BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Pasco County by Ni Florida, LLC.

DOCKET NO. 090182-SU ORDER NO. PSC-09-0751-PCO-SU ISSUED: November 16, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman LISA POLAK EDGAR NANCY ARGENZIANO NATHAN A. SKOP DAVID E. KLEMENT

ORDER SUSPENDING PROPOSED FINAL RATES AND APPROVING INTERIM RATES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Ni Florida, LLC (Ni Florida or Utility) is a Class A utility serving approximately 2,589 residential customers, 145 commercial customers, and one industrial customer. The Utility provides wastewater collection service to its customers and purchases wastewater treatment service from Pasco County pursuant to a Bulk Wastewater Treatment Agreement. The majority of Ni Florida's service territory is located in an area designated as a flood plain area, which is unsuitable for the use of septic tanks and drain fields. The Utility is in the South Florida Water Management District and is not in a water use caution area. Wastewater rate base was last established for this Utility in 2007.

On July 21, 2009, Ni Florida filed an Application for Rate Increase at issue in the instant docket. The Utility had deficiencies in the Minimum Filing Requirements (MFRs). Those deficiencies have been reconciled. The Utility requested that the application be processed using the Proposed Agency Action (PAA) procedure and requested interim rates. The test year established for interim and final rates is the historical year ending December 31, 2008.

Ni Florida requested interim rates designed to generate annual wastewater revenues of \$1,837,081. This represents a revenue increase on an annual basis of \$366,244 (24.90 percent).

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¹ See Order Nos. PSC-08-0226-FOF-SU, issued April 7, 2008, in Docket No. 070740-SU, <u>In re: Joint application for approval of transfer of Hudson Utilities, Inc.'s wastewater system and Certificate No. 104-S, in Pasco County, to Ni Florida, LLC, and PSC-09-0017-PAA-SU, issued January 5, 2009, in Docket No. 070740-SU, <u>In re: Joint application for approval of transfer of Hudson Utilities, Inc.'s wastewater system and Certificate No. 104-S, in Pasco County, to Ni Florida, LLC.</u></u>

The Utility requested final rates designed to generate annual wastewater revenues of \$1,873,806. This represents a revenue increase of \$402,969 (27.40 percent).

The original 60-day statutory deadline for us to suspend the Utility's requested final rates was October 6, 2009. However, by letter dated August 25, 2009, the Utility agreed to extend the statutory time frame through October 27, 2009. This Order addresses the suspension of Ni Florida's requested final rates and the Utility's requested interim rates. We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

SUSPENSION OF PROPOSED WASTEWATER RATES

Section 367.081(6), F.S., provides that we may, for good cause, withhold consent to the implementation of the requested rates within 60 days after the date the rate request is filed. Further, Section 367.081(8), F.S., permits the proposed rates to go into effect (secured and subject to refund) at the expiration of five months if: (1) we have not acted upon the requested rate increase, or (2) our PAA action is protested by a party other than the Utility.

We have reviewed the filing and considered the information filed in support of the rate application and the proposed final rates. We find that further investigation of this information is reasonable and necessary, including on-site investigations by our staff accountants and engineers. Based on the foregoing, we hereby suspend the Utility's proposed final rate increase.

INTERIM RATES

As explained in detail below, we authorize Ni Florida to collect the following interim annual wastewater revenues:

	Adjusted Test Year Revenues	\$ Increase	Revenue <u>Requirement</u>	% Increase
Wastewater	\$1,470,837	\$345,103	\$1,815,940	23.46%

Ni Florida has filed rate base, cost of capital, and operating statements to support its requested interim wastewater increase. Pursuant to Section 367.082(5)(b)1, F.S., the achieved rate of return for interim purposes must be calculated by applying adjustments consistent with those used in the Utility's most recent rate proceeding and annualizing any rate changes. We have reviewed Ni Florida's interim request, as well as Order No. PSC-09-0017-PAA-SU, in which we last established rate base. Our approved adjustments are discussed below. Accounting schedules illustrating our approved rate base, capital structure, and test year operating income amounts are attached to this order. The rate base is shown on Schedule No. 1. The capital structure is shown on Schedule No. 2. The operating income schedule for wastewater is shown on Schedule No. 3-A, and the operating income adjustments are shown on Schedule No. 3-B. The approved rates are shown on Schedule No. 4.

Rate base

On MFR Schedule A-17, the Utility reflected year-end balances to calculate its working capital allowance of \$9,088. Pursuant to Rule 25-30.433(4), Florida Administrative Code (F.A.C.), the method used to calculate rate base and cost of capital shall be a 13-month average for Class A utilities. Based on our calculation, the Utility's working capital is negative. A negative working capital is not typical of a "normal" utility or the expected future condition of the utility. In our prior decisions, we have used a zero working capital allowance in lieu of the negative amount.² Accordingly, the interim working capital allowance is zero. Based on this adjustment, our approved rate base for interim purposes is \$2,351,327 for wastewater.

Cost of Capital

In its interim request, Ni Florida requested an overall cost of capital of 9.53 percent. However, the Utility's requested overall cost of capital is based on the ending balances of its capital accounts and not the 13-month average balances. Consistent with Rule 25-30.433(4), F.A.C., we adjusted the ending balances to reflect the 13-month average balances. Also, consistent with our prior decisions, we have not carried over the outstanding debt nor the Return on Equity (ROE) of the Utility's prior owner because neither survives the transfer of a Utility. Based on the above, we find that the interim weighted average cost of capital is 8.70 percent. This represents an eighty-three basis point reduction to the overall cost of capital requested by Ni Florida.

Net Operating Income

Based on our analysis of the MFRs, we find that no adjustments are necessary. Accordingly, the appropriate test year operating loss, before any revenue increase, is \$124,920 for wastewater.

Revenue Requirement

Based on the above adjustments, we hereby approve a revenue requirement of \$1,815,940 for wastewater. This represents an interim increase in annual revenues of \$345,103 (or 23.46 percent) for wastewater. This will allow the Utility the opportunity to recover its wastewater operating expenses and earn a 8.70 percent return on its wastewater rate base.

² See Order Nos. PSC-97-0076-FOF-WS, issued January 27, 1997, in Docket No. 961364-WS, <u>In re: Investigation of rates of Lindrick Service Corporation in Pasco County for possible overearnings</u>, and PSC-96-1338-FOF-WS, issued November 7, 1996, in Docket No. 951056-WS, <u>In re: Application for rate increase in Flagler County by Palm Coast Utility Corporation</u>.

³ See Order Nos. PSC-09-0385-FOF-WS, issued May 29, 2009, in Docket No. 080121-WS, <u>In re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., and PSC-06-0925-PCO-WS, issued November 6, 2006, in Docket No. 060246-WS, <u>In re: Application for increase in water and wastewater rates in Polk County by Gold Coast Utility Corp.</u></u>

APPROPRIATE INTERIM RATES

We find that interim wastewater service rates for Ni Florida shall be designed to allow the Utility the opportunity to generate annual operating revenues of \$1,470,837 for wastewater operations. Before removal of miscellaneous revenues, this would result in an increase of \$345,103, or 23.46 percent, for wastewater. To determine the appropriate percentage increase to apply to the service rates, miscellaneous service revenues are removed from the test year revenues. The calculation is as follows:

		Wastewater
1	Total Test Year Revenues	\$1,470,837
2	Less: Miscellaneous Revenues	<u>32,986</u>
3	Test Year Revenues from Service Rates	\$1,437,851
4	Revenue Increase	<u>\$345,103</u>
5	% Service Rate Increase (Line 4/Line 3)	<u>24.00%</u>

Ni Florida incorrectly applied an increase of approximately 23.71 percent to its present residential and general service rates to calculate its requested interim Base Facility Charge (BFC) and gallonage rates. As stated above, an across-the-board increase of 24.00 percent to the Utility's present base facility and gallonage charges is appropriate. As such, the Utility understated its requested wastewater interim BFC charge. Approving interim rates greater than those requested by the Utility, due to an erroneous application of the across-the-board rate increase in the MFRs, is consistent with our prior orders.⁴

The interim rate increase of 24.00 percent for wastewater shall be applied as an across-the-board increase to the service rates in effect as of December 31, 2008. The approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The rates shall not be implemented, however, until our staff verifies that the tariff sheets are consistent with this decision, the proposed customer notice is adequate, and the required security has been filed. The Utility shall provide proof of the date notice was given within 10 days after the date of notice.

The Utility's test year, proposed interim and final rates, and approved interim rates are shown on Schedule No. 4.

⁴ <u>See</u> Order No. PSC-06-0925-PCO-WS, issued November 6, 2006, in Docket No. 060246-WS, <u>In re: Application for increase in water and wastewater rates in Polk County by Gold Coast Utility Corp.</u>

SECURITY TO GUARANTEE INTERIM INCREASE

Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by us. As discussed above, the total annual interim increase is \$345,103 for wastewater. In accordance with Rule 25-30.360, F.A.C., we calculated the potential refund of revenues and interest collected under interim conditions to be \$201,457. This amount is based on an estimated seven months of revenue being collected from our approved interim rates over the Utility's current authorized rates shown on Schedule No. 4.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Since Ni Florida recently acquired Hudson Utility, we used Ni Florida's Commission Annual Report for 2008 and Hudson Utility, Inc's. Annual Reports for 2006 and 2007 to calculate these ratios. Ni Florida has improved equity ownership and liquidity to sufficient levels in 2008. However, the average of these measures over the most recent three-year period are not within acceptable parameters. Ni Florida reports insufficient interest coverage, deficient average equity ratio, and net losses over the review period. Net losses have steadily increased and have averaged over \$129,000 per year. For these reasons, we find that Ni Florida does not have the financial capability to support a corporate undertaking in the amount of \$201,457. Based on this analysis, Ni Florida shall secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refunds of wastewater revenues.

If the security provided is an escrow account, said account shall be established between the Utility and an independent financial institution pursuant to a written escrow agreement. This Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall also state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Commission Clerk, of Office of Commission Clerk; the account shall be interest bearing; information concerning that escrow account shall be available from the institution to the Commission or its representative at all times; the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and, pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d DCA 1972), escrow accounts are not subject to garnishments.

The Utility shall deposit \$28,759 into the escrow account each month for possible refund. The escrow agreement shall state that if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers and, if a refund to the customers is not required, the interest earned on the escrow account shall revert to the Utility.

If the security provided is a surety bond or a letter of credit, said instrument shall be in the amount of \$201,457. If the Utility chooses a surety bond as security, the surety bond shall state that it will be released or terminated only upon subsequent order. If the Utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the

period it is in effect and that it will be in effect until a final order is rendered releasing the funds to the Utility or requiring a refund.

Regardless of the type of security provided, the Utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the Utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. Such costs are the responsibility of, and shall be borne by, the Utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ni Florida, LLC's proposed final wastewater rates shall be suspended pending further review. It is further

ORDERED that, on an interim basis, the Utility shall be authorized to collect annual wastewater revenues as set forth in the body of this Order. It is further

ORDERED that the wastewater service rates for Ni Florida, LLC in effect as of December 31, 2008, shall be increased by 24.00 percent to generate the approved revenue increase for the interim period. It is further

ORDERED that all matters contained in the schedules attached to this Order are incorporated by reference herein. It is further

ORDERED that the approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1)(a), F.A.C. It is further

ORDERED that the rates shall not be implemented until our staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security discussed above has been filed. It is further

ORDERED that Ni Florida, LLC shall provide proof of the date the notice was given within 10 days after the date of the notice. It is further

ORDERED that all funds collected subject to refund shall be secured by a surety bond, letter of credit, or escrow agreement in the amount of \$201,457. It is further

ORDERED that if the security provided is an escrow agreement, Ni Florida, LLC shall deposit \$28,759 into the escrow account each month. It is further

ORDERED that if the security provided is a bond or letter of credit, said instrument shall be in the amount of \$201,457. It is further

ORDERED that pursuant to Rule 25-30.360(6), F.A.C., Ni Florida, LLC shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. It is further

ORDERED that this docket shall remain open pending final resolution of Ni Florida, LLC's requested permanent rate increase.

By ORDER of the Florida Public Service Commission this 16th day of November, 2009.

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Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is non-final in nature, may request (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

	Ni Florida, LLC.				Schedule No.	1-A
	Schedule of Wastewater Rate Bas	e			Docket No. 09	00182-SU
	Test Year Ended 12/31/08					
		Test Year	Utility	Adjusted	Commission	Commission
		Per	Adjust-	Test Year	Adjust-	Adjusted
	Description	Utility	ments	Per Utility	ments	Test Year
	***************************************					***************************************
	Plant in Service	\$7,560,838	(\$8,551)	\$7,552,287	\$0	\$7,552,287
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2	Land and Land Rights	9,513	0	9,513	0	9,513
	O Company	,				
3	Non-used and Useful Components	0	0	0	0	0
	•					
4	Construction Work In Progress	315	(315)	0	0	0
	_					
5	Accumulated Depreciation	(3,003,678)	22,404	(2,981,274)	0	(2,981,274)
	•					
6	CIAC	(3,496,849)	(1)	(3,496,850)	0	(3,496,850)
		,				
7	Amortization of CIAC	1,235,992	31,659	1,267,651	0	1,267,651
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8	Acquisition Adjustments	3,620,491	(3,620,491)	0	0	0
9	Working Capital Allowance	<u>0</u>	9,088	9,088	(9,088)	<u>o</u>
10	Rate Base	\$5,926,622	(\$3,566,207)	\$2,360,415	(\$9,088)	\$2,351,327
}						

Ni Florida, LLC. Adjustments to Rate Base Test Year Ended 12/31/08	Schedule No. 1-B Docket No. 090182-SU		
Explanation	Water	Wastewater	
Working Capital Allowance			
To set working capital allowance to zero.	<u>N/A</u>	<u>(\$9,088</u>	

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Ni Florida, LLC. Capital Structure-13 Month Average Test Year Ended 12/31/08 Schedule No. 2 Docket No. 090182-SU

•		Total	Specific Adjust-	Subtotal Adjusted	Prorata Adjust-	Capital Reconciled		Cost	Weighted
	Description	Capital	ments	Capital	ments	to Rate Base	Ratio	Rate	Cost
Per	Utility								
1	Long-term Debt	\$233,931	\$0	\$233,931	(\$137,426)	\$96,505	4.09%	8.50%	0.35%
2	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
3	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4	Common Equity	5,477,556	0	5,477,556	(3,217,862)	2,259,694	95.73%	9.58%	9.17%
5	Customer Deposits	10,219	0	10,219	(6,003)	4,216	0.18%	6.00%	0.01%
6	Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	0.00%
10	Total Capital	<u>\$5,721,706</u>	<u>\$0</u>	\$5,721,706	(\$3,361,291)	<u>\$2,360,415</u>	<u>100.00%</u>		9.53%
Per	Commission								
11	Long-term Debt	\$233,931	(\$93,468)	\$140,463	(\$24,311)	\$116,152	4.94%	8.50%	0.42%
12	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.06%
13	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
14	Common Equity	5,477,556	(2,783,820)	2,693,736	(466,235)	2,227,501	94.73%	8.72%	8.26%
15	Customer Deposits	10,219	(2,545)	7,674	0	7,674	0.33%	6.00%	0.02%
16	Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	0.00%	0.00%	0.00%
20	Total Capital	<u>\$5,721,706</u>	(\$2,879,833)	<u>\$2,841,873</u>	(\$490,546)	<u>\$2,351,327</u>	<u>100.00%</u>		<u>8.70%</u>
							LOW	<u>HIGH</u>	
					RETURN ON E	QUITY	<u>8.72%</u>	10.72%	
					OVERALL RAT	E OF RETURN	8.70%	10.60%	

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	Ni Florida, LLC. Statement of Wastewater Oper Test Year Ended 12/31/08	Schedule No. 3-A Docket No. 090182-SU						
:	Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjusted Test Year	Revenue Increase	Revenue Requirement
1	Operating Revenues:	<u>\$1,470,837</u>	<u>\$366,244</u>	<u>\$1,837,081</u>	(\$366,244)	\$1,470,837	<u>\$345,103</u> 23.46%	\$1,815,940
2	Operating Expenses Operation & Maintenance	\$1,302,104	\$34,294	\$1,336,398	\$0	\$1,336,398	\$0	\$1,336,398
2	Operation & Maintenance	Ψ1,502,104	ψ0 4 ,23 4	Ψ1,050,050	ΨΟ	Ψ1,330,330	Ψ	Ψ1,550,536
3	Depreciation	123,059	0	123,059	0	123,059	0	123,059
4	Amortization	0	0	0	0	0	0	0
5	Taxes Other Than Income	136,300	16,481	152,781	(16,481)	136,300	15,530	151,830
6	Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
7	Total Operating Expense	<u>\$1,561,463</u>	<u>\$50,775</u>	\$1,612,238	(\$16,481)	\$1,595,757	\$15,530	\$1,611,287
8	Operating Income	<u>(\$90,626)</u>	<u>\$315,469</u>	<u>\$224,843</u>	(\$349,763)	(\$124,920)	\$329,573	<u>\$204,653</u>
9	Rate Base	\$5,926,622		\$2,360,415		<u>\$2,351,327</u>		<u>\$2,351,327</u>
10	Rate of Return	(1.53%)		<u>9.53%</u>		(5.31%)		<u>8.70%</u>

Ni Florida, LLC. Adjustment to Operating Statement Test Year Ended 12/31/08	Schedule No. 3-B Docket No. 090182-SU			
Explanation	Water	Wastewater		
Operating Revenues				
Remove requested final revenue increase.	<u>N/A</u>	(\$366,244)		
Taxes Other Than Income				
RAFs on revenue adjustments above.	<u>N/A</u>	<u>(\$16,481)</u>		

Ni Florida, LLC. Wastewater Monthly Service Rates Test Year Ended 12/31/08			Schedule No Docket No. (
	Test Year Rates on 12/31/08	Utility Requested Interim	Utility Requested Final	Commission Approved Interim
Residential				
All Meter Sizes:	\$15.72	\$19.45	\$19.89	\$19.4
Gallonage Charge Per 1,000				
Gallons (10,000 gallon cap)	\$5.17	\$6.41	\$6.54	\$6.4
<u>General/Multi-Residential</u> <u>Service</u>				
Base Facility Charge by Meter Size:				
5/8" x 3/4"	\$15.72	\$19.45	\$19.89	\$19.4
Full 3/4"	\$23.56	\$29.14	\$29.80	\$29.2
1"	\$39.26	\$48.58	\$49.67	\$48.6
1-1/2"	\$78.51	\$97.13	\$99.32	\$97.3
2"	\$125.63	\$155.42	\$158.92	\$155.7
3"	\$251.25	\$310.85	\$317.84	\$311.
4"	\$392.56	\$485.67	\$496.61	\$486.7
6"	\$785.16	\$971.38	\$993.26	\$973.6
8"	\$1,256.24	\$1,554.18	\$1,589.20	\$1,557.7
10"	\$1,805.86	\$2,234.17	\$2,284.49	\$2,239.2
General Service - Gallonage Charge, per 1,000 Gallons Bulk Flow Meter Service - Gallonage	\$6.17	\$7.66	\$7.81	\$7.6
Charge, per 1,000 Gallons	\$6.45	\$8.00	\$8.16	\$8.0
	Typi	cal Residentia	al Bills 5/8" x 3	3/4" Meter
3,000 Gallons	\$31.23	\$38.68	\$39.51	\$38.7
5,000 Gallons	\$41.57	\$51.50	\$52.59	\$51.5
10,000 Gallons	\$67.42	\$83.55	\$85.29	\$83.5