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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200044-WS

PROPOSED AMENDMENT OF RULE
25-30.457, F.A.C. LIMITED
ALTERNATIVE RATE INCREASE.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

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

DATE: Tuesday, March 31, 2020

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right, Item No. 3, Mary
3 Anne.

4 MS. HELTON: Item No. 3 is staff's
5 recommendation to amend the limited alternative
6 rate increase rule, some folks call it the LARI
7 rule, for small water and wastewater utilities.

8 Staff is recommending that the rule be amended
9 to clarify application requirements, including a
10 requirement that the utility explain why it needs a
11 rate increase under the rule.

12 In addition, staff is recommending that the
13 rule be amended to change the procedure staff uses
14 to conduct its earning review in order to reduce
15 regulatory lag, and to delete the requirement that
16 utilities provide security for money collected
17 subject to refund and provide monthly reports,
18 which can be unduly burdensome for small water and
19 wastewater utilities.

20 J.R. Kelly, the Public Counsel is on the phone
21 and would like to address the Commission.

22 Troy Rendell, Marty Friedman and Mike
23 Smallridge are also on the line and would like to
24 have the opportunity to respond to OPC if they feel
25 its lnecessary.

1 Finally, Kathryn Cowdery, Todd Brown, Amber
2 Norris and Tripp Coston are on the telephone from
3 staff if you have any questions for them.

4 CHAIRMAN CLARK: Great. Thank you, Ms.
5 Helton.

6 Mr. Kelly, the floor is yours.

7 MR. DAVID: Yes. Commissioner Clark, this is
8 Tad David on behalf of the Office of Public
9 Counsel, and also entering an appearance for J.R.
10 Kelly. And I have just got a couple of things I
11 would like to say.

12 First of all, good morning and thank you for
13 the time. The Office of Public Counsel first
14 brought its concern to the staff regarding this
15 rule, and it engaged the staff and interested water
16 and wastewater utilities for over a year on the
17 proposed amendment. I have to say that overall --

18 COMMISSIONER GRAHAM: Excuse me. Excuse me.

19 CHAIRMAN CLARK: Tad, can you -- we are having
20 a little bit of difficulty hearing you.

21 Just a reminder, if you are talking on a -- if
22 you are on the conference and you are talking on a
23 speakerphone, please take that off and go to the
24 regular headset, or if not, try and get a little
25 closer and speak up for us, please.

1 I am sorry, Tad, go ahead.

2 MR. DAVID: Okay, is it better now?

3 CHAIRMAN CLARK: A little bit.

4 MR. DAVID: Okay.

5 CHAIRMAN CLARK: Just speak -- speak a little
6 bit louder, if you would.

7 MR. DAVID: Okay. I can do that. I will
8 talk as loud as I can.

9 Anyway, what I was saying is that the -- we
10 have been engaged with the staff and the interested
11 water and wastewater utilities for over a year on
12 this -- on this amendment, and overall, we are
13 generally satisfied with the rule proposed today,
14 and I appreciate staff's consideration of many of
15 our recommendations going into this process.
16 However, I do want to note for the record a concern
17 we continue to have, which relates to an issue that
18 we previously raised.

19 And first, we would like the Commission or
20 staff to clarify how many times within a given
21 period a utility may ask for a rate increase under
22 this new proposed rule.

23 We initially raised this issue because of
24 language in the current rule that is listed as a
25 criteria. Namely it states whether the utility was

1 granted a rate case within the two-year period
2 prior to receipt of the petition under review.
3 That is listed as a criteria under the current
4 rule. And the language in the current rule is not
5 clear in this criteria as whether the utility must
6 wait at least two years from the time of the last
7 rate case before petitioning for a rate increase
8 pursuant to the rule, or whether the utility may
9 not wait more than two years since the time of its
10 last rate case before requesting a rate increase
11 under the rule. This issue was never -- never
12 clarified during the workshop.

13 Under the proposed rule, the two-year language
14 is being repealed. However, the proposed rule does
15 not appear to impose any limit the number of times
16 a utility may come to the Commission and petition
17 for a rate increase.

18 And, for example, if the utility A comes in
19 for a SARC in 2019, can utility A subsequently file
20 a petition for rate increases in each of the next
21 six years before the seven-year limitation runs and
22 ask for a 20-percent rate increase each time under
23 the new LARI rule?

24 The new proposed rule doesn't answer this
25 question. You know, a different way to present the

1 question is, is the only limitation regarding this
2 knew rule, the new -- that the new rates would not
3 be granted by the Commission, would the only
4 limitation be that new rates can't put the utility
5 into an overearning situation; and as long as it
6 doesn't put a utility into an overearning
7 situation, the utility can come in for sequential
8 20 percent increase? Does this mean a water or
9 wastewater utility currently earning at its
10 midpoint ask for a rate increase, or even multiple
11 rate increases under the rule so long as the new
12 rule does not -- the new rates do not cause it to
13 be in an overearning position?

14 If the answer to either of these questions is
15 yes, you know, then you have to ask, what's the
16 intent of the rule limiting utilities to a
17 20-percent rate increase under the rule?

18 Anyway, as I said, just generally classify the
19 rule as proposed, but the intent and operation
20 still needs to be clarified so that all the parties
21 understand the purpose and exactly what the pol --
22 what policy the Commission wishes to adopt.

23 Thank you -- you know, thank you again for the
24 time this morning.

25 CHAIRMAN CLARK: Thank you, Tad.

1 Mary Anne, would you like to address that, or
2 do you have a staff member that could address it?

3 MS. HELTON: No, sir. I am going to defer to
4 Kathryn Cowdery, who is the lawyer assigned to
5 this. And if she can't answer the question, she
6 would know best who the staff person is to answer
7 it.

8 CHAIRMAN CLARK: Kathryn, did you hear both of
9 the questions? I think I framed them how many
10 times can a utility come in during the seven-year
11 period, and what would prevent them from getting
12 multiple rate increases over that period of time?

13 Kathryn, are you with us?

14 MS. COWDERY: Yeah, I needed to unmute there.

15 CHAIRMAN CLARK: No problem.

16 MS. COWDERY: Yes, I did hear the questions,
17 and the rule does not currently state anything as
18 far as how many times a utility can come in.

19 I would note in response to Tad that the last
20 comments we got from them, from Mr. David,
21 following our workshop had two comments in the rule
22 and we did incorporate both of those in the rule.
23 I was not aware that this was a -- an issue at --
24 at that time. So just, you know, we were trying to
25 be very responsive to the Office of Public Counsel.

1 I would say I think some of the things that
2 Mr. David said sort of answered the question, which
3 is there are certain requirements that have to be
4 met in order to -- to be allowed to get a limited
5 alternative rate increase. And one of those is you
6 have got to show that you have got a specific basis
7 or bases for the requested rate increase, and there
8 has got to be an underearnings situation.

9 So one would hope that when one applies for
10 a -- when a utility applies for one of these LARIs,
11 it's going to be in effect for a couple of years
12 where we have the -- have to have the annual review
13 done. And I would -- I would think it would be
14 unlikely that you would have yearly applications of
15 this, but if -- you know, I think there is a lot of
16 speculation here, and I would then defer to staff,
17 and possibly even some of our other interested
18 persons who may wish to respond to OPC.

19 CHAIRMAN CLARK: Okay. We will take up the
20 interested parties kind of in order and see if they
21 have some comments, and we will come back to staff
22 on that in just a moment.

23 Mr. Rendell, are you on the line?

24 MR. RENDELL: Yes, sir, I am.

25 CHAIRMAN CLARK: Would you care to comment?

1 MR. RENDELL: I agree with Ms. Cowdery. I
2 mean, it doesn't specifically set out a timeframe
3 of when a utility can or cannot come in for another
4 limited alternative rate increase, but it does lay
5 out the criteria, as she mentioned, of over -- of
6 underearning and what specifically is causing an
7 underearning.

8 I am basically here to support staff's
9 recommendation, but I believe that the criteria as
10 established in the proposed rule would allow the
11 staff and the Commission the latitude, the
12 flexibility to determine if an increase is
13 warranted.

14 CHAIRMAN CLARK: Okay. Thank you for those
15 comments.

16 Mr. Friedman, are you on the line?

17 MR. FRIEDMAN: Yes. This is Marty Friedman.
18 I would -- I would echo what Troy said. I mean,
19 theoretically, I guess the company could file every
20 year if they met the criteria for need an increase,
21 I think that's a, more likely, theoretical issue
22 rather than a practical one, and I would support
23 the staff's recommendation of the rule change as
24 it's written, without any changing.

25 CHAIRMAN CLARK: Okay. Thank you.

1 Mr. Smallridge. Mr. Michael Smallridge, you
2 are listed as an interested party, do you have a
3 comment?

4 MR. SMALLRIDGE: Mr. Chairman, the video is --
5 the audio is a little bit ahead of the video on the
6 computer, but I don't have any comments at this
7 time.

8 CHAIRMAN CLARK: Okay. Thank you very much.
9 Ms. Helton.

10 MS. HELTON: I was just going to say that it's
11 my understanding that Mr. Friedman is actually
12 representing Mr. Smallridge.

13 Mr. Smallridge actually raised a point that I
14 hope everybody noticed in the instructions that we
15 sent out. If you are watching the video with the
16 volume on, it's going to have a lag between that
17 and what you are hearing on the phone. So please
18 listen on the phone if you are wanting to
19 participate telephonically today, and don't rely on
20 the video that you are seeing for knowing when your
21 cue is to speak.

22 CHAIRMAN CLARK: Thank you very much.

23 Mr. David, you heard the comments. Any final
24 comments on behalf of OPC?

25 MR. DAVID: No, sir. That was the main

1 thing, was the understanding that the parties would
2 seem to indicate that there is no clear prohibition
3 there, and relying on the pragmatic and the
4 function of the rule to limit whatever -- however
5 many petitions may be filed under it.

6 CHAIRMAN CLARK: Great. Thank you. I think
7 that's -- I think it's a very valid point. I think
8 there is -- there is an underlying common sense
9 there that it's going to be very difficult to file
10 one every year. Valid points.

11 Any other interested parties on the line that
12 wish to address this issue before I move to the
13 Commissioners?

14 Okay, Commissioner Graham, any comments?

15 COMMISSIONER GRAHAM: Yes, sir. I got a quick
16 question for Kathryn.

17 Total difference between what OPC said and
18 what you said earlier, they can come in when they
19 are in an underearning situation or just not in an
20 overearning situation, because that's a 200-point,
21 200-basis-point swing there.

22 MS. COWDERY: Well, under the rule,
23 Commissioner, the requirement is if the requested
24 rate increase is based on the utility's
25 underearning or the utility's expectation

1 underearning, they would have to give an
2 explanation as to that.

3 I don't see -- I mean, I will also defer to
4 staff who is, you know, in the field on this, but
5 if you have got an overearning situation, I
6 can't -- I don't see how you would meet the
7 requirement.

8 COMMISSIONER GRAHAM: Well, no, the question
9 is -- let's just say their midpoint is 9.0 and they
10 come in at a 9.5, that's still not an overearning
11 situation because you are not overearning until you
12 hit a 10.0. Now, do they have to be at an 8.0 or
13 lower, or do they have to be just under a 10.0? I
14 guess that's what my question is.

15 MS. COWDERY: I am not sure, but I think the
16 rule is maybe broad enough that it shows that if
17 you are going to be -- you are expected to
18 underearn that you can apply, and then it would be
19 up to staff to review and see if it was warranted.

20 CHAIRMAN CLARK: Okay. Mr. Maurey has taken a
21 seat at the front table. I think he is going to
22 give an explanation.

23 Mr. Maurey.

24 MR. MAUREY: Good morning. Thank you.

25 The company cannot be in an overearnings

1 position. To date, all the companies that have
2 come in for this rule-making have always been in an
3 underearning situation, but that's not strictly
4 required. They cannot be overearning. They must
5 attest in their application that they will not
6 overearn as a result of the increase, and that is
7 the benchmark that we look at.

8 COMMISSIONER GRAHAM: So OPC -- what I was
9 hearing from everybody else was they had to be in
10 an underearning situation, and what OPC says is
11 just as long as you are not overearning, they can
12 come in.

13 MR. MAUREY: That's correct.

14 COMMISSIONER GRAHAM: Okay.

15 MR. MAUREY: To date, everyone who has come in
16 has been in an underearning situation, but it's
17 just that they have to attest they will not
18 overearn as a result of the increase.

19 COMMISSIONER GRAHAM: Thank you.

20 CHAIRMAN CLARK: Great point. Thank you,
21 Mr. Maurey.

22 Any other questions, Commissioner Graham?

23 COMMISSIONER GRAHAM: No.

24 CHAIRMAN CLARK: Commissioner Brown?

25 COMMISSIONER BROWN: Thank you, and I do think

1 this is a good creative tool that we can use to
2 help avoid regulatory lag, and I appreciate OPC
3 raising these concerns, and I am pleased that 2G
4 and 2H included in the proposed rule.

5 I have a question for Ms. Cowdery regarding
6 that -- on page 10, lines 17 through 18 regarding
7 what are the utilities was granted a rate increase
8 within the two-year period prior to the receipt of
9 the petition. Why did staff recommend removing
10 that?

11 CHAIRMAN CLARK: Ms. Cowdery, did you
12 understand the question?

13 MS. COWDERY: Yes, Commissioner, I did.

14 I am going to defer to staff on that. The
15 determination was that was not necessary for
16 granting a limited alternative rate increase
17 because as -- the important thing was to give the
18 relief that is needed at the time, and those two
19 items were not needed. So I am going to defer to
20 staff on that.

21 CHAIRMAN CLARK: Okay. Mr. Maurey is here to
22 answer the question.

23 Mr. Maurey.

24 MR. MAUREY: Ms. Cowdery is absolutely correct.
25 It was stricken because it was deemed unnecessary.

1 COMMISSIONER BROWN: You do think, with the
2 removal of that, that will allow more utilities to
3 utilize this rule? Was that the intent there?

4 MR. MAUREY: Yes, but also only if they are in
5 a position to need the rule.

6 The purpose of the rule was to allow for an
7 expedited increase for someone that is potentially
8 underearning so that they can continue to provide
9 quality service to their customers.

10 There is a tight timeframe on this rule, a
11 90-day turn around, and the increase is limited.
12 So there is a finite group of companies that would
13 qualify for use of this rule, but those that would
14 qualify would benefit from it, yes.

15 COMMISSIONER BROWN: Last question.

16 What costs would be eligible for rate case
17 expenses under this rule?

18 MR. MAUREY: Right now, there is a filing fee
19 and there are noticing requirements that would be
20 part of rate case expense.

21 There is no staff report. There is no
22 customer meetings, so some of the costs that you
23 typically see are not present in this, so it's
24 minimal.

25 COMMISSIONER BROWN: We won't start seeing

1 attorney's fees and consultant fees associated when
2 a utility comes in with this?

3 MR. MAUREY: We haven't to date. That doesn't
4 mean that we might not in the future. The
5 limitation that a company must be eligible for a
6 staff-assisted rate case limits this to very small
7 systems. So it's possible one of those small
8 systems may have to engage a outside consultant,
9 but that's not what we've seen to date.

10 COMMISSIONER BROWN: And I imagine that would
11 kind of obviate the intent behind having a LARI.

12 MR. MAUREY: But the petition is -- has been
13 streamlined. This isn't nearly as collaborate as
14 minimum filing requirements in a filing suspend
15 rate case or even thew application for a
16 staff-assisted rate case. So it's -- it's -- it
17 should be a situation that these utilities can
18 handle on their own without the need of consultants
19 or attorneys, but we can't prohibit someone from
20 retaining an attorney.

21 COMMISSIONER BROWN: Thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN CLARK: Thank you, Commissioner
24 Brown.

25 Commissioner Polmann?

1 COMMISSIONER POLMANN: My questions have been
2 answered. Thank you.

3 CHAIRMAN CLARK: Thank you.
4 Commissioner Fay?

5 COMMISSIONER FAY: My questions were also
6 answered.

7 I like this structure, Mr. Chairman. Thank
8 you.

9 CHAIRMAN CLARK: Thank you.
10 All right. Yes, Mark.

11 MR. FUTRELL: Commissioners, this is Mark
12 Futrell with the staff, and I just wanted to
13 clarify one comment Mr. Maurey was -- when he was
14 responding to Commissioner Brown's questions was
15 that staff has held customer meetings regarding
16 these LARI applications that we've seen in the past
17 couple of years. So staff will continue to, if we
18 get future petitions, we will hold customer
19 meetings to fully inform the customers of this, and
20 explain this process.

21 CHAIRMAN CLARK: Good. Thank you.
22 Okay. Any other comments from anyone
23 regarding this or I call for the motion?

24 COMMISSIONER FAY: Mr. Chairman, I have a
25 quick comment.

1 CHAIRMAN CLARK: Commissioner Fay.

2 COMMISSIONER FAY: I think the dialogue on
3 this potential change is appropriate. From what I
4 understand, Ms. Cowdery and the staff worked pretty
5 hard on this process to get this rule-making into
6 the current situation that it's in now. And so the
7 proposed change, although relevant to discuss, I
8 have concerns with going through the entire process
9 and then now, at this point, making a change to the
10 recommendation that's in front of us, but I know
11 rule-making is sometimes a fluid process, so I will
12 let my colleagues decide if that's relevant or not,
13 but I don't have an appetite to make a change based
14 on the recommendation that's in front of us.

15 Thank you, Mr. Chair.

16 CHAIRMAN CLARK: Thank you, Commissioner Fay.

17 Any other comments?

18 I will entertain a motion.

19 COMMISSIONER GRAHAM: Mr. Chairman, I move
20 staff recommendation on Item No. 3.

21 CHAIRMAN CLARK: Do I have a second?

22 COMMISSIONER BROWN: Second.

23 CHAIRMAN CLARK: I have a motion and a second
24 to approve staff recommendation on Item No. 3.

25 Any discussion on the motion?

1 Commissioner Graham?

2 COMMISSIONER GRAHAM: Yes.

3 CHAIRMAN CLARK: Commissioner Brown?

4 COMMISSIONER BROWN: Yes.

5 CHAIRMAN CLARK: Commissioner Polmann?

6 COMMISSIONER POLMANN: Yes.

7 CHAIRMAN CLARK: Commissioner Fay?

8 COMMISSIONER FAY: Yes.

9 CHAIRMAN CLARK: The motion is approved.

10 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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time and place herein stated.

IT IS FURTHER CERTIFIED that I
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I FURTHER CERTIFY that I am not a relative,
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DATED this 8th day of April, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
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