



INDIAN RIVER COUNTY, FLORIDA DEPARTMENT OF UTILITY SERVICES

Date: November 14, 2018
To: Jason E. Brown, County Administrator
From: Vincent Burke, P.E., Director of Utility Services
Prepared By: Cindy Corrente, Utility Finance Manager
Subject: Reserve Accounts

BACKGROUND

On November 13, 2018, staff presented six recommendations to the Indian River County Board of County Commissioners (BCC) regarding various scenarios related to reserve accounts. Each recommendation and its status is listed below.

1. Modify County Code to allow for the refund of impact fees paid, if such request is made within twenty-four months of the purchase of the ERU(s). This recommendation was approved by the BCC and staff was directed to bring back the code modification language. See Attachment 1.
2. Modify County Code to allow for the relinquishment of ERUs purchased during one of the voluntary assessment programs provided that the property remains undeveloped and/or service is not available within two hundred feet of the parcel. Such relinquishment shall include a refund of any impact fees paid only if service is unavailable within 200 feet of the property. Accounts shall be brought current before allowing any such relinquishment. This item was tabled until December 4th.
3. Modify County Code to allow for the relinquishment of ERUs purchased at any time. Unless the ERUs were purchased within the past twenty-four months, relinquishment shall not include a refund of impact fees. Accounts shall be brought current before allowing any such relinquishment. This item was tabled until December 4th.
4. Modify County Code to accommodate the County reclaiming any ERUs wherein twenty-four months of service availability fees are past due. This item was tabled until December 4th.
5. Modify County Code to provide a 90-day amnesty period that also provides the property owner an opportunity to relinquish ERUs upon the account becoming current. The BCC directed staff to bring a policy to accommodate this item on December 4th and to move forward with the advertisement for a Public Hearing on December 18th. See Attachment 3.
6. Direct staff to work with the County Attorney's office to research the logistics of foreclosing on properties that have excessive accounts receivable balances and enforcing the foreclosure option moving forward. This recommendation was approved.

ANALYSIS

Reserve accounts are defined as accounts wherein impact fees were voluntarily paid in order to guarantee capacity in the water and/or wastewater system. Reserve accounts contain a certain number of equivalent residential units (ERUs). An ERU is defined as “the amount of water used or wastewater produced by a typical residential unit”, or a maximum of 7,500 gallons per month. Once an impact fee is paid, there is a monthly service availability fee affiliated with that reserve account. Monthly service availability fees cover the operating costs affiliated with maintaining the reserved capacity in the water and wastewater system. Currently, Indian River County Department of Utility Services (IRCDUS) has 972 water reserve accounts with 3,736 ERUs and 998 sewer reserve accounts with 4,411 ERUs. The chart below depicts the total number of utility accounts and ERUs as well as the number of reserve accounts and ERUs.

Type of Account	Total Accounts All Types	Total Active Accounts	Total ERUs All Accounts	Total Active ERUs	Reserve Accounts	Reserve ERUs
Water	49,994	49,022	69,213	65,477	972	3,736
Sewer	29,770	28,772	49,241	44,830	998	4,411
Total	79,764	77,794	118,454	110,307	1,970	8,147

When an impact fee is paid, a utility account is established. Until the property is actually connected to the utility system, the account is referred to as a reserve account. Immediately upon receiving payment of an impact fee, IRCDUS is obligated to set aside and maintain the customer’s share of capacity in the system. Once that happens, IRCDUS incurs certain reoccurring costs in order to maintain that capacity. IRCDUS is reimbursed for these reoccurring costs through the monthly service availability fees.

For this analysis, the reserve accounts have been described in groups wherein there are similarities in the accounts within the group. These categories include accounts where the reserves were recently purchased in order to secure a building permit, accounts where the ERUs were purchased during various voluntary assessment programs and accounts where reserves were purchased for future development and often were required for a developer to obtain a concurrency certificate. Staff will describe concerns regarding some accounts within each category. Among more than one category, there are a small percentage of accounts where the account holder is not paying the monthly service availability fees. Even though IRCDUS is incurring the costs of maintaining the capacity, we are not receiving the reimbursement of the costs. This dilemma was reviewed extensively with our rate consultant. Second, amongst more than one category, there are accounts that have more ERUs than can be utilized on the property affiliated with the account, even at maximum buildout. Third, there are account holders amongst all groups that desire to relinquish their ERUs. Descriptions of the various categories follow below.

Reserve Accounts where the impact fees were paid in order to secure a building permit

On November 13, 2018, staff recommended modifying County Code to allow for the refund of impact fees, if such request is made within twenty-four months of the purchase of the ERUs. The BCC approved this recommendation and advised staff to come back in December with the proposed modification to County Code. A copy of this modification is included in Attachment 1.

Reserve Accounts where impact fees were paid during a voluntary assessment project

Between 1984 and 1989, IRCDUS adopted resolutions that were affiliated with various voluntary assessment projects. During this time frame, IRCDUS promoted assessments in lieu of impact fees in order to generate revenues for expansion of the system. The assessment values equated to ERUs. The funds generated were expended many years ago for expansion of the utility. The service availability revenues generated from these voluntary assessments were pledged for coverage of various bond issues affiliated with many of the expansion projects. The majority of these voluntary assessment projects were sewer projects wherein the funds generated were used to make sewer available, primarily in the north part of the county and the State Road 60 area. No one was forced to participate in the assessment project nor required to purchase ERUs. Customers purchased them strictly on a voluntary basis. Once the ERUs were purchased, service availability fees began to accrue. Over 11,000 ERUs were sold through these voluntary assessment projects. Over time, many of the parcels containing the reserves have been developed. However, 233 voluntary water and sewer reserve accounts remain in the system today. Those 233 reserve accounts hold a total of 1,277 reserves. Over ninety-percent of these account holders continue to pay their monthly service availability fees.

Type of Account	Number of Current Accounts*	Number of ERUs originally purchased	Number of ERUs remaining
Water	78	2,050	219
Sewer	155	9,176	1,058
Total	233	11,226	1,277

*This is the number of accounts remaining that are affiliated with ERUs that were purchased during one of the voluntary assessments. The original number of accounts is irrelevant since oftentimes the parcels consisted of tens or even hundreds of acres each. As the properties were carved out for development, accounts were added to accommodate the carve outs.

Included among the remaining account holders are some who have no plans to develop their property or connect to the county system, even though their properties are located within the urban service boundary. Some of them have expressed an interest in relinquishing their reserves. An allowance for such is discussed below in the recommendation section of this report. Most of these account holders continue to pay their monthly service availability fees. However, there are 21 accounts that are not paying the monthly service availability fees. These properties all have utility liens on them. It is important to understand that these few accounts have a large impact on cash flow and accounts receivable. Below is a chart that depicts the type of account, affiliated ERUs, and past due accounts receivable balances.

Type of Account	Number of Past Due Accounts	Number of ERUs	Accounts Receivable as of 6/30/18
Water	9	100	\$108,041
Sewer	12	187	\$370,418
Total	21	287	\$478,459

Reserve Accounts where impact fees were purchased for a Planned Unit Development (PUD)

Primarily, the ERUs in this group were purchased between Fiscal Year (FY) 2004 and FY 2007. At the time, there was an economic upswing, and residential development was widespread throughout the County, with heavy concentration in South County. A new practice became the standard during this time

frame. Developers were buying up vacant land for PUDs. They then purchased reserves in quantities that were sufficient to cover every residence and building in the PUD. Between FY 2004 and 2007, a total of 17,244 water ERUs and 12,724 sewer ERUs were purchased. The majority of these ERUs became active water and sewer accounts within a few years of the original purchase. Some of the PUDs were fully developed while others only partially developed. Today, about twenty percent of these locations remain undeveloped, and fourteen percent of those are in the process of being developed. Only six percent are not being developed. Coincidentally, only six percent of these account holders are not paying their service availability charges either.

Below is a table that depicts the past due balance on the six percent of the accounts referred to above.

Type of Account	Number of Past Due Accounts	Number of ERUs	Accounts Receivable
Water	9	882	\$1,731,490
Sewer	6	876	\$2,944,197
Total	15	1,758	\$4,675,687

OPTIONS FOR CONSIDERATION:

Several factors were considered before staff was able to make recommendations regarding reserve accounts. The first key factor was whether or not the service availability fees have been kept current. Overall, only six percent of the total ERUs sold by IRCDUS are affiliated with accounts that are not current. However, the impact of those few accounts on cash flow is quite significant. In reviewing these accounts with the rate consultant, it was advised that when service availability fees are not maintained, the owner of the ERUs loses their rights to the capacity related to those ERUs. A similar concept was written into Resolution 87-142 (Attachment 2), which was adopted on December 1, 1987. At that time, the County could reclaim the ERUs and resell them. Staff is unsure when this practice was discontinued. In order to prevent excessive balances accruing on reserve accounts in the future, staff recommended modifying County Code to allow for the refund of impact fees paid, if such request is made within twenty-four months of the purchases of the ERUs. On November 13, 2018, the BCC approved staff's recommendation and directed staff to return with a proposed modification to County Code. It is included in Attachment 1.

Staff is also recommending that after twenty-four months of service availability fees become delinquent, the county reclaim the ERUs affiliated with those service availability fees. Account holders would be notified and given the opportunity to bring the account current prior to the County reclaiming the ERUs. The manner in which those reserves are reclaimed will be elaborated upon within each applicable category of ERU discussed below.

Other factors that were reviewed include the circumstance under which the ERUs were purchased, the time period during which they were purchased, the volume of other similar purchases, and whether or not the funds collected for such sales have already been expended to expand the system. Relative to the total number of ERUs sold by IRCDUS since its inception, most have been utilized to establish active service. IRCDUS utilized the impact fees that were collected to expand the capacity of the system and now provides service to those areas. Less than two percent of all ERUs sold are affiliated with reserve accounts. Within that two percent, there are some situations described herein that require some action on the part of IRCDUS in order to resolve various areas of financial concern. A very small percentage of

these accounts are not in good credit standing with IRCDUS. Before considering any recommendations, the financial impact to IRCDUS was considered.

Reserve Accounts that were purchased during a voluntary assessment project

There are currently account holders whom possess ERUs that were purchased during one of the voluntary assessments and now have expressed the desire to relinquish their ERUs. Staff recommends updating County Code to allow for the relinquishment of such ERUs. A chart that reflects the potential impact if refunds were allowed for all reserve accounts is below.

Type of Account	Number of ERUs	Annual Revenue Generated (Service Availability Fees)	Cost to Refund Impact Fees
Water	219	\$ 23,783	\$ 295,650
Sewer	1,058	\$201,486	\$1,428,300
Total	1,277	\$225,269	\$1,723,950

Within this same group of ERU accounts, there are 21 accounts with 287 ERUs that are past due. Eight accounts make up eighty-four percent of the past-due accounts receivable category. Staff recommends giving the owner the opportunity to bring their account current within 90 days of receiving notice by certified mail. At the end of the 90-day period, if the account is not current, exercising the option to foreclose should be seriously considered. Failure to do so will result in further compounding the receivable problem.

Reserve Accounts that were purchased for a PUD

Staff has analyzed this group of account holders and recommends several actions related to this category. First, our rate consultant has advised that if service availability fees have not been paid, then the account holder loses their rights to the ERUs. Therefore, staff (on November 13th) recommended an update to County Code that defines the consequences of not paying service availability fees on reserve accounts. Before taking any action, staff recommended giving the owner the opportunity to bring their account current within 90 days of being notified by IRCDUS. The BCC directed staff to bring an amnesty policy back for review on December 4th and approved of advertising a public hearing regarding the ordinance to be held on December 18th. A copy of the draft ordinance and corresponding modification to County Code is included in Attachment 3.

Staff expects that some of the past-due account holders will not participate in the amnesty program. Therefore, staff recommended that they work with the County Attorney’s office to research the logistics of foreclosing on properties that have excessive accounts receivable balances and enforcing the foreclosure option moving forward. This recommendation was approved by the BCC on November 13th. Staff and the County Attorney will work together in researching this concept.

It is possible that another unique situation exists amongst holders of ERUs purchased during a voluntary assessment or purchased for a PUD. It may be that the account contains more ERUs than the owner plans to utilize. Under these circumstances, staff is recommending that the account holder be allowed to relinquish any ERUs they no longer want. Such relinquishment could only take place if the account was current. Once current, any subsequent bills would be based on the lower number of ERUs.

FUNDING

There is no funding affiliated with this agenda item at this time. However, the refund of any impact fees will affect the Impact Fee Fund balance by reducing said balance. Any penalties and late fees that are waived as a result of the amnesty program will be reflected in a reduction of operating revenues. At the conclusion of the amnesty period, staff will report to the board regarding any reductions that were issued.

Account Number	Account Name	Potential Impact
472-104000	Impact Fee Fund Pooled Cash	\$1,723,950
471034-343310	Water Sales	Report to follow at end of amnesty period
471034-343510	Sewer Sales	Report to follow at end of amnesty period

RECOMMENDATIONS

A summary of the recommendations contained herein is listed below:

1. Approve (or approve with modification) proposed ordinance change depicted in Attachment 1 to allow for the relinquishment of ERUs acquired during one of the voluntary assessment programs between 1984 and 1989. Such relinquishment shall include a refund of any impact fees or fees in lieu of impact fees that were paid to reserve capacity, provided that the property remains undeveloped and/or service is not available within two hundred feet of the parcel. Refunds shall be made at the rate at which the fees were paid. Accounts shall be brought current before allowing any such relinquishment. Direct staff to hold a public hearing on December 18th regarding this matter.
2. Modify County Code to allow for the relinquishment of ERUs purchased at any time if the owner desires to relinquish them. Unless the ERUs were purchased within the past twenty-four months or during one of the voluntary assessment programs described earlier herein, relinquishment shall not include a refund of impact fees. Accounts shall be brought current before allowing any such relinquishment.
3. Modify County Code to accommodate the County reclaiming any ERUs wherein twenty-four months of service availability fees are past due. Under this scenario, a partial refund would be processed for the impact fees. However, all account balances due would be deducted from that refund.
4. Approve (or approve with modifications) the draft amnesty ordinance and direct staff to hold a public hearing to adopt the proposal. A copy of the draft ordinance is presented in Attachment 3.
5. If approved, direct staff to work with the County Attorney to develop a proposed ordinance to accommodate Refund, Relinquishment, and Reclaiming ERUs as described in items 2 and 3 of this recommendation, and to proceed with advertising for a public hearing regarding said matter. A draft of the proposed ordinance is included in Attachment 4.

Attachments

Attachment 1 - Proposed Code Modification regarding Refund of Impact Fees (Section 201.09 E)

Attachment 2 - Resolution 87-142

Attachment 3 - Proposed Ordinance regarding Amnesty

Attachment 4 - Proposed Code Modification regarding Recommendations 2 and 3