + \$138) to produce revenues sufficient to cover O&M expenses and additional RAFs. Thus, we find that the appropriate interim revenue requirement is \$30,681. This is an 11.14 percent increase above the utility's test year revenues. Table 1 illustrates our interim increase calculation.

⁴Document No. 00858-2022, filed on January 31, 2022.

⁵Order No. PSC-2001-1654-FOF-WS, issued August 13, 2001, in Docket No. 20010396-WS, *In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.*

**Table 1
Determination of Interim Increase**

	Water
1. Utility Test Year O&M Expenses	\$30,543
2. Less: Utility Test Year Revenues	\$27,605
3. Revenues to Cover O&M Expenses	<u>\$2,938</u>
4. Interim Revenue Increase	\$2,938
5. RAFs on Interim Rate Increase	\$138
6. Total Interim Revenue Increase (\$)	<u>\$3,076</u>
7. Total Interim Revenue Increase (%)	11.14%

Source: Utility's revised application and our calculations.

II. Appropriate Interim Water Rates

The interim rate increase of 11.29 percent shall be applied as an across-the-board increase to the water service rates. The rates, as shown on Schedule No. 1, shall be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The utility shall file revised tariff sheets and a proposed customer notice to reflect the approved rates. In addition, the approved rates shall not be implemented until the required security has been filed, we have approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date the notice was given within 10 days of the date of the notice.

We find that interim service rates for Leighton Estates are designed to allow the utility the opportunity to generate annual operating revenues of \$30,681 for water. Before removal of miscellaneous revenues, this would result in an increase of \$3,076 (11.14 percent). To determine the appropriate increase to apply to the service rates, miscellaneous revenues shall be removed from the test year revenues. The calculation is as follows:

**Table 2
Percentage Service Rate Increase**

	Water
1 Total Test Year Revenues	\$27,605
2 Less: Miscellaneous Revenues	<u>\$365</u>
3 Test Year Revenues from Service Rates	\$27,240
4 Revenue Increase	<u>\$3,076</u>
5 Percentage Service Rate Increase (Line 4/Line 3)	11.29%

Source: Commission-approved revenue requirement and the utility's application

III. Appropriate Security to Guarantee the Interim Increase

The utility shall be required to open an escrow account or secure a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the utility shall deposit \$257 into the escrow account each month. Otherwise, the surety bond or letter of credit shall be in the amount of \$2,054. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and in accordance with Rule 25-30.360, F.A.C.

Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by this Commission. The approved interim increase for water is \$3,076. In accordance with Rule 25-30.360, F.A.C., we calculated the potential refund of revenues and interest collected under interim conditions to be \$2,054. This amount is based on an estimated eight months of revenue being collected under the approved interim rates shown on Schedule No. 1.

The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. We reviewed Leighton Estates' financial condition. Because the utility reported a significant net loss in 2021, has no meaningful liquidity, and has no equity, we find the utility does not have the financial capability to support a corporate undertaking in the amount requested at this time. In addition, the utility has only one year of annual reports under current ownership, whereas we prefer to have three years of financial records. Instead, we find that the utility shall be required to secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refund.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
- 2) No monies in the escrow account may be withdrawn by the utility without the express approval of the Commission Clerk, or his or her designee.
- 3) The escrow account shall be an interest bearing account.
- 4) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 5) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 6) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 7) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 8) This escrow account is established at the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to

Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

- 9) The account must specify by whom and on whose behalf such monies were paid.

If the security provided is a surety bond or a letter of credit, said instrument shall be in the amount of \$2,054. If the utility chooses a surety bond as security, the surety bond shall state that it shall be released or terminated only upon subsequent order by this Commission. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period it is in effect and that it shall be in effect until we issue a final order releasing the funds to the utility or requiring a refund.

In no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase shall be maintained by the utility. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Leighton Estates, LLC is authorized to collect interim revenues set forth in the body of this Order. It is further

ORDERED that the interim rate increase of 11.29 percent shall be applied as an across-the-board increase to the water service rates. It is further

ORDERED that the rates, as shown on Schedule No. 1, shall be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that Leighton Estates shall file revised tariff sheets and a proposed customer notice to reflect the approved rates. In addition, the approved rates shall not be implemented until the required security has been filed, we have approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date the notice was given within 10 days of the date of the notice. It is further

ORDERED that Leighton Estates shall be required to open an escrow account or secure a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the utility shall deposit \$257 into the escrow account each month. Otherwise, the surety bond or letter of credit shall be in the amount of \$2,054. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that if a refund be required, the refund shall be with interest and in accordance with Rule 25-30.360, F.A.C. It is further

ORDERED that this docket shall remain open pending this Commission's final action in the utility's staff-assisted rate case.

By ORDER of the Florida Public Service Commission this 12th day of April, 2022.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

WLT/SG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is non-final in nature, may request (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.