

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Lee County by Ni Florida, LLC. | DOCKET NO. 100149-WU
ORDER NO. PSC-10-0564-PCO-WU
ISSUED: September 15, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

ORDER SUSPENDING FINAL RATES AND
GRANTING INTERIM RATES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Ni Florida, LLC (Ni Florida or Utility) is a Class A utility providing water service to approximately 745 customers in Lee County. Water rates were last established for this Utility in 1992.¹ Rate Base was last established in 2009.²

On June 22, 2010, Ni Florida filed its application for a rate increase at issue in the instant docket. The Utility's application did not meet the minimum filing requirements (MFRs). By letter dated July 22, 2010, Ni Florida was notified that the MFRs were deficient. Ni Florida corrected the deficiencies through information submitted on July 28, 2010. The Utility requested that the application be processed using the Proposed Agency Action (PAA) procedure and requested interim rates. The test year established for interim and final rates is the 13-month average period ended December 31, 2009.

Ni Florida requested an interim revenue increase of \$159,475 (or 72.44 percent). The Utility requested a final revenue increase of \$191,525 (or 87.0 percent).

The original 60-day statutory deadline for us to suspend Ni Florida's requested final rates was August 23, 2010. However, by letter dated June 23, 2010, Ni Florida agreed to extend the statutory time frame through August 31, 2010. This Order addresses the suspension of Ni

¹ See Order No. PSC-92-0807-FOF-WS, issued August 11, 1992, in Docket No. 910560-WS, In re: Application for Approval of rate increase in Lee County by Tamiami Village Utility, Inc.

² See Order No. PSC-09-0260-PAA-WU, issued April 27, 2009, in Docket No. 080183-WU, In re: Joint application for approval of transfer of Tamiami Village Utility, Inc's water system and Certificate No. 388-W in Lee County to Ni Florida, LLC.

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FPSC-COMMISSION CLERK

Florida's requested final rates and requested interim rates. We have jurisdiction to consider these matters pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

DECISION

Suspension of Rates

Section 367.081(6), F.S., provides that we 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) we have not acted upon the requested rate increase; or (2) if our PAA action is protested by a party other than the Utility.

We have reviewed the filing and have considered the information filed in support of the rate application and the proposed final rates. We find that it is necessary to further investigate this information, including on-site investigations by Commission staff accountants and engineers. Based on the foregoing, we find it appropriate to suspend the Utility's proposed rate increase.

Interim Rate

Ni Florida filed rate base, cost of capital, and operating statements to support its requested interim increase in water rates. Pursuant to Section 367.082(1), F.S., in order to establish a prima facie entitlement for interim relief, the Utility shall demonstrate that it is earning outside the range of reasonableness on its rate of return. Pursuant to Section 367.081(2)(a), F.S., in a proceeding for an interim increase in rates, we shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return. Based on the Utility's filing and the recommended adjustments below, we find that the Utility has demonstrated its prima facie entitlement in accordance with Section 367.082(1), F.S.

Pursuant to Section 367.082(5)(b)1, F.S., the achieved rate of return for interim purposes must be calculated by applying adjustments consistent with those used in the Utility's most recent rate proceeding and annualizing any rate changes. We have reviewed Ni Florida's interim request, as well as Order No. PSC-09-0260-PAA-WU, in which we last established rate base. Our approved adjustments are discussed below. Attached to this Order are accounting schedules to illustrate our findings for the appropriate rate base, capital structure, and test year operating income amounts. Rate base is labeled as Schedule No. 1-A, with adjustments shown on Schedule No. 1-B. Capital structure is labeled as Schedule No. 2. Operating income is labeled as Schedule No. 3-A, with adjustments shown on Schedule No. 3-B.

Rate Base

Ni Florida included adjustments to increase water plant by \$173,478 for the replacement of meters, meter boxes and lids, and updated piping. Pursuant to Section 367.082(5)(b)1, F.S.,

the only adjustments that shall be made to the interim test year are those consistent with the most recent individual rate proceeding or adjustments to annualize rate changes occurring during the interim test year. We find that the Utility's proposed adjustments are pro forma in nature because they are beyond the interim test year. As such, Ni Florida's pro forma plant adjustments above shall be removed from the interim rate base calculation. Therefore, Ni Florida's interim water rate base shall be \$82,740.

Cost of Capital

For purposes of its interim request, Ni Florida used a return on equity (ROE) of 9.24 percent and an overall cost of capital of 7.06 percent.³ Pursuant to Section 367.082(2)(a), F.S., the appropriate ROE for purposes of determining an interim rate increase is the minimum of the Utility's currently authorized ROE range. Ni Florida's authorized ROE was set at 11.22 percent in its last rate case.⁴ However, Ni Florida was transferred in April 2009.⁵ The ROE does not survive a transfer.⁶ The Utility has an equity ratio of 100 percent as a percentage of investor sources of capital. Pursuant to Sections 367.081(4)(f) and 367.082(5)(b)3, F.S., we used the current leverage formula to determine the appropriate ROE for purposes of this docket. Based on the current leverage formula⁷ and an equity ratio of 100 percent, the indicated ROE is 8.82 percent. With a range of plus or minus 100 basis points, the appropriate ROE for purposes of determining interim rates is 7.82 percent and the resulting overall cost of capital is 7.71 percent.⁸

Net Operating Income

Based on our review, we find it appropriate to make an adjustment to Ni Florida's operating revenues. We have increased operating revenues by \$570 to reflect the appropriate amount of annualized revenues.

Additionally, we find it appropriate to make an adjustment to operating expenses. Ni Florida included adjustments to increase water expenses by \$12,984 for contract operators, uncollectible accounts, bad debt expense, and purchased water. Pursuant to Section

³ The Utility's interim filing contained an error in the calculation of the requested overall cost of capital for interim purposes. Based upon the Utility's capital structure for the period ended December 31, 2009, by operation of math the overall cost of capital should have been 9.22 percent, not the 7.06 percent reflected in its filing.

⁴ See Order No PSC-92-0807-FOF-WS.

⁵ See Order No. PSC-09-0260-PAA-WU.

⁶ See Order Nos. PSC-07-0325- FOF-WS, issued April 16, 2007, in Docket No. 060368-WS, In re: Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., PSC-06-0925-PCO-WS, issued November 6, 2006, in Docket No. 060246-WS, In re: Application for increase in water and wastewater rates in Polk County by Gold Coast Utility Corp., PSC-06-0675-PCO-SU, issued August 7, 2006, in Docket No. 060255-SU, In re: Application for increase in wastewater rates in Pinellas County by Tierra Verde Utilities, Inc.

⁷ See Order Nos. PSC-10-0401-PAA-WS, issued June 18, 2010, and PSC-10-0446-CO-WS, issued July 13, 2010, in Docket No. 100006-WS, In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

⁸ The 7.71 percent return represents a one hundred fifty-one basis point reduction of the Utility's corrected overall cost of capital of 9.22 percent.

367.082(5)(b)1, F.S., the only adjustments that should be made to the interim test year are those consistent with the most recent individual rate proceeding or adjustments to annualize rate changes occurring during the interim test year. We find that the Utility's proposed adjustments are pro forma in nature because they are beyond the interim test year. As such, Ni Florida's pro forma expense adjustments shall be removed from the interim net operating income calculation.

Based on the above, we find that the appropriate test year operating loss, before any revenue increase, is \$105,991.

Revenue Requirement

Based on the above adjustments, we find that Ni Florida's revenue requirement shall be \$338,385. This represents an interim increase in annual revenues of \$117,668 (or 53.31 percent). This increase will allow the Utility the opportunity to recover its operating expenses and earn a 7.71 percent return on its rate base.

Appropriate Interim Water Rates

We find that interim water service rates for Ni Florida shall be designed to allow the Utility the opportunity to generate annual operating revenues of \$338,385. Before removal of miscellaneous revenues, this would result in an increase of \$117,668 or 53.31 percent. To determine the appropriate percentage increase to apply to the service rates, miscellaneous service revenues shall be removed from the test year revenues. The calculation is as follows:

	<u>Water</u>
1 Total Test Year Revenues	\$220,716
2 Less: Miscellaneous Revenues	<u>995</u>
3 Test Year Revenues from Service Rates	\$219,721
4 Revenue Increase	\$117,668
5 % Service Rate Increase (Line 4/Line3)	<u>53.55%</u>

The interim rate increase of 53.55 percent shall be applied as an across-the-board increase to the service rates in effect as of December 31, 2009. The approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The rates shall not be implemented until Commission staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security has been filed. Ni Florida shall provide proof of the date notice was given within 10 days after the date of notice.

Schedule No. 4, attached hereto, shows the Utility's test year, proposed interim and final rates, and our approved interim rates.

Appropriate Security to Guarantee the Interim Increase

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. As approved above, the total annual interim increase is \$117,668. In accordance with Rule 25-30.360, F.A.C., we have calculated the potential refund of revenues and interest collected under interim conditions to be \$68,710. This amount is based on an estimated seven months of revenue being collected from the approved interim rates over Ni Florida's current authorized rates shown on Schedules No. 4.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Since Ni Florida recently acquired Hudson Utility, Inc., we used Ni Florida's PSC Annual Report for 2008 and 2009 and Hudson Utility, Inc's. Annual Report for 2007 to calculate these ratios. Ni Florida has improved equity ownership and liquidity to sufficient levels in 2009. However, the average of these measures over the most recent three-year period are not within acceptable parameters. Ni Florida reports insufficient interest coverage and net losses over the review period. Net losses have steadily increased and have averaged over \$261,000 per year. For these reasons, we find that Ni Florida does not have the financial capability to support a corporate undertaking in the amount of \$68,710. Based on this analysis, Ni Florida shall be required to secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refund of water revenues.

If the security provided is an escrow account, said account shall be established between Ni Florida and an independent financial institution pursuant to a written escrow agreement. This Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of this Commission through the Office of Commission Clerk; the account shall be interest bearing; information concerning that escrow account shall be available from the institution to this Commission or its representative at all times; the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and, pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d DCA 1972), escrow accounts are not subject to garnishments.

Ni Florida shall deposit \$9,807 into the escrow account each month. The escrow agreement shall also state that if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers, and if a refund to the customers is not required, the interest earned on the escrow account shall revert to the Utility.

If the security provided is a surety bond or a letter of credit, said instrument shall be in the amount of \$68,710. If the Utility chooses a surety bond as security, the surety bond shall state that it will be released or terminated only upon subsequent order of 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 will be in effect until a final Commission order is rendered releasing the funds to the Utility or requiring a refund.

Regardless of the type of security provided, Ni Florida shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the Utility shall provide a report by the 20th day 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 undertaken in accordance with Rule 25-30.360, F.A.C.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. Such costs are the responsibility of, and shall be borne by, the Utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the final water rates proposed by Ni Florida, LLC. are hereby suspended. It is further

ORDERED that the request for an interim rate increase for water rates by Ni Florida, LLC. is hereby granted, subject to our modifications, as set forth in the body of this Order. It is further

ORDERED that all matters contained in the schedules attached hereto are incorporated herein by reference. It is further

ORDERED that the approved interim rates shall be effective for service rendered as of the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1)(a), Florida Administrative Code. It is further

ORDERED that the interim rates shall not be implemented until Commission staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security is filed. It is further

ORDERED that Ni Florida, LLC. shall provide proof of the date notice was given within 10 days after the date of notice. It is further

ORDERED that Ni Florida, LLC. shall file a corporate undertaking on behalf of Ni Florida, LLC. to guarantee any potential refunds of revenues collected under interim conditions, as set for the in the body of this Order. It is further

ORDERED that pursuant to Rule 25-30.360(6), Florida Administrative Code, Ni Florida, LLC. 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 should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that this docket shall remain open pending our Proposed Agency Action decision on Ni Florida, LLC.'s requested rate increase.

By ORDER of the Florida Public Service Commission this 15th day of September, 2010.



ANN COLE
Commission Clerk

(S E A L)

LAH

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate 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. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Ni Florida, LLC Schedule of Water Rate Base Test Year Ended 12/31/09			Schedule No. 1-A Docket No. 100149-WU		
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjusted Test Year
1 Plant in Service	\$292,084	\$173,478	\$465,562	(\$173,478)	\$292,084
2 Land and Land Rights	0	0	0	0	0
3 Non-used and Useful Components	0	0	0	0	0
4 Accumulated Depreciation	(203,862)	0	(203,862)	0	(203,862)
5 CIAC	(110,779)	0	(110,779)	0	(110,779)
6 Amortization of CIAC	105,297	0	105,297	0	105,297
7 Acquisition Adjustment	713,630	(713,630)	0	0	0
8 Working Capital Allowance	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
9 Rate Base	<u>\$796,370</u>	<u>(\$540,152)</u>	<u>\$256,218</u>	<u>(\$173,478)</u>	<u>\$82,740</u>

Ni Florida, LLC Adjustments to Rate Base Test Year Ended 12/31/09	Schedule No. 1-B Docket No. 100149-WU
Explanation	Water
<u>Plant In Service</u> To remove pro forma plant items.	<u>(\$173,478)</u>

Ni Florida, LLC
Capital Structure - 13-Month Average
Test Year Ended 12/31/09

Schedule No. 2
Docket No. 100149-WU

Description	Total Capital	Specific Adjustments	Subtotal Adjusted Capital	Prorata Adjustments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost	
Per Utility									
1 Long-term Debt	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%	0.00%	
2 Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%	
3 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
4 Common Equity	713,563	0	713,563	(459,007)	254,556	76.07%	9.24%	7.03%	
5 Customer Deposits	4,660	0	4,660	(2,998)	1,662	0.50%	6.00%	0.03%	
6 Tax Credits-Zero Cost	0	0	0	0	0	0.00%	0.00%	0.00%	
7 Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>	
8 Total Capital	<u>\$718,223</u>	<u>\$0</u>	<u>\$718,223</u>	<u>(\$462,005)</u>	<u>\$256,218</u>	<u>100.00%</u>		<u>7.06%</u>	
Per Commission									
9 Long-term Debt	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%	0.00%	
10 Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%	
11 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
12 Common Equity	713,563	0	713,563	(\$635,483)	78,080	94.37%	7.82%	7.38%	
13 Customer Deposits	4,660	0	4,660	0	4,660	5.63%	6.00%	0.34%	
14 Tax Credits-Zero Cost	0	0	0	0	0	0.00%	0.00%	0.00%	
15 Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>	
16 Total Capital	<u>\$718,223</u>	<u>\$0</u>	<u>\$718,223</u>	<u>(\$635,483)</u>	<u>\$82,740</u>	<u>100.00%</u>		<u>7.71%</u>	
						LOW	HIGH		
RETURN ON EQUITY						<u>7.82%</u>	<u>9.82%</u>		
OVERALL RATE OF RETURN						<u>7.71%</u>	<u>9.60%</u>		

Ni Florida, LLC Statement of Water Operations Test Year Ended 12/31/09						Schedule No. 3-A Docket No. 100149-WU	
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjusted Test Year	Revenue Increase	Revenue Requirement
1 Operating Revenues:	<u>\$220,146</u>	<u>\$159,475</u>	<u>\$379,621</u>	<u>(\$158,905)</u>	<u>\$220,716</u>	<u>\$117,668</u> 53.31%	<u>\$338,385</u>
Operating Expenses							
2 Operation & Maintenance	\$314,908	\$12,984	\$327,892	(\$12,984)	\$314,908	\$0	\$314,908
3 Depreciation	1,911	10,200	12,111	(10,200)	1,911	0	1,911
4 Amortization	0	0	0	0	0	0	0
5 Taxes Other Than Income	9,863	7,176	17,039	(7,151)	9,888	5,295	15,183
6 Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
7 Total Operating Expense	<u>\$326,682</u>	<u>\$30,360</u>	<u>\$357,042</u>	<u>(\$30,335)</u>	<u>\$326,707</u>	<u>\$5,295</u>	<u>\$332,002</u>
8 Operating Income	<u>(\$106,536)</u>	<u>\$129,115</u>	<u>\$22,579</u>	<u>(\$128,570)</u>	<u>(\$105,991)</u>	<u>\$112,373</u>	<u>\$6,382</u>
9 Rate Base	<u>\$796,370</u>		<u>\$256,218</u>		<u>\$82,740</u>		<u>\$82,740</u>
10 Rate of Return	<u>(13.38%)</u>		<u>8.81%</u>		<u>(128.10%)</u>		<u>7.71%</u>

Ni Florida, LLC Adjustments to Operating Income Test Year Ended 12/31/09	Schedule No. 3-B Docket No. 100149-WU
Explanation	Water
<u>Operating Revenues</u>	
Remove requested final revenue increase.	(\$159,475)
To reflect the appropriate annualized revenue adjustment.	570
Total	<u>(\$158,905)</u>
<u>Operation and Maintenance Expense</u>	
To remove pro forma contract operator.	(\$7,100)
To remove pro forma uncollectable accounts.	(2,650)
To remove pro forma purchased water.	(443)
To remove pro forma bad debt expense.	<u>(2,791)</u>
Total	<u>(\$12,984)</u>
<u>Depreciation Expense</u>	
To remove pro forma depreciation expense.	<u>(\$10,200)</u>
<u>Taxes Other Than Income</u>	
RAFs on revenue adjustments above.	<u>(\$7,151)</u>

Ni Florida, LLC		Schedule No. 4		
Water Monthly Service Rates		Docket No. 100149-WU		
Test Year Ended 12/31/09				
	Present Rates	Utility Requested Interim	Utility Requested Final	Commission Approved Interim
<u>Residential Service</u>				
All meter sizes	\$13.61	\$23.93	\$25.39	\$20.90
<u>Gallage Charge, per 1,000 Gallons</u>				
RS-Gallage Charge	\$3.36	\$5.50	\$6.27	\$5.16
<u>General Service</u>				
Base Facility Charge by Meter Size:				
5/8" x 3/4"	\$11.13	\$19.57	\$20.76	\$17.09
1"	\$27.89	\$49.03	\$52.02	\$42.83
1-1/2"	\$55.76	\$98.02	\$104.01	\$85.62
2"	\$89.21	\$156.82	\$166.40	\$136.98
3"	195.18	\$343.11	\$364.07	\$299.71
4"	\$278.82	\$490.14	\$520.08	\$428.14
<u>Gallage Charge, per 1,000 Gallons</u>				
GS-Gallage Charge	\$3.36	\$5.91	-	\$5.16
<u>General Service</u>				
Base Facility Charge by Meter Size:				
3"	\$1,425.53	\$2,505.97	\$2,659.04	\$2,188.95
<u>Gallage Charge, per 1,000 Gallons</u>				
GS-Gallage Charge	\$3.54	\$6.22	\$6.60	\$5.44
<u>Typical Residential Bills 5/8" x 3/4" Meter</u>				
3,000 Gallons	\$23.69	\$40.43	\$44.20	\$36.38
5,000 Gallons	\$30.41	\$51.43	\$56.74	\$46.70
10,000 Gallons	\$47.21	\$78.93	\$88.09	\$72.49