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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20190116-SU

APPLICATION FOR STAFF-
ASSISTED RATE CASE IN
BREVARD COUNTY, AND REQUEST
FOR INTERIM RATE INCREASE
BY MERRITT ISLAND UTILITY
COMPANY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4

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

DATE: Tuesday, March 3, 2020

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

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

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Next up is Item
3 No. 4, application for staff-assisted rate case in
4 Brevard County.

5 MR. BROWN: Good morning, Commissioners. Todd
6 Brown with Commission staff. Item 4 is staff's
7 recommendation addressing Merritt Island's
8 application for a staff-assisted rate case. The
9 utility is a Class C wastewater utility that serves
10 approximately 141 residential customers, and one
11 general-service customer in Brevard County.

12 Rates for this utility were last established
13 in 2008. A customer meeting was held on
14 November 4th, 2019, in which no customers attended.
15 The Commission has not received any correspondence
16 from customers regarding this docket.

17 Representatives from the utility and the
18 Office of Public Counsel are here today. And staff
19 is available for your questions at this time.

20 CHAIRMAN CLARK: All right. I believe OPC
21 wanted to make some comments.

22 MS. MORSE: Yes, we do. Good morning,
23 Mr. Chairman and Commissioners. My name is
24 Stephanie Morse on behalf of the Office of Public
25 Counsel.

1 We want to briefly address a concern related
2 to Issue 2. The record shows the utility is not in
3 compliance with DEP regulations and, thus, is not
4 in compliance with Rule 25-30- --

5 CHAIRMAN CLARK: Ms. Morse, could you pull the
6 mic a little closer, please? Thank you.

7 MS. MORSE: This way. All right. Okay.

8 The record shows the utility is not in
9 compliance with the DEP regulations and, thus, not
10 in compliance with Rule 25-30.225 of the Florida
11 Administrative Code.

12 The record further indicates the utility
13 considered entering a consent order to avoid being
14 fined by DEP for this failure, which is related to
15 routine maintenance.

16 Notwithstanding this evidence, the
17 recommendation does not include a penalty for
18 failing to maintain the system in compliance with
19 DEP's regulations.

20 Where a utility is clearly shown to be out of
21 compliance with applicable regulatory requirements,
22 there should be some consequence in its rate-
23 request proceedings before this body.

24 Commissioners, consistent with the carrot-or-
25 stick approach that several of you discussed at the

1 January agenda this year, where a utility fails in
2 performing basic tasks it's obligated to do and for
3 which the customers have paid, it's important that
4 there be ramifications for those failures or else
5 there will be no incentive for any utility to
6 comply with any regulatory requirements.

7 The facts in this case are undisputed. The
8 utility is not operating in compliance with DEP
9 requirements. That failure is noted in the staff's
10 recommendation.

11 The assurance from the utility in this case
12 that it's working on the issues is inadequate
13 support to maintain a finding of satisfactory
14 com- -- performance in an element in a rate case.
15 In short, when you're not doing the job that you're
16 supposed to do and for which ratepayers are paying,
17 there should be a penalty.

18 In some of its responses and correspondence to
19 the staff, the utility indicated that, before it
20 took over the utility in -- in or about 2017, the
21 utility had been in a state of neglect.
22 Nonetheless, the warning letter at issue, the DEP
23 warning letter, was issued in November 2019.

24 At a certain point, the fault for lack of
25 maintenance is no longer the prior owner's fault,

1 but is appropriately directed to the current
2 company, which has been in charge for years now.

3 The DEP's warning letter indicates the
4 deficiencies are related to a lack of routine
5 maintenance of vegetation growth and removal of
6 solids. These present legitimate risks to the
7 public.

8 OPC's concerns are that any additional
9 expenses related to extraordinary clean-up caused
10 by the failure to prudently perform routine
11 maintenance should not be borne by the customers
12 and -- and that the utility's performance or
13 operating conditions should not be considered
14 satisfactory where the record demonstrates it's
15 failed to stay in compliance with DEP's
16 requirements.

17 When the Commission discussed the carrot-or-
18 stick approach in January, the consequence of poor
19 performance was a penalty in the range of 50 to 100
20 basis points. Therefore, we -- we respectfully
21 request that you impose appropriate penalties for
22 the compliance failures in this case.

23 Thank you.

24 CHAIRMAN CLARK: Thank you, Ms. Morse.

25 Mr. Rendell, would you like to respond?

1 MR. RENDELL: Yes, sir. Troy Rendell on
2 behalf of Merritt Island utility.

3 Since we took over this utility, we have spent
4 over \$118,000 on improvements. Prior to us
5 purchasing it, there was little to no treatment at
6 the plant. The ponds in question have accumulated
7 sludge over numerous years, probably 20, 30 years.

8 We -- we did meet with DEP last month as a --
9 as recently as last week. I believe on Friday,
10 they sent us a long consent form, which we agreed
11 to. And basically what the consent form is --
12 does -- and we have not signed it yet -- is we --
13 we've agreed to do in-kind.

14 What DEP allows is they have a fine -- I
15 think, in this instance, around 4,000 and we would
16 have to spend about 6,000, but regardless of that,
17 we're already spending additional funds.

18 We put in two new blowers. We're putting in
19 brand-new diffusers. So, we're -- we're actually
20 spending additional capital that's not included in
21 this rate case. As a result, we may have to come
22 in for a limited proceeding after the conclusion of
23 the staff-assisted rate case.

24 The ponds in question were full of water.

25 They -- the piping -- the original piping did not

1 allow for rotations of the ponds, so they were
2 going into one main one.

3 During the period of time they -- the DEP
4 wanted us to drain it and clean the vegetation,
5 there is tremendous rainfall. As a matter of fact,
6 when we had the customer meeting in that area,
7 there was a huge rainfall and they had eight inches
8 of rain. You can't dry out a pond with rain. And
9 we've indicated that to DEP, which they've agreed.
10 And now it's the dry season, so we've agreed to
11 have it done by April, while -- while the ponds are
12 dry.

13 So, we -- we acknowledge that there -- you
14 know, there are issues that have to be addressed
15 with DEP. We've met with them. They're working
16 very closely with us and we intend to file -- to
17 sign the consent order very soon.

18 CHAIRMAN CLARK: Okay. Thank you very much.

19 All right. Commissioners, any questions?

20 Commissioner Brown.

21 COMMISSIONER BROWN: Just a follow-up to OPC's
22 comments about the carrot and the stick -- so,
23 you're recommending that the Commission penalize
24 the utility because of the current status with DEP,
25 but what is your actual recommendation on a

1 penalty?

2 MS. MORSE: The basis points, in -- in terms
3 of the rate increase, is what we propose is -- is
4 an adequate -- within the range, of course, that --
5 at your discretion.

6 COMMISSIONER BROWN: So, in the -- in the
7 prior case where the Commission voted on the
8 penalties, though, the circumstances were
9 different. This transfer took place in 2016. And
10 my understanding is that it appears most of the
11 issues, though, took place prior to the transfer?

12 MS. MORSE: I'm sorry. What was -- what was
13 the beginning of that question?

14 COMMISSIONER BROWN: Most of the circumstances
15 and issues took place prior to the transfer that
16 occurred in 2016, correct?

17 MR. RENDELL: Correct.

18 MS. MORSE: No -- well, I'm not sure about
19 that, but it's my understanding that they weren't
20 under a DEP penalty at -- at the time of the
21 transfer. So, it -- at the time of the transfer,
22 there wasn't a DEP issue, to my knowledge, as far
23 as the last order entered in this case -- for this
24 utility.

25 MR. RENDELL: Many of the improvements we made

1 were required by DEP through the permit -- through
2 the permitting process. When we got issued the new
3 permit, there were spec- -- specific items that we
4 had to do, including some head work, some
5 diffusers, some basic work to the plant, which we
6 did.

7 Some of that has to be redone now. We
8 discovered the blowers were too small. The
9 diffusers, because there's so much sediment and
10 accumulation in the digester, we could- -- the old
11 diffusers didn't work. We had to put new diffusers
12 in, which we're doing now.

13 So, there's additional work that we're doing
14 that was required by DEP in the permit.

15 COMMISSIONER BROWN: Thank you.

16 CHAIRMAN CLARK: Commissioner Polmann.

17 COMMISSIONER POLMANN: Thank you,
18 Mr. Chairman.

19 For staff, the prior owner -- when was the
20 last time they were in for a rate case? Do you
21 have that information available?

22 MR. BROWN: I believe it was 2008.

23 COMMISSIONER POLMANN: Okay.

24 MR. BROWN: There was a SARC.

25 COMMISSIONER POLMANN: Thank you.

1 Are we aware that they had a valid -- did they
2 have valid operating permits at that time? Do
3 we -- do you recall, we had that --

4 MR. BROWN: My engineer to the left of me is
5 saying yes.

6 COMMISSIONER POLMANN: Okay. To the utility,
7 Mr. Rendell, when you took over the utility, did
8 they have valid operating permits at that time?
9 Because there was a long period of time between
10 2008 and when you acquired this; is that correct?

11 MR. RENDELL: I believe that the permit was --
12 was up for renewal when we bought it. And that's
13 how it came about. When we -- when we transferred
14 the permit to us and renewed the permit, it was
15 right -- probably about the time we bought it.
16 That's when DEP put the requirements to make the
17 additional upgrades to the plant, which they had
18 not enforced on the previous owner.

19 COMMISSIONER POLMANN: So, to your
20 understanding, there were deficiencies that DEP had
21 not identified when the prior owner had that. And
22 then, when you acquired it and -- and transferred
23 the permit, they identified those deficiencies.

24 MR. RENDELL: That's correct.

25 COMMISSIONER POLMANN: Okay. Mr. Chairman,

1 I -- based on what's indicated in the staff item,
2 under Issue 2, I -- and what I've heard here today,
3 I believe that the utility is taking the
4 appropriate actions to remedy the situation.
5 I'm -- I'm quite satisfied that they're on the
6 right path.

7 And as Mr. Rendell indicated, they've made
8 some substantial capital improvements. Now, how
9 that relates back to the operating expenses, that's
10 not -- not immediately obvious to me, but I do
11 anticipate there will be some additional operating
12 expenses.

13 So, the question to the staff, again, is: Is
14 your expectation that there's adequate additional
15 funding in here for adequate -- I'm sorry --
16 operating expenses or are you expecting additional
17 costs for operating in addition to capital
18 improvements going forward in -- in another case?

19 MR. BROWN: Based on what we had before us, I
20 believe there is adequate operating expenses to
21 cover the utility. I'm not sure what Mr. Tr- --
22 Mr. Rendell has -- has planned and how that may
23 impact operating expenses going forward, though,
24 but that's something we would clearly look at --

25 COMMISSIONER POLMANN: Okay.

1 MR. BROWN: -- if they brought a limited
2 proceeding to us.

3 COMMISSIONER POLMANN: Okay. In our -- in our
4 briefing, you made a distinction yesterday between
5 quality-of-service penalties and then permit-
6 violation penalties. Could you -- could you
7 elaborate or clarify that, again, for me?

8 MS. WATTS: Each one would be evaluated
9 separately and there could be penalties associated
10 with both. And with the Issue 2, we noted that,
11 you know, this utility has been acting continuously
12 since they acquired this utility to make the
13 improvements that are necessary, as opposed to, you
14 know, just waiting for something else to happen
15 or -- they've been proactive in doing that.

16 So, in that respect, we don't believe that a
17 penalty is warranted at this time.

18 COMMISSIONER POLMANN: Thank you.

19 Mr. Chairman, that's all I have.

20 CHAIRMAN CLARK: All right. No other lights
21 on. I'll entertain a motion.

22 COMMISSIONER POLMANN: Mr. Chairman, I believe
23 the utility is acting appropriately to bring --
24 bring this facility back into good quality of
25 service. I don't have any issue with their

1 performance here, and I would move approval of
2 staff recommendation on all issues.

3 COMMISSIONER BROWN: Second.

4 CHAIRMAN CLARK: Motion and second to approve
5 the item as presented. Any discussion?

6 On the motion, all in favor, say aye.

7 (Chorus of ayes.)

8 CHAIRMAN CLARK: Opposed?

9 Motion is approved.

10 Thank you very much.

11 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of March, 2020.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES February 9, 2021