

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
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DATED THIS 12th day of March, 2018.



DANA W. REEVES
NOTARY PUBLIC
COMMISSION #FF968527
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