

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180138-SU

APPLICATION FOR  
STAFF-ASSISTED RATE CASE IN  
VOLUSIA COUNTY BY NORTH  
PENINSULA UTILITIES  
CORPORATION.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 10

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

DATE: Thursday, October 3, 2019

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

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

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

2 CHAIRMAN GRAHAM: Item No. 10.

3 By the way, Mr. David, nice tie.

4 MR. DAVID: Thank you.

5 MS. THOMPSON: Good morning, Commissioners.

6 Takira Thompson with Commission staff. Item No. 10  
7 is staff's recommendation regarding the application  
8 for a staff-assisted rate case by North Peninsula  
9 Utilities Corporation.

10 North Peninsula is a Class B wastewater  
11 utility in Volusia County with approximately 433  
12 customers. Based on our analysis, staff is  
13 recommending a 10.66-percent revenue-requirement  
14 increase, or \$25,988 annually.

15 A customer meeting was held in May of this  
16 year and 16 customers were in attendance.  
17 Additionally, one customer comment was filed in the  
18 docket regarding the rate increase and maintenance  
19 of the facility.

20 Staff and the utility are available for any  
21 questions.

22 CHAIRMAN GRAHAM: Thank you, staff.

23 OPC?

24 MR. DAVID: Yes. Once again, Tad David on  
25 behalf of the Office of Public Counsel. And again,

1 I'd like to thank you for your time this morning.

2 OPC is not going to expressly object to or  
3 oppose the requested wastewater rates, but because  
4 North Peninsula Utilities is currently not in  
5 compliance with DEP and is, apparently, relying on  
6 the proposed rate increases requested in this  
7 docket to address those issues, among others, OPC  
8 requests that the Commission include some assurance  
9 in the order in this docket.

10 This assurance could come in one of two forms:  
11 Either include a provision in the order requiring  
12 that NPUC, within a year of the order, file a  
13 report or other documentation demonstrating that  
14 the problems proposed to be addressed and  
15 alleviated by the additional funds have actually  
16 been addressed or alleviated; or second choice  
17 would be include a provision in the order requiring  
18 that NPUC, as part of their next rate case,  
19 demonstrate at that time that the issues have been  
20 addressed or alleviated, to assure that -- that the  
21 reasons behind the filing of this -- or the  
22 apparent reasons behind the filing of this have  
23 been fulfilled.

24 Once again, we're not going to expressly  
25 oppose or object, but we would request that some

1 form of assurance be included in the order, please.

2 CHAIRMAN GRAHAM: Thank you, sir.

3 Commissioners. Commissioner Brown.

4 COMMISSIONER BROWN: Mr. David, that was  
5 exactly why I pulled this item. I thought that it  
6 was warranted to at least leave the docket open  
7 until we had verification from the utility that the  
8 pro forma items -- which have been outstanding, by  
9 the way, for a year and a half, including holes in  
10 the tank -- at least we have some type of  
11 verification.

12 And I -- I like your suggestion of leaving it  
13 open, but I was going to suggest that we put the  
14 burden on the utility to get in contact with the  
15 staff once these items have been completed.

16 And then I know Issue 14 has -- is the  
17 docket -- leave the docket open. I would just  
18 include that staff verify the pro forma projects  
19 have been completed, add that language in there,  
20 and I think that captures it.

21 Rather than putting a certain time frame,  
22 maybe just put the burden on the utility to -- to  
23 get with the staff, once each of the projects are  
24 complete, since there is a growing list. And some  
25 are more important than others, but -- that's all.

1           CHAIRMAN GRAHAM: I'll give you the time to  
2 think of that motion, as Commissioner Polmann  
3 speaks.

4           Commissioner Polmann.

5           COMMISSIONER POLMANN: Thank you,  
6 Mr. Chairman.

7           I discussed several items in briefing with  
8 staff on this. And I appreciate the concern, both  
9 from OPC and -- and the Commission on the  
10 performance by the utility.

11           And I'll -- I'll ask staff a general question.  
12 Com- -- and -- and I understand it's difficult to  
13 compare the specifics of the circumstances here of  
14 this utility to -- to others, but in -- in the  
15 general sense, speaking about reporting back, being  
16 under a -- a consent order, keeping the docket open  
17 and -- and so forth, would those types of things be  
18 similar or different to how we've treated a utility  
19 of this size in -- in the past?

20           I'm just trying to understand if -- if that --  
21 if that kind of treatment would be unique, unusual,  
22 and so forth. I -- I want to just frame that in  
23 a -- in a context, so that we -- we're fully  
24 informed about how we're -- how we're dealing with  
25 this.

1           MR. BALLINGER: It -- I think it would be  
2 slightly different, and here's why: Normally we'll  
3 keep dockets open for pro forma items when there's  
4 a Phase 2 rate, that those items are actually  
5 funding and -- and creating a change in rates for  
6 Phase 2. So, we'll keep the docket open until  
7 they're completed and then the Phase 2 rates go  
8 into place.

9           In this instance, since they're under the  
10 operating ratio, the capital improvements aren't  
11 really affecting the revenue requirements. And so,  
12 the projects can go in and the revenue requirement  
13 is established. That's why we have the -- the  
14 cutoff date now and rates go into effect. So, it's  
15 a little different.

16           In terms of compliance, what DEP does with  
17 their compliance and consent orders is what DEP  
18 does, whether they fine them or whatever it does.  
19 And we leave that to DEP to and manage that and  
20 their aspects. DEP may decide to grant them  
21 another six months to complete the projects, that  
22 kind of thing. So, that's out of our purview.

23           So, it is -- keeping it open like this is  
24 slightly different in this instance because I don't  
25 know what we would do by keeping the docket open;

1 are we holding the money subject to refund, things  
2 of that nature. So, it's -- it's a slight change.

3 COMMISSIONER POLMANN: Well, I understand --  
4 and correct me if I'm wrong -- that -- looking at  
5 the -- the issues here, Issue No. 2 -- and this was  
6 raised -- Mr. David and OPC -- even though there is  
7 a -- the fact that the utility is not in  
8 compliance, strictly with the -- with the DEP --  
9 they are in a consent order, from our perspective.  
10 That's satisfactory to us.

11 That's the way we've treated other utilities  
12 that have -- that have -- they're under consent  
13 order. They're moving forward. We found that to  
14 be acceptable and we allowed DEP to deal with that,  
15 as you've just said; is that correct?

16 MR. BALLINGER: Correct.

17 COMMISSIONER POLMANN: You've treated other  
18 utilities that way.

19 MR. BALLINGER: And -- and the rules have  
20 recently changed with the quality of service for  
21 wastewater. Used to be that we would take those  
22 things into account; the condition of the plant and  
23 consent orders from DEP in -- in terms of the  
24 quality-of-service issue.

25 Those have been separated out now, where the

1 condition of the plant is a separate management;  
2 are they complying with DEP regulation kind of an  
3 issue. And in that case, there's really not a  
4 satisfactory or not. In this case, if you want to  
5 say they are satisfactory, they're complying with  
6 the DEP consent order in a timely manner.

7 COMMISSIONER POLMANN: Okay.

8 MR. BALLINGER: DEP has not fined them, so --  
9 but it's not quality of service, as we're used to  
10 dealing with.

11 COMMISSIONER POLMANN: So, if I understood  
12 your -- your answer to my prior point, leaving the  
13 docket open, we don't have, currently, an  
14 opportunity to -- there's no consequence, per se --  
15 receiving a report, subsequently from them -- I'm  
16 trying to -- to understand Commissioner Brown's  
17 question and -- and the follow-up that we would  
18 have if they're not timely. I don't -- I'm not  
19 quite sure what timely would be unless we go back  
20 to --

21 MR. BALLINGER: Right.

22 COMMISSIONER POLMANN: -- suggestion from OPC  
23 that it be dealt with in the next rate case.

24 MR. BALLINGER: Exactly. An example: We've  
25 had utilities where they have a meter-replacement

1 program that they come in with a SARC and they're  
2 going to replace 200 meters over the next couple of  
3 years. Those monies are included in rates and they  
4 go forward and do it.

5 We find out, the next rate case, they didn't  
6 do those meter replacements because something else  
7 came up, and they have to justify why they didn't  
8 do the meter replacements. So, those things sort  
9 themselves out in the process.

10 I have no problem with getting a report from  
11 the utility on their progress with this. That's  
12 fine. I maybe prefer going to close the docket  
13 because, if something comes up where they're not  
14 complying, perhaps staff could look at a show-  
15 cause item or something of that nature.

16 But we can do it if you want. It's just --  
17 it's a little -- little different.

18 COMMISSIONER POLMANN: Well, of course,  
19 you'll -- you -- you'll do what we ask.

20 I -- I'm -- I'm just trying to have certainty  
21 from which we could, then, have a subsequent action  
22 that has some weight, and -- and I'm seeking, you  
23 know, a technical understanding. And I'll -- I'll  
24 look to our adviser here on what -- what is the  
25 appropriate legal action that -- that makes sense.

1           If we close the docket, but then leave it to  
2           the next rate case -- I don't want to disagree  
3           with -- with the intent from Commissioner Brown.  
4           I'm just looking for an understanding of what's the  
5           best thing -- I'm not opposed to moving this thing  
6           forward; I just want to have the right, subsequent  
7           opportunity. That's all.

8           I'll -- I'll leave it at that, Mr. Chairman,  
9           and see if -- if there's another response.

10           CHAIRMAN GRAHAM: Commissioner Brown.

11           COMMISSIONER BROWN: So -- so, I -- thank you,  
12           Commissioner Polmann. I intended to leave it open  
13           with the understanding that, you know, the dates  
14           could shift, which would make it move outside of  
15           that year period.

16           And this utility has not filed a rate case --  
17           the last rate case was in 2000. So, I'd hate to  
18           tie it to the utility filing another rate case,  
19           which is why I wanted to have them at least leave  
20           the docket open until staff can verify that the pro  
21           forma improvements have been completed. And once  
22           the actions are complete, the docket should be  
23           closed administratively.

24           That being said, we can always show-cause them  
25           if some of these items are not completed since they

1 will be ultimately in rate base; isn't that  
2 correct, Legal?

3 MS. HELTON: I'm a little bit uncomfortable,  
4 sitting here today saying that, if they don't  
5 complete the pro forma that's laid out in the  
6 recommendation, that we could show-cause  
7 them for -- for not --

8 COMMISSIONER BROWN: I'm going to go to  
9 Mr. Murphy. Mr. Murphy gave me a better answer  
10 yesterday.

11 (Laughter.)

12 MS. HELTON: There -- I mean, just as in any  
13 rate case, there are circumstances that can change  
14 from the time that you set rates until they start  
15 collecting the -- the revenues.

16 And I'm uncomfortable saying that, yes, we can  
17 show-cause them. That is definitely something that  
18 staff could look at. Staff could look at whether  
19 they're being managed appropriately or not, but I'm  
20 uncomfortable giving you that answer.

21 COMMISSIONER BROWN: Then I will ask you, what  
22 is the best way to achieve the dis- -- what we  
23 would like to do here today, and what are our  
24 remedies.

25 MS. HELTON: Well, when I looked at the

1 recommendation -- I think the staff has recommended  
2 that we keep the docket open until such time as  
3 staff can verify -- no --

4 COMMISSIONER BROWN: No, it doesn't say that.

5 MS. HELTON: No, wait just a second.

6 COMMISSIONER BROWN: I asked that in --

7 MS. HELTON: Wait. The staff -- the docket --  
8 and maybe I'm looking at the wrong one, but  
9 Issue 14, the docket should remain open for staff's  
10 verification --

11 COMMISSIONER BROWN: Just the tariffs sheets.

12 MS. HELTON: Oh, never mind. Then, keep the  
13 docket -- you could keep the docket open, let staff  
14 verify whether they have completed the pro forma --  
15 pro forma or not, and if, after a certain period of  
16 time, they haven't, staff can have discussions with  
17 the utility and, if we think it's appropriate to  
18 bring the matter before you, then we could do that.

19 CHAIRMAN GRAHAM: Keith has got a comment.

20 MR. HETRICK: Not to disagree with Mary  
21 Anne -- far be it for me to ever disagree with the  
22 guru here and -- but I would flip it a little,  
23 though, and rather than put the burden on the  
24 Commission to verify, have -- have the utility  
25 report back and -- you know, within a year, as to

1           how they're in- -- implementing the pro forma.

2           You know, put the burden on them, so --  
3           because we don't have an ongoing compliance  
4           function, really, in this agency, so -- but you  
5           do -- you can put the burden on them to report  
6           back. If they don't report back --

7           COMMISSIONER BROWN: How about every six  
8           months because the consent --

9           MR. HETRICK: Right.

10          COMMISSIONER BROWN: I imagine these items are  
11          going to get pushed back.

12          MR. HETRICK: And that gives you a tag just on  
13          the pure reporting issue, you know, to be able to  
14          consider. And that -- that way we're not in a  
15          compliance mode, but the burden is upon the  
16          utility, and then we will know if they don't report  
17          back.

18          COMMISSIONER BROWN: I think we have a motion  
19          ready, Mr. Chairman.

20          CHAIRMAN GRAHAM: I am ready to hear it,  
21          Commissioner Brown.

22          COMMISSIONER BROWN: Thank you. I would move  
23          approval of all issues with the modification of  
24          Issue 14 to require the utility to submit reports  
25          every six months to verify the pro forma items have

1           been complete.

2           COMMISSIONER POLMANN:   Second.

3           CHAIRMAN GRAHAM:   It's been moved and  
4           seconded.  Any further discussion or clarification  
5           on the motion?

6           Mr. Murphy.

7           MR. MURPHY:   It still closes,  
8           administratively, if they -- once they've completed  
9           the pro forma.

10          COMMISSIONER BROWN:   That was included in my  
11          motion.

12          CHAIRMAN GRAHAM:   Any further discussion?  
13          Seeing none, all in favor, say aye.

14          (Chorus of ayes.)

15          CHAIRMAN GRAHAM:   Any opposed?  
16          By your action, you have approved that motion.  
17          (Agenda item concluded.)

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STATE OF FLORIDA )  
COUNTY OF LEON )

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DATED THIS 14th day of October, 2019.



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