

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20170147-WS

APPLICATION FOR
STAFF-ASSISTED RATE CASE IN
LEVY COUNTY BY FIMC
HIDEAWAY, INC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

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
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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 move on to the
3 last item on our agenda, Item No. 6.

4 MR. LEWIS: Good morning, Commissioners. I am
5 Clayton Lewis -- Clayton Lewis, representing staff.

6 Item 6 is staff's recommendation that the
7 Commission direct FIMC Hideaway, Inc., to
8 investigate changes to its water-treatment
9 operations to enable it to meet DEP secondary water
10 standards, specifically to resolve ongoing problems
11 meeting the standards for sulfates and total
12 dissolved solids.

13 Staff is additionally recommending that the
14 utility meet with its customers to discuss and
15 possibly come to an agreement on a remedy.

16 Representation from the utility is not present
17 today; however, the Office of Public Counsel is
18 here and may wish to speak on this matter. Staff
19 is available to answer your concerns.

20 CHAIRMAN GRAHAM: Mr. Kelly, welcome to the
21 front.

22 MR. KELLY: Morning, Mr. Chairman and
23 Commissioners. I -- I really just wanted to tell
24 you -- I do have two quick comments, but I wanted
25 to take this opportunity to introduce you to our

1 newest attorney. Mireille Fall-Fry joined us last
2 week. And since I had assigned this case to her
3 and she's been here less than a week, I didn't -- I
4 wasn't going to make her speak on it.

5 So -- but -- just real quickly, we agree with
6 staff's recommendation. It -- we would ask for two
7 considerations: Number one, that the meetings that
8 staff referred to with the customers -- we would
9 ask that there be a notice by the utility given to
10 the Commission so that our office could know when
11 the meetings are going to occur and have an
12 opportunity to attend.

13 And the only other comment is that we would
14 ask, instead of the docket being closed, that you
15 continue to allow it to remain open, as you have
16 over the past several months, until this issue is
17 resolved, because it -- it's obviously -- was an
18 issue when you voted on this case last year, and
19 you left it open. And that would be our request;
20 that you -- it remains open until this issue of the
21 water quality is finally resolved.

22 Thank you, Mr. Chair.

23 CHAIRMAN GRAHAM: Thank you, Mr. Kelly.

24 All right. Commissioners, Item No. 6.

25 Commissioner Brown.

1 COMMISSIONER BROWN: I -- I just have a
2 question regarding keeping the docket open until
3 the issue of water quality is resolved. Does
4 that -- are you suggesting that, Mr. Kelly, that
5 just -- the utility has an opportunity to meet with
6 the customers and provide them an estimate of cost
7 or are you suggesting that a remedy actually be
8 implemented thereafter?

9 MR. KELLY: Commissioner, that's a good point.
10 I -- I -- I think at least hold it open until we
11 figure out where we're going to go forward; after
12 the customer meetings and after the things that
13 staff delineated insofar as determining what
14 options would be available, what are the costs of
15 those options, whether the customers would be
16 willing and able to pay for those options. If
17 they're -- if they're too much, then we could
18 decide on a -- a different path to take, but at
19 least that far, we would ask for it to remain open.

20 And I -- I -- and I would concede that if it
21 was -- if it turned out to be a two- or three-year
22 opt- -- excuse me -- an option would be take two or
23 three years to implement, then we could talk about
24 agreeing to close it at that time and wait and --
25 and see what's going to happen.

1 COMMISSIONER BROWN: And I think, given what
2 you just stated, I think both of those are
3 reasonable requests.

4 But staff -- so, what kind of language would
5 you propose for the close-the-docket option, given
6 the discussion we just had?

7 MS. DuVAL: Well, Commissioner, I believe that
8 that's probably what staff was contemplating. For
9 purposes of this recommendation, we were just
10 looking at the issues that were teed up, and that's
11 why we phrased it the way that we did.

12 But if I were going to suggest any language, I
13 think it would just be to -- to suggest that the
14 docket remain open until such time that the -- the
15 quality issue has been vetted, possibly, and fully
16 addressed because there is the potential that,
17 based on the -- the information that we received
18 back from the utility, that -- that the Commission
19 could find that whatever solution -- whatever the
20 plausible solution is is -- is not in the best
21 interest of the customers, like -- like Mr. Kelly
22 said.

23 So, I believe maybe just some more-generic
24 terms, keep the docket open until the quality issue
25 has been vetted and addressed.

1 COMMISSIONER BROWN: Thank you. I appreciate
2 the recommendation.

3 And welcome, for appearing before us today,
4 too.

5 Thank you, Mr. Chairman.

6 CHAIRMAN GRAHAM: Thank you, Commissioner
7 Brown.

8 Staff, I've got -- it's a little concerning
9 that the -- we still can't meet the secondary
10 standards. If -- if we go -- if we have the
11 customer meeting that we're talking about, with the
12 utility, OPC, and the customers being there -- and
13 I'm sitting here looking at the e-mail that came
14 from the customers saying that FIMC cannot afford
15 the equipment or the engineering required to meet
16 the standard.

17 Now, if they decide -- if the outcome of that
18 meeting is that it's cost-prohibitive -- now, do we
19 have -- because when they pass this -- statutorily,
20 when they pass -- that we shall look at secondary
21 standards, do we have the ability to not require
22 them to hit the secondary standard, if -- if the
23 customers don't want to pay that -- that cost
24 increase?

25 MS. DuVAL: Right. So, our quality-of-service

1 statute, like you said, only requires that the
2 Commission consider the finding by DEP that they're
3 not meeting those secondary standards.

4 So, given that language and the fact that the
5 DEP is the agency with the primary enforcement
6 authority over the standards, we believe it is
7 within the Commission's discretion, of course, as
8 to whether or not you all require that the utility
9 make those improvements to meet the standards.

10 It's in Subsection 2E of the quality -- of our
11 quality-of-service statute that says that the
12 Commission may require the utility to implement a
13 solution that's in the best interest of the
14 customers.

15 So, there is -- like I said before, there is
16 the potential that it may appear to the Commission
17 that whatever solution the -- you know, that the
18 utility and customers can come up with, whether
19 that be to -- to not do anything at all -- that may
20 be what is in the best interest of the customers.
21 I think we would just have to see when that comes
22 down the road.

23 CHAIRMAN GRAHAM: Mr. Hetrick?

24 MR. HETRICK: I think she stated the law
25 accurately; that the charge for the Commission is

1 to -- ultimately, at the end of the day, you have
2 the ability to enforce secondary standards, but the
3 statute -- if that is in -- disqualifies that with,
4 if that is in the best interest of the customers.

5 So, your -- the Commission's charge is to look
6 at the best interest of the customers and come up
7 with a solution that meets the best interest of the
8 customers after -- after you've looked at what the
9 various options are to meet secondary standards.

10 So, I -- I think you did a good point -- right
11 on -- on the statute.

12 MS. DuVAL: And I would also add, if I could,
13 I'm obviously not an expert on DEP's rules or
14 statutes, but I do believe that companies in these
15 situations sometimes have the ability to apply for
16 either an exemption or a variance from DEP's rules
17 regarding these standards as well.

18 So, that may be something else that the
19 utility hasn't explored yet that they could
20 potentially during this -- this period of time.

21 CHAIRMAN GRAHAM: Well, I'm not really
22 concerned about DEP's requirement. It's just,
23 statutorily, what our requirement is. And so --
24 and I guess I'm asking the question: So, when
25 something comes to us after this meeting, that

1 we're not sitting around saying, I wish we would
2 have known that before.

3 What -- what -- how many customers does -- how
4 many customers do you need to say that they're not
5 satisfied? Is it one customer? Is it half the
6 customers?

7 MR. LEWIS: Well, normally, when we get
8 reports of complaints, especially on the quality-
9 of-service issue, we'll pass it on to DEP. But
10 when we get such a substantial number all at once
11 and everything, then we would properly investigate
12 and -- and talk to the utility and find out what
13 the issue is and see if there's a resolution in the
14 works.

15 In this particular case, these instances have
16 been documented and going on for a couple of
17 decades now, and they have continuously not met
18 this -- this secondary water standard for total --
19 for sulfates and totally dissolved solids.

20 It appears that DEP has been aware of this the
21 whole time, and -- but due to the nature of the
22 utility's size, the customer base -- I think it's
23 just under 200 customers -- that they haven't
24 pressed forward on this, but I can't speak for DEP
25 and what they are -- what is their -- the

1 initiation of their actions on what they -- how
2 they go forward and present anything on to the
3 utility.

4 CHAIRMAN GRAHAM: I have a few more questions,
5 but my board is all lit up.

6 Commissioner Polmann?

7 COMMISSIONER POLMANN: Thank you,
8 Mr. Chairman. The last point you raised is a very
9 interesting one that I think the Commission will
10 continue to wrestle with is, you know, whether it's
11 one customer or several or many.

12 We -- we -- we tried to address that in -- in
13 whether or not to develop a rule. And I think
14 we'll, unfortunately, continue to wrestle with
15 that. I don't have an answer to that and I suspect
16 that will continue to be a challenge for us on a
17 case-by-case basis.

18 But putting that aside for the moment, with
19 regard to this particular item and the issues in
20 keeping the docket open and so forth, as I read
21 this and, based on discussion that I had with
22 staff, what -- what I was contemplating was a need
23 for the Commission to receive back from the utility
24 some specific details at the end of six months as
25 to this specific statement here for FIMC to create

1 an estimate of costs and benefits of a plausible
2 solution; rather than having the utility come back
3 in six months and say, well, we don't know what to
4 do because this has been going on for -- for a very
5 long time, and we can't meet the standards without
6 spending an extraordinary amount of money because
7 that's not going to be useful to us, and then for
8 us to say, well, that's unacceptable, and -- and
9 for this to go around and around again and again.

10 So, I have -- I have asked staff to very
11 deliberately request of the utility a calendar of
12 events over the next six months -- and perhaps
13 that's consistent with what Mr. Kelly is looking
14 for -- which would be a month-by-month schedule of
15 what are they going to do specifically because I --
16 I don't anticipate that this is a particularly
17 difficult concept of how to treat for these
18 secondary-standard materials, but what are the
19 procedures that we're going to follow to -- to
20 determine what a solution is in terms of a --
21 treatment options, and what are they going to do to
22 engage the customers in an adequate fashion to lay
23 out these plausible solutions and then to interact
24 with the customers to determine, are the customers
25 willing to pay so that they can report back to this

1 Commission in six months with a real plan?

2 Because if they come back and say, well, you
3 know, it's going to cost a lot of money, but we
4 don't know if the customers want to pay, then we're
5 still sitting there in six months where we are
6 today.

7 So, until we have real information from the
8 utility and from the customers as -- as to a
9 willingness to pay, we don't have anything. So, I
10 would -- I would like us to direct staff to be very
11 specific and -- and to have a very high expectation
12 of the utility to be serious about coming back here
13 with what it says is an estimate of costs and
14 benefits of a plausible solution and for staff to
15 define specifically what constitutes a plausible
16 solution and -- and for them to be very deliberate
17 with the utility as to getting detailed reports
18 back. And if we don't get that, we're -- we're
19 nowhere.

20 So, that's my point, and -- thank you,
21 Mr. Chairman.

22 CHAIRMAN GRAHAM: All right. Commissioner
23 Fay.

24 COMMISSIONER FAY: Thank you, Mr. Chairman.

25 Just a -- a quick question for Mr. Kelly on

1 the notice comment. I -- I'm not sure that what
2 you're asking for is consistent with the current
3 staff recommendation, but it sounds like, based on
4 what Commissioner Polmann is saying, that if
5 there's communication by the parties with the
6 Commission staff, that this will be brought back
7 before us -- or at least the information will be
8 submitted to the Commission on August -- August --

9 At that time, I would -- I would -- I'll let
10 staff correct me, but I believe, at that point, the
11 Office of Public Counsel would have the opportunity
12 to weigh in on that information as it's brought
13 before the Commission. Would that be sort -- would
14 that be sufficient to what you're requesting?

15 MR. KELLY: Commissioner, what we -- what I
16 was talking about -- we want to be aware of the
17 customer meetings. In other words, we wanted
18 the -- the utility to be required to tell you when
19 they're going to hold customer meetings so that we
20 could be informed, and we could attend those
21 customer meetings.

22 I -- I agree with you, once you get down the
23 road and -- and staff comes back to you with a
24 recommendation, or a summary of what's transpired
25 absolutely, we'll be involved, but I -- we just

1 specifically want to know when the utility is
2 planning to meet with the customers so that we
3 could also attend.

4 COMMISSIONER FAY: Okay. And that -- that
5 would be sort -- that would be unusual for a
6 circumstance like this, correct?

7 MR. KELLY: I -- I don't think so. I know, in
8 the past, we've -- the Commission has directed the
9 utility to hold meetings and inform our office
10 and -- and we've attended those meetings.

11 I specifically remember that about the
12 Summertree that some of the folks that have been
13 here a few years, certainly remember.

14 COMMISSIONER BROWN: Hmm.

15 CHAIRMAN GRAHAM: Summertree.

16 MR. KELLY: And -- and so, that -- that's all
17 we're asking.

18 COMMISSIONER FAY: Looks like you're bringing
19 up a happy case to compare this to, Mr. Kelly.

20 (Laughter.)

21 MR. KELLY: Well, hope- -- it -- it's got a
22 happy ending, so --

23 COMMISSIONER FAY: Yeah.

24 MR. KELLY: But that's all we're asking for.
25 We just want -- we don't want to find out, oh,

1 there was a customer hearing -- meeting, excuse me,
2 meeting, not a hearing -- customer meeting last
3 week with FIMC and the customers, and we didn't
4 know anything about it.

5 That -- that's -- that was really what I'm
6 getting at.

7 COMMISSIONER FAY: Okay. Because that's -- I
8 think, if we're looking for resolution, I just
9 wouldn't want to do anything that would hinder the
10 parties' ability to have discussions -- the
11 customers and the company to have discussions to
12 try to find some resolution.

13 And so, I think what you're saying, as long as
14 you have the information of when they are meeting,
15 that's sufficient for you. They're not obligated
16 to work around schedules to -- so, you would be
17 able to be in attendance for these types of
18 meetings, correct?

19 MR. KELLY: Ye- --

20 COMMISSIONER FAY: Okay.

21 MR. KELLY: Yes, sir.

22 COMMISSIONER FAY: Gotcha.

23 MR. KELLY: Yeah, we -- we -- we've done this
24 in the past where we've met with customers and the
25 utility really trying to all work together to -- to

1 a workable solution.

2 COMMISSIONER FAY: Because the -- everyone has
3 the same, common goal, so --

4 MR. KELLY: Absolutely.

5 COMMISSIONER FAY: Okay. Gotcha.

6 Thank you, Mr. Chairman. That's all I had.

7 CHAIRMAN GRAHAM: Okay. Commissioner Clark.

8 COMMISSIONER CLARK: Thank you, Mr. Chairman.
9 I appreciate -- you articulated a lot of the
10 concerns that I had a couple of minutes ago. So,
11 I'll be very brief.

12 I just want to take off of the comment that
13 was just made. I don't see any -- based on my
14 reading of the material and -- and discussions with
15 staff, I see that this utility has somewhat -- I
16 don't think, taken this very seriously. It doesn't
17 appear to me that they've taken it very seriously,
18 based on their responses, hey, the issue has been
19 here for a long time; we know it's an issue, but
20 there is nothing we can do it about it. That's not
21 an acceptable answer, to me.

22 And I would even take this customer meeting to
23 a higher degree and -- and almost insist that we
24 have staff at that meeting that's there to listen
25 firsthand at the information that's being

1 presented. And -- and certainly, I have no problem
2 scheduling this as a -- as a customer hearing in
3 that regard, as well.

4 But I -- I would -- I would seriously like to
5 see us take this issue a little more seriously.
6 They have, like, 11, 12 years of secondary-quality
7 issues with DEP.

8 Those are -- that's kind of one of those
9 things where the squeaky wheel gets the grease
10 there. Unless there's a lot of customer complaints
11 regarding the secondary standards, there's -- it's
12 probably not going to be addressed. And I think
13 maybe the customers aren't quite as familiar with
14 exactly the next steps to take.

15 So, I would encourage us to -- to work with
16 staff to set up something and possibly be a part of
17 this customer hearing, Mr. Chairman.

18 CHAIRMAN GRAHAM: Okay. In the
19 recommendation, it has this coming back before us
20 by August 6th. I take it that's our meeting in
21 August. I -- I like the idea and Mr. Hetrick made
22 the suggestion earlier when I met with him about
23 making sure that staff was included in this -- in
24 this hearing as well so we're not just hearing
25 everything second and thirdhand. I -- I think

1 that's a great recommendation.

2 I guess my concern is -- and I agree with you,
3 Commissioner Clark, there -- there seems to be a
4 lack of urgency by the utility. And what happens
5 when this -- you know, come August 6th and they
6 come back around and they just say, what are we
7 supposed to do, it's too expensive, but yet, you've
8 still got customers complaining about it.

9 And that's why I asked the question, trying
10 not to be facetious about, you know, what's enough
11 customers complaining about it, you know. And I --
12 I'm sure that's one of those things that, come
13 August 6th, we'll make that determination, but I
14 just want to make sure that we have enough dialogue
15 about this so we know -- you know, at least we're
16 giving staff direction on what our concerns are and
17 where we would like for this thing to end up.

18 I guess the question to staff is, what do we
19 need to do in the motion as far as to direct you to
20 make sure that staff is part of this hearing,
21 moving forward, and is it something that's -- would
22 staff set up this meeting? Will we wait for the
23 utility to set up this meeting and staff just
24 attend or how do you foresee this moving forward?

25 MR. LEWIS: As we discussed, I believe a

1 possible time frame -- we envision that it would
2 take the utility probably about a month or two to
3 get appropriate bids and to formulate some type of
4 presentation to the customers.

5 Seeing that we want to do -- maybe see an
6 initial meeting, along the guidelines of what OPC
7 stated, around the third month, and then follow-up
8 meetings, based upon what -- however the customers
9 and the utility proceeded to -- to further flesh
10 out the options so that they could probably come to
11 the conclusion within the -- the fourth or fifth
12 month and -- and -- and provide that information to
13 the Commission so the staff could have time to
14 prepare and -- and present it.

15 That -- that's kind of like where we kind of
16 left it because we didn't -- we don't know which
17 way the -- the utility or the customers might
18 decide to -- to comport themselves on -- on how to
19 address this issue.

20 So, that's -- that's -- that's kind of where
21 we stood there, as far as the time frame, but I
22 think being notified of the customer meetings,
23 and -- staff or supervisors can determine which of
24 these meetings that staff should -- should attend.
25 It'd probably be -- be informative of -- of -- of a

1 notification so that everybody is aware of the
2 specific time frames.

3 CHAIRMAN GRAHAM: Well, I would definitely ask
4 for staff to keep us apprized of what's going on
5 because what I don't want to see happen is, come
6 August 6th, that the utility states that, we're
7 still looking for engineering bids and we're still
8 trying to put this together and we still haven't
9 met with -- with the -- with the customers yet.

10 MR. LEWIS: At that point, I would probably
11 just suggest that maybe the utility give a -- a
12 mid-point status report on where they are in the
13 process.

14 CHAIRMAN GRAHAM: Well, I -- I assume that you
15 guys are going to stay in contact with the customer
16 [sic]. I'm just saying for you to guys to get back
17 to us, maybe at an -- at an internal affairs and
18 just say --

19 MR. LEWIS: Okay.

20 CHAIRMAN GRAHAM: An update, where this thing
21 is so far and where you see it going. I mean,
22 because I just don't -- like I said, I don't want
23 to have this conversation six months from now and
24 nothing has happened.

25 Commissioner Brown.

1 COMMISSIONER BROWN: So, I would suggest, with
2 that -- with these -- this conversation that we've
3 had here is to direct the utility in our order to
4 have -- conduct the customer meeting and notify OPC
5 and include staff, within the next 60 to 90 days
6 from issuance of our order and then submit the
7 results back to the Commission within 30 days after
8 the meeting is held.

9 So, we have a tight time frame that's provided
10 within the order, even though the utility is --
11 obviously, there's no representative here today,
12 but our order provides direction, clear direction,
13 so we have a path so, come August, you know, we'll
14 have at least an idea of -- of where we're going to
15 go.

16 MR. HETRICK: And Commissioner?

17 COMMISSIONER BROWN: Uh-huh.

18 MR. HETRICK: I think you would want --
19 options submitted by what those cost estimates are
20 associated with the options is sort of what -- the
21 discussion I heard. And the Commission is part of
22 that. So, it's not general --

23 COMMISSIONER BROWN: So, the -- so, the
24 meeting would consist of what Mr. Lewis said, is
25 have the utility discuss options with the customers

1 within 60 to 90 days from issuance of our order and
2 then provide the Commission back with the results.

3 MR. HETRICK: Yes, ma'am.

4 COMMISSIONER BROWN: Within 30 days.

5 COMMISSIONER CLARK: Was that a motion?

6 COMMISSIONER BROWN: I -- I hope our clerk is
7 clear on the motion.

8 MR. TEITZMAN: I got it.

9 COMMISSIONER BROWN: So, that is the motion.
10 Mr. Chairman.

11 CHAIRMAN GRAHAM: It's been moved and
12 seconded.

13 COMMISSIONER BROWN: Oh, pardon me.
14 Mr. Chairman, if -- I would, though, also -- I
15 would move -- and that's just Issue 1, but I would
16 move also the issue of Issue 2 to keep the docket
17 open until such time as the quality issue has been
18 vetted.

19 CHAIRMAN GRAHAM: Okay. It's been moved and
20 seconded. Any further discussion on that motion?

21 Executive director, do you have a question?

22 MR. BAEZ: (Shaking head negatively.)

23 CHAIRMAN GRAHAM: Okay. Seeing no other
24 questions or concerns, Mr. Kelly, is that --

25 MR. KELLY: Yes, sir, that's --

1 CHAIRMAN GRAHAM: Okay. All in favor, say
2 aye.

3 (Chorus of ayes.)

4 CHAIRMAN GRAHAM: Any opposed?

5 By your action, you have approved the Brown
6 motion.

7 All right. It looks like that -- that
8 concludes our agenda. We have a hearing coming up
9 in this room in 10 minutes. So, by that clock in
10 the back, that's a quarter 'til 11.

11 So, we're adjourned. Travel safe.

12 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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IT IS FURTHER CERTIFIED that I
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DATED THIS 14th day of February, 2019.



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