

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180013-PU

PETITION TO ESTABLISH A
GENERIC DOCKET TO
INVESTIGATE AND ADJUST
RATES FOR 2018 TAX SAVINGS,
BY OFFICE OF PUBLIC
COUNSEL.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 13

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER GARY F. CLARK

DATE: Tuesday, August 6, 2019

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

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. We're going down to
3 the last item for today's agenda, which is Item No.
4 13. Following this item we're going to have IA in
5 this room in about five minutes.

6 And Item No. 13 is a panel of myself, Clark
7 and Brown. Staff. Item No. 13.

8 MR. MAUREY: Good morning Commissioners,
9 Andrew Maurey with Commission staff. Item 13
10 concerns the Tax Cuts and Jobs Act of 2017.

11 On February 6, 2018, the Commission
12 established jurisdiction over the tax savings for
13 all utilities under its purview. Subsequently, the
14 Commission opened separate dockets to address
15 potential tax savings for electric and natural gas
16 utilities. At this time, all electric and natural
17 gas tax utility, all utility tax savings dockets
18 have been resolved. The instant docket remains
19 open to address potential tax savings associated
20 with water and wastewater utilities.

21 Of the 13 water and wastewater utilities that
22 have income taxes included in the revenue
23 requirement, and then filed 2018 annual report,
24 none are earning above their authorized rate of
25 return range.

1 Staff is recommending that no adjustment to
2 base rates is necessary regarding the impacts
3 resulting from the passage of the tax act for these
4 utilities.

5 Two water and wastewater utilities have not
6 yet filed their annual reports for 2018. Staff is
7 recommending that if the Commission approves the
8 staff recommendation in issue one, that this docket
9 be closed upon the expiration of the proposed
10 agency action protest period and that separate
11 dockets be opened to address the impact of tax
12 savings for these two remaining utilities.

13 Mr. Rehwinkel, on behalf of Office of Public
14 Council, is present to address the Commission.
15 Staff is available to answer any questions.

16 CHAIRMAN GRAHAM: Thank you, staff. Mr.
17 Rehwinkel.

18 MR. REHWINKEL: Good morning, Mr. Chairman,
19 and Commissioners, my name is Charles Rehwinkel and
20 I'm here on behalf of Office of Public Council.

21 We're here today, Commissioners, to speak on
22 this item because this appears to be the last stop
23 before closing the docket that was open on
24 February 8, 2018, at the request of this office
25 that was made on January 9th, 2018.

1 Commissioners, I'm going to address the
2 specifics of Utilities, Inc. of Florida, the
3 largest water and wastewater company you regulate.
4 But since this is possibly the last stop on this
5 docket, some background is needed to place in
6 context our deep and grave concerns that both --
7 about both this docket and the UIF circumstances,
8 specifically.

9 In the ensuing 18 months since this docket was
10 opened, approximately 596 million dollars of their
11 money has so far been returned to the customers of
12 Duke Energy Florida, Tampa Electric Company, Gulf
13 Power, Peoples Gas and Florida Public Utilities
14 Company. These dollars were returned in the form
15 of agreed-upon rate reductions, payments toward
16 Hurricane Irma costs, one-time credits, accelerated
17 depreciation write-offs and historically large
18 hurricane clean-up costs. The ongoing permanent
19 rate reductions alone total over 143 million
20 dollars annually so far for Duke and Tampa
21 Electric. Actually, I should say for Tampa
22 Electric, Peoples Gas and Gulf Power.

23 The agreed-upon storm repair costs paid to
24 date total 323 million dollars. These dollars,
25 which represent the money of the customers, were

1 returned to those customers in the agreed-upon ways
2 because those companies had agreements with the
3 Public Council and other intervenors.

4 In the same 18-month period, not a single
5 penny of the tax savings generated by not -- by
6 nonexistent federal income tax costs, which again
7 is the customer's money, has been returned to those
8 customers as a direct result of this docket that
9 was opened with much fanfare back in 2018.

10 ~~Now, it might be said that FPL has used tax~~
11 ~~savings to pay off the costs of Hurricane Irma.~~
12 ~~However, the decision to do that was made solely by~~
13 ~~FPL, at least 40 days before this docket was~~
14 ~~opened, and it was made with no Commission~~
15 ~~involvement whatsoever.~~

16 ~~As we are all aware, no Commission -- as we~~
17 ~~all are aware, FPL used their reading of the use of~~
18 ~~a set-aside from customer-provided depreciation~~
19 ~~overpayments to pay off Hurricane Irma repair costs~~
20 ~~and then used the customer's tax savings money to~~
21 ~~reestablish set-aside amount that was supposed to~~
22 ~~only be used to manage day-to-day earnings~~
23 ~~headwinds, even though a specific cost recovery~~
24 ~~method was specifically required for storm recovery~~
25 ~~from current customers.~~

1 ~~Despite the irregular accounting, we concede~~
2 ~~that it is plausible to say that over this same~~
3 ~~18-month period, FPL has effectively used about 1.3~~
4 ~~billion dollars of the annual recurring 772 million~~
5 ~~dollars of tax savings to pay off costs of~~
6 ~~Hurricane Irma.~~

7 ~~Of course, it is equally fair to say that if~~
8 ~~asked, which we were not, the intervenors would~~
9 ~~have quickly agreed with FPL, like we readily did~~
10 ~~with Duke and Tampa Electric, to use customer's tax~~
11 ~~savings to directly offset the costs of Hurricane~~
12 ~~Irma along with an ongoing subsequent reduction in~~
13 ~~FPL's base rates when the storm costs were paid~~
14 ~~off. That conversation did not happen and there~~
15 ~~has been no resistance to FPL keeping the money~~
16 ~~under this docket while earnings -- earning up to~~
17 ~~and above the excess of 11.6 percent ROE cap. So~~
18 ~~we are now in the position of letting the Florida~~
19 ~~Supreme Court decide if the public interest was~~
20 ~~served by letting FPL keep post-Irma 772 million~~
21 ~~dollars in annual tax savings.~~

22 ~~The bottom line is that, unlike other utility~~
23 ~~regulatory Commissions around the country which~~
24 ~~have acted aggressively to return tax savings to~~
25 ~~customers, this Florida docket has fizzled and now~~

~~1 appears to be nothing more than a way to ratify the
2 utilities keeping the customer's money.~~

3 The recommendation today seeks to put a close
4 to this unfortunate chapter in Florida's utility
5 regulation. The Public Council has had a
6 long-standing objection going back over 30 years to
7 the Commission's approach to letting utilities keep
8 tax savings if they are earning within or below the
9 self-reported bottom of the range, regardless of
10 whether they have any plans to actually file a rate
11 case. That objection still stands today.

12 Fortunately, federal income tax rates have not
13 increased in many decades. However, one certainly
14 has to wonder whether there would be more
15 earnestness in separating the customers from their
16 money posthaste under such circumstances,
17 regardless of earnings and perhaps through a
18 limited proceeding.

19 Commissioners, we do not agree with the
20 decision you made in this docket for the small gas
21 companies to allow them to keep tax overpayments
22 based on the self-reported earnings rationale in
23 light of the fact that there was not a scintilla of
24 evidence that they had any intention to file for
25 rate relief. And the fact that those gas companies

1 had been self-reporting under-earnings for years
2 for the tax -- the tax savings were pure gravy and,
3 unfortunately, we could not contest those PAA
4 orders due to the prohibitive costs of litigating
5 those cases.

6 Now today, based on the approach this
7 Commission has established, staff is recommending
8 for these remaining water and wastewater utilities,
9 that you take this same approach. That is, to look
10 first at the self-reported unaudited earnings of
11 these water and wastewater companies. It appears
12 that you are ready to endorse that approach again
13 to close out this docket. Once again, we object to
14 that philosophy.

15 However, in addition to our continuing general
16 objection, I am here today to specifically object
17 to this approach when it comes to Utilities, Inc.
18 of Florida, or UIF. Our concern with the proposed
19 treatment of this specific utility is deep and it
20 is serious. In our view, the UIF component of this
21 recommendation is, assuming you issue only one
22 order for all companies, an ideal candidate for
23 Section 120-8013(b) protest. That is where we
24 would protest only UIF and let the other utilities'
25 tax savings determinations, although objectionable,

1 become final. The other utilities' financial
2 results do not have the same proximity to a recent
3 rate case order that UIF self-reported results do.

4 Given the fact that we're asking the Florida
5 Supreme Court to review and order more scrutiny for
6 the massive rate increase, which the largest
7 electric utility got my pocketing its windfall, so
8 should the largest water and wastewater utility you
9 regulate get some extra scrutiny.

10 The single biggest reason for this is that
11 apart from the fact that we fundamentally disagree
12 with the earnings-based approach, this utility was
13 fresh off of a huge rate increase that was granted
14 based on a 35-percent federal corporate income tax
15 rate that was ordered a mere 88 days before the
16 corporate income tax rate dropped 40 percent from
17 35 percent to 21 percent. We estimate that this
18 represents an annual one-million-dollar cost
19 differential for the combined consolidated system.
20 And to put this into context, the smallest electric
21 utility, FPUC, had a 1.5 million dollar annual tax
22 savings that they gave back. This figure is an
23 estimate related to UIF because no where in the
24 recommendation is it reported that UIF was asked by
25 you to calculate their windfall.

1 What is further disconcerting here is that
2 when this utility filed its very first consolidated
3 system annual report in March of 2018, after having
4 received a 5.2-million-dollar annual rate increase
5 in 2017, September, which included approximately
6 the one million dollars for income taxes that
7 instantly became a windfall on January 1, 2018, as
8 a result of the Tax Cuts and Jobs Act, UIF
9 self-reported under-earnings for 2017.

10 Now, this is not necessarily alarming because
11 they should have only reflected three months of
12 additional revenue and would have had earned,
13 year-end rate base, due to some proforma additions,
14 plus for 2017 the statutory tax rate was still 35
15 percent for the remaining 88 days.

16 The real red flag for us that we want to bring
17 to your attention today is that the 2018 annual
18 report that was filed in March of 2019 shows UIF
19 still under-earning after a full year of collecting
20 the higher revenues, just approved by the
21 Commission, and the full one-million-dollar tax
22 windfall.

23 In the case of the water system, the unaudited
24 self-reported earnings dropped even more between
25 2017 and 2018. Our concern does not end there.

1 Remember, this is a utility that was fully
2 consolidated for the very first time in 2017. This
3 utility has, I'll call it, a checkered past over
4 the past 15 years when it comes to accurately
5 updating its books and records to fully and
6 properly reflect Commission rate orders. So it is
7 perhaps not surprising than in 2017, coming out of
8 a massive effort to consolidate all 27 systems
9 under one set of books they self-report
10 consolidated under-earnings right off the bat.

11 A cursory, but ongoing review in our office
12 for the first two annual reports for the years 2017
13 and 2018, filed under consolidated -- this
14 consolidated construct, indicates that while they
15 filed journal entries, as you requested them to do,
16 or ordered them to do, reflecting the adjustments
17 ordered by the Commission in this 2017 case, for
18 the individual systems, UIF has many other apparent
19 post-rate case adjustments to capital structure
20 revenue and O&M, including a material reduction of
21 almost four million dollars in differed taxes, a
22 significant change in the equity ratio and
23 unverified debt rates, which by the way, are all
24 established by affiliated companies.

25 The combined rate case, and this is

1 significant, in the self-reported balance sheet on
2 the 2018 annual report is 1.5 million dollars
3 greater than the sources of capital in the
4 self-reported capital structure. How is that even
5 possible? Additionally, revenues for the water
6 system do not approach what was ordered in the 2017
7 order and wastewater O&M expenses, based on their
8 reporting, increased 23 percent from 2017 to 2018,
9 as shown in those reports.

10 For 2017 and 2018, UIF also shows 1.1 million
11 dollars in tax losses on sales of assets, but they
12 have not reported to you selling any assets. There
13 also appears to be what I'll call an upstream loan
14 of 22 million dollars to an affiliate company shown
15 as a negative advance from the affiliate.

16 These are just a few items that cause us to
17 have concerns about the accuracy, or at least the
18 reliability of the annual reports that UIF filed.

19 In short, this unaudited consolidated
20 financial reporting does not provide us, and it
21 should not provide you and your staff, with
22 adequate assurances that UIF even meets your test
23 for keeping the customers overpaid income taxes.
24 If we let this go unchallenged, perhaps the most
25 insidious result, Commissioners, will be that if

1 UIF comes in, as we have heard they intend to, and
2 asks for a limited proceeding that ignores
3 earnings, they will be in a great position to get,
4 after a 5.2-million-dollar rate increase and an
5 additional estimated one million dollars in pure
6 gravy served by the customers, a limited rate
7 increase that will only be measured some years from
8 now based on the self-reported unaudited financials
9 in an annual report.

10 To sum it up, UIF's unaudited financials do
11 not support them keeping the tax savings, nor do
12 they support a free pass in future rate-setting
13 proceedings in the form of ignoring their earnings.

14 We ask you, Commissioners, to deny staff
15 recommendation, at least for UIF, given these facts
16 and circumstances, and to keep this docket open for
17 an in-depth audit for the consolidated financials
18 and a hearing, perhaps, on the amount of tax
19 savings and the achieved earnings of UIF.

20 ~~And before I close, I just want to mention one~~
21 ~~thing. There are even UIF customers down in~~
22 ~~Charlotte County who are also FPL customers and so~~
23 ~~we would just point out that those customers would~~
24 ~~be getting kind of a double whammy of their tax~~
25 ~~savings being kept by their electric and their~~

1 ~~water company.~~

2 So, with that, I would end. Thank you.

3 CHAIRMAN GRAHAM: Mr. Rehwinkel, when this
4 recommendation came out, did you reach out to staff
5 at all with any of these concerns?

6 MR. REHWINKEL: Yes, Chairman. I've had
7 conversations with staff and Marsha Willis has had
8 conversations with staff in the -- I guess in the
9 past ten days. And, you know, that's -- we voiced
10 our concerns and we said that we would bring them
11 to the Commission, as well.

12 CHAIRMAN GRAHAM: Okay. Mr. Friedman.

13 MR. FRIEDMAN: Thank you. Mr. Chairman,
14 Commissioners, Marty Friedman, attorney for UIF.
15 Also with me is John Hoy, who the president of UIF,
16 and Jerry Deason, who's the head of regulatory
17 affairs.

18 The 30,000 dollar -- the 30,000-foot view of
19 this is that it sounds like the majority of what
20 Mr. Rehwinkel has concerns with is the fact that
21 you have already set a precedent in the other
22 industries about, particularly the small gas
23 companies, about how you look at this issue of the
24 tax savings, and what the staff has recommended in
25 this final part of the docket is consistent with --

1 or what this Commission has done before, in spite
2 of the fact that Mr. Rehwinkel continues to rail at
3 what this Commission has done previously.

4 We haven't delved into the details. The -- as
5 Mr. Rehwinkel keeps saying, unaudited
6 self-reported. I mean, he must have said that 50
7 times. But I will let Mr. Hoy address some of the
8 highlights of why Mr. Rehwinkel's comments are not
9 particularly accurate. But I would point out,
10 again, that what the staff is recommending is
11 consistent with what this Commission has done in
12 the past, the companies are not over-earning based
13 upon its annual reports consistent with everybody
14 else. The Commission has not required any
15 particular audits of any other companies, nor any
16 of these other 13 that are on this list.

17 So I think it's not necessary to pull UIF out
18 of this category. And I'll let Mr. Hoy address
19 more specifics. Thank you.

20 MR. HOY: Good morning, Commissioners. Let me
21 just hit two key points. One is, you talk about
22 windfall coming out of this rate case, I mean this
23 was a 2015 test year. So we are -- we're four
24 years past that, or just about. So expenses have
25 gone up. And when we get approval for a rate

1 increase, and those rates didn't go into effect
2 until the very end of 2017, we come out behind the
3 eight-ball right away, because expenses have gone
4 up and we're already past that test year as we're
5 going forward.

6 So to think that we automatically come out of
7 a rate case to earn your allowed return is kind of
8 fantasy. And you can see if from all the other
9 water utilities on there, we struggle. We struggle
10 very much to get near our allowed return. I think
11 I've been in Florida since 2006 with Utilities,
12 Inc. I don't think we've, on a consolidated basis,
13 ever earned our allowed return. So that's just a
14 fact of the water industry we face here.

15 The other piece you talked about, the windfall
16 from the tax reform. So we -- yes, the rate went
17 down, but the thing that Mr. Rehwinkel didn't point
18 out was the fact that baked into the rate case was
19 a considerable amount of proforma plant. If you
20 remember, we had a lot of capital investment that
21 was going in. The assumption is when we filed the
22 cases was all that plant was going to get bonus
23 depreciation. That did not materialize because
24 that was another effect of the tax cut and form --
25 the jobs act. So that went against us.

1 So the increases, the tax cut helped us. The
2 bonus depreciation hurt us. So that totaled all --
3 putting all that together, we did come out and are
4 continuing to under-earn from our allowed return.

5 I'll leave it at that. Those are the
6 highlights.

7 Well, Mr. Deason pointed out that, you know,
8 we do look at the individual expenses. I mean,
9 again, it's been three-and-a-half, four years.
10 We've had salary increases go up. We've had, you
11 know, electric costs. We've had sludge hauling,
12 other maintenance costs. We are pushing towards
13 investing considerably in this utility. We've
14 got -- we're investing probably in the neighborhood
15 of 15, 20 million dollars a year. That was, again,
16 after the test year. So some of that was in our
17 proforma adjustments, but we continue to push that
18 as we go forward.

19 So we are constantly battling for keeping up
20 with the expenses in the capital investment that
21 we've been making with the rate increases we're
22 allowed to pass through.

23 MR. REHWINKEL: Mr. Chairman.

24 CHAIRMAN GRAHAM: Would you like to chime in?

25 MR. RUBIN: I would. Thank you Mr. Chairman.

1 I just wanted to register an objection and move to
2 strike all the comments about --

3 CHAIRMAN GRAHAM: I need your name and address
4 for the record.

5 MR. RUBIN: I'm sorry. Ken Rubin, counsel for
6 FPL.

7 I would like to register an objection to the
8 speech I heard about the FPL tax docket, which has
9 been fully litigated before this Commission. The
10 comments were inappropriate, for a matter that is
11 not on the agenda. Not only inappropriate, but
12 inaccurate in many respects. It sounded to me like
13 Mr. Rehwinkel was seeking reconsideration of a
14 matter that's already been decided by this
15 Commission, fully litigated. Public Council had
16 every opportunity to make their positions known and
17 they'll have an opportunity to make their position
18 known at the Florida Supreme Court as they've taken
19 an appeal from the Commission's order.

20 And so, with that, I would ask that the
21 Commission strike all of the comments about FPL.
22 FPL's tax docket, not a matter on this agenda, not
23 a matter appropriate to be addressed here today.
24 Thank you.

25 CHAIRMAN GRAHAM: Thank you, Mr. Rubin.

1 Mary Ann, it's an interesting question.

2 MS. HELTON: I agree, but I think we need to
3 hear from Mr. Rehwinkel before you hear from me, if
4 that's what you're asking for.

5 CHAIRMAN GRAHAM: Mr. Rehwinkel. Specifically
6 just the Florida Power and Light comments.

7 MR. REHWINKEL: Okay. And I do want to
8 respond to one factual issue on the O&M expense
9 with respect to UIF. Our comments were, as I set
10 out at the very beginning, a contextual background
11 for the tax docket, the generic tax docket as a
12 whole, which did encompass all utilities. The --
13 it is inaccurate to say that I was asking for
14 reconsideration. I said it. Mr. Rubin
15 acknowledged that this would be before the Supreme
16 Court. We stand behind our comments. If -- you
17 know, this is not a record that has any life with
18 respect to FPL beyond today. These were just
19 background comments and I think they're a fair
20 comment on the record in our view of the facts and
21 circumstances in that case.

22 Our reason for being here, to be clear, is
23 two-fold. It has to do with the generic tax docket
24 and the global handling of tax savings and then UIF
25 specifically. So we stand behind them. The

1 Commission is free to do and consider, however they
2 want, these comments.

3 CHAIRMAN GRAHAM: Thank you.

4 MS. HELTON: Mr. Chairman, I have to say that
5 in one respect I agree with Mr. Rubin, because I
6 also was wondering why Mr. Rehwinkel was choosing
7 to address on a docket that was noticed for dealing
8 with water and wastewater utilities, Florida Power
9 and Light. That being said, you all, I think, have
10 the ability to totally disregard those comments in
11 making a decision with respect to -- whether to
12 close these dockets or not as staff has
13 recommended, but you also have the discretion, if
14 you so desire, to strike the records dealing with
15 Florida Power and Light that Mr. Rehwinkel said,
16 but I also really agree that they really don't have
17 any bearing on whether you decide to close the
18 dockets that has staff recommended.

19 CHAIRMAN GRAHAM: Well then I guess the choice
20 is mine. I say let's strike the Florida Power and
21 Light reference in the docket with today's
22 testimony.

23 Mr. Maurey.

24 MR. REHWINKEL: Mr. Chairman --

25 CHAIRMAN GRAHAM: I'll get back to you.

1 MR. REHWINKEL: Okay.

2 CHAIRMAN GRAHAM: Mr. Maurey, any comments on
3 what you've heard before I bring it back to the
4 Commission?

5 MR. MAUREY: Staff supports its
6 recommendation.

7 CHAIRMAN GRAHAM: Okay. Mr. Rehwinkel.

8 MR. REHWINKEL: The only point I wanted to
9 address is that our comment about the 23 percent
10 increase in O&M was from the year 2017 to 2018. It
11 has nothing to do with test year or anything like
12 that. As we see it, O&M expenses increased
13 1,853,827 in 2018 over O&M of 8,071,336. So that's
14 23 percent increase. That's all we we're talking
15 about.

16 CHAIRMAN GRAHAM: Commissioners. Commissioner
17 Clark. Commissioner Brown.

18 COMMISSIONER CLARK: Just one question. We
19 keep talking about closing the docket like it's
20 just an automatic, but if I understand right,
21 there's a protest period, right? So you still have
22 the right to object and protest. Anyone affected
23 by the decision has a right to file a protest and
24 that would keep the docket open.

25 MS. HELTON: Yes, sir. And it depends on, I

1 guess -- Mr. Rehwinkel had made reference to
2 120.8013, so I had to go back and refresh my memory
3 to make sure I knew which statute he was talking
4 about, and that statute allows us, allows you to
5 deem as stipulated any issues that are not
6 protested. So if he were to protest only UIF, I
7 think you could, in effect, close the other --
8 close the docket with respect to all the other
9 remaining water and wastewater utilities that staff
10 has listed here. Have I -- I don't think I
11 answered your question.

12 COMMISSIONER CLARK: You did. No, you did.
13 I'm thinking about what you said.

14 CHAIRMAN GRAHAM: Commissioner Brown.

15 COMMISSIONER BROWN: Thank you. I was
16 wondering why Mr. Rehwinkel was talking about the
17 utility. And, Mr. Rubin, obviously you don't have
18 to be at the bench anymore if you don't -- given
19 the Chairman's ruling.

20 That being said, getting back to UIF and some
21 of the points that were made, Mr. Rehwinkel kept
22 saying self-reported unaudited consolidated
23 reporting. Mr. Maurey, can you please address
24 that, those points of contention that Mr. Rehwinkel
25 brought up?

1 MR. MAUREY: Well, annual reports by all the
2 utilities are self-reported in all industries.

3 COMMISSIONER BROWN: And then please go
4 through our previous actions on other tax dockets,
5 gas and other industries.

6 MR. MAUREY: Yes. As I said in the opening
7 remarks, the Commission opens separate dockets for
8 every electric and every natural gas company under
9 its jurisdiction. In each of those cases, we're
10 set for hearing. Not all -- a lot of them were
11 settled. And for the electric utilities that were
12 earning above their range, there were rate
13 decreases, but for -- and for the natural gas
14 companies that were earning above their range as a
15 result of tax savings, but for those natural gas
16 utilities earning within or below their range,
17 there were no tax -- or were no rate reductions
18 ordered. Staff's recommendation here follows that
19 pattern. These water and wastewater utilities on
20 Attachment A, page six, over half of them, even
21 with tax savings, are still reporting losses. And
22 the other six are earning below the authorized top
23 of the range.

24 COMMISSIONER BROWN: So in our action, for
25 example in the gas dockets, that -- our action was

1 based on the utility's report, the annual report,
2 or unaudited?

3 MR. MAUREY: Yes, they are unaudited. We do
4 not audit all of the annual reports every year.
5 Now, if a company comes in for a rate proceeding,
6 yes, those reports are audited in a rate case.

7 COMMISSIONER BROWN: And just to refresh our
8 memory, my memory up here, are all of our decisions
9 in the tax proceedings, were they all based on
10 unaudited reports? So that would be -- this action
11 today would be consistent with our action in all of
12 the dockets, except for one, I think.

13 MR. MAUREY: They weren't all audited by us.
14 A lot of the electric utilities, the large
15 publicly-traded companies, they do have auditing
16 taking place. Now, we did not audit them for
17 purposes of these tax savings dockets, no, but they
18 are audited at some level.

19 COMMISSIONER BROWN: So just to be clear with
20 Mr. Rehwinkel, your objection and the way that
21 we're handling what you're raising today, when all
22 of the other tax dockets are closed, but your
23 objection is with regard to unaudited reporting?

24 MR. REHWINKEL: That's a general objection we
25 have to the Commission's approach. It's not really

1 much different than what happened in the late '80s.
2 We vigorously objected then, but here today and in
3 this docket --

4 COMMISSIONER BROWN: I didn't know you had an
5 objection, though. I've never heard that before in
6 any other proceeding -- tax docket proceeding.

7 MR. REHWINKEL: Well, the only place in this
8 generic docket that it would have come up would
9 have been those gas utilities, and I'm explaining
10 why we were silent on that. It just wasn't -- you
11 know, it wasn't a situation where someone had just
12 come off of a rate case. We were talking about UIF
13 only here, but we were letting you know that we
14 maintain this objection. We think that if you're
15 going to allow a company to keep tax savings based
16 on whether they're inside the range, then you ought
17 to do more active monitoring or auditing of those
18 reported earnings before you say you can keep that
19 windfall. That's our position. And if it wasn't
20 known before, I'm making it known here today, but
21 this is -- this case is, for UIF, is different even
22 from that because of the proximity of today to
23 their last rate case.

24 COMMISSIONER BROWN: The rate case in 2015?

25 MR. REHWINKEL: No, no. That rate case was

1 concluded in September of '17. You know what their
2 test year is, is not -- but I'm telling you that
3 our concerns are between '17 and '18.

4 COMMISSIONER BROWN: Got it.

5 MR. REHWINKEL: And this is very unusual
6 because they consolidated their accounting for the
7 very first time, 27 systems put them all together.

8 COMMISSIONER BROWN: I have some clarity now.
9 So you don't object to the way that the Commission
10 is handling any of the other items here, 1 through
11 15, minus 14 on the -- table one.

12 MR. REHWINKEL: Specifically, our lack of
13 objection there is identical to the small gas
14 companies. It's the juice is not worth the squeeze
15 there. We are not going to go after those for
16 that -- for our general reason.

17 COMMISSIONER BROWN: So then your preference
18 would be to allow staff to audit Utilities, Inc.
19 before the Commission renders a decision?

20 MR. REHWINKEL: Our preference would be that
21 there be some greater degree of scrutiny than there
22 has been to date. I know your staff. You have
23 some very good staff members that have looked at
24 this and they've identified some issues I believe
25 that are a concern, but I don't think they're in a

1 position, based on the approach that the Commission
2 has taken, to say we will treat them differently
3 than everyone else. We'll take everyone the way
4 they've reported it and make our judgment on that.
5 So that's what they've done.

6 We -- I don't know whether it's an audit or
7 it's some sort of letter proceeding and some
8 opportunity for us to get involved. But we're
9 likely going to protest this and explore that.

10 COMMISSIONER BROWN: That's what it sounds
11 like.

12 Mr. Maurey, is there any additional due
13 diligence that staff can do to garner more
14 information than what we have here today on
15 Utilities, Inc?

16 MR. MAUREY: Well, the annual report could be
17 audited, yes.

18 COMMISSIONER BROWN: How long does that
19 process take?

20 MR. MAUREY: Well, 60 days, 90 days, depends
21 on workload.

22 COMMISSIONER BROWN: Mr. Rehwinkel, if staff
23 conducts an audit on the utility's annual report,
24 would that -- would you object to us moving forward
25 today with the recommendation with the caveat on

1 Utilities, Inc., we will -- the Commission will
2 render a decision after staff conducts an audit?

3 MR. REHWINKEL: If your question is, would the
4 recommendation be -- if it was voted out in toto
5 and encapsulated in a single order, would we let
6 that order become final pending an audit that would
7 be completed on the other side of that protest
8 period, I don't think we could agree to that.

9 COMMISSIONER BROWN: Okay.

10 CHAIRMAN GRAHAM: Commissioner Clark.

11 COMMISSIONER CLARK: I want to go back to the
12 audited/unaudited for one second, just to clarify.
13 In my mind, I understand our staff and what we do
14 from an auditing perspective. I understand what a
15 third-party CPA firm does when they actually do an
16 audit, but when you report for the purposes of your
17 annual report and for your stockholders, where do
18 those financials come from? Are they compiled
19 strictly in-house by staff or do you have an
20 accounting firm that actually does your -- actually
21 prepares your financial statements?

22 MR. DEASON: Our accounting firm is Ernst and
23 Young. They audit our financials every year and I
24 base the annual report off those audited
25 financials.

1 COMMISSIONER CLARK: But they do audit your
2 financials every year?

3 MR. DEASON: Yes, sir.

4 COMMISSIONER CLARK: And those are the same
5 numbers, I'm sure they wouldn't take much to
6 verify, but your audited financials are the ones
7 that appear in your annual report?

8 MR. DEASON: Yes, sir.

9 COMMISSIONER CLARK: What is the difference in
10 the type of audit that we would do, Mr. Maurey,
11 from an internal perspective other than, I assume,
12 pulling -- doing random sampling of the data than
13 Ernst and Young would do? Would we not be willing
14 to accept Ernst and Young's opinion? They're a
15 pretty large firm, as I understand.

16 MR. MAUREY: Regulatory audits are different
17 than the accounting audits they do for financial
18 reporting purposes. They're tailored towards the
19 regulatory decisions that the Commission has to
20 make. So they're not as -- the audits done for
21 reporting purposes are more strenuous.

22 COMMISSIONER CLARK: Audits done for --

23 MR. MAUREY: For financial reporting purposes
24 are more strenuous than the ones that we do in the
25 building.

1 COMMISSIONER CLARK: Than the ones that we
2 would? So the numbers that we would see that have
3 been audited by Ernst and Young are more stringent
4 than the ones than if we did it? Is that what
5 you're saying?

6 MR. MAUREY: Yes.

7 COMMISSIONER CLARK: That's interesting. Why
8 would we ever do one then and not just use ones
9 reported by the -- if the company uses a
10 third-party CPA?

11 MR. MAUREY: Well, UIF's an exception. Most
12 of the utilities on this list are not audited.

13 COMMISSIONER CLARK: Okay. Interesting.

14 MR. REHWINKEL: Commissioner -- Mr. Chairman,
15 may I address the --

16 CHAIRMAN GRAHAM: Actually, I got a question
17 for you. We may be going down the same path. It
18 goes from the question that Commissioner Brown
19 asked earlier. If we were to bifurcate this and
20 pull Utilities, Inc. off, and I agreed with the
21 other 14 on the list, I guess the question I have
22 is, would OPC let those other 14 go and deal with
23 Utilities, Inc. individually? Because I guess
24 what's going on in my head is can we give finality
25 to these other utilities and not hold the entire

1 package up because OPC plans on challenging
2 whatever the order may be?

3 MR. REHWINKEL: Well, under the law, if we
4 protest and we only identify Utilities, Inc. as a
5 protest by the law, those other utilities will
6 become final under 120-8013(b). So you would
7 achieve that if we just protested them. And we're
8 not -- we won't be holding them up at all.

9 CHAIRMAN GRAHAM: Okay.

10 MR. REHWINKEL: If I could just quickly
11 address the audit. First of all, there's not an
12 auditor's report that accompanies these documents.
13 Say these documents were audited. I believe what
14 Ernst and Young may audit are the consolidated
15 financials of the parent company in Northbrook,
16 Illinois. And one of the things that an auditor, a
17 public auditor would not do for purposes of
18 presenting financials for the reliance by
19 investors, which is the primary purpose of that,
20 they wouldn't look at allocations between
21 affiliates. They wouldn't look to see whether the
22 service company -- utility services was allocating
23 an improper amount of cost to the Florida
24 utilities. So you're not going to get that. They
25 could care less about that, unless there is some

1 sort of -- well, I shouldn't say they could care
2 less. That's just not something they're tasked
3 with doing. That's something that your auditors
4 over the years have done, affiliate audits, where
5 they've looked at the basis for allocations, and
6 there have been Supreme Court decision based on
7 that. So it's a different ball game, in our view,
8 completely.

9 CHAIRMAN GRAHAM: Commissioners.

10 MS. BROWNLESS: Excuse me.

11 CHAIRMAN GRAHAM: Ms. Brownless.

12 MS. BROWNLESS: May I just offer a suggestion
13 here?

14 CHAIRMAN GRAHAM: Sure.

15 MS. BROWNLESS: In this docket, we have said
16 that we believe it appropriate to open separate
17 dockets for Gold Coast Utility Corporation and
18 Saint James Island. Perhaps, if a separate docket
19 was also opened for UIF to pursue an audit, or
20 whatever else is deemed appropriate, that would
21 allow you to finalize your decision with regard to
22 the other water and wastewater utilities that are
23 listed on this chart.

24 CHAIRMAN GRAHAM: Commissioner Clark.

25 COMMISSIONER CLARK: I was just curious if UIF

1 would address the auditing of the consolidated
2 statements versus parent company. Is that an
3 accurate statement that Mr. Rehwinkel made?

4 MR. HOY: For the most part. The financials
5 are audited at the UI level, but those are
6 essentially -- oh, they are, for sure. The essence
7 of those then flow down into the annual reports
8 that we use in the states. So those numbers are
9 audited and they make their way into the annual
10 report that we file here with the Commission.

11 COMMISSIONER CLARK: But are there other
12 non-affiliated -- or other affiliated companies
13 that are not related to the water business that
14 would be included in those?

15 MR. HOY: No. For the most part, those are
16 regulated public utilities in the states that we
17 serve.

18 COMMISSIONER CLARK: Okay. So, I mean,
19 let's -- utilities located in other states are
20 included in the same financial statements that you
21 are representing here?

22 MR. HOY: Correct.

23 COMMISSIONER CLARK: Okay.

24 CHAIRMAN GRAHAM: Panel? Commissioner Clark.

25 COMMISSIONER CLARK: Commissioner, I go back

1 to Ms. Brownless' comment there. Based on, I
2 guess, another look at this, I would not have any
3 objection to us splitting the three out. Let's get
4 the rest of these approved, take a look at the
5 three that you have mentioned, the two Gold Coast
6 and Saint James, and put UIF and give us a little
7 bit of time to look at it. I'd like a little bit
8 more time on it.

9 CHAIRMAN GRAHAM: Mr. Baez.

10 MR. BAEZ: Mr. Chairman, at the risk of
11 sounding like I'm disagreeing with Commissioner
12 Clark's concerns, I think that you're going to get
13 to the same place by rendering your decision on the
14 staff's recommendation without going through the
15 modification or the machinations of peeling UIF
16 out, outright, without a good basis for doing so,
17 insofar as you're treating all the water and
18 wastewater utilities correctly.

19 To Commissioner Clark's concerns, the -- I
20 think if the Office of Public Council puts their
21 money where their mouth is and protested this,
22 we're going to get the type of scrutiny, or the
23 time if you will, as you put it, to look at these
24 consolidated financial statements. I think that
25 would probably be the first order of business for

1 the staff is to actually commence an audit for --
2 with the proper focus.

3 So in terms of efficiency of the process,
4 you're not stepping out and creating a different
5 treatment of one of your regulated utilities based
6 on what at this point -- and I use the term
7 guardedly -- the threat of a protest. Let them
8 protest. Let the statute take effect. They
9 protest on isolated issues. Every other issue gets
10 the finality that you're seeking through your
11 decision here, and we can go from there.

12 I think -- I don't want to speak for general
13 counsel, but I'm going to try anyway. We're pretty
14 comfortable with how that would play out, that it
15 would address everyone's concerns, you know, to the
16 extent that there are, including yours,
17 Commissioner Clark.

18 CHAIRMAN GRAHAM: Did you say move staff, Mr.
19 Clark?

20 COMMISSIONER CLARK: Move staff.

21 COMMISSIONER BROWN: Second.

22 CHAIRMAN GRAHAM: Commissioner Brown -- well,
23 it's moved and second, staff recommendation on Item
24 No. 13.

25 Any further discussion? Commissioner Brown.

1 COMMISSIONER BROWN: Thank you. And I
2 appreciate the discussion here and also the further
3 information of the utilities, how they get the
4 information on the annual report, which is
5 obviously a lot different than the other utilities
6 we're voting on today.

7 That being said, knowing that a protest is
8 going to be coming, I would encourage the parties
9 to move swiftly so that this tax docket is resolved
10 as soon as possible, but I support the -- I have
11 supported the staff recommendation from the
12 beginning. And, again, I appreciate you. We will
13 see you guys again soon.

14 CHAIRMAN GRAHAM: It's been moved and
15 seconded. All in favor say, aye.

16 (Chorus of ayes.)

17 CHAIRMAN GRAHAM: Any opposed?

18 (No comments made.)

19 CHAIRMAN GRAHAM: By your action, you've
20 approved staff recommendation. The panel has
21 approved staff recommendation on Item No. 13.

22 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court
Reporter, do hereby certify that the foregoing
proceeding was heard at the time and place herein
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IT IS FURTHER CERTIFIED that I
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I FURTHER CERTIFY that I am not a relative,
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attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 12th day of August, 2019.



DANA W. REEVES
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