

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20170223-SU

APPLICATION FOR  
ESTABLISHMENT OF WASTEWATER  
ALLOWANCE FOR FUNDS  
PRUDENTLY INVESTED (AFPI)  
CHARGES IN HIGHLANDS, LAKE,  
MARION, PASCO AND PINELLAS  
COUNTIES, BY UTILITIES,  
INC. OF FLORIDA.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 7

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW G. FAY

DATE: Thursday, March 1, 2018

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

REPORTED BY: DANA W. REEVES  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Let's go on to Item  
3 No. 7.

4 MS. BRUCE: Good morning, Commissioners. I am  
5 Sonica Bruce speaking on behalf of Commission  
6 Staff.

7 CHAIRMAN GRAHAM: Ms. Bruce, just give me a  
8 second so we can get our line changed, but I do  
9 appreciate your enthusiasm.

10 Thank you, Ms. Bruce.

11 MS. BRUCE: Thank you. Again, I am Sonica  
12 Bruce speaking on behalf of Commission Staff. Item  
13 No. 7 addresses Utilities, Inc. of Florida's UIF  
14 tariff approval to establish allowance for funds  
15 prudently invested AFPI charges for LUSI, Labrador,  
16 Lake Placid, Mid-County and UIF Marion wastewater  
17 systems, including the proposed tariffs reflecting  
18 the AFPI charges.

19 Staff recommends that the Commission approve  
20 the proposed AFPI charges except for LUSI proposed  
21 tariff. The tariff is inconsistent with Rule  
22 25-30.434(4), Florida Administrative Code. Staff  
23 recommends that UIF be given the option to file  
24 revised tariff within ten days of the Commission's  
25 vote for administrative approval by Staff that

1 reflects the non-used-and-useful cost associated  
2 with the LUSI wastewater treatment plant, pursuant  
3 to Order No. PSC-2017-0361-WS, and accrued  
4 beginning January 1st, 2016.

5 There has been no customer contact. Utility  
6 representative, Marry Friedman, will address the  
7 Commission and OPC may have some comments. Staff  
8 is prepared to answer any questions that you may  
9 have.

10 CHAIRMAN GRAHAM: Thank you. Mr. Friedman,  
11 I'm going to go to OPC first so they can tee up  
12 their concerns and I'll let you address both Staff  
13 recommendation and their comments. Mr. Sayler.

14 MR. SAYLER: Thank you, Mr. Chairman. Good  
15 morning, Commissioners. Welcome, Commissioner Fay.

16 We are in substantial agreement with -- we  
17 have no issue with Issue 1 and we are in  
18 substantial agreement with Issue 2, which begins on  
19 page five of Staff's recommendation. We agree that  
20 the AFPI charges should be restarted for LUSI. We  
21 also agree that it should have been discontinued  
22 when UIF collected charges from the 545 ERCs, as  
23 discussed in Staff's recommendation.

24 Our concern with Issue 2 is as it is written.  
25 We believe that the Commission must provide the

1 Staff with some substantive guidance on what Staff  
2 should be approving administratively. At this  
3 point there is no language in Staff's  
4 recommendation about the starting or ending AFPI  
5 amounts or language that explains what the AFPI  
6 amounts the Commission would be approving in Issue  
7 2, administratively, for Staff.

8 Now, yesterday Ms. Vandiver and I had the  
9 opportunity to speak with Staff and share our  
10 concerns and I'm happy to say that our concerns  
11 were partially addressed by the schedule of AFPI  
12 charges that were filed in the docket file  
13 yesterday, because they include starting and ending  
14 AFPI. I don't know if you've had the benefit of  
15 seeing this, but it was in the docket file  
16 yesterday.

17 However, Staff's recommendation as currently  
18 drafted does not reference Schedule D, which Staff  
19 filed yesterday. Therefore, OPC requests that you  
20 include language in the order that specifies the  
21 starting and ending dates of AFPI charges for LUSI  
22 or simply attaches to the order Staff's AFPI  
23 schedule that was filed yesterday.

24 And our last comment on Staff's recommendation  
25 relates to the final order that Staff referenced in

1 the last rate case, as well as footnote seven on  
2 page six. In the last rate case, the Commission  
3 discovered that UIF has been over-collecting AFPI  
4 from LUSI customers and, as a result, the  
5 Commission ordered that a new docket shall be  
6 opened with a full audit in order to determine the  
7 amount of over-collection AFPI charges and the  
8 appropriate disposition of over-collection. This  
9 new docket, as indicated by footnote seven, has  
10 been opened and Public Counsel would simply like to  
11 know, one, when does Staff anticipate starting the  
12 full audit and, two, when does Staff anticipate  
13 completing the full audit? We look forward to  
14 reviewing the full audit once it is completed, and  
15 thank you for the opportunity. Those are our  
16 comments.

17 CHAIRMAN GRAHAM: Thank you, Mr. Sayler. Mr.  
18 Friedman.

19 MS. FRIEDMAN: Thank you, Mr. Chairman,  
20 Commissioners. Marry Friedman on behalf of  
21 Utilities, Inc. of Florida. Also with me is Jared  
22 Deason, the financial analyst for Utilities, Inc.  
23 of Florida.

24 And I'm not going to address the last issue.  
25 There is another docket open on the investigation,

1 is an off-shoot from the last rate case and it's  
2 got no relevance to the instant case. I would  
3 point out that after the recently-completed rate  
4 case, UIF ceased collecting AFPI charges for the  
5 LUSI wastewater system.

6 In this docket, we're seeking to reinstate  
7 AFPI charges, and the only one on the Staff  
8 recommendation with which we disagree is the Lake  
9 Utility Services, LUSI system. As was mentioned,  
10 the existing -- prior to the last rate case, UIF  
11 had AFPI charges in place, and as you know they  
12 start low and they end at a particular point and  
13 they cap at a particular point. So it increases  
14 every month for some time period. When it gets to  
15 a cap, it stays the same until you reach the number  
16 of ERCs applicable.

17 And what we think was appropriate in this case  
18 was that the Commission should have -- or in this  
19 particular docket, is that Commission should,  
20 instead of restarting the service availability  
21 charge, that because there has always been  
22 non-used-and-useful plant at LUSI wastewater  
23 system, that it's more appropriate instead of  
24 starting over that you would continue, pick the --  
25 whatever the highest amount was in the last AFPI

1 charge and just continue that on until you reach  
2 the full capacity of the plant.

3 As you know, I mean, the AFPI charge is  
4 intended to cover the utility's investment in  
5 non-used-and-useful plant and it's to the extent  
6 that this Commission has found none-used-and-useful  
7 plant; it's the only mechanism by which a utility  
8 has to cover the expenses of continuing to operate  
9 the non-used-and-useful portion of this plant  
10 because it's not without cost. And so typically  
11 this AFPI charge is for that purpose. And to the  
12 extent the utility has always had  
13 non-used-and-useful plant, there is no reason that  
14 they should not be approved to collect the AFPI  
15 charges to the full extent they can.

16 Now, since the original AFPI charge was  
17 established, back before UIF bought the system, UIF  
18 has substantially increased the design capacity of  
19 the wastewater treatment plant. When they  
20 purchased the system in 1998 in July, the  
21 committed -- permitted capacity was 0.175, a  
22 million gallons a day after having been expanded  
23 from the prior .075, which is what precipitated the  
24 original AFPI charges. Again, in 2000, UIF  
25 increased the permitted capacity to a half-million

1 gallons a day and then further expanded it to  
2 .99 million gallons a day in 2009.

3 So in all the subsequent rate cases since AFPI  
4 charge was established, in all subsequent rate  
5 cases, this Commission has found that that  
6 wastewater treatment plant was not a hundred  
7 percent used and useful.

8 In the 2009 rate case order, the Commission  
9 found that it was 52.42 percent used and useful.  
10 In the '11 rate case, it was found that it was  
11 53 percent used and useful. So you can see at  
12 least far back as the mid-2000s there's been  
13 non-used-and-useful plant. And if you don't allow  
14 the utility to collect for that non-used-and-useful  
15 plant that has been there from the outset, you're  
16 prohibiting the utility from recovering the cost of  
17 the plant that the customers aren't having to pay  
18 for, and I don't think you can do it both ways.  
19 You can't say you're not a hundred percent used and  
20 useful and then, by the way, you can't collect AFPI  
21 charge either because that would put the utility of  
22 being in a position of not being able to have an  
23 opportunity to earn its authorized rate of return.  
24 And this went through these prior rate cases.  
25 The Commission in 2009 and 2011 orders didn't

1 change Utility, Inc.'s AFPI charge. They left that  
2 original charge in existence through those two rate  
3 cases and at least tacitly agreeing that those  
4 charges were appropriate. And we think that it's  
5 more appropriate because of the circumstances of  
6 this case where there has always been  
7 non-used-and-useful plant that instead of starting  
8 over, that you should start and just use the cap  
9 that was in the last rate case because that time  
10 period has passed and continue to just cap at that  
11 and not have an increase at all until the capacity  
12 of the plant is met.

13 The Commission did a similar situation in  
14 Sandalhaven's -- Sandalhaven Utility's 2014 rate  
15 case where they had restarted the number. UIF  
16 protested that -- or cross-protested. OPC  
17 protested it and UIF cross-protested that order and  
18 we argued that it wasn't appropriate to reset the  
19 AFPI. And in connection with the Commission's  
20 approval for settlement between OPC and the utility  
21 in that case, this Commission didn't reset the AFPI  
22 charge, but allowed the AFPI charge to continue  
23 from the last date, and we think that's appropriate  
24 here in order to protect the utility and its  
25 opportunity to earn its authorized rate of return.

1 Thank you.

2 CHAIRMAN GRAHAM: Staff, any comments from OPC  
3 or the Utility's comments?

4 MS. BRUCE: Yes. In regards to Mr. Friedman's  
5 comments with starting the LUSI AFPI charges with a  
6 constant charge would have been had the charges had  
7 been evaluated back in the 2010 case. We disagree.  
8 We look at the AFPI charges as something that  
9 utility proactively seeks. We don't automatically  
10 institute because there are other utilities that  
11 have non-used-and-useful, but we don't offer up  
12 AFPI as a mechanism. You have to apply for it,  
13 just like with indexes that's available, but it's  
14 at the utility's option to apply for it or have  
15 that instituted for them.

16 Trying to see what else he addressed. And we  
17 did evaluate in the Sandalhaven case and at that  
18 time the circumstances had changed. There were  
19 more ERCs to spread the non-used-and-useful dollars  
20 across which I believe -- or Staff believes is  
21 appropriate.

22 So Mr. Friedman also pointed out that LUSI's  
23 plant has increased over the years and, you know,  
24 the capacity has changed, which to me would be a  
25 cause to have the charges reevaluated at that time,

1           and I can't speak for why they were not looked at  
2           in the last case. Utility did not ask for it. It  
3           probably was because they already had a charge in  
4           play and was okay with what they were getting at  
5           the time, but that charge has been discontinued  
6           because we feel that they have exceeded the number  
7           of ERCs for which it intended and we do have an  
8           investigation going on to figure out at what point  
9           that happened and what to do with any potential  
10          disposition of any monies that may have been  
11          over-collected.

12                 As far as the four audit that Mr. Sayler  
13          brought up, we've asked some data request questions  
14          in regards to that so we haven't conducted a full  
15          audit yet. We're trying to handle the situation  
16          through data request questions and look at the  
17          annual reports in trying to compile the number of  
18          ERCs and then the dollars that have been collected  
19          first, but we are investigating the matter and we  
20          will file in the case -- are to file a  
21          recommendation April 6 to take it to agenda.

22                 CHAIRMAN GRAHAM: Okay. Commissioners,  
23          questions, comments? Commissioner Polmann.

24                 COMMISSIONER POLMANN: Thank you, Mr.  
25          Chairman. Mr. Friedman, I appreciate your

1           comments. As to the LUSI facility, it's curious to  
2           me that this continues to be somewhere close to or  
3           around 53 percent used and useful. Is it -- I  
4           don't want to say it's planned that way. That's  
5           just coincidence that kind of expands and then, you  
6           know, you've got the growth in the community and  
7           then expands. And I don't know that there's any  
8           good explanation for that, but --

9           MS. FRIEDMAN: I don't know that yet --

10          CHAIRMAN GRAHAM: Microphone.

11          MR. DEASON: I'll try to answer that to the  
12          best of my ability. That's kind of an operational  
13          question as far as the decision to expand the  
14          plant, but based on my understanding, although this  
15          does predate my association with the company, we  
16          had planned for substantial growth in that  
17          particular service territory in the mid-2000s. We  
18          started to get some growth, but then, as you may  
19          recall the economy --

20          COMMISSIONER POLMANN: I do recall.

21          MR. DEASON: -- just bottomed out in 2008.  
22          Basically, all developer activity pretty much  
23          ceased from about 2008 up until March of last year.  
24          So that's probably one of the reasons why the  
25          company did not seek a rehash of AFPI because there

1           were no developers to collect from at that point in  
2           time.

3           COMMISSIONER POLMANN: All right. Okay.  
4           Thank you. The other question I have in that same  
5           system, and maybe there's not a good answer for  
6           this, but I understand your point, Mr. Friedman,  
7           that the preference would be to continue without  
8           the reset. Has the utility looked at the financial  
9           analysis with respect to the dollar difference of  
10          the Staff recommendation, with the reset -- you  
11          know, there is an invitation here that you could  
12          refile with the revised tariff and then the reset  
13          for January 1, 2016. Have you, by any chance --  
14          and I don't necessarily need the dollar answer.  
15          I'm just curious, have you looked at the dollar  
16          difference between continuing under your request  
17          compared to the Staff suggestion with the reset?

18          MS. FRIEDMAN: Well, we haven't and obviously  
19          that would depend upon how fast developer's  
20          connected. I don't remember the exact number of  
21          the restart, but it's less than, I think, \$10 --

22          MR. DEASON: I believe \$18 would be the reset.

23          MR. FRIEDMAN: At the beginning?

24          MR. DEASON: At the beginning. And then it  
25          would cap out at approximately \$1,170.

1 MS. FRIEDMAN: So that would be -- I'm just  
2 saying in my own thinking simplistically at \$18,  
3 the difference between it starting at \$18 and  
4 starting at \$1,171 is a big difference. What  
5 actual dollar amount that makes will depend upon  
6 whether anybody connects today. If somebody -- if  
7 we had a big development come in on day one and  
8 they only had to pay \$18 per ERC versus the 1,171,  
9 certainly that would be a substantial impact, but  
10 without knowing how development is going to come  
11 about --

12 COMMISSIONER POLMANN: And I appreciate that.  
13 What I was -- you know, the dollars are important  
14 to utility and my question was kind of -- you know,  
15 is this a matter of principle and how you interpret  
16 rule and so forth as opposed to, you know, the  
17 finances are really the point, so I was kind of  
18 probing that a little bit. I mean, it can be both,  
19 but I just wanted to understand your position on  
20 that.

21 MS. FRIEDMAN: Yeah, and it seems like that by  
22 restarting it, you're presuming that the utility  
23 now has -- I think it's 58 percent used and useful  
24 at this point. And so, you know, by restarting it  
25 you're saying the company never had used and useful

1 issue in the past and so all that plant that we  
2 built, you know, we're only going to recover \$20  
3 per ERC from instead of 1,171, which would be --  
4 you know, which would cover all those years that we  
5 have continued to operate that non-used and useful  
6 part of the plant. That's what the incremental  
7 increase every month does, it's to get you to a  
8 point where you're covering the non-used-and-useful  
9 part of the plant and the only way to really do  
10 that, since we've had non-used-and-useful plants  
11 since, you know, the mid-2000s at least and  
12 probably day one, is to allow it to continue and  
13 not restart it.

14 COMMISSIONER POLMANN: Okay. Thank you.  
15 Follow-up, Mr. Chairman.

16 CHAIRMAN GRAHAM: Sure.

17 COMMISSIONER POLMANN: To Staff, looking at in  
18 Issue 2 your explanation in the Staff analysis on  
19 page five, you make reference back to the test year  
20 and, you know, an appropriate time window for the  
21 accrual. Can you just speak to that kind of in  
22 reference to the utility's position? There is a  
23 particular time period where you look at the  
24 accrual. Is that -- just comment on that for us,  
25 if you will.

1 MS. BRUCE: The time period that we're looking  
2 at is what utility used in their last rate case,  
3 the one that we just did -- 1600101 docket. So  
4 those charges -- the test year was December 31st,  
5 2015, and usually when you set the AFPI charge, it  
6 starts accruing on that month after the test year.

7 What the utility is asking to do is to assume  
8 that we had reevaluated it back in 2010, and had we  
9 done that the charge would be around 1,100 or 1,200  
10 at this time, but that didn't take place and it's,  
11 I believe, the utility's responsibility or on them  
12 to have those sort of things reevaluated because we  
13 don't, again, as I mentioned, automatic institute  
14 AFPI, just like, you know indexes and things like  
15 that. It's utilities should evaluate where they  
16 are in regards to their used and useful, because  
17 not all utilities have it. There's other utilities  
18 with non-used-and-useful plant, but they don't have  
19 AFPI so it's available for utilities, but we don't  
20 just arbitrarily just suggest that they get it and  
21 we calculate it and we implement it. We haven't  
22 been doing that.

23 COMMISSIONER POLMANN: So the analysis in  
24 terms of how you come down to the dollar amount  
25 really depends on what period in time you're

1 looking at, whether or not the utility asks and  
2 makes a request is one point, but the dollar impact  
3 really depends on which window in time you're doing  
4 the analysis. That's how you come up with these  
5 vastly different amounts. Is that correct?

6 MS. BRUCE: Correct.

7 COMMISSIONER POLMANN: Thank you.

8 CHAIRMAN GRAHAM: Commissioners, any further  
9 questions comments, concerns? Mr. Polmann, I'll  
10 entertain a motion.

11 COMMISSIONER POLMANN: Mr. Chairman, I would  
12 move Staff recommendation on all issues.

13 CHAIRMAN GRAHAM: It's moved and second Staff  
14 recommendation on all issues on Item No. 7. Any  
15 further discussion?

16 Seeing none, all in favor say aye.

17 (Chorus of ayes.)

18 CHAIRMAN GRAHAM: Any opposed?

19 (No comments made.)

20 CHAIRMAN GRAHAM: By action, you've approved  
21 Item No. 7.

22 Okay. We have one item left, which is a  
23 panel. We're hitting about our two-hour mark --  
24 or, actually, we've just passed it. So we're going  
25 to take about a three-minute break so our court

1 reporter can rest her little fingers.

2 Mr. Baez, are we having IA here or IA in the  
3 IA room afterwards?

4 MR. BEAZ: I think we're going to move to the  
5 IA.

6 CHAIRMAN GRAHAM: Okay. So immediately  
7 following the panel, we're going to -- five minutes  
8 after the panel we're going to meet in the IA room  
9 so we're going to take a break for five -- I'm  
10 sorry. For three minutes.

11 MR. FRIEDMAN: Is that the room we're meeting  
12 on the workshop on the rule is going to take place,  
13 as well? Thank you.

14 CHAIRMAN GRAHAM: Okay. We'll take a  
15 three-minute break.

16 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

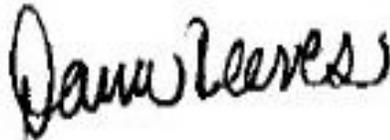
STATE OF FLORIDA )  
COUNTY OF LEON )

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of March, 2018.



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DANA W. REEVES  
NOTARY PUBLIC  
COMMISSION #FF968527  
EXPIRES MARCH 22, 2020