

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of: DOCKET NO. 20180141-WS

PROPOSED ADOPTION OF RULE  
25-30.4575, F.A.C.,  
OPERATING RATIO  
METHODOLOGY.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 1

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

DATE: Tuesday, February 5, 2019

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

REPORTED BY: ANDREA KOMARIDIS  
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 flip back to  
3 the top of the agenda. Item No. 1.

4 MS. HARPER: I'm Adria Harper with the General  
5 Counsel's Office. Item No. 1 is a matter that was  
6 deferred at the December agenda. So, we're  
7 bringing it back to the Commission.

8 In it, staff is recommending that the  
9 Commission propose the adoption of a new rule for  
10 the operating ratio methodology, which will be used  
11 to determine the margin component of -- of revenue  
12 requirement in a SARC for those water and  
13 wastewater utilities that have a small or negative  
14 rate base. The proposed rule both codifies and  
15 updates the Commission practice into a rule.

16 Mr. Chair, I can continue with a quick summary  
17 of the rule or I can stop here, since you've heard  
18 it before. It's your preference.

19 CHAIRMAN GRAHAM: I think I would rather you  
20 just stop there.

21 MS. HARPER: Okay. My pleasure.

22 (Laughter.)

23 CHAIRMAN GRAHAM: Commissioners, any questions  
24 of staff on Item No. 1.

25 Commissioner Polmann?

1                   COMMISSIONER POLMANN: Thank you,  
2                   Mr. Chairman. First, I appreciate all the time and  
3                   effort that has been spent discussing this and all  
4                   the effort by staff, both legal and the technical  
5                   staff, that they've expended going through some  
6                   detailed analysis on this.

7                   They have provided analysis on 71 utilities,  
8                   water and wastewater utilities, that are analyzed  
9                   and -- and reviewed as staff-assisted rate cases.  
10                  And I have looked at the impact of this rule on  
11                  those 71 utilities. I have considered the rule as  
12                  currently proposed, which involves a cap on the use  
13                  of the operating margin. You all have that before  
14                  you, which includes the operating ratio adjust- --  
15                  adjustments shall not be more than \$15,000.

16                 There was prior consideration at a 15-percent  
17                 with no cap. We're now looking at a 12-percent  
18                 margin with a cap of \$15,000, as you know. And my  
19                 concern is the -- the consequence of a \$15,000 cap.

20                 I am wondering whether we are, in fact, fully  
21                 implementing the statutory intent of the SARC  
22                 legislation by imposing a cap, and I would like  
23                 some consideration of the consequence of -- of the  
24                 cap as it relates to whether or not the utilities  
25                 that are affected by the cap can really achieve a

1 fully-reliable and -- and sustainable operation,  
2 such that they can achieve the result of providing  
3 their customers with -- with the service that is  
4 intended through the SARC legislation.

5 So, I've prepared a diagram that shows the  
6 consequence. I know there's been a lot of concern  
7 about the large percentage increases that  
8 potentially could -- could result from applying the  
9 12-percent margin without a cap.

10 Mr. Chairman, I'd be happy to hand that out,  
11 if the Commission would like to review that. We  
12 have copies for the -- for the aides as well, so --

13 CHAIRMAN GRAHAM: Sure, if it will help you  
14 illustrate your point.

15 Do you also have copies for our legal and OPC?

16 COMMISSIONER POLMANN: Yes. Ms. Ortega --

17 CHAIRMAN GRAHAM: Okay.

18 COMMISSIONER POLMANN: -- has provided that.

19 CHAIRMAN GRAHAM: Commissioner, you still have  
20 the floor.

21 COMMISSIONER POLMANN: Does everybody have  
22 that available? Okay.

23 So, what we have here -- the numbers across  
24 the top show the original values for the annual  
25 revenue. And what I'm looking at in the blue

1 markers are the case where we have a 12-percent  
2 margin; and then the -- the red markers are -- are  
3 referenced for the 15-percent margin.

4 So, the axis on the left is the -- the rate  
5 increase as a percentage. So, you can see the  
6 values of the very-high-percentage rate increase in  
7 this particular operation. There are several that  
8 are at or above -- slightly above 100 percent.

9 And these numbers come directly from the staff  
10 analysis of the 71, so -- 71 utilities that are  
11 eligible, based upon the annual revenue for a SARC;  
12 that being at or below the \$300,000 in the current  
13 statutory definition. So, there are a few that,  
14 with the additional operating-margin percentage,  
15 that can approach nearly a 100-percent rate  
16 increase.

17 In the case where you impose a cap of \$15,000,  
18 with the 12-percent margin, you can see the  
19 consequence where the marker that's blue moves to  
20 the marker that's green. So, for each dollar value  
21 of the annual revenue, it moves -- as a percentage  
22 of rate increase, it will move vertically downward  
23 from the blue to the green.

24 So, at the -- at the lower end of the annual  
25 revenue dollar amounts, there are several at the

1 left side of the page where there's a decrease in  
2 the percentage amount that, in certain cases, is --  
3 is quite a bit. Note that the left-hand axis is a  
4 logarithmic scale so that they -- they all kind of  
5 fit here in a way that -- that visually is  
6 separated.

7 So, you have a couple at the left-hand scale  
8 that go from fairly-high values, just above a  
9 hundred percent, that -- that -- one that's just at  
10 about 100 percent down to about 60 percent.

11 The next one over is at 87 percent. That goes  
12 down to 57 percent as a percentage increase.

13 The third one over goes from about 70 percent  
14 all the way down to 25 percent. That's the one  
15 that's marked. So, there's a significant impact of  
16 imposing the cap.

17 Now, you see, the others that are affected by  
18 the \$15,000 cap are all the way over at the  
19 relatively-high -- I say relatively high within the  
20 SARC bundle -- are over at the higher revenue. And  
21 the one at the extreme right would normally have  
22 had a -- a 14.6-percent increase. That's cut off  
23 down to a 6.3-percent increase.

24 So, the majority of those that are impacted by  
25 the cap are at or below -- the consequence puts

1           them at or below 10 percent of a rate increase.

2           So, we're only talking about, at the left-hand  
3 side here, of three utilities that are affected by  
4 imposing a cap. And they're cut from these high-  
5 percentage increases; in one case, from 72 percent  
6 down to 25 percent; and the other case, from near a  
7 hundred down to values that are 60 percent or  
8 higher.

9           So, in -- in my view, what I would like to be  
10 considered is the consequence to just a few  
11 utilities by developing this rule, as staff has  
12 proposed, and whether the Commission is interested  
13 in -- in developing a rule that's -- in a very  
14 general context that, in fact, we're trying to  
15 protect customers against very-large rate increases  
16 that, in fact, has an application by imposing a  
17 constraint that really affects only less than a  
18 handful of utilities.

19           And in the case where we have a -- an  
20 apprehension concerning those set of customers --  
21 which you can see are very small utilities; in the,  
22 you know, 60, \$80,000 revenue or -- or less, down  
23 in the 20, \$30,000 revenue.

24           Perhaps, there is a different way to impose  
25 that rate increase. Maybe something could be a

1 Phase 1, Phase 2 or -- or maybe there's something  
2 else I -- that I'm unaware of that staff could  
3 recommend. I -- I don't know what all the other  
4 options may be.

5 My -- my larger concern is at the higher end  
6 of the -- of the revenue. These -- you know,  
7 again, within -- within the SARC bundle that we may  
8 have the unintended -- unintended consequence of  
9 cutting a -- a utility that -- that we would  
10 otherwise not intend to -- to eliminate the revenue  
11 opportunity.

12 Mr. Chairman, I could -- I could answer any  
13 questions or -- or help assist the Commission  
14 with -- with my rationale further, but I'll just  
15 leave it at that for the moment.

16 CHAIRMAN GRAHAM: Okay.

17 COMMISSIONER POLMANN: Thank you. Thank you  
18 for the opportunity.

19 CHAIRMAN GRAHAM: Commissioner Polmann -- any  
20 questions of Commissioner Polmann?

21 Commissioner Fay.

22 COMMISSIONER FAY: Thank you, Mr. Chairman.

23 I just want to make sure I fully understand  
24 the diagram. So, the -- the outliers that you're  
25 presenting on this far-left column above a hundred



1           percent, the -- that would be, I guess, company 67,  
2           68 on the list.

3           So, they're essentially -- their annual  
4           revenue is 20 -- basically for water, 26,000; and  
5           sewer 24,000. So, they're -- I mean, those  
6           numbers -- those outliers are because of an  
7           extremely-low revenue generation, correct?

8           COMMISSIONER POLMANN: Yes, Commissioner Fay,  
9           that's correct. And if -- and if we identify  
10          their -- their rate base, they're extraordinarily  
11          negative in the rate base. Their eligible O & M,  
12          you know, is pretty high, but their operating  
13          margin is -- is very low. Their revenue is very  
14          low. So, they're -- they're peculiar in a sense.  
15          And I think this is, in -- in almost every regard,  
16          they're unusual.

17          COMMISSIONER FAY: Sure. And I -- I  
18          appreciate the visual. That is -- it is helpful  
19          for me. I would just -- from -- from our  
20          perspective, I was just curious if you had thoughts  
21          on kind of where -- based on these numbers in the  
22          chart, where you thought an appropriate threshold  
23          would be, going forward.

24          COMMISSIONER POLMANN: I'm sorry. Thre- --  
25          threshold --

1 COMMISSIONER FAY: For a cap.

2 COMMISSIONER POLMANN: For a cap?

3 COMMISSIONER FAY: Yeah.

4 COMMISSIONER POLMANN: Frankly, I'm  
5 comfortable with the original language that was  
6 proposed back September 28th, without a cap.

7 COMMISSIONER FAY: Okay.

8 COMMISSIONER POLMANN: I see the cap as -- if  
9 we're looking at the chart that I proposed with the  
10 three colors, the cap of \$15,000 applies only to  
11 the green dots, which is about 15 utilities. If  
12 you eliminated the cap, it would only be for those  
13 15 utilities. If you reduce the -- if you raise  
14 the cap to some other amount, it would simply move  
15 those green dots up on the chart --

16 COMMISSIONER FAY: Okay.

17 COMMISSIONER POLMANN: -- closer to the blue  
18 dots.

19 CHAIRMAN GRAHAM: Any other questions of  
20 Commissioner Fay or any other questions of Item  
21 No. -- I'm sorry -- Commissioner Polmann. Any  
22 other questions of -- or concerns or comments on  
23 Item No. 1?

24 Commissioner Brown.

25 COMMISSIONER BROWN: Thank you.

1           And first, Commissioner Polmann, thank you for  
2           elucidating the data that staff produced into a  
3           chart that shows kind of a different path.

4           I was also -- from the previous agenda  
5           conference, I was comfortable with the original  
6           draft, but talking with staff about this in a  
7           little more detail provided me some comfort with  
8           regard to the ability to assist a utility with a  
9           petition for a rule waiver.

10           Since it is a SARC, staff is in a position of  
11           assisting the utilities with -- if -- if there  
12           is -- you know, we discussed extraordinary  
13           circumstances, like you pointed out, 67 and 68 --  
14           that staff would come back to the Commission with a  
15           request for a rule waiver.

16           And I just want some clarity here, for our  
17           edification, about what that process would look  
18           like. For example, using -- if we have a situation  
19           like 67 and 68, and we implement the rule as  
20           proposed with -- with a cap, what would staff do in  
21           that scenario?

22           MS. HARPER: So, in that case, staff would  
23           work with the utility -- they would have to make  
24           the -- the request, themselves, but we could advise  
25           them.

1           And under the statute there is a provision  
2           that says, when a rule waiver is appropriate, we  
3           are supposed to provide them with the materials to  
4           assist them with, you know, understanding the  
5           statute underlying that -- that waiver and how they  
6           could do it. So, we would approach them about  
7           considering filing a rule waiver.

8           COMMISSIONER BROWN: So, for the examples that  
9           Commissioner Polmann pointed out, towards the left  
10          end of the chart -- are those kind of examples that  
11          you -- of utilities that you would pose a question  
12          to them or point out that there is a rule waiver  
13          that they would -- should apply for?

14          MS. GALLOWAY: Yes, Commissioner, I think  
15          those would be good examples of where we would at  
16          least make the utility aware that a rule waiver  
17          might be appropriate.

18          COMMISSIONER BROWN: And can you refresh all  
19          of our memories here on why the language has  
20          changed? The 15 percent, as was recommended prior  
21          to -- and -- and I see that the examples of, you  
22          know, when you reduce it to 12 percent, how many  
23          apply -- you know, can qualify for the operating  
24          ratio -- pardon me -- not qualify, but how many  
25          more it would benefit.

1           Could you just walk us through why you all  
2           have changed on your recommendations?

3           MS. GALLOWAY: We -- after the October agenda,  
4           we -- it was deferred. We met with the OPC and  
5           listened to some of their concerns. We were  
6           comfortable modifying the rule from 15 percent to  
7           12 percent. We felt like it didn't make a huge  
8           difference in what the margin would be. We also  
9           knew that what we care -- I don't want to say what  
10          we cared most about, but --

11          COMMISSIONER BROWN: Right.

12          MS. GALLOWAY: -- the 125 percent -- the rate  
13          base being 125 percent of O & M, rather than rate  
14          base being less than O & M -- that caveat was very  
15          important to us because we felt like it captured  
16          more utilities, giving them the opportunity for  
17          operating ratio methodology.

18          So, the 15-percent margin going down to  
19          12 percent was not a real heartburn for us. We  
20          weren't married to 15 percent.

21          COMMISSIONER BROWN: With -- with the -- okay.  
22          Again, with that -- looking at the inclusion of a  
23          cap, the margin from 15 percent to 12 percent -- it  
24          looks like, at the 15 percent, there are -- I mean,  
25          pardon me -- at the 20 percent, with the cap, there

1           are more?

2           MS. GALLOWAY: Right.

3           COMMISSIONER BROWN: Do you -- Commissioner  
4           Polmann talked about unintended consequences of --  
5           with not including a cap -- pardon me -- with  
6           including a cap. Can you -- can you address his  
7           concerns?

8           MS. GALLOWAY: Unintended consequences for not  
9           including the cap, Commissioner -- we talked about  
10          rate shock in some of the briefings. And to us,  
11          that is a great possibility.

12          You have to remember that the cap still  
13          assures the utility of that margin. They're still  
14          going to get that \$15,000 margin. And so, as  
15          you -- and again, you know, the chart that we  
16          looked at -- those are unaudited numbers, but as  
17          you get a -- higher and higher operating-and-  
18          maintenance expenses, you have to remember, those  
19          are all going to be included in totality in the  
20          revenue requirement.

21          So, given that and the fact that there would  
22          still be a margin, we -- we believe that that was  
23          also a good solution. We didn't have heartburn  
24          about that.

25          MS. HARPER: And just to add, from a legal

1 perspective, too, we didn't want to box the  
2 Commission in -- in a situation where there  
3 would -- there would be a rate shock and the rule  
4 would mandate that this methodology be applied  
5 without any flexibility, so...

6 COMMISSIONER BROWN: And -- thank you,  
7 Mr. Chairman, and thank you, staff, for walking us  
8 through. I just -- I wanted to go through it. I'm  
9 comfortable with the rule right now -- although, I  
10 appreciate Commissioner Polmann's points. I am  
11 comfortable with the rule, as proposed, given that  
12 staff acknowledged a willingness to assist those  
13 with a rule waiver when warranted, based on the  
14 examples we've discussed here today.

15 CHAIRMAN GRAHAM: Okay. Any other comments,  
16 questions, concerns, on Item No. 1? Then I will  
17 entertain a motion.

18 Commissioner Fay.

19 COMMISSIONER FAY: Thank you, Mr. Chairman.

20 Just a quick comment and then I'm -- I would  
21 put forth a motion, unless anybody has a response  
22 to it. I think this rule has been worked on for a  
23 long time and I think the debate and the discussion  
24 that we've had with this Commission's authority has  
25 been relevant.

1           And, I think, Commissioner Polmann, who is  
2           nationally looked at as an expert in the water  
3           area, and his -- his opinions give a lot of weight.  
4           I believe you're going up to DC and speaking on a  
5           panel up there in a few days. And I think your  
6           experience is extremely relevant to a decision like  
7           this because you see the impact to the companies  
8           and what they can do.

9           What continues to give me comfort with the  
10          language as proposed is -- which includes the  
11          Office of Public Counsel's concept of a -- of a  
12          cap -- I think the number has been discussed and  
13          there's different thresholds that have been put in  
14          front of us.

15          I think the -- the concept does allow for some  
16          deviation in the circumstances that it's needed,  
17          but also provides that condition of protecting the  
18          ratepayers, to -- to a certain extent. That's why  
19          I feel comfortable moving forward with -- with the  
20          language as proposed, and I think it's still  
21          consistent with some of the points that you've  
22          made.

23          So, I understand your position on this and --  
24          you -- you may vote differently, but I think, at  
25          the end of the day, the language as proposed will



1 provide some of the protections that we have.

2 So, I would move staff's recommendation on all  
3 issues for this item.

4 COMMISSIONER BROWN: Second.

5 CHAIRMAN GRAHAM: It's been moved and second.  
6 Further discussion?

7 Commissioner Polmann.

8 COMMISSIONER POLMANN: Thank you,  
9 Mr. Chairman.

10 I -- I appreciate the -- the issue being  
11 debated. I appreciate the opportunity to speak to  
12 the issue here and bring forward my concerns. I  
13 recognize the opinion of the Commissioners and  
14 acknowledge what's been offered here as concern for  
15 rate shock.

16 I simply wanted to express what I see as an  
17 obligation of the Commission to pursue the  
18 legislative intent of fulfilling the purpose of the  
19 smaller water and wastewater companies' obligation  
20 to serve. And I would encourage the Commission to  
21 make sure, going forward, in the future, that we  
22 are very diligent about finding ways to provide  
23 adequate funding.

24 Having said that, I -- I'm -- I'm satisfied  
25 that we've debated the issue sufficiently. And I

1 think there may be a challenge implementing things  
2 such as waivers, but having identified that and --  
3 and being aware of the challenges, I will certainly  
4 support the majority on this issue going forward.

5 Thank you, Mr. Chairman.

6 CHAIRMAN GRAHAM: Thank you, Mr. Polmann.

7 All right. We have a motion, duly seconded.

8 Any further discussion?

9 Seeing none, all in favor, say aye.

10 (Chorus of ayes.)

11 CHAIRMAN GRAHAM: Any opposed?

12 By your action, you have approved that motion.

13 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, 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 14th day of February, 2019.




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ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #GG060963  
EXPIRES February 9, 2021

# Annual Revenue Increase with Proposed Rule (percent)

