

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** February 18, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Mouring, Bulecza-Banks, Daniel, Fletcher, Linn, Rieger) *SBK PD*  
Office of the General Counsel (Brubaker, Williams) *APW JSB*

*BS*

*(Signature)*

**RE:** Docket No. 090182-SU – Application for increase in wastewater rates in Pasco County by Ni Florida, LLC.

**AGENDA:** 03/02/10 – Regular Agenda – Proposed Agency Action Except For Issue Nos. 15, 16, and 21 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** 5-Month Effective Date Waived Through 3/2/10

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090182.RCM.DOC

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FPSC-COMMISSION CLERK

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### **Case Background**

Ni Florida, LLC (Ni Florida or Utility) is a Class A wastewater utility serving approximately 2,589 residential, 145 commercial, 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. Wastewater rate base was last established for this Utility in 2007.<sup>1</sup>

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.

By Order No. PSC-09-0751-PCO-SU, issued November 16, 2009, Ni Florida was granted an interim rate increase designed to generate annual wastewater revenues of \$1,815,940. This represents a revenue increase on an annual basis of \$345,103 (23.46 percent). 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).

By letter dated December 22, 2009, the Utility waived the statutory 5-month deadline for this case through March 2, 2010. This recommendation addresses Ni Florida's requested final rates. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

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<sup>1</sup> See Order No. PSC-09-0017-PAA-SU, issued January 5, 2009, in Docket No. 070740-SU, 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.

### Discussion of Issues

**Issue 1:** Is the quality of service provided by Ni Florida, LLC satisfactory?

**Recommendation:** No. The overall quality of service provided by Ni Florida, LLC should be considered marginal based on the operating condition of its wastewater collection facilities and the quality of the Utility's product. (Rieger)

**Staff Analysis:** Pursuant to Rule 25-30.433(1), Florida Administrative Code (F.A.C), the Commission determines the overall quality of service provided by a utility by evaluating three separate components of wastewater operations, including the quality of the utility's product, the operational condition of the utility's plants and facilities, and the utility's attempt to address customer satisfaction. Comments or complaints received by the Commission from customers are reviewed. The utility's current compliance with the Department of Environmental Regulation (DEP) is also considered.

#### Quality of Utility's Product and Operational Condition of Plant and Facilities

The Utility is a wastewater collection system only. All wastewater is pumped to Pasco County (the County) for treatment and disposal pursuant to an agreement made in 1990. Some of the original collection system lines were constructed in the 1970s using vitreous clay pipe (VCP). The majority of the collection system was constructed from 1986 through 2004 using polyvinyl chloride pipe (PVC). Due to its close proximity to the coast, the Utility's collection system has had problems with infiltration and inflow (I&I) in the past, resulting in wastewater with elevated chloride concentrations. In April of 2008, a Consent To Assignment Of Agreement with the County was made, acknowledging the sale of the utility from the former owner, Hudson Utilities, Inc. (Hudson), to Ni Florida. The agreement noted that pursuant to a Consent Order with DEP, the County must address the high level of chlorides at its Hudson Wastewater Treatment Plant (WWTP). The County identified Hudson as a source of chlorides going to its WWTP, resulting in damages attributable to Hudson of \$133,500. With potential undetermined damages pending, Hudson was also required to escrow \$200,000 from the proceeds of the sale. The agreement required Ni Florida to timely execute, adequately fund, and diligently prosecute repairs to the collection system with the goal of reducing the chloride levels to meet a 250 milligrams per liter (mg/l) level.

Ni Florida acquired this system in May of 2008. In its application, Ni Florida indicated that under the former ownership, the system had fallen into a state of disrepair. It has developed a five-year program to restore the system to a state of good repair at a total estimated cost of \$900,000. Since it has taken over the system, Ni Florida has started to address the I&I situation by prioritizing and repairing problems that adversely impact the integrity of the collection system. Approximately \$265,000 was spent during the test year for repairs to the system, including broken pipe repairs, check valve replacements, and lift station rehabilitations. The approximately \$265,000 spent during the test year consists of two maintenance projects designed to "restore the system to a state of good repair." The first of the two projects is aimed at addressing the I&I issues present in its collection system, including leaks in pipes, manholes, and lift stations, totaling \$143,474 for the test year. The second project, focused on repairing lift stations, pumps, and electrical equipment totaling \$121,297, is discussed in Issue 3.

Although chloride levels have been reduced in the areas where repairs have been made, system wide, the overall 250 mg/l desired level has not yet been achieved. In its response to a staff data request, Ni Florida stated that it purchased the assets of Hudson Utilities, Inc. with full knowledge that I&I repairs and general repairs and maintenance had been ignored for years. It pointed out that from a practical point of view, these repairs need to be spread over a number of years, as the problems were created over a number of years. The Utility expects I&I repairs to be an ongoing process that is done on a five year cycle. Staff believes that the Utility is positively addressing the chloride situation in its system and supports its systematic approach to achieve compliance with the agreement it has made with Pasco County; however, because the overall 250 mg/l level has not yet been achieved, the quality of the Utility's product and operational condition of the plant and facilities should be considered marginal. Staff further recommends that no adjustment be made because of the documented improvements the Utility is undertaking to achieve the appropriate level of chlorides.

#### The Utility's Attempt to Address Customer Satisfaction

Customer Meeting. A customer meeting was held on December 16, 2009, at the West Pasco Government Center in New Port Richey, Florida. Approximately twenty customers attended the evening meeting. The majority of those who attended were concerned with the proposed rate increase and the negative financial impact it would have on them. Although it was acknowledged that the system was in need of repair, the customers pointed out that they cannot afford the increase and that Pasco County should have taken the system over instead of it being transferred to Ni Florida. Generally, the customers had no particular problems with the service provided by the Utility. Indicating possible improvements, one customer stated that he no longer noted any sewer odor from a nearby lift station.

Correspondence. No correspondence was received that cited quality of service problems. However, the Commission has received numerous letters from customers, both residential and commercial, expressing concern over the proposed rate increase and the resulting negative affect it would have on them in the current troubled economic times.

In a letter from a Pasco County Commissioner expressing concern regarding the proposed increase, it was pointed out that the charges the utility proposes seem high, since most of the cost recovery of a wastewater utility operation is typically in treatment and disposal, and this utility has only a collection system. Also, the Pasco County letter pointed out that the Utility has spent a significant amount of money on I&I repair with little to show in corresponding decreases in the amount of flow to the County. There was also concern over costly redundancies within the Utility creating inefficiencies that increase the costs of the service. The letter noted that Pasco County has investigated the purchase of the Utility and, believing that public ownership would result in significant cost savings for the customers, the County has recently requested that the Florida Governmental Utility Authority investigate the purchase of the system.

Customer Complaints. There is currently one open complaint logged with the Commission concerning billing. There have been eight billing related complaints logged since Ni Florida took over the system, but no service related complaints.

Summary

Staff believes that Ni Florida's attempt to address customer satisfaction should be considered satisfactory. However, given the situation concerning the operational condition of its wastewater collection facilities and the quality of its product regarding the high chloride situation, the overall quality of service should be considered marginal. As indicated earlier, no adjustments are recommended because of the Utility's current attempts to achieve the appropriate level of chlorides.

**Issue 2:** Should the audit adjustments to rate base, to which the Utility agrees, be made?

**Recommendation:** Yes. Based on the audit adjustments agreed to by the Utility, the following adjustments should be made. (Mouring)

<b>Audit Finding</b>	<b>Wastewater</b>
No. 4 – Decrease Accumulated Depreciation	\$10,730
No. 5 – Increase Accum. Amort. of CIAC	\$402

**Staff Analysis:** In its response to the staff's audit report, Ni Florida agreed to the audit adjustments listed below. As such, staff recommends the following adjustments to rate base.

<b>Audit Finding</b>	<b>Wastewater</b>
No. 4 – Decrease Accumulated Depreciation	\$10,730
No. 5 – Increase Accum. Amort. of CIAC	\$402

**Issue 3:** Should any adjustments be made to test year plant-in-service?

**Recommendation:** Yes. Plant should be increased by \$195,367. Accordingly, corresponding adjustments should be made to increase accumulated depreciation and depreciation expense by \$10,854 and decrease contractual services – other by \$108,381. (Mouring, Rieger)

**Staff Analysis:** Ni Florida purchased the system in May of 2008, and began planning much needed repairs. The Utility is currently in the process of surveying the wastewater collection system and making much-needed repairs to the dilapidated system. In the MFRs, Ni Florida has outlined a rolling five-year program that is designed to evaluate the entire wastewater collection system every five years, by addressing one-fifth of the system each year.

As reflected on MFR Schedule B-11, the Utility included a maintenance project related to its five-year program designed to “restore the system to a state of good repair.” This project focused on repairing the lift stations, pumps, and electrical equipment at a cost totaling \$121,297 for the test year. Due to the neglect of the collection system by the prior owner of the Utility, staff believes that this project is prudent in order to address issues with Ni Florida’s lift stations. However, staff believes that the \$121,297 amount included in test year contractual services – other should be reduced to capitalize certain items and amortize non-recurring items.

Based on information provided by the Utility, staff has identified several 2008 test year items, totaling \$66,169, that should be capitalized. Ni Florida also provided an update showing the actual expenditures for the lift station project for 2009. This update showed \$72,996 worth of items that the Utility had capitalized and \$2,363 that had been expensed, as well as \$56,202 of work to be performed in 2010 which staff believes should also be capitalized. Based on the above, staff recommends increasing plant-in-service by \$195,367 (\$66,169+\$72,996+\$56,202). Accordingly, corresponding adjustments should be made to increase accumulated depreciation and depreciation expense by \$10,854 (\$195,367/18), based on an anticipated useful life of 18 years. In addition, a corresponding adjustment should be made to reduce contractual services – other by \$66,169.

Moreover, Ni Florida provided a revised estimate for the lift station maintenance project of \$100,000 for 2010. As stated earlier, the Utility recorded \$121,297 in the test year and budgeted \$70,000 in 2009. However, Ni Florida provided 2009 actual costs of \$75,359 (\$72,996+\$2,363). Based on the above, staff believes that there is too much variation and uncertainty with this project and recommends a normalizing adjustment to test year expenses. Based on actual costs in 2009, staff believes that \$2,363 is a conservatively reasonable estimate for this project on a going-forward basis. Staff believes that the \$52,765 (\$121,297-\$66,169-\$2,363) difference observed in the test year is a non-recurring amount and should be amortized over a five-year period per Rule 25-30.433(8), F.A.C. This results in a further reduction to contractual services – other of \$42,212 ((\$52,765/5)X4). Thus, staff recommends reducing contractual services – other by \$108,381 (\$66,169+\$42,212).

**Issue 4:** What are the used and useful percentages of the Utility's wastewater system?

**Recommendation:** The Utility's wastewater collection system should be considered 100 percent used and useful. (Rieger)

**Staff Analysis:** The Utility has approximately 2,580 single-family residential, one multi-residential, and 144 commercial customers. Approximately 22 percent of the total residential lots in the service area are currently unoccupied. Even though the Utility asserts that the average growth rate may support total build out within five years, it maintains that the system should be considered 100 percent used and useful since the unoccupied lots are spread throughout the area. Given the fact that there are no large blocks of unoccupied lots left to be served, staff believes that the existing collection system is necessary to serve the existing customer base. Staff, therefore, recommends that the wastewater collection system be considered 100 percent used and useful.

**Issue 5:** What is the appropriate working capital allowance?

**Recommendation:** The appropriate working capital allowance is \$0. (Mouring)

**Staff Analysis:** On MFR Schedule A-17, the Utility reflected year-end balances to calculate its working capital allowance of \$99,088. Rule 25-30.433(4), Florida Administrative Code (F.A.C.), states that the method to be used by the Commission to calculate rate base and cost of capital shall be a 13-month average for Class A utilities. Based on staff's 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 prior Commission decisions, the Commission has used a zero working capital allowance in lieu of the negative amount.<sup>2</sup> Based on the above, staff recommends a working capital allowance of zero.

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<sup>2</sup> See Order Nos. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for rate increase by Florida Public Utilities Company; and PSC-97-0076-FOF-WS, issued January 27, 1997, in Docket No. 961364-WS, In re: Investigation of rates of Lindrick Service Corporation in Pasco County for possible overearnings.

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**Issue 6:** What is the appropriate rate base for the test year period ending December 31, 2008?

**Recommendation:** Consistent with other recommended adjustments, the appropriate rate base is \$2,546,972. (Mouring)

**Staff Analysis:** Based on staff's recommended adjustments, the appropriate rate base is \$2,546,972. The schedule for rate base is attached as Schedule No. 1-A. The adjustments to rate base are shown on Schedule No. 1-B.

**Issue 7:** What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure?

**Recommendation:** Based on the resolution of the previous issues, the appropriate return on equity (ROE) is 9.72 percent based on staff's recommended 2009 leverage formula<sup>3</sup> and an equity ratio of 94.76 percent. Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes. The appropriate weighted average cost of capital, including the proper components, amounts, and cost rates associated with the capital structure, is 9.65 percent. (Mouring)

**Staff Analysis:** Ni Florida's capital structure consists of long-term debt, common equity and customer deposits. Based on the Commission's 2009 leverage formula and an equity ratio of 94.76 percent, staff recommends that the appropriate ROE is 9.72 percent. Staff also recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes. Based on the resolution of the preceding issues, staff's recommended capital structure yields an overall cost of capital of 9.65 percent. Schedule No. 2 contains staff's recommended capital structure.

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<sup>3</sup> See Order No. PSC-09-0430-PAA-WS, issued June 19, 2009, in Docket No. 090006-WS, In re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081 (4)(f), F.S.

**Issue 8:** What is the appropriate amount of rate case expense?

**Recommendation:** The appropriate rate case expense is \$98,184. This expense should be recovered over four years for an annual expense of \$24,546. Thus, rate case expense should be increased by \$2,046. (Mouring)

**Staff Analysis:** In its MFRs, the Utility included an estimate of \$90,000 for current rate case expense. Staff requested an update of the actual rate case expense incurred, with supporting documentation, as well as the estimated amount to complete the case. On December 7, 2009, the Utility submitted a revised estimated rate case expense through completion of the PAA process of \$114,000.

	MFR <u>Estimated</u>	<u>Actual</u>	Additional <u>Estimated</u>	<u>Total</u>
Legal and Filing Fees	\$50,000	\$19,531	\$19,680	\$39,211
Consultant Fees – Accounting	40,000	41,910	5,000	46,910
Consultant Fees – Engineering	0	22,862	5,000	27,862
Miscellaneous	<u>0</u>	<u>17</u>	<u>0</u>	<u>17</u>
Total Rate Case Expense	<u>\$90,000</u>	<u>\$84,320</u>	<u>\$29,680</u>	<u>\$114,000</u>

Pursuant to Section 367.081(7), F.S., the Commission shall determine the reasonableness of rate case expense and shall disallow all rate case expense determined to be unreasonable. Staff has examined the requested actual expenses, supporting documentation, and estimated expenses as listed above for the current rate case. Based on our review, staff believes several adjustments are necessary to the revised rate case expense estimate.

The first adjustment relates to costs incurred to correct deficiencies in the MFR filing. Based on staff's review of invoices of the Utility's consultants, a combined amount of \$2,096 was billed for correcting MFR deficiencies and revising the Utility's filing. Accordingly, staff recommends that \$2,096 be removed as duplicative and unreasonable rate case expense. The Commission has previously disallowed rate case expense associated with correcting MFR deficiencies because of duplicate filing costs.<sup>4</sup>

The second adjustment relates to the Utility's estimated legal fees to complete the rate case. Ni Florida estimated 61.5 hours or \$19,680 in fees to complete the rate case. The specific amounts of time associated with each item are listed below:

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<sup>4</sup> See Order Nos. PSC-05-0624-PAA-WS, issued June 7, 2005, in Docket No. 040450-WS, In re: Application for rate increase in Martin County by Indiantown Company, Inc.; and PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In Re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.

**Estimate To Complete Through PAA Process**

<u>Description</u>	<u>Hours</u>	<u>Fees</u>
Unbilled time through 3/31/09	10.0	\$3,200
Respond to formal data requests from staff and informal requests for information from staff	16.0	5,120
Prepare for and attend customer meeting; Discuss customer meeting with client and consultant; Discuss customer meeting with staff	8.0	2,560
Review audit staff requests; Review and prepare responses to audit staff; Review audit report; Discuss audit report with client and consultant; draft response to audit report	6.0	1,920
Review staff recommendation; conference with client and consultant regarding recommendation; conference with staff regarding recommendation	2.0	640
Prepare for and attend agenda conference; Discuss agenda with client and staff	15.0	4,800
Review PAA Order; conference with client and consultant regarding PAA Order	2.0	640
Prepare revised tariff sheets. Obtain staff approval of tariffs; Draft and revise customer notice; Obtain staff approval of notice; Coordinate mailing of notices and implementation of tariffs	<u>2.5</u>	<u>800</u>
Total Estimated Fees	<u>61.5</u>	<u>\$19,680</u>

In response to a staff data request, the Utility provided the estimated legal hours necessary to complete the case. The Utility then applied Mr. Friedman's hourly rate of \$320 to the estimated hours to arrive at the \$19,680 in legal costs to complete the case. However, based on the actual participation of Mr. Friedman, only about 15 percent of the hours billed through September 30, 2009, have been attributable to him (7.1/47.4), with the remaining 85 percent being attributable to Mr. Marcelli (40.3/47.4). As such, staff has calculated a weighted average hourly rate of \$294.50 (( $\$320 \times .15$ ) + ( $\$290 \times .85$ )) to be applied to the estimated hours to completion.

It is the Utility's burden to justify its requested costs. Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). Further, the Commission has broad discretion with respect to the allowance of rate case expense. It would constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings. Meadowbrook Util. Sys., Inc. v. FPSC, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), rev. den., 529 So. 2d 694 (Fla. 1988).

As stated above, it is the Utility's burden to justify its requested costs. Staff believes that the estimated 61.5 hours to complete the case is excessive, when compared to the estimated and actual hours billed to complete the 2007 rate case for Miles Grant Water & Sewer Co., a water and wastewater company that also used the Rose, Sundstrom & Bentley, LLP law firm. The Commission granted Miles Grant 53.5 hours to perform similar activities through the completion of that rate case and 97.0 total hours. Staff believes that 53.5 hours is a reasonable amount of time to respond to data requests, conference with the client and consultants, review staff's recommendation, travel to the Agenda Conference, and attend to miscellaneous post-PAA

matters. The actual hours billed to Ni Florida through September 30, 2009, totaled 47.4. Adding staff's estimate of 53.5 to complete the case would result in 93.8 hours for this rate case, which staff believes is reasonable. Therefore, staff believes the legal fees should be decreased by \$2,356  $[(61.5-53.5)\times\$294.5]$  to reflect estimates more consistent with the Miles Grant rate case.

The third adjustment relates to the estimated costs to complete this case by Tangibl, LLC (Tangibl) and Key Engineering Associates, Inc. (Key). In the Utility's revised estimate to complete this rate case, Ni Florida included \$5,000 for both Tangibl and Key. Tangibl's primary function in this rate case has been preparation of the MFRs. The Utility provided no detailed breakdown of Tangibl's projected future involvement in this rate case and last billed the Utility in July of 2009 for services related to this case. Likewise, Key's primary duty was surveying and preparing system maps, which have been completed. In the Utility's response to staff's second data request, Ni Florida provided staff with a marginally more detailed description of Tangibl's future involvement with this case. The Utility listed preparation of revised exhibits, responses to data requests, and participation in conference calls and preparation of e-mails as the duties to be performed by Tangibl. However, staff has no knowledge of any exhibits revised after September 30, 2009. Also, though Mr. Clayton, Tangibl's consultant, was copied on the Utility's response to staff's first data request, it appears that much, if not all, of the information for the response came directly from Ni Florida. The descriptions of duties to be performed are very vague and it appears that much, if not all, of both Tangibl's and Key's duties have already been performed. Thus, \$10,000 (\$5,000+\$5,000) should be disallowed from rate case expense. Removing estimated costs to be included in rate case expense that appear to be unwarranted is consistent with prior Commission decisions.<sup>5</sup>

In summary, staff recommends that Ni Florida's revised rate case expense be decreased by \$15,816 for MFR deficiencies and for unsupported and unreasonable rate case expense. The appropriate total rate case expense is \$98,184. A breakdown of rate case expense is as follows:

<u>Description</u>	<u>MFR</u> <u>Estimated</u>	<u>Utility</u>	<u>Staff</u> <u>Adjustments</u>	<u>Total</u>
		<u>Revised Actual</u> <u>&amp; Estimated</u>		
Legal Fees	\$50,000	\$39,211	(5,816)	\$33,395
Consultant Fees-Accounting	40,000	46,910	(5,000)	41,910
Consultant Fees-Engineering	0	27,862	(5,000)	22,862
Miscellaneous	0	17	0	17
<b>Total Rate Case Expense</b>	<b><u>\$90,000</u></b>	<b><u>\$114,000</u></b>	<b><u>(15,816)</u></b>	<b><u>\$98,184</u></b>
<b>Annual Amortization</b>	<b><u>\$22,500</u></b>	<b><u>\$28,500</u></b>	<b><u>(3,954)</u></b>	<b><u>\$24,546</u></b>

In its MFRs, Ni Florida requested total rate case expense of \$90,000, which amortized over four years would be \$22,500. Thus, rate case expense should be increased by \$8,184, or \$2,046 per year.

<sup>5</sup> See Order No. PSC-09-0385-FOF-WS, issued May 29, 2009, in Docket No. 080121-WS, 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., at p.100.

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The recommended total rate case expense should be amortized over four years, pursuant to Section 367.0816, F.S. Based on the data provided by Ni Florida and the recommended adjustments discussed above, staff recommends annual rate case expense of \$24,546.

**Issue 9:** Should any adjustments be made to bad debt expense?

**Recommendation:** Yes. Consistent with Commission practice, bad debt expense should be \$18,094 based on a 5-year average. Accordingly, Ni Florida's requested bad debt expense of \$32,791 should be decreased by \$14,697. (Mouring)

**Alternative Recommendation:** Yes. Bad debt expense should be based on the average of the 2007 and 2009 bad debt expense, which results in a bad debt expense of \$24,549. Accordingly, Ni Florida's requested bad debt expense of \$32,791 should be reduced by \$8,242. (Bulecza-Banks)

**Staff Analysis:** In its MFRs, the Utility showed bad debt expense of \$46,090 for 2008 and stated it is currently experiencing bad debt expense at or above 1.75 percent of revenue. As such, the Utility made two adjustments to that amount, consisting of a \$20,351 reduction to bad debt expense to reflect 1.75 percent of the test year revenues, as well as a \$7,052 increase to reflect 1.75 percent of the Utility's requested revenue increase of \$402,969. These adjustments result in a bad debt expense of \$32,791 (\$46,090-\$20,351+\$7,052).

After analyzing the bad debt expense that Ni Florida has experienced over the past 5-year period, staff has identified 2008 and 2007 as having substantially higher bad debt expense than prior years. Though the Utility may be experiencing more bad debt expense under the current economic conditions, staff believes that normalizing this expense is appropriate. Given that the most recent 2-year period reflects an increased amount of bad debt expense, likely due to the current economic downturn, staff believes that a 5-year average would be more indicative of a normal year of operations. Staff also notes that the Commission has approved the use of a 5-year average in determining the appropriate amount of bad debt expense.<sup>6</sup> The 5-year average of bad debt expense reported by the Utility in the annual reports is \$18,094. Staff has adjusted this expense to reflect the 5-year average balance, resulting in a reduction to bad debt expense of \$14,697 (\$32,791-\$18,094).

**Alternative Staff Analysis:** Alternative staff agrees that Ni Florida has experienced a higher level of bad debt expense during 2007 and 2008. Ni Florida's bad debt expense for the past six years is as follows:

Ni Florida's Bad Debt						
	2009**	2008	2007	2006	2005	2004
Bad Debt	29,341	46,090	19,756	9,195	7,552	7,878

\*\* = Estimated

Ni Florida informed staff that it estimates bad debt expense for 2009 to be \$29,341. Alternative staff recognizes that bad debt expense has likely increased as a result of the downturn in the economy. Should the Commission grant Ni Florida an increase in rates, alternative staff

<sup>6</sup> See Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for rate increase by Florida Public Utilities Company, at p.22. In this case, the Commission deviated from the use of a three-year or four-year average because the five-year average resulted in a more reasonable test year bad debt expense level.

also believes that the level of bad debt expense is likely to be higher than in years 2004-2006, as customers' bills will be higher than in those years.

While Ni Florida has sought an increase based on an historical test year, the Utility also requested certain pro forma adjustments. Ni Florida has sought bad debt expense of \$32,791. Alternative staff believes that it would be inappropriate to use a 5-year average to determine bad debt expense as the bad debt expense associated with years 2004-2006 skew the average. In alternative's staff's view, the 5-year average will not provide the Utility a sufficient level of expense to cover bad debt expense.

Alternative staff believes that a significant level of bad debt expense will continue to be experienced through 2010. As a result of the impact of the downturn in the economy, alternative staff believes a shorter horizon would be more appropriate in determining the appropriate level of bad debt expense. During periods of economic uncertainty, alternative staff believes it would be more appropriate to use a 3-year average based on the most current 3-year period. The Commission has previously approved the application of a 3-year average to determine the appropriate level of bad debt expense; the Commission has set bad debt expense using the 3-year average in three electric cases,<sup>7</sup> two gas cases,<sup>8</sup> and one water and wastewater case.<sup>9</sup> The Commission approved a 3-year average in these cases based on the premise that a 3-year average fairly represented the expected bad debt expense. In Docket No. 060253-WS, as it relates to utilities in Pasco County, the Commission approved the use of a 3-year average based on calendar years 2001-2004, but deleted the highest year's bad debt expense in calculating the average. In other cases, the Commission applied a 3-year average based on previous Commission decisions. Overall, the basis for determining bad debt expense has been whether the amount is representative of the bad debt expense to be incurred by the utility.

Based on the current economic conditions, alternative staff believes that a 3-year average would typically be an appropriate time frame to determine bad debt expense. However, in this case, the 2008 bad debt expense amount of \$46,090, which is significantly higher than the 2007 or 2009 amounts, skews the 3-year average. Alternative staff believes the 2008 amount is an anomaly and could result in an overstatement of bad debt expense. Alternative staff believes that a reasonable amount of bad debt expense to include for ratemaking purposes would be an amount between the 2007 amount of \$19,756 and the 2009 amount of \$29,341. While staff believes that typically a 3-year average provides a better smoothing of fluctuating expenses, in this case, however, staff believes it would be more appropriate to average the 2007 and 2009

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<sup>7</sup> See Order Nos. PSC-94-0170-FOF-EI, issued February 10, 1994, in Docket No. 930400-EI, In Re: Application for a Rate Increase for Marianna electric operations by Florida Public Utilities Company, at p. 20; PSC-93-0165-FOF-EI, issued February 2, 1993, in Docket No. 920324-EI, In Re: application for a rate increase by Tampa Electric Company, at pp. 69-70; and PSC-92-1197-FOF-EI, issued October 22, 1992, in Docket No. 910890-EI, In Re: Petition for a rate increase by Florida Power Corporation, at p. 48.

<sup>8</sup> See Order Nos. PSC-92-0924-FOF-GU, issued September 3, 1992, in Docket No. 911150-GU, In re: Application for a rate increase by PEOPLES GAS SYSTEM, Inc., at p. 6; and PSC-92-0580-FOF-GU, issued June 29, 1992, in Docket No. 910778-GU, In Re: Petition for a rate increase by West Florida Natural Gas Company, at pp. 30-31.

<sup>9</sup> See Order No. PSC-07-0505-SC-WS, issued June 13, 2007, in Docket No. 060253-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida, at pp. 41-42.

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amounts. The average of the 2007 and 2009 bad debt expense amounts results in a bad debt expense of \$24,549.

Based on this calculation, Ni Florida should be entitled to bad debt expense of \$24,549. As a result, alternative staff recommends that Ni Florida's bad debt expense of \$32,791 be reduced by \$8,242.

**Issue 10:** Should any further adjustments be made to test year net depreciation expense?

**Recommendation:** Yes. Depreciation expense should be reduced by \$14,508. (Mouring)

**Staff Analysis:** In the MFRs, the Utility recorded net depreciation expense of \$123,059 for the test year. Based on Audit Finding No. 6, the Utility did not use the appropriate composite depreciation rates as required by Rule 25-30.140(9)(c), F.A.C., which states that any composite rate used shall be recalculated each year based on the applicable plant balances and depreciation rates. In Audit Finding No. 6, the auditor calculated the appropriate amount of depreciation expense and recommended a decrease to depreciation expense of \$26,938.<sup>10</sup> The auditor also recommended a \$12,430 decrease to Amortization of CIAC expense based on the application of the correct composite rates.

In the Utility's response to the audit report, the Utility states that it calculates depreciation expense by taking the fixed asset balance for each asset and calculating depreciation over the life of each individual asset. Amortization of CIAC is calculated by continuing to amortize historical CIAC at the same amount as was done by the previous owners of the utility in previous years. Ni Florida asserts that the method for calculating depreciation expense and amortization of CIAC expense utilizing a composite depreciation rate is more difficult and complicated than it needs to be, and would cause a new composite amortization rate to be calculated at the end of each year regardless of any changes in fixed assets or CIAC. However, staff notes that a composite rate was used in the Utility's last rate proceeding in 1990,<sup>11</sup> as well as its 2007 transfer case.<sup>12</sup> As such, staff recommends that a composite rate be used for each year in accordance with Rule 25-30.140(9)(c), F.A.C.

Based on the above, staff recommends a reduction to net depreciation expense of \$14,508 (\$26,938-\$12,430).

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<sup>10</sup> This net amount of \$26,938 (\$24,407+\$2,531) excludes the auditor's recommended depreciation expense adjustment of \$2,531, which the Utility and staff agreed should not be made.

<sup>11</sup> See Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU, In re: Application for a staff-assisted rate case in Pasco County by Hudson Utilities, Inc., at p.5.

<sup>12</sup> See Order No. PSC-09-0017-PAA-SU, issued January 5, 2009, in Docket No. 070740-SU, 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., at p.3.

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**Issue 11:** What is the test year operating income before any revenue increase?

**Recommendation:** Based on the adjustments discussed in previous issues, the Utility experienced an operating loss of \$15,863. (Mouring)

**Staff Analysis:** This is primarily a "fall-out" issue subject to resolution of other issues related to revenues and operating expenses and rate base. As shown on Schedule No. 3-A, after applying staff's adjustments, the Utility's net operating loss is \$15,863. Staff's adjustments to operating income are shown on Schedule No. 3-B.

**Issue 12:** What is the appropriate revenue requirement?

**Recommendation:** The following revenue requirement should be approved

	<u>Test</u> <u>Year Revenues</u>	<u>\$ Increase</u>	<u>Revenue</u> <u>Requirement</u>	<u>% Increase</u>
Wastewater	\$1,470,837	\$274,028	\$1,744,865	18.63%

(Mouring)

**Staff Analysis:** The issue is a summary computation that is subject to the resolution of other issues related to rate base and cost of capital, and is primarily a “fall-out” number. The computation of the revenue requirement is shown on Schedule No. 3-A. This results in a revenue requirement of \$1,744,865, which represents an increase of \$274,028 or 18.63 percent.

**Issue 13:** What are the appropriate rates for this utility?

**Recommendation:** The appropriate monthly rates are shown on Schedule No. 4. Excluding miscellaneous service revenues, the recommended rates are designed to produce revenues of \$1,744,865. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given no less than 10 days after the date of the notice. (Mouring)

**Staff Analysis:** Excluding miscellaneous service revenues, the recommended rates shown on Schedule No. 4 are designed to produce revenues of \$1,744,865. Staff's recommended revenue increase should be applied as an across-the-board increase to the Utility's service rates in effect as of December 31, 2008.

Ni Florida's current wastewater rate structure is a base facility charge and gallonage charge with a 10,000 gallon cap on residential customers. The Utility's current rate structure contains a differential in the gallonage charge between residential and general service. This rate differential is designed to recognize that approximately 80 percent of a residential customer's water usage will not return to the wastewater system, whereas approximately 96 percent of multi-family and general service water usage is returned. This wastewater gallonage rate differential is employed by the Commission in setting wastewater rates and is widely recognized as an industry standard. Based on the above, staff believes that the gallonage rate differential should continue to be used in this case, consistent with the differential approved in the last case.

The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

A comparison of the Utility's original and requested rates, the Commission-approved interim rates, and staff's recommended PAA rates are shown on Schedule No. 4.

**Issue 14:** Should the Utility be authorized to revise its miscellaneous service charges, and, if so, what are the appropriate charges?

**Recommendation:** Yes. Ni Florida should be authorized to revise its miscellaneous service charges. The Utility should file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475(1), F.A.C., provided the notice has been approved by staff. The Utility should provide proof the customers have received notice within 10 days after the date that the notice was sent. The appropriate charges are reflected below. This notice may be combined with the notice required in Issue 13.

Miscellaneous Service Charges

	<u>Normal Hrs</u>	<u>After Hrs</u>
Initial Connection	\$27	\$40
Normal Reconnection	\$27	\$40
Violation Reconnection	Actual Cost	Actual Cost
Premises Visit	\$18	\$27

(Mouring)

**Staff Analysis:** The miscellaneous service charges were approved for Ni Florida on November 27, 1990, and have not changed since that date. The Utility believes these charges should be updated to reflect current costs. Staff agrees with this update. In addition, Ni Florida provided the following cost estimates for the expenses associated with connections, reconnections, and premises visits:

<u>During Business Hours</u>		<u>After Hours</u>	
Item:	Cost:	Item:	Cost:
Labor (\$32.00/hr. X 0.7 hours)	\$22.40	Labor (\$48.00/hr. X 0.7 hours) <sup>13</sup>	\$33.60
Transportation	<u>5.00</u>	Transportation	<u>6.00</u>
Total	<u>\$27.40</u>	Total	<u>\$39.60</u>

Staff recommends that Ni Florida be allowed to increase its miscellaneous service charges from \$15 to \$27 and from \$15 to \$40 for after hours, and from \$10 to \$18 and from \$10 to \$27 for after hours for premises visits. The current and recommended miscellaneous service charges are shown below.

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<sup>13</sup> Represents time-and-a-half wage and the additional time it takes an employee to get to the customer's property after hours.

Miscellaneous Service Charges

	<u>Current Charges</u>		<u>Staff Recommended</u>	
	<u>Normal Hrs</u>	<u>After Hrs</u>	<u>Normal Hrs</u>	<u>After Hrs</u>
Initial Connection	\$15	\$15	\$27	\$40
Normal Reconnection	\$15	\$15	\$27	\$40
Violation Reconnection	Actual Cost	Actual Cost	Actual Cost	Actual Cost
Premises Visit	\$10	\$10	\$18	\$27

Ni Florida’s miscellaneous service charges have not been updated in approximately 19 years, and costs for fuel and labor have risen substantially since that time. The Commission has expressed concern with miscellaneous service charges that fail to compensate utilities for the cost incurred. By Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, involving Southern States Utilities Inc., the Commission expressed “concern that the rates [miscellaneous service charges] are eight years old and cannot possibly cover current costs” and directed staff to “examine whether miscellaneous service charges should be indexed in the future and included in index applications.”<sup>14</sup> Currently, miscellaneous service charges may be indexed if requested in price index applications pursuant to Rule 25-30.420, F.A.C. However, few utilities request that their miscellaneous service charges be indexed. Staff notes that these rates are comparable to the Commission approved miscellaneous service charges of the 2008 rate case of Utilities, Inc. of Eagle Ridge.<sup>15</sup> Ni Florida has also requested increased charges for premises visit fees. Even though the Utility’s requested premises visit fees are lower than the requested initial connection and normal reconnection fees, the same activities are required for these functions. As a result, staff believes the premises visit fees are appropriate.

In summary, staff recommends the Utility’s miscellaneous service charge of \$27 and after hours charge of \$40 be approved because the increased charges are cost-based, reasonable, and consistent with fees the Commission has approved for other utilities. The Utility should file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475(1), F.A.C., provided the notice has been approved by staff. Within ten days of the date the order is final, the Utility should be required to provide notice of the tariff changes to all customers. Ni Florida should provide proof the customers have received notice within ten days after the date the notice was sent.

<sup>14</sup> See Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

<sup>15</sup> See Order No. PSC-09-0264-PAA-SU, issued April 27, 2009, in Docket No. 080247-SU, In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge, at pp.12-13.

**Issue 15:** In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

**Recommendation:** The proper refund amount should be calculated by using the same data used to establish final rates, excluding rate case expense and other items not in effect during the interim period. This revised revenue requirement for the interim collection period should be compared to the amount of interim revenue requirement granted. Based on staff's calculation, the Utility should be required to refund 5.63 percent of revenues granted under interim rates. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. Further, the escrow should be released upon staff's verification that the required refunds have been made. (Mouring)

**Staff Analysis:** By Order No. PSC-09-0751-PCO-SU, issued November 16, 2009, the Commission approved an interim revenue requirement of \$1,815,940. This represented an increase of \$345,103 or 23.46 percent.

According to Section 367.082(4), F.S., any refund should be calculated to reduce the rate of return of the Utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect should be removed. Rate case expense is an example of an adjustment which is recovered only after final rates are established.

In this proceeding, the test period for establishment of interim and final rates is the 13-month average test year ending December 31, 2008. Ni Florida's approved interim rates did not include any provisions for pro forma or projected operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs and the floor of the last authorized range for equity earnings.

Using the principles discussed above, staff calculated a revised interim revenue requirement of \$1,713,792 utilizing the same data used to establish final rates. Rate case expense was excluded because this item is prospective in nature and did not occur during the interim collection period. The revenue of \$1,713,792 is less (a 5.63 percent or \$102,148 difference) than the interim order revenue requirement of \$1,815,940. This results in a 5.63 percent refund of interim rates, after miscellaneous revenues have been removed. The Utility should be required to refund 5.63 percent of water revenues collected under interim rates. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. Further, the escrow should be released upon staff's verification that the required refunds have been made.

**Issue 16:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense?

**Recommendation:** The rates should be reduced as shown on Schedule No. 4 to remove \$30,663 for rate case expense, grossed-up for Regulatory Assessment Fees (RAFs), which is being amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. (Mouring)

**Staff Analysis:** Section 367.0816, F.S., requires rates to be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense, the associated return included in working capital, and the gross-up for RAFs, which is \$30,663. The decreased revenue will result in the rate reduction recommended by staff on Schedule No. 4.

The Utility should be required to file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice. Ni Florida should provide proof of the date notice was given no less than 10 days after the date of the notice.

If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

**Issue 17:** Should the Utility's request for approval of a \$5 late fee be granted?

**Recommendation:** Yes. The Utility's requested late fee of \$5 should be approved. The late fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given no less than 10 days after the date of the notice. This notice may be combined with the notice required in Issue 13. (Mouring)

**Staff Analysis:** Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. Ni Florida has requested a \$5.00 late fee. The Utility's request for a late fee was accompanied by its reason for requesting the fee, as well as the cost justification required by Section 367.091, F.S. Ni Florida's cost analysis breakdown for its proposed late fee is shown below:

**COST ANALYSIS BREAKDOWN**

Clerical

Office Clerk - \$22.50 per hour

Total - \$22.50 per hour, \$4.50 per 1/5 hour

Postage/Printing/Envelope - \$.50

Total Costs

Clerical - \$4.50 per 1/5 hour

Postage/Printing/Envelope - \$.50

Total - \$5.00

This cost is comprised of one-fifth of an hour of employee time at \$22.50 per hour to research and verify that the payment is late, process the bill and assess the late payment fee, or \$4.50 (22.50/5). Also, the \$5.00 cost includes an envelope, printer and printing supplies, and postage to send the notice to the customer, totaling approximately \$0.50.

The late payment fee is designed to encourage customers to pay their bills on time to ensure that the cost associated with late payment is not passed onto customers who do pay on time. The Utility's justification for the late fee is to place the burden of these costs on the cost causer rather than the general body of ratepayers. Staff believes the estimated cost provided by the Utility is reasonable.

Based on the above, staff recommends that Ni Florida's proposed late fee of \$5 should be approved. This fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C.

**Issue 18:** Should the Utility's request for approval of a Non-Sufficient Funds fee be granted?

**Recommendation:** Yes. The Utility's requested Non-Sufficient Funds (NSF) fee should be approved. The NSF fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date the notice was given no less than 10 days after the date of the notice. Staff also recommends that the Utility be required to refund, with interest, any NSF fees collected by Ni Florida from the time it took over the utility from Hudson in May 2008, until the effective date of the Commission-approved revised rates and charges for this docket in accordance with Rule 25-30.360, F.A.C. This notice may be combined with the notice required in Issue 13. (Mouring)

**Staff Analysis:** Section 367.091, F.S., requires that rates, charges, and customer service policies be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Ni Florida has requested an NSF fee in accordance with the Section 832.08(5), F.S.

Staff believes that Ni Florida should be authorized to collect an NSF fee. Staff believes the NSF fee should be established consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 832.08(5), the following fees may be assessed:

- 1.) \$25, if the face value does not exceed \$50,
- 2.) \$30, if the face value exceeds \$50 but does not exceed \$300,
- 3.) \$40, if the face value exceeds \$300,
- 4.) or five percent of the face amount of the check, whichever is greater.

Staff recommends that Ni Florida's tariff for an NSF fee be revised to reflect the charges set by Sections 68.065 and 832.08(5) F.S., as may be amended.

Approval of an NSF fee is consistent with prior Commission decisions.<sup>16</sup> As such, staff recommends that Ni Florida's proposed NSF fee should be approved. This fee should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C.

Moreover, staff recommends that the Utility be required to refund, with interest, any NSF fees collected by Ni Florida from the time it took over the utility from Hudson in May 2008, until the effective date of the Commission-approved revised rates and charges for this docket. The refund should be made in accordance with Rule 25-30.360, F.A.C.

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<sup>16</sup> See Order Nos. PSC-08-0831-PAA-WS, issued December 23, 2008, in Docket No. 070680-WS, In re: Application for staff-assisted rate case in Pasco County by Orangewood Lakes Services, Inc.; and PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 960444-WU, In re: Application for rate increase and for increase in service availability charges in Lake County by Lake Utility Services, Inc., at p.20.

**Issue 19:** Should Ni Florida, LLC, be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Sections 367.081(1) and 367.091, F.S., and Rule 25-30.135(2), F.A.C., pertaining to the unauthorized collection of late payment fees?

**Recommendation:** No. A show cause proceeding should not be initiated. Instead, the Utility should be required to refund with interest any late payment fees collected in accordance with Rule 25-30.360, F.A.C. (Williams)

**Staff Analysis:** In reviewing Ni Florida's approved tariff, staff discovered that the Utility did not have an authorized late payment fee or "late penalty fee." However, on MFR Schedule E-5, Ni Florida reflected \$19,959 related to "Late Penalty Fees." Pursuant to Rule 25-30.135, F.A.C., a utility may not modify or revise its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision. Also, Section 367.081(1), F.S., states that a utility may only charge rates and charges that have been approved by the Commission, and Section 367.091, F.S., states:

- (3) Each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the commission.
- (4) A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval.

Accordingly, the Utility appears to be in violation of Rule 25-30.135, F.A.C., and Sections 367.081(1) and 367.091, F.S.

On September 28, 2009, staff advised the Utility that if it did not cease collecting late penalty fees from customers and adequately explain its collection of the apparently unauthorized fees, staff would recommend to the Commission that the Utility be required to show cause in writing why it should not be fined for its violation pursuant to Section 367.161, F.S. By letter dated October 30, 2009, the Utility stated that the collection of the late penalty fees not authorized by an approved tariff was an oversight. The Utility was recently transferred from Hudson Utilities, Inc. (Hudson) to Ni Florida by Order No. PSC-08-0226-FOF-SU, issued on April 7, 2008, in Docket No. 070740-SU, 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. The Utility explained that Hudson had collected such fees, and Ni Florida continued collecting such fees unaware that such collection was not authorized by the tariffs. Ni Florida continued to charge the late penalty fees as the previous owner had done without knowledge that such fees were not authorized. The Utility further claimed that it ceased collecting such fees once it was made aware that it lacked authority to assess the charge.

Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful rule or order of the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not

intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that “‘willful’ implies an intent to do an act, and this is distinct from an intent to violate a statute or rule.” Additionally, “[i]t is a common maxim, familiar to all minds that ‘ignorance of the law’ will not excuse any person, either civilly or criminally.” Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility’s collection of unauthorized late payment fees, would meet the standard for a “willful violation.” Staff has analyzed the apparent violations using the above-noted criteria.

Staff believes that the Utility’s act was “willful” in the sense intended by Section 367.161, F.S. While the Utility’s collection of late penalty fees from customers could be said to be willful, staff believes that the Utility’s actions do not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. The Utility agrees that it erred in collecting such fees without an authorizing tariff and has properly sought approval to implement a Commission-approved “late penalty fee” within this docket. Therefore, staff recommends that the Commission not order Ni Florida to show cause for its apparent failure to comply with Sections 367.081(1) and 367.091, F.S., and Rule 25-30.135(2), F.A.C.

Instead, staff believes that the Utility should be required to refund with interest any late payment fees collected by Ni Florida from the time it took over the utility from Hudson in May 2008, until the effective date of the Commission-approved revised rates and charges for this docket. The refund should be made in accordance with Rule 25-30.360, F.A.C. During the processing of the refund, the Utility should be required to file monthly reports on the status of the refund. In addition, a preliminary report should be made within 30 days after the date the refund is completed and again 90 days thereafter. The utility should be required to file a final report after all administrative aspects of the refund are completed. All refund reports should specify: (a) the amount of money to be refunded and how that amount was computed; (b) the amount of money actually refunded; (c) the amount of any unclaimed refunds; and (d) the status of any unclaimed amounts.

**Issue 20:** Should Ni Florida, LLC, be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Sections 367.081(1) and 367.091, F.S., and Rule 25-30.135(2), F.A.C., pertaining to the unauthorized collection of an NSF fee?

**Recommendation:** No. A show cause proceeding should not be initiated. Instead, the Utility should be required to refund, with interest, any NSF fees collected in accordance with Rule 25-30.360, F.A.C. (Williams)

**Staff Analysis:** In confirming that Ni Florida had ceased collecting unauthorized late payment fees, staff discovered that the Utility was also collecting NSF fees. The Utility does not have an authorized NSF fee in its tariff. Pursuant to Rule 25-30.135, F.A.C., a utility may not modify or revise its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision. Also, Section 367.081(1), F.S., states that a utility may only charge rates and charges that have been approved by the Commission, and Section 367.091, F.S., states:

- (3) Each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the commission.
- (4) A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval.

Accordingly, the Utility appears to be in violation of Rule 25-30.135, F.A.C., and Sections 367.081(1) and 367.091, F.S.

Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful rule or order of the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's collection of unauthorized late payment fees, would meet the standard for a "willful violation." Staff has analyzed the apparent violations using the above-noted criteria.

Staff believes that the utility's act was "willful" in the sense intended by Section 367.161, F.S. While the utility's collection of late penalty fees from customers could be said to be willful, staff believes that the utility's actions do not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. Normally, when staff believes that a violation of statutes, rules or orders may have occurred, we contact the utility's management in writing to determine if they are aware of the violation and give them the opportunity to comply

or to explain their position. In this instance, staff did not discover the unauthorized collection of NSF fees in time to notify the Utility in writing. Nevertheless, Ni Florida informed staff on February 9, 2010, that it would cease collecting such fees until the Commission determined that a tariff was not required or until a Commission-approved tariff was in place. Furthermore, the Utility has properly sought approval to implement an NSF fee within this docket. Therefore, staff recommends that the Commission not order Ni Florida to show cause for its apparent failure to comply with Sections 367.081(1) and 367.091, F.S., and Rule 25-30.135(2), F.A.C.

Instead, staff believes that the Utility should be required to refund with interest any NSF fees collected by Ni Florida from the time it took over the utility from Hudson Utilities, Inc. in May 2008, until the effective date of the Commission-approved revised rates and charges for this docket. The refund should be made in accordance with Rule 25-30.360, F.A.C. During the processing of the refund, the Utility should be required to file monthly reports on the status of the refund. In addition, a preliminary report should be made within 30 days after the date the refund is completed and again 90 days thereafter. The utility should be required to file a final report after all administrative aspects of the refund are completed. All refund reports should specify: (a) the amount of money to be refunded and how that amount was computed; (b) the amount of money actually refunded; (c) the amount of any unclaimed refunds; and (d) the status of any unclaimed amounts.

**Issue 21:** Should the Utility be required to provide proof that it has adjusted its books for all Commission approved adjustments?

**Recommendation:** Yes. To ensure that the Utility adjusts its books in accordance with the Commission's decision, Ni Florida should provide proof, within 90 days of the final order in this docket, that the adjustments for all the applicable National Association of Regulatory Utility Commissioners Uniform System Of Accounts primary accounts have been made. (Mouring)

**Staff Analysis:** To ensure that the Utility adjusts its books in accordance with the Commission's decision, Ni Florida should provide proof, within 90 days of the final order in this docket, that the adjustments for all the applicable National Association of Regulatory Utility Commissioners Uniform System Of Accounts primary accounts have been made.

**Issue 22:** Should this docket be closed?

**Recommendation:** No. If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue Nos. 15, 19 and 20 and to verify that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively. (Williams, Mouring)

**Staff Analysis:** If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue Nos. 15, 19 and 20 and to verify that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively.

Ni Florida, LLC. Schedule of Wastewater Rate Base Test Year Ended 12/31/08			Schedule No. 1-A Docket No. 090182-SU		
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Staff Adjust- ments	Staff Adjusted Test Year
Plant in Service	\$7,560,838	(\$8,551)	\$7,552,287	\$195,367	\$7,747,654
2 Land and Land Rights	9,513	0	9,513	0	9,513
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)	(124)	(2,981,398)
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	402	1,268,053
8 Acquisition Adjustments	3,620,491	(3,620,491)	0	0	0
9 Working Capital Allowance	<u>0</u>	<u>99,088</u>	<u>99,088</u>	<u>(99,088)</u>	<u>0</u>
10 <b>Rate Base</b>	<u>\$5,926,622</u>	<u>(\$3,476,207)</u>	<u>\$2,450,415</u>	<u>\$99,557</u>	<u>\$2,546,972</u>

<b>Ni Florida, LLC.</b> <b>Adjustments to Rate Base</b> <b>Test Year Ended 12/31/08</b>		<b>Schedule No. 1-B</b> <b>Docket No. 090182-SU</b>
Explanation	Wastewater	
<u>Utility Plant In Service</u>		
1 To reflect capitalized items (Issue 3)		\$66,169
2 To reflect 2009 pro forma capitalized items (Issue 3)		72,996
3 To reflect 2010 pro forma capitalized items (Issue 3)		<u>56,202</u>
Total		<u>\$195,367</u>
<u>Accumulated Depreciation</u>		
1 To reflect Audit Finding No. 4 (Issue 2)		\$10,730
2 To reflect capitalized items (Issue 3)		<u>(10,854)</u>
Total		<u>(\$124)</u>
<u>Accumulated Amortization of CIAC</u>		
To reflect Audit Finding No. 5 (Issue 2)		<u>\$402</u>
<u>Working Capital Allowance</u>		
To set working capital allowance to zero. (Issue 5)		<u>(\$99,088)</u>

Ni Florida, LLC. Capital Structure-13 Month Average Test Year Ended 12/31/08						Schedule No. 2 Docket No. 090182-SU		
Description	Total Capital	Specific Adjustments	Subtotal Adjusted Capital	Prorata Adjustments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
<b>Per Utility</b>								
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%	<u>0.00%</u>
7 <b>Total Capital</b>	<u>\$5,721,706</u>	<u>\$0</u>	<u>\$5,721,706</u>	<u>(\$3,361,291)</u>	<u>\$2,360,415</u>	<u>100.00%</u>		<u>9.53%</u>
<b>Per Staff</b>								
8 Long-term Debt	\$233,931	(\$93,468)	\$140,463	(\$14,615)	\$125,848	4.94%	8.50%	0.42%
9 Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.06%
10 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
11 Common Equity	5,477,556	(2,783,820)	2,693,736	(280,285)	2,413,451	94.76%	9.72%	9.21%
12 Customer Deposits	10,219	(2,545)	7,674	0	7,674	0.30%	6.00%	0.02%
13 Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
14 <b>Total Capital</b>	<u>\$5,721,706</u>	<u>(\$2,879,833)</u>	<u>\$2,841,873</u>	<u>(\$294,901)</u>	<u>\$2,546,972</u>	<u>100.00%</u>		<u>9.65%</u>
						<b>LOW</b>	<b>HIGH</b>	
RETURN ON EQUITY						<u>8.72%</u>	<u>10.72%</u>	
OVERALL RATE OF RETURN						<u>8.70%</u>	<u>10.60%</u>	

Ni Florida, LLC. Statement of Wastewater Operations 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	Staff Adjust- ments	Staff Adjusted Test Year	Revenue Increase	Revenue Requirement
1 <b>Operating Revenues:</b>	<u>\$1,470,837</u>	<u>\$402,969</u>	<u>\$1,873,806</u>	<u>(\$402,969)</u>	<u>\$1,470,837</u>	<u>\$274,028</u> 18.63%	<u>\$1,744,865</u>
<b>Operating Expenses</b>							
2 Operation & Maintenance	\$1,302,104	\$60,777	\$1,362,881	(\$121,032)	\$1,241,849	\$0	\$1,241,849
3 Depreciation	123,059	0	123,059	(14,508)	108,551	0	108,551
4 Amortization	0	0	0	0	0	0	0
5 Taxes Other Than Income	136,300	18,134	154,434	(18,134)	136,300	12,331	148,632
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 <b>Total Operating Expense</b>	<u>\$1,561,463</u>	<u>\$78,911</u>	<u>\$1,640,374</u>	<u>(\$153,674)</u>	<u>\$1,486,700</u>	<u>\$12,331</u>	<u>\$1,499,032</u>
8 <b>Operating Income</b>	<u>(\$90,626)</u>	<u>\$324,058</u>	<u>\$233,432</u>	<u>(\$249,295)</u>	<u>(\$15,863)</u>	<u>\$261,697</u>	<u>\$245,834</u>
9 <b>Rate Base</b>	<u>\$5,926,622</u>		<u>\$2,450,415</u>		<u>\$2,546,972</u>		<u>\$2,546,972</u>
10 <b>Rate of Return</b>	<u>(1.53%)</u>		<u>9.53%</u>		<u>(0.62%)</u>		<u>9.65%</u>

NI Florida, LLC. Adjustment to Operating Statement Test Year Ended 12/31/08		Schedule No. 3-B Docket No. 090182-SU
Explanation	Wastewater	
<u>Operating Revenues</u>		
Remove requested final revenue increase.		<u>(\$402,969)</u>
<u>O&amp;M Expenses</u>		
1 To reflect capitalized items. (Issue 3)		(\$66,169)
2 To reflect normalization of capital projects. (Issue 3)		(42,212)
3 To reflect normalization of Bad Debt Expense. (Issue 10)		(14,697)
4 To reflect the appropriate Rate Case Expense. (Issue 8)		\$2,046
Total		<u>(\$121,032)</u>
<u>Depreciation Expense - Net</u>		
1 To reflect capitalized items. (Issue 3)		\$10,854
2 To reflect the appropriate depreciation amount. (Issue 11)		<u>(14,508)</u>
Total		<u>(\$3,654)</u>
<u>Taxes Other Than Income</u>		
RAFs on revenue adjustments above.		<u>(\$18,134)</u>

<b>Ni Florida, LLC. Wastewater Monthly Service Rates Test Year Ended 12/31/08</b>		<b>Schedule No. 4 Docket No. 090182-SU</b>			
	<b>Rates Prior to Filing</b>	<b>Comm. Approved Interim</b>	<b>Utility Requested Final</b>	<b>Staff Recomm. Final</b>	<b>4-Year Rate Reduction</b>
<b><u>Residential</u></b>					
All Meter Sizes:	\$15.72	\$19.49	\$19.89	\$18.72	\$0.28
Gallage Charge Per 1,000 Gallons (10,000 gallon cap)	\$5.17	\$6.41	\$6.54	\$6.16	\$0.09
<b><u>General/Multi-Residential Service</u></b>					
Base Facility Charge by Meter Size:					
5/8" x 3/4"	\$15.72	\$19.49	\$19.89	\$18.72	\$0.28
Full 3/4"	\$23.56	\$29.21	\$29.80	\$28.05	\$0.41
1"	\$39.26	\$48.68	\$49.67	\$46.74	\$0.69
1-1/2"	\$78.51	\$97.35	\$99.32	\$93.47	\$1.38
2"	\$125.63	\$155.78	\$158.92	\$149.57	\$2.20
3"	\$251.25	\$311.55	\$317.84	\$299.13	\$4.41
4"	\$392.56	\$486.78	\$496.61	\$467.37	\$6.88
6"	\$785.16	\$973.61	\$993.26	\$934.80	\$13.77
8"	\$1,256.24	\$1,557.75	\$1,589.20	\$1,495.66	\$22.03
10"	\$1,805.86	\$2,239.29	\$2,284.49	\$2,150.02	\$31.67
General Service - Gallage Charge, per 1,000 Gallons	\$6.17	\$7.65	\$7.81	\$7.35	\$0.11
Bulk Flow Meter Service - Gallage Charge, per 1,000 Gallons	\$6.45	\$8.00	\$8.16	\$7.68	\$0.11
<b><u>Typical Residential Bills 5/8" x 3/4" Meter</u></b>					
3,000 Gallons	\$31.23	\$38.72	\$39.51	\$37.20	
5,000 Gallons	\$41.57	\$51.54	\$52.59	\$49.52	
10,000 Gallons	\$67.42	\$83.59	\$85.29	\$80.32	