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100149-WU

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Sent: Wednesday, November 17, 2010 4:58 PM
To: Filings@psc.state.fl.us
Cc: 'Martin Friedman'; 'ewallace@niamerica.com'; Jared Deason; Bart Fletcher; Andrew Maurey; Ralph Jaeger; REILLY,STEVE
Subject: Dkt. 100104-WU Ni America - Tamiami Rate Case
Attachments: 100149 Letter to J.Deason Allocations and Bad Debt.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100149-WU, In re: Docket 100149-WU-Application for increase in water rates in Lee County by Ni Florida, LLC.

c. Document being filed on behalf of Office of Public Counsel.

d. There are a total of 4 pages.

e. The document attached for electronic filing is a letter to Jared Deason that addresses Issues Regarding Corporate Allocations and Bad Debt Expense.

Thank you for your attention and cooperation to this request.

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Speaker of the
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Patricia W. Merchant
Chief Legislative Analyst

November 17, 2010

Mr. Jared Deason
Division of Economic Regulation
Florida Public Service Commission
2340 Shumard Oak Boulevard
Tallahassee, Florida 32399-0830

Re: Docket 100149-WU-Application for increase in water rates in Lee County by Ni Florida, LLC. – OPC Issues Regarding Corporate Allocations and Bad Debt Expense

Dear Mr. Deason,

The Office of Public Counsel is actively monitoring the rate case docket for the Ni America/Ni Florida-Tamiami. In our review of the minimum filing requirements and the staff audit workpapers, we have numerous concerns that we believe should be addressed. While several of these concerns might be addressed in response to staff's most recent data request dated November 9, 2010, we would like to bring these to staff's attention to aid staff in its review of the rate case so that staff can address these concerns as you see fit.

The majority of the areas that we have looked into deal with the level of affiliate costs and the allocation methodology Ni used to allocate corporate overhead to the few systems it owned in 2009 and the level requested to be recovered from the Ni Florida Tamiami ratepayers.

Corporate Allocated Expenses

Below is a partial list of the affiliate costs that Ni wants to allocate to Tamiami ratepayers:

Employee/Officer/Director Salaries & Benefits:	\$1,481,070
Corporate Accounting/Tax:	\$ 130,212
Corporate Rent for at least 2 offices:	\$ 43,829
Corporate Travel:	\$ 37,330
Computer Services:	\$ 26,880
Crime:	\$ 3,338
Telephone:	\$ 51,181
Utilities:	\$ 16,624
Meals & Entertainment:	\$ 25,032

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Ni America Capital Management Corporate Governance: \$ 250,778

The above itemized expenses total \$2.06 million of the \$2.13 corporate overhead requested. Ni has taken the \$2.13 million total of affiliate costs and allocated 47% to the 5 systems owned in 2009 as utility related costs. This is approximately \$1.00 million that was allocated to the 4,685 test year equivalent residential connections (ERC's) resulting in \$214/ERC/year (\$18 per month) for just corporate overhead. Direct costs for running each system are in addition to these requested affiliate costs. OPC has several concerns regarding these affiliate charges that Ni wishes Tamiami customers to pay.

Salary Overhead Concerns

The 2009 corporate salaries expensed were for 19 persons. The staff audit workpapers include a document that contains company-provided job descriptions for the 19 employees that existed in 2009. Of those 19, it appears that 9 have left the company and one had his salary drop by a third. That leaves 9 employees with an average salary of \$115,000 (only 2 under \$100,000). (See Staff audit work paper 43 and supporting schedules.) The company also appears to have a new chairman (Jim McGivern) and regional president (R. Stan Jones) based on the Ni America website. This website also provides job descriptions for the 4 key personnel, but only Edward R. Wallace, President, and Mark B. Myers, VP Business Development, were included in the 2009 payroll. In addition to the non-recurring and materially changed personnel and payroll, OPC has concerns over the need for such high payroll overhead for the size of the current systems and that several of the employees are involved in acquisitions and due diligence for future systems.

Based on the notes from the directors meetings provided in response to staff audit requests, Ni America stated on Jan 21, 2009, that it would employ 8 partners and 4 employees (Notes from BOD Minutes Audit WP 8). OPC questions whether these partners have day to day responsibilities for the management and operation of the owned utilities or if their salaries essentially represent directors' fees. Other pertinent information would be whether any of these individuals have other outside jobs and how much time each person spends working on utility related matters.

Specifically for the Tamiami system, Ni America pays FUGH a \$36,000 management fee for Water Distribution Operations, Meter Reading, Billing/Collection, Book Keeping/ Administration, and a 24-Hour Customer Call Service. The company has requested additional fees of \$7,100 to administer a line flushing program and pays for routine preventative maintenance and minor repairs on an as incurred basis. While OPC is not disputing the prudence of the FUGH contract amounts, adding an additional layer of \$175,000 for corporate overhead charges appears to be excessive given that the FUGH services represent essentially a turn-key operation.

Corporate Accounting/Tax:

Ni America recorded \$130,212 in accounting and tax fees in 2009 that it allocated 47% to the 5 utility systems. The information provided to staff auditors indicated that Ni has at least 14 limited liability corporations that are affiliated with Ni America (see list below). OPC questions why such a large accounting and tax bill is required to operate several small water and/or wastewater utilities and whether the potential for complicated accounting and tax situations arise because of the corporate structure and private equity component of the organization rather than utility-related issues.

Ni America provided an organizational chart to the auditors that reflected the following 14 entities as affiliates of Ni America:

Ni America Texas, LLC
Ni Louisiana, LLC
Ni North Carolina, LLC
Ni South Carolina, LLC
Ni Florida Utilities, Inc.
Wateree Utilities Holding, Inc
1710 Woodcreek Farms, Inc.

Ni Arizona, LLC
Ni Mississippi, LLC
Ni Pennsylvania, LLC
Ni Arizona Utilities, Inc.
Ni Texas Development, LLC
Palmetto Utilities, Inc.
Ni America Utility Holding, Corp.

Corporate Rent and Travel

Upon review of the Ni America Operating general ledger, the company incurred \$43,829 to maintain at least two corporate offices: one in Houston and one in College Station. It also expensed \$37,330 for corporate travel. Staff auditors questioned why the company paid living expenses for its former chairman and the company responded that because the chairman did not reside in Houston, it was part of the company agreement to pay his living expenses. OPC questions the reasonableness of each of these categories and why they are prudent utility related expenses.

Crime and D&O Insurance

Ni America Operating purchased a \$1 million crime policy with \$10,000 deductible and \$3 million directors and officers and employers practices liability with \$25,000 deductible. Without reviewing the individual policies currently in effect and the beneficiaries of each policy, OPC questions the reasonableness of charging ratepayers.

Telephone, Utilities and Computer Services

Ni America Operating incurred close to \$95,000 in telephone, utilities and computer services in 2009. Given the large officer/director/employee turnover that occurred in 2009 and the large percentage of due diligence work, OPC questions the recurring nature and prudence of such expenses for the small number of utility systems owned.

Ni America Capital

Ni America Capital charged Ni America Operations \$250,778 in corporate governance fees to be spread 47% to the 5 owned systems in 2009. Of this amount, Ni Capital paid \$100,000 for director fees for Mike Fuizat and Jim McGivern, \$100,000 for an executive search fee for Jim McGivern, transportation expenses of \$9,188 for travel to board meetings and \$10,703 for D&O Insurance. Ni America Capital was also charged \$21,840 from Metalmark Capital (which invested in Ni America) for 2008 federal and state tax preparation. These all appear to be investor related expenses which OPC questions the reasonableness and prudence of passing any portion to ratepayers.

Allocation Issues

Below are several concerns that OPC has regarding how the costs were allocated.

Informal Survey for Allocation Methodology

The company did an informal survey by each employee to determine how to allocate between utility and non-utility work performed. Based on this survey, Ni stated that the average employee works 47.0898% on utility matters. There are no workpapers to support this estimate and based on the provided job titles and descriptions, it is obvious that many of the persons listed perform due diligence work to investigate future systems that Ni might purchase. None of the provided descriptions reflect a reasonable amount of daily work performed for the few utilities that the company owns, and many of the persons that received salaries in 2009 are no longer with the company.

Additional Systems Purchased in 2009 and 2010

According to its website, Ni America bought a new system in early 2010 called Palmetto Utilities, Inc. in South Carolina with 11,000 customers (14,823 ERCs as of April 2009). The company also included the Brighton system in 2009 for less than a full year. These are known and measurable changes that occurred during and after the test year that OPC believes should be considered in determining whether the allocated corporate overhead should be allowed or how it should be allocated.

Bad Debt Expense

The last issue that OPC wishes to address at this time is bad debt expense. The company increased bad debts without sufficient support. The Company requested a bad debt expense of 1.75% of revenues. The Bad Debt Expense booked in 2009 was \$1,202 with recorded Revenues of \$220,145. This resulted in an actual 2009 Bad Debt Expense ratio to revenues of 0.55%. Bad debt expense for the first six months of 2010 totaled \$581, and doubling this equals \$1,162. The company has not provided sufficient support to show its requested \$3,853 proforma bad debt expense is representative or reasonable.

In conclusion, I wish to thank you in advance for your analysis and consideration of our issues. Should staff have any questions, we would be willing to discuss these in a meeting with the parties, if necessary.

Sincerely,

s/ Tricia Merchant

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