

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 160246-WS

PROPOSED ADOPTION OF RULE
25-30.444, F.A.C., UTILITY
RESERVE FUND, AND 25-30.4445,
F.A.C., NOTICE OF APPLICATION
FOR UTILITY RESERVE FUND.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS
COMMISSIONER DONALD J. POLMANN

DATE: Tuesday, March 7, 2017

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
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P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** All right. Circling back to
3 Item 2.

4 **MS. HARPER:** Good morning, Commissioners. I'm
5 Adria Harper with the Office of the General Counsel.

6 Today we have Item 2 where staff is
7 recommending that the Commission propose rules to
8 implement a Utility Reserve Fund for water and
9 wastewater utilities, as required by legislation enacted
10 in the 2016 legislative session that amended the water
11 and wastewater ratemaking statute, Section 367.081.

12 As required by the new legislation, the
13 Utility Reserve Fund rule that staff is recommending
14 addresses the projects eligible for the reserve fund,
15 the filing requirements to request a reserve fund, the
16 reporting requirements for monies collected in the
17 reserve fund, and how a utility may receive
18 disbursements from the fund.

19 Because approval of a Utility Reserve Fund
20 surcharge may result in a rate increase to customers,
21 staff is also recommending that the Commission propose a
22 rule on noticing requirements for a Utility Reserve
23 Fund.

24 During the rule development process, staff
25 held a workshop and requested public comments on both

1 these draft rules. Staff attempted to address the
2 concerns of all the stakeholders in the draft rules. As
3 discussed in the staff recommendation, some of the
4 stakeholders had opposite views on certain aspects of
5 the rules. Staff believes that the rules are a good
6 balance of the opposing views and will benefit both
7 ratepayers and the utilities, while also implementing
8 the legislature's intent in regard to the creation of a
9 Utility Reserve Fund. Staff is available to answer any
10 questions you may have.

11 **CHAIRMAN BROWN:** Thank you, Ms. Harper. And I
12 know we have folks here -- nice to see you -- today who
13 want to address the Commission. But before we get into
14 that, Ms. Harper, I just want to get kind of a timeline
15 of all of the events that have led to this because we
16 had legislation, we had a study committee that started
17 out -- what? -- in 2012?

18 **MS. HARPER:** Yes, ma'am.

19 **CHAIRMAN BROWN:** If you could just kind of
20 give all of us a roadmap.

21 **MS. HARPER:** Right. Yes. So the study
22 committee, which you were a part of, in 2012 --

23 **CHAIRMAN BROWN:** Thank you.

24 **MS. HARPER:** -- looked at addressing several
25 problems that were in the wastewater -- that were -- the

1 wastewater utilities, particularly the smaller ones,
2 were having problems with. The Utility Reserve Fund was
3 something that was suggested by the committee, as well
4 as other things, to help wastewater utilities that have
5 low capital the ability to get loans and financing to
6 prepare plants and so forth.

7 **CHAIRMAN BROWN:** Really that happened,
8 though -- just a timeline of dates, so that happened --
9 the study committee met in 2012.

10 **MS. HARPER:** '12.

11 **CHAIRMAN BROWN:** Issued the report in 2013.

12 **MS. HARPER:** Correct.

13 **CHAIRMAN BROWN:** Legislation?

14 **MS. HARPER:** And then the legislation came in
15 2016. Ultimately it was passed in 2016. And we had --
16 we have till April 1st, per the legislation, to
17 implement rules for a Utility Reserve Fund. And there
18 was some other stuff that the legislature looked at, but
19 we're focused today on the Utility Reserve Fund aspect.

20 **CHAIRMAN BROWN:** Thank you so much. And with
21 that, I want to get into some comments first from --
22 hearing from Public Counsel, who actually happened to
23 serve on the study committee with me.

24 **MR. KELLY:** Good morning, Madam Chairman and
25 members.

1 First off, I want to thank staff. Back in
2 December, they held a workshop. And my mother happened
3 to be in the hospital, and they accommodated me and
4 allowed me to participate by phone, and that was very
5 much appreciated. And they've been very open about
6 comments, sharing their comments back and forth, and our
7 office really appreciates that.

8 I don't want to go back and rehash all the
9 comments that we've submitted in writing, but a couple
10 of areas, I think, bear mentioning to you this morning.

11 And first off, our first concern is about the
12 cap, that the rule is not 100 percent clear that there's
13 a 30 percent cap on any surcharge that might be imposed,
14 and there's a couple of issues with that.

15 Number one, I would submit to you that a
16 30 percent rate hike is pretty significant on any
17 system. Number two, it's not clear that the 30 percent
18 is on a project-by-project cap or is it a total year
19 cap? And then also the rule contemplates that the
20 utility seeking a reserve fund can ask for a variable
21 surcharge, meaning it might change month to month. And
22 so we would ask that there might be some consideration
23 for clarifying that if it is indeed a 30 percent cap,
24 which we would submit is the right way to go for all
25 projects, no matter if you add projects over the years,

1 you can never go above 30 percent, that also the
2 30 percent cap would apply on a month-to-month basis.
3 Because I would hate to see ratepayers experience a 50
4 or 60 percent rate hike for, say, six months and then
5 the remaining months of the year 10 percent. I just
6 don't -- I don't think that would be good practice.

7 And so those are things that we would ask you
8 to consider along those lines of clarifying exactly that
9 the cap is 30 percent for all projects and would apply
10 on a yearly as well as a monthly basis.

11 The other two issues, I'll again try to be
12 very, very brief. And the underlying statute,
13 367.081(2)(c), specifies that the creation of the
14 reserve fund is related to existing distribution and
15 collection infrastructure. And we had conversations at
16 the workshop and comments had been submitted that the
17 rule does not necessarily limit the reserve fund to
18 distribution and collection infrastructure. Staff
19 mentions in their staff recommendation that no examples
20 were provided that customers would be harmed. With all
21 due respect, that's not the legal proposition of whether
22 consumers would be harmed or not.

23 The bottom line is the statute gives you, the
24 Commission, your power. It gives me, my office, our
25 authority. You can't go beyond that statutory

1 authority.

2 And so we have a concern that while it might
3 be a good project, I'm not arguing that, what I am
4 arguing is that the statute is very specific, and that's
5 what I believe the rule must be limited to or you are
6 going beyond statutory authority.

7 Along the exact same lines, my last point I
8 wanted to make is that the last revision by staff, in
9 response to some comments from industry, now are going
10 to allow the reserve fund to be used if an emergency
11 situation occurs at a water and wastewater utility.

12 Again, I'm not going to sit here and tell you,
13 argue that that may be a bad use of the fund. What I am
14 here to tell you is I do not believe the statute gives
15 you the discretion to decide that these monies can be
16 used for purposes other than what the statute says it's
17 going to be created for.

18 The use of funds for emergency purposes is not
19 limiting to the -- again, to the words of the statute,
20 the collection and distribution infrastructure. There
21 is, in the rule, some language about that if the utility
22 uses part of the funds in this manner, then they are
23 supposed to notify you how they're going to replenish
24 it, but there's no requirement that it be replenished.
25 It then says if they can't replenish it, then how are

1 they going to come up with a mechanism to either extend
2 the reserve fund collection to take care of paying for
3 the projects that were the basis for the setting of the
4 underlying reserve fund?

5 So with all due respect, we don't believe your
6 rule can go beyond the words of the statute. It must
7 only apply to existing distribution and collection
8 infrastructure. And again, with all due respect, I do
9 not believe it can be applied in an emergency situation
10 simply because the statute does not provide for that.
11 If the legislature wanted to give you the discretion to
12 do that, they could have easily done that in the
13 statute, and they didn't. And with that, I appreciate
14 your indulgence in allowing me to share our comments.

15 **CHAIRMAN BROWN:** Thank you, Mr. Kelly. And
16 I'm sure my colleagues have questions for you after we
17 hear from Mr. Rendell.

18 **MR. RENDELL:** Good morning, Commissioners.
19 Troy Rendell, U.S. Water Services, here on behalf of
20 several regulated utilities throughout the state.

21 First off, I commend staff on the proposed
22 rule, and I support the recommendation. I originally
23 had not planned to speak, but after I talked to my
24 president after the recommendation came out, I just
25 wanted to bring, like, a real life situation and

1 example. And I think the 30 percent may address this,
2 but just to bring it out.

3 As you, many of you recall, last year we had
4 Brevard Waterworks, which is an aging utility over in
5 Brevard County that needs complete restructure --
6 infrastructure replacement, which could cost between
7 600- and \$700,000. There's only just over
8 200 customers, and if the project takes six months, you
9 know, that's 4- or \$500 a month on top of their bills
10 that they can't afford. So I just wanted to bring the
11 point that, you know, there needs to be flexibility. If
12 you apply the 30 percent cap, then it may take two or
13 three years to get the funds up.

14 So, you know, the utility and staff can work
15 together, along with OPC, to maybe, you know, collect
16 those funds over an extended period, over two years, and
17 then do the project, but they wouldn't start the project
18 until the funds were there. But I just wanted to bring
19 that real life example so that, you know, you're aware
20 and then that, you know, we'll have flexibility with
21 working on staff -- with staff when we file -- if we
22 file under this rule.

23 **CHAIRMAN BROWN:** Thank you, Mr. Rendell. And
24 do you think that the proposed rule, as is drafted, that
25 the utilities that you represent would actually utilize

1 this rule? Because I know one of the issues coming up
2 with something that strikes the right balance is to
3 allow the utilities to take advantage of it for the
4 benefit of the customers, and I just wanted to see if
5 your utilities were prepared to utilize it as proposed.

6 **MR. RENDELL:** We would. It depends on the
7 project. You know, we -- fortunately, we do have the
8 capital to make these investments upfront and seek rate
9 cases. But there may be instances where -- you know,
10 like Brevard or some of these other ones that are
11 extreme, and they're becoming more common. I mean,
12 there's aging infrastructure all over the state and
13 small customer bases.

14 But in those instances, we could, we could use
15 this rule and we could get that funding upfront, but it
16 may take some time to get those funds for that project.

17 **CHAIRMAN BROWN:** So, Mr. Rendell, so --
18 because my recollection of the whole discussion on the
19 reserve funds was really -- it started with regard to
20 the smaller utilities and their lack of ability to
21 attract capital and have access to capital. And so the
22 reserve funds would serve as that mechanism to provide
23 for infrastructure improvements and, with no disrespect,
24 but also for emergency projects that needed to be
25 addressed for the benefit of the customers. So that was

1 my recollection of the whole dialogue on the study
2 committee that ultimately led to this legislation. Do
3 you think that this would be utilized by the larger
4 utilities that have access to capital?

5 **MR. RENDELL:** Possibly, yes, because it does
6 provide another tool in the toolbox for, you know,
7 funding similar to some of the electric companies, that
8 they can have this surcharge that wasn't available
9 before. Because, you know, we've heard time and time
10 again they can't afford any infrastructure and they end
11 up abandoning or selling, which is good for us, but
12 we -- you know, I think they would use this, and I
13 think, you know, we would, you know, we would also look
14 at this.

15 And I do agree that, you know, we need to look
16 at water quality. Water quality is the largest issue
17 right now, and there is a statute, a new statute where
18 the Commission has to take that into account. So I do
19 agree with staff that it needs to address water quality
20 as well.

21 We're working with an HOA right now to install
22 forced draft aeration, and we got their full support.
23 We've met with them, you know, several times and we're
24 moving forward. So I think the water quality, although
25 OPC believes, you know, respectfully it goes beyond the

1 statute, I think it needs to be addressed as well.

2 **CHAIRMAN BROWN:** Thank you. And, again, the
3 statute doesn't specifically limit it to the smaller
4 utilities, but the whole discussion generated from the
5 smaller utilities' inability to attract capital to
6 address these projects that needed immediate attention,
7 so more attention.

8 Commissioners, back to the bench. I just have
9 a question for Mr. Kelly with regard -- to me, hearing
10 your concerns, and it looks like staff really did take
11 them into consideration, and -- in proposing the rule.
12 Again, it's a very hard balance, the whole discussion of
13 the reserve fund. And it was very -- it was a
14 conversation that, during the study committee, that it
15 was hard to generate a consensus because it is -- it's
16 just hard to have the limitations but to afford the
17 ability to address the issues.

18 So that being said, it looks like your big
19 concern to me, from what I hear, is the language and the
20 statutory authority going beyond to those emergency
21 projects. And with the proposal, if the Commission were
22 to go ahead and approve the proposed rules, I'm just
23 trying to understand how strongly you feel to see where
24 we are in terms of procedure and if the Public Counsel
25 is concerned enough to protest this rule.

1 **MR. KELLY:** Sure. Madam Chair, I --

2 **CHAIRMAN BROWN:** Sorry for being so blunt.

3 **MR. KELLY:** -- I don't really have an answer
4 for you today. I mean, I know that the Joint
5 Administrative Procedures Committee, I believe, is going
6 to have to review this. Is that correct?

7 **MS. HARPER:** Yes. They've actually done an
8 initial review. Now they could -- they're going to have
9 to review it again more formally. So that was just an
10 initial make sure we're on the right track, and they did
11 not have any issues at that time with anything like
12 statutory authority.

13 **CHAIRMAN BROWN:** And the proposal may not be
14 deferred. It has to be voted on by April 1st.

15 **MS. HARPER:** It has -- yes, ma'am, it has to
16 be proposed by April 1st.

17 **MR. KELLY:** My thoughts are, you know, JAPC is
18 the -- I've worked with them for about the last 30
19 years, and if they -- you know, I can't sit here and
20 tell you -- let me back up.

21 We don't have any plans to protest because,
22 again, I don't think that the ideas behind the rule are
23 bad. My concern, though, is exceeding statutory
24 authority. And I will let the process run its course
25 and let's see what the Joint Administrative Procedures

1 Committee says. And if they feel -- I don't know if
2 they've looked yet at the emergency provision or not, so
3 I'd like to wait and see what they have to say and what
4 their comments are.

5 **CHAIRMAN BROWN:** So we've got Commissioners
6 with questions, but I just want to follow up with that
7 real quickly.

8 And, you know, I looked at the legislative
9 intent and it was very vague, because I wanted to look
10 at the concerns. And my recollection -- I have copious
11 notes about the discussion on the study committee too.
12 So I try to get down to what was the intent of the
13 committee and then what was the intent of -- and my
14 recollection is that it did address emergency concerns.

15 **MR. KELLY:** Oh, yes, ma'am. I agree with you
16 100 percent that several of those issues were addressed
17 by the study committee. Now it wouldn't be fair for me
18 to sit here and tell you what my considerations were
19 with the bill sponsor. That's not fair.

20 **CHAIRMAN BROWN:** Right.

21 **MR. KELLY:** Okay? That's conversations he had
22 with me and asking me to come over and review things.

23 What I will submit to you is that the
24 legislature had full access to the study committee. And
25 if they had wanted to go as far as everything that the

1 study committee suggested, they could easily have done
2 so.

3 **CHAIRMAN BROWN:** Fair enough, and that's true.

4 With that, we'll go to Commissioner Graham.

5 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

6 I think you guys touched on a lot of the questions that
7 I had. Does staff -- after we approve this, assuming we
8 approve it, and we move forward to the next step and
9 they disapprove, they say that we went too far, what
10 happens after that?

11 **MS. HARPER:** Well, they'll have 21 days to
12 notify us that they'd like to have a rule hearing, and
13 we would basically come before you again and have a
14 hearing about these rules. And they -- you know, the
15 parties would be able to submit alternative language.

16 **COMMISSIONER GRAHAM:** And then?

17 **MS. HARPER:** And then you could approve it or
18 disapprove it.

19 **COMMISSIONER GRAHAM:** And then? I mean, does
20 it go back to them again or is that the rule?

21 **MS. HARPER:** Well, that would be their
22 opportunity to, you know -- if they do not -- if they're
23 still not satisfied, then we could go forward with, you
24 know, another process. I mean, the rule will be
25 proposed by April 1st either way. So the next step is

1 just getting it to the Department of State and JAPC for
2 review. So we do have some leeway in that time to work
3 with OPC and to work with you, if you have preferences
4 on language, if it's proposed -- or, excuse me, if you
5 want to go forward with any changes.

6 **CHAIRMAN BROWN:** But those changes would need
7 to occur right now.

8 **MS. HARPER:** Yes. We do need to get it -- we
9 do need to get it proposed by April 1st. And then we'll
10 have -- once it's proposed, then we will have some time.
11 Ideally -- it doesn't happen very often here, from what
12 my understanding is, but we have some time to work on
13 things before it goes to DOS for approval, final
14 adoption. And if somebody asks for a hearing, as I
15 mentioned, we'll -- obviously we can provide a hearing
16 to address any other concerns.

17 **COMMISSIONER GRAHAM:** Well, I guess I'm going
18 back to what Public Counsel was saying as far as going
19 beyond what he thinks our statutory authority was in
20 this bill because, as I think I heard you say, you're
21 not opposed necessarily to having the bill to use this
22 thing for emergencies. It's just you don't think that
23 that authority was granted to us.

24 **MR. KELLY:** That's correct, Commissioner.

25 **COMMISSIONER GRAHAM:** I guess the question I

1 have moving forward from here is: Would that be
2 something that your office would be willing to move
3 forward and saying, "Okay. It may not have been
4 granted, but we think it should have been granted"? You
5 know, maybe we need a glitch bill or --

6 **MR. KELLY:** You said a "glitch bill," meaning
7 something filed with the legislature? I can't get
8 involved in lobbying, so I can't -- I have to follow
9 what they say. So --

10 **COMMISSIONER GRAHAM:** I'm not necessarily
11 saying lobbying, but you said they've already pulled you
12 into their office asking specifics about this bill, and
13 you can say, "Well, I think this is where you guys
14 should have opened the door a little bit wider."

15 **MR. KELLY:** Sure. Maybe I should clarify.
16 When I was called in, I was called in for informational
17 purposes and to talk a little bit about how I saw
18 certain things being interpreted. I did not suggest
19 anything to the sponsors about what should go into the
20 bill and what should not go into the bill. That goes
21 beyond my authority to do so.

22 **COMMISSIONER GRAHAM:** Okay.

23 **CHAIRMAN BROWN:** Any further questions,
24 Commissioner Graham?

25 **COMMISSIONER GRAHAM:** No.

1 **CHAIRMAN BROWN:** Okay. Commissioner Brisé.

2 **COMMISSIONER BRISÉ:** Yeah. I think we talked
3 about this in my briefing in terms of how do we get to
4 the level of comfort that we have in the rule with
5 respect to intent? And so if you can walk us through
6 that and -- because my thought is you -- at this point,
7 if there's a certain level of comfort that staff has
8 found sort of in the middle, then we would move forward
9 and then let the Department of State do their job. And
10 if they are unhappy with what we found, then there are
11 ways to remedy that. And so, therefore, you know -- but
12 we have to be sure that staff took into account the
13 intent and all of the information that it had available
14 to it to arrive at a conclusion that puts the rule
15 within the parameters of what they perceive what the
16 legislature wanted to be able to happen.

17 **CHAIRMAN BROWN:** Uh-huh. Staff?

18 **MS. HARPER:** Yes. And JAPC, if they do have
19 an issue with it when they go for the -- we go for a
20 final review, they can object, and we can stop the
21 process and incorporate any of their comments or make
22 any changes we need to. So I just wanted to let you
23 know that opportunity will still be there and to answer
24 Commissioner Graham's question on that as well.

25 But we did -- we're very sensitive to the

1 concerns OPC had. And, in fact, we looked a lot at the
2 legislative study committee and tried to incorporate a
3 lot of OPC's comments and questions in building the
4 rule, and that's why they're such extensive reporting
5 requirements and filing requirements and noticing
6 requirements.

7 So although we do have a different view on the
8 interpretation of the statute, and ours is a little bit
9 more broad than theirs, we built in a lot of protection,
10 customer protections and Commission oversight in the
11 rule to strike the balance that you're talking about.

12 **COMMISSIONER BRISÉ:** Okay. So I understand
13 that you -- the taking in the work of the water, the
14 water study committee. But in terms of --

15 **MS. HARPER:** The statute?

16 **COMMISSIONER BRISÉ:** -- the statute itself --

17 **MS. HARPER:** Yes.

18 **COMMISSIONER BRISÉ:** -- are you -- are we
19 comfortable that we are within the parameters of what
20 the statute is asking us to do?

21 **MS. HARPER:** Yes, Commissioner. The statute,
22 to take a portion out of it, the existing distribution
23 and collection infrastructure that is nearing the end of
24 its useful life or is detrimental to water quality or
25 reliability of service. And so we feel like the

1 statute -- the reserve fund would not be utilized if we
2 can't address these other parts of the plant that are in
3 desperate need of repair that are going to affect water
4 quality and reliability of service.

5 **COMMISSIONER BRISÉ:** Okay. So as I stated
6 before, I think that staff has done a good job of
7 finding a middle place and understanding what the
8 general intent was or is of the legislation and of
9 finding a way for us to move forward and addressing
10 these water issues that are pervasive throughout our
11 state.

12 So I think that from my perspective as one
13 Commissioner, I think we should move forward on the
14 rules and let the Department of State do their job.

15 **CHAIRMAN BROWN:** Thank you, Commissioner
16 Brisé.

17 Commissioner Polmann.

18 **COMMISSIONER POLMANN:** Thank you, Madam
19 Chairman. I've had quite a bit of discussion with staff
20 and I've heard the discussion here. I won't repeat
21 questions or I'll try not to repeat questions or get
22 into issues other Commissioners have addressed.

23 I would support the item moving forward. I
24 just have a point of clarification on the April 1st
25 date. We're required to file?

1 **MS. HARPER:** Propose the rules.

2 **COMMISSIONER POLMANN:** Oh, propose.

3 **MS. HARPER:** So that they won't be, you know,
4 completely adopted, but we have to propose them by
5 April 1st so -- you know, to have a good version,
6 finalized version at that point.

7 **COMMISSIONER POLMANN:** And I'm sorry to
8 interrupt.

9 **MS. HARPER:** That's okay.

10 **COMMISSIONER POLMANN:** That includes the JAPC
11 review being completed or just we propose?

12 **MS. HARPER:** Yes. JAPC will -- we will --
13 yes. We will propose it and JAPC will review it. And
14 JAPC always reviews before it goes to DOS. And
15 sometimes we talk to them at the same time if there's
16 questions, but --

17 **COMMISSIONER POLMANN:** Okay. Very good.
18 Thank you.

19 **MS. HARPER:** Yes.

20 **COMMISSIONER POLMANN:** Now as to -- and I
21 appreciate the comments from Office of Public Counsel,
22 and thank you for your input. I do value that, so thank
23 you.

24 As to the legislative intent, I support the
25 idea of a broader interpretation. As a professional

1 engineer with some expertise in this area, that does
2 seem most appropriate. And let me just say that it
3 would simply be unclear to me how a narrow reading of
4 repair and replacement on the transmission and
5 distribution really would meet -- I'm sorry --
6 reliability and water quality issues absent the
7 opportunity for the repair or replacement on the broader
8 infrastructure, the water and wastewater plant. That's
9 too narrow of an interpretation, as I think you've just
10 addressed. It's not a reasonable person's perspective
11 on that, so I do support the broader interpretation.

12 And from our discussions in briefing and as
13 mentioned, I believe you've done a good job in reviewing
14 the intent as we understand it. So I think the narrow
15 reading is too restrictive, and, again, I don't see that
16 as appropriate.

17 If I may take a moment, Madam Chairman, to
18 look into some specific language.

19 **CHAIRMAN BROWN:** Absolutely.

20 **COMMISSIONER POLMANN:** I want to consider the
21 notion of the emergency, if we can, for just a moment.
22 And in particular, if we can look at the rule
23 language -- and, again, I did discuss this with staff,
24 but I just --

25 **CHAIRMAN BROWN:** Could you direct us to a page

1 number, please?

2 **COMMISSIONER POLMANN:** Yes. On page 22 in the
3 rule language, and I'm looking specifically -- the
4 disbursement of funds, and this is Section (4), and if
5 we can start with just a couple of questions to clarify.

6 This is where a utility may request
7 disbursement of funds from the reserve. And my question
8 here is if the staff could just elaborate on would you
9 have the ability with the language, as written, to get
10 some information from the utility as to why they believe
11 this particular situation constitutes an emergency and
12 that this section of the rule would apply, that, in
13 fact, what they're asking for funds is an emergency
14 situation?

15 **MS. GOLDEN:** Yes, we believe that we would.
16 What the requirement would be, that they would provide
17 the same type of information that's required for a
18 regular disbursement that's requested from the Utility
19 Reserve Fund for an approved project. Their explanation
20 for the reason for the disbursement should include that
21 information, why it's an emergency.

22 We did try to limit it to it would be a true
23 emergency, something that was out of the utility's
24 control such as a weather-related event. One example
25 that was given to us was it's not uncommon for them to

1 have a lightning strike that will knock out a piece of
2 the plant.

3 But because this would deviate from the
4 approved plan, staff would bring a recommendation to the
5 Commission for your approval before that money would be
6 disbursed. So you would have an opportunity to be aware
7 of it. OPC and the customers would have an opportunity
8 to be aware of the request and to review it and also
9 comment at agenda.

10 So we believe that even though this does
11 deviate a little from the actual plan that would be
12 approved, there are safeguards for the customers.

13 **COMMISSIONER POLMANN:** Okay. The only trouble
14 I have with the whole notion, and I'm not objecting to
15 the language at this point, the idea of an emergency
16 seems to me to be a quick turnaround if it's truly an
17 emergency, but the whole process that's contemplated
18 within this would necessarily take time.

19 So I understand the notion that they need
20 access to funds, they need to -- they would desire to
21 use the money within the fund to make the repair, but
22 it's contrary to the notion of the nature of the
23 emergency where they need funds quickly. So it's just
24 the idea of where they're kind of stuck, but so be it.

25 **MS. GOLDEN:** This, again, was one of those

1 balancing acts.

2 **COMMISSIONER POLMANN:** Yes, there's a balance
3 that's required.

4 **MS. GOLDEN:** Yes.

5 **COMMISSIONER POLMANN:** It's in the public
6 interest to have the funds, but then the nature of the
7 emergency, it's a little bit of a conundrum. But I
8 understand the need.

9 But then moving on down page 22 under section
10 (f), and this comes back to the comment from Public
11 Counsel, at the bottom of the page, lines 24, 25, 25 in
12 particular, the notion that the utility would be seeking
13 funds that may be available, is it your intent that this
14 would be funding sources that the utility is actively
15 pursuing or intends to pursue as opposed to anything
16 that may be available? Could you clarify that for me,
17 please?

18 **MS. GOLDEN:** Yes. It's our intent that this
19 would be funding that is actually -- that they believe
20 would be available that they are trying to get.

21 The example that was given by Florida Rural
22 Water Association would be that, for example, if it was
23 hurricane damage and if the utility were eligible for
24 FEMA money and that they believed they were and they
25 were going to pursue getting that money, that allowing

1 the emergency use of the Utility Reserve Fund might help
2 them make those repairs in the meantime. But then once
3 they did get the money from FEMA, then they would use
4 that money to reimburse the fund. And so the intent is,
5 yes, it would be money that they actually do believe
6 they could get.

7 **COMMISSIONER POLMANN:** Okay. Well, thank you
8 very much. I appreciate it.

9 **CHAIRMAN BROWN:** Thank you, Commissioner
10 Pollman.

11 Commissioner Patronis.

12 **COMMISSIONER PATRONIS:** I'll keep my comments
13 brief. It's kind of -- I've never been able to witness
14 this side of the rulemaking process, so this has been
15 enlightening to me. And I think everything there is
16 good. And I appreciate Mr. Kelly's comments because
17 legislators can get very territorial, and if their
18 legislative intent is not -- their legislative intent is
19 their legislative intent. It's not always what ends up
20 in the statutes. It isn't. I mean, they have one that
21 there's a lot of expectations that the folks that are
22 helping them draft statutes are getting the full
23 understanding of what they hope to accomplish, and they
24 do the best they can. We're all human.

25 But, you know, getting back to the emergency

1 fund request, I would hope through just normal
2 maintenance, repairs, day-to-day oversight of the
3 utility that emergency requests are almost a non-issue.
4 I mean, I know -- and then just like to bring up the
5 concerns of FEMA monies, you know.

6 So, anyway, I appreciate this dialogue, and I
7 like the idea of trying to -- I mean, there's plenty of
8 belts and suspenders on this thing, so the oversight and
9 protection of the ratepayers' monies are really, I
10 think, well protected.

11 **CHAIRMAN BROWN:** Thank you, Commissioner
12 Patronis.

13 And talking about those belts and suspenders,
14 I just want to make sure for the record, and really
15 looking at Mr. Kelly, who represents the ratepayers,
16 that there are adequate checks and balances here. I
17 went over them extensively. I was a little confused by
18 the actual summary of the recommendation with regard to
19 notice provisions and whether they deviate from a rate
20 case per se. I just want to make sure -- and that is
21 the most important thing, I think, is to make sure that
22 customers are notified of any potential increase as a
23 result of, let's say, a standalone reserve fund or even
24 a rate case that includes that.

25 So there are three areas that I wanted to get

1 your opinion on, and that would be, first, the notice
2 provisions. There was some discussion by Gary Williams,
3 who is not here today, with the Rural Water Association,
4 and I know he wanted to be here, pursuant to staff, but
5 on the transfer issue with regard to governmental
6 entities. And I wanted to get your opinion on that
7 because I didn't see that in your comments.

8 And then finally, the disposition of the
9 reserve fund. One thing that really, really struck me
10 here is that these reserve funds don't go in perpetuity,
11 so that they just don't keep accruing year -- you know,
12 they submit plans every five -- you know, a five-year
13 plan, and then we have these every six month plant --
14 and please tell me if I'm correct on my reports.

15 **MS. GOLDEN:** Yes, the status report every six
16 months. And then they also would need to provide an
17 updated capital improvement plan every three years.

18 **CHAIRMAN BROWN:** Okay. So the Commission goes
19 ahead and approves the plan once. We don't see it
20 again. Staff is reviewing every time they seek a
21 disbursement. They get monthly reports, but the
22 Commission does not see it again. So we want to make
23 sure that there are adequate provisions in place with
24 regard to final disposition too. So when the accrual
25 stops, if a project has been completed, that Public

1 Counsel is aware, in addition to staff being aware of
2 these reports, and is on notice. So I want to get your
3 comfort level on the proposal. You didn't -- you really
4 didn't talk about it in your comments.

5 And the last thing is something that I just
6 had a suggestion on the rule, and I don't think it would
7 be a big issue for the Commissioners or for the utility
8 or for Public Counsel, and that's with regard to when a
9 utility is in receivership and is obviously bankrupt or
10 in problem and they have a reserve fund, well, that is a
11 major catastrophic issue for the utility that I think
12 would almost trigger a refund to the customers of those
13 funds that have been held.

14 There are different provisions in here to --
15 and there was some language in there talking about
16 disbursement to -- back to the customers. I think a
17 receivership would trigger that. So if, let's say, you
18 know, Joe Brown holds -- is trustee for a utility,
19 doesn't plan on holding it for long but has those
20 reserve funds, I mean, obviously a new entity would
21 ultimately acquire that -- hopefully, you know -- failed
22 entity, and I think that the reserve funds should be
23 transferred back to the customer because those are their
24 funds. And who knows if that utility is going to
25 continue the plan that was approved by the previous

1 owner. Okay. Those were four questions.

2 **MR. KELLY:** Okay. I'm not sure I'm going to
3 take them in exact order, but with respect to the
4 reporting requirements, I echo what several people in
5 here said. I think staff has done a very good job of
6 trying to balance protecting the ratepayers by requiring
7 certain -- by the depth of the application for the fund
8 to begin with and then the periodic reporting.

9 There were comments -- I think at one time the
10 original rule was not monthly, maybe quarterly, and
11 there were some comments from the utilities saying that
12 may be too onerous, and we didn't have any problem with
13 that. I think six months is sufficient.

14 What we plan to do is basically for anybody
15 that sets up a reserve fund, we will basically calendar
16 when those come in, whether they're, you know, whether
17 they're going to be due January 1 and July 1 or they're
18 going to be due six months, they're going to be
19 staggered. I mean, that's something I'm sure is going
20 to sort of come out in the wash.

21 But once they're on a -- the utility is on a
22 schedule, just like we do now, we will monitor and
23 review those and submit to staff any comments that we
24 might have with respect to do we think something is
25 falling behind, are the monies being disbursed, et

1 cetera. I mean, you know, it'll run the gamut as to
2 what we might comment back to staff and to the utility
3 with respect to any particular utility's funds. So I
4 think reporting requirements are very good, and we --
5 we're going to set up a mechanism to monitor those.

6 You mentioned disbursement. That -- there
7 were some comments that were raised, I believe it was on
8 December 16th at the -- in the workshop, about how the
9 utility would go about terminating a particular fund or
10 part of a fund. Let's say you've got a fund set up for
11 five projects and two of them get completed within a
12 year's time, then they're paid for. And we would
13 certainly expect the utility, when they file under the
14 guidelines there, and admittedly I don't know them as
15 well as staff does, but the guidelines that the utility,
16 it's incumbent upon them to say, "Hey, we have finished
17 these projects. They're paid for. We originally asked
18 for X in our fund. Whatever portion is attributable to
19 those should be terminated going forward."

20 And I -- you know, and it raises a question to
21 me, can that be done by staff simply saying, "Okay," or
22 has it got to come back to y'all? I'll leave that to --
23 it just now entered my mind, that question, so I don't
24 know.

25 **CHAIRMAN BROWN:** I asked them that. I asked

1 them that.

2 **MR. KELLY:** Okay. I don't know the answer to
3 that. But certainly I don't think we would have any
4 problem, since it's going to be a reduction, that staff
5 be given the administrative authority to terminate a
6 part of a fund if the utility says, "Hey, we've
7 completed the project. We don't need any more money."

8 The transfer to a government entity, I know
9 that Mr. Williams did raise that because he was
10 concerned if a -- if XYZ county came in and purchased a
11 utility and there was X amount of money in a reserve
12 fund, is that reserve fund just going to automatically
13 go to the county? And I believe his comments were he
14 would rather see that go back to the ratepayers --

15 **CHAIRMAN BROWN:** Customers, yeah.

16 **MR. KELLY:** -- and we agreed with that. So we
17 didn't submit any comments because we agreed with what
18 Mr. Williams had suggested.

19 **CHAIRMAN BROWN:** I agreed with that as well,
20 so I think that makes sense.

21 **MR. KELLY:** Yes. I mean, the government
22 entity that's doing the purchasing should know what
23 they're getting, and they've already got procedures set
24 up because normally they already have -- they're
25 incorporating it into their existing public utility, and

1 so I would hope anything in that fund would go back to
2 the ratepayers.

3 And the last question --

4 **CHAIRMAN BROWN:** And that's just for
5 governmental entities, transferred as a matter of right
6 to government entities.

7 **MR. KELLY:** Yes, ma'am. And then the last one
8 you mentioned was bankruptcy, and I think that's going
9 to pose a bigger problem. Because when an entity files
10 for bankruptcy, no one, including this body, has any
11 control whatsoever except that bankruptcy judge. So I
12 don't think you're going to be able to statutorily or
13 otherwise, if I remember my bankruptcy law class --

14 **CHAIRMAN BROWN:** I don't.

15 **MR. KELLY:** -- do anything with those funds.
16 You're going to have to go to the judge and say,
17 "Bankruptcy Judge, we are asking for release of those
18 funds." And my experience, in the few bankruptcy cases
19 I did 25 years ago, is he or she are probably going to
20 say, "Not right now." We're going to -- they're going
21 to wait until they see how the bankruptcy comes out. Is
22 it a reorganization? Is it a complete liquidation? And
23 at that point, that judge is then going -- he or she are
24 going to use those funds, quite honestly, the way they
25 want to.

1 **CHAIRMAN BROWN:** Thank you.

2 **MR. KELLY:** And so I don't think we could do
3 anything about that.

4 **CHAIRMAN BROWN:** I appreciate the indulgence.
5 This is an issue that is very near and dear to me. I
6 know it's near and dear to you, and I know it's near and
7 dear to you too, Mr. Rendell. Any comments or --

8 **MR. RENDELL:** Just one. I had one thought on
9 the receivership. It may not be a bankruptcy. It could
10 be an abandonment. And in those cases, the receiver
11 steps into the shoes of a utility and they have all the
12 rights to come in and file a staff-assisted rate case.
13 I don't necessarily agree it should automatically be
14 refunded. I think the receiver at that point has an
15 obligation to the Commission to indicate if they're
16 going to move forward with a project and if they're
17 going to use those funds, because obviously they were in
18 financial difficulties to begin with, the original
19 owner, and that's why they had to abandon.

20 So, you know, if there's been progress and --
21 you know, better, you know, to move forward to replace
22 needed infrastructure. If you refund it, it's going to
23 take a step backwards. So, you know, no rule is
24 perfect, but I think this is a tremendous step forward
25 in the water industry and I applaud it. But, you know,

1 those are just my thoughts on that.

2 **CHAIRMAN BROWN:** No, I appreciate that. Thank
3 you for -- yes.

4 **MR. KELLY:** And, Madam Chair, I would agree
5 with Mr. Rendell. And I think the procedures you have
6 in place -- the receiver, I don't believe, could just go
7 in there and just start taking money out of the fund.
8 They're still going to have to follow the procedures
9 that the rule sets out.

10 **CHAIRMAN BROWN:** Codified by rule.

11 **MR. KELLY:** So I would agree that I don't -- I
12 think you could take a wait-and-see approach. And if
13 you've got some projects underway, it would not make
14 sense to pull the plug out from under them unless they
15 were not --

16 **CHAIRMAN BROWN:** No, I appreciate the
17 feedback. Thank you, guys, both of you, so much.

18 And then finally, just a clarification that
19 Public Counsel raised in his -- for staff in his earlier
20 comments regarding the 30 percent for all projects.
21 Could you provide, Ms. Golden or Ms. Harper,
22 clarification whether that applies to all projects
23 yearly, on a monthly basis, for the record, project by
24 project?

25 **MS. GOLDEN:** It would apply to all of the

1 projects combined. However many projects are in the
2 Utility Reserve Fund at the time the surcharge is
3 calculated, it would apply to that total cost.

4 We did modify the rule, apparently not enough,
5 but we did change the language in the rule to say it's
6 the total cost upon implementation of the surcharge.
7 But it is our intention that it would be the total
8 surcharge for all the projects, and we calculate rates
9 on an annual basis.

10 **CHAIRMAN BROWN:** So I was going to say, it's
11 an annual, not monthly.

12 **MS. GOLDEN:** Yes.

13 **CHAIRMAN BROWN:** Okay.

14 **MS. GOLDEN:** Could I also clarify on the
15 variable surcharge?

16 **CHAIRMAN BROWN:** Yes.

17 **MS. GOLDEN:** It is not our intention that a
18 utility would be allowed to just fluctuate that
19 surcharge from month to month. What they would need to
20 do when they file their application, they would need to
21 propose if they want a different surcharge at different
22 stages along the way.

23 And, again, the example that was given, that
24 the funding needs may differ throughout the life of the
25 project, if they need to pay more money upfront for

1 materials or perhaps engineering work, they might need
2 to collect that part of the money a little quicker. So
3 they might propose two surcharges: one a higher amount
4 in the beginning for a certain number of years, and then
5 it could decrease.

6 **CHAIRMAN BROWN:** So would that be approved
7 administratively or would that be approved by the
8 Commission?

9 **MS. GOLDEN:** No, that would be approved by the
10 Commission. That would be part of the initial
11 application that the utility -- they would request that
12 in their application.

13 **CHAIRMAN BROWN:** They could not vary the
14 amount without Commissioners' approval. It can't be
15 done administratively.

16 **MS. GOLDEN:** No.

17 **CHAIRMAN BROWN:** Okay.

18 **MS. GOLDEN:** No, it would not. Any change
19 would be approved by the Commission. But there is a
20 provision in the rule that the utility can request a
21 modification of the plan. Say, if years down the road
22 they realize there's another project they need to add,
23 they could request a modification of the plan and of the
24 surcharge. But, again, that would be brought to the
25 Commission for approval.

1 **CHAIRMAN BROWN:** Thank you so much. Thank
2 you, guys, for your work on this. I know it's been a
3 lot of in the weeds, a lot of review of background
4 materials, so I appreciate you working with all the
5 parties here.

6 Commissioners, any final questions or
7 comments? And if not, we are ripe for a motion.

8 Seeing none, go ahead, Commissioner Brisé.

9 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.
10 I move that we approve the rule as proposed and move
11 forward.

12 **COMMISSIONER PATRONIS:** Second.

13 **CHAIRMAN BROWN:** Thank you. Any further
14 discussion? Seeing none, all those in favor, say aye.

15 (Vote taken.)

16 All right. The motion passes. Thank you for
17 your involvement. We will be reconvening in the IA room
18 in five minutes.

19 **MR. HETRICK:** Madam Chairman?

20 **CHAIRMAN BROWN:** Sure. What, Mr. Hetrick?

21 **MR. HETRICK:** If I might, I have an
22 announcement to make, if I might indulge the Commission
23 for 30 seconds.

24 **CHAIRMAN BROWN:** Sure.

25 **MR. HETRICK:** I'd like to announce that this

1 will be the last agenda for Keino Young. He's a very
2 valuable and key member of our team. He's leaving us to
3 join the City of Gainesville's regional utility as their
4 new chief counsel. We're going to miss him greatly.
5 Fortunately we have him through the Gulf rate case. But
6 his contributions to public service and growth with the
7 Commission will leave a legacy that's not going to be
8 forgotten by me.

9 So we're very excited for his new opportunity
10 and proud of him. We wish him well in his endeavors.
11 And I'd certainly like to thank him for his service to
12 the Commission for many years, and I hope you would join
13 me in giving him a round of applause in his job well
14 done.

15 (Applause.)

16 **CHAIRMAN BROWN:** If I could chant, "We love
17 Keino." When I heard the news that Keino was leaving, I
18 almost cried. I really did. Personally Keino has been
19 such a valuable confidant, advisor. I don't know what
20 life is going to be like without Keino. And I know my
21 advisor relies on him, Katherine, as a friend and as a
22 confidant. And we are going to miss you so much. And I
23 know Commissioner Graham, some other Commissioners may
24 have some comments. But, Keino, you've been great to
25 us. You've made us a better agency, and we're depending

1 on you in the Gulf rate case. Thank you.

2 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

3 You know, I don't remember giving him approval
4 to leave. I mean, you know, so if we don't release him,
5 I think he has to stay; right?

6 **CHAIRMAN BROWN:** That's right.

7 Commissioner Patronis.

8 **COMMISSIONER PATRONIS:** Just keep wearing
9 those garnet ties like you've got on today to inoculate
10 yourself from those swamp lizards.

11 **CHAIRMAN BROWN:** Any other comments?

12 Commissioner Brisé.

13 **COMMISSIONER BRISÉ:** Well, I just want to say
14 thanks, Keino, for all your work and all your service.
15 We will indeed truly miss you, and keep up that
16 recovery.

17 **CHAIRMAN BROWN:** That's right. That's right.

18 Commissioner Polmann.

19 **COMMISSIONER POLMANN:** I was just getting to
20 know you and now -- what's up with that?

21 **COMMISSIONER BRISÉ:** Well, maybe that's the
22 problem.

23 (Laughter.)

24 **CHAIRMAN BROWN:** Ba-da-bum. You've got to be
25 quick.

1 **COMMISSIONER POLMANN:** It's all my fault.

2 **CHAIRMAN BROWN:** It's all your fault.

3 Keino, we're going to miss. Love you.

4 All right. We're going to reconvene in five
5 minutes in the IA room. Thank you. This Agenda
6 Conference is adjourned.

7 (Agenda Conference adjourned at 10:47 a.m.)

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2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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5 Reporter, do hereby certify that the foregoing
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8 IT IS FURTHER CERTIFIED that I
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10 same has been transcribed under my direct supervision;
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13 I FURTHER CERTIFY that I am not a relative,
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16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 14th day of March, 2017.

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