

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180014-WS

INVESTIGATION OF ALLOWANCE
FOR FUNDS PRUDENTLY INVESTED
(AFPI) IN LAKE COUNTY, BY
UTILITIES, INC. OF FLORIDA.

10 PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 13

12 COMMISSIONERS
12 PARTICIPATING: CHAIRMAN ART GRAHAM
13 COMMISSIONER JULIE I. BROWN
13 COMMISSIONER DONALD J. POLMANN
14 COMMISSIONER GARY F. CLARK
14 COMMISSIONER ANDREW G. FAY

15 DATE: Friday, April 20, 2018

16 PLACE: Betty Easley Conference Center
Room 148
17 4075 Esplanade Way
Tallahassee, Florida

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

22 PREMIER REPORTING
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1 P R O C E E D I N G S

2 MS. BRUCE: Good morning, Commissioners. I am
3 Sonica Bruce speaking on behalf of Commission
4 staff.

5 Item No. 13 addresses staff's investigation of
6 Utilities Inc. of Florida's over-collection of AFPI
7 charges and the disposition of the over-collection.

8 Staff recommends that the utility be required
9 to refund the over-collected AFPI charges of
10 \$165,739 with interest in accordance with Rule
11 25-30.360 FAC. The refund should be completed
12 within 90 days of the Commission's vote, and
13 documentation supporting the final refunds should
14 be provided within 10 days of the completed refund.

15 There has been no customer contact. The
16 utility representative Attorney Friedman and OPC
17 will address the Commission.

18 Staff is prepared to answer any questions that
19 you may have.

20 CHAIRMAN GRAHAM: Thank you, staff.

21 Mr. Friedman.

22 MR. FRIEDMAN: Yes. Thank you. I am going to
23 let Jared Deason, who is the Regulatory Manager for
24 UIF to take the lead on this, and I will make a
25 couple of conclusory comments.

1 CHAIRMAN GRAHAM: Sir.

2 MR. DEASON: Good morning, Commissioners. As

3 Mr. Friedman said, I am Jared Deason. I am the

4 Regulatory Manager for Utilities Inc. of Florida.

5 I just wanted to -- I have a few comments about

6 staff's recommendation. They are recommending that

7 we refund approximately \$165,000 that we collected

8 in March of 2017 of AFPI from one specific

9 developer.

10 Just to give you a little bit of background

11 about this was -- at least the way I read staff

12 recommendation. They are relying on PSC Rule

13 25-30.4346, which states we cannot collect the

14 AFPI -- we is AFPI until all the projected

15 calculation -- all the ERCs projected in the

16 calculations have been added.

17 In doing my research on this matter, because

18 actually, this goes back to an order that preceded

19 our ownership by approximately eight years. So

20 when I was doing my research, going back that far

21 back, I think it was 1991, it seems that the rule

22 that was applicable in our specific situation was

23 Rule 25-30.4341(d) which states that AFPI does not

24 cease until we have reached our design capacity.

25 So I think there is a little bit of a conflict

1 between the rule that PSC staff is relying on and
2 the rule that I believe the Commission has relied
3 on in the past, because the rule the staff is
4 relying does not take into account plant
5 expansions, and basically the design capacity
6 increasing over time.

7 In fact, in 1999, when we acquired the system,
8 the design capacity had already reached above the
9 545 that staff mentioned in their staff
10 recommendation, but recognizing the fact that we
11 had plant expansion, the design capacity had
12 increased substantially, we were less than
13 100 percent used and useful, the Commission gave us
14 a tariff, an AFPI tariff so that we could collect
15 for that -- the carrying costs for that nonused and
16 useful plant.

17 This continued on for several years. It
18 actually continued on through two subsequent rate
19 cases, in 2008 and in 2010. In both those cases,
20 we were a little over 50 percent used and useful,
21 and the Commission allowed that tariff to stay in
22 place.

23 Now, moving forward to 2017, when we finally
24 had developer activity after the long recession, we
25 collected approximately \$165,000. At that time, we

1 were approximately 58 percent used and useful.

2 Additionally, we had an approved AFPI tariff that
3 had been consistently used and approved by this
4 commission for, ever since we had owned that Lake
5 wastewater treatment plant.

6 Just looking in general at AFPI. You know,
7 AFPI is collected from developers. So it's not
8 collected from our general customer base. This is
9 strictly from developers. And it's a way to
10 collect for the carrying cost of our prudently
11 invested plant.

12 All the plant expansions that have occurred
13 since we acquired this utility, rate case after
14 rate case, has been deemed by this commission to be
15 prudent investments. This was a way for us to
16 recover that carrying cost.

17 We were consistent with the Commission rules.
18 We were consistent with the Commission approved
19 tariff that was given to us. And as such, we
20 believe that no refund is necessary in our
21 situation.

22 CHAIRMAN GRAHAM: Mr. Friedman.

23 MR. FRIEDMAN: Yeah, a couple of additional
24 comments.

25 As Mr. Deason pointed out, that AFPI is a

1 methodology that this commission developed in order
2 to alleviate the issue with nonused and useful
3 prudently invested plant. And it's the only
4 mechanism by which the utility can get the carrying
5 cost of that plant that's being held for future
6 use. If they don't recover it in AFPI charges,
7 they never recover it.

8 And as Mr. Deason pointed out, there are
9 really three compelling reasons, very simple
10 cut-to-the-chase reasons why this refund to the
11 developer is not appropriate.

12 First, as Mr. Deason pointed out, the utility
13 has always had nonused and useful plant at this
14 particular facility -- sewer facility.

15 The tariff doesn't say anything about stopping
16 at a particular point in time. And so the
17 utility's tariff required them to collect that
18 charge when it was imposed.

19 And number three, they went through two rate
20 cases where service availability charges, including
21 AFPI, were generally reviewed, and the staff didn't
22 recommend any changes to it. The reason they
23 didn't is because the plant wasn't 100 percent used
24 and useful. It was around 50 or 58 percent used
25 and useful all those times. And so the staff looks

1 at it and says, well, they are not 100 percent used
2 and useful, sure, they are entitled to AFPI.

3 Now they come, you know, five years, six years
4 later, or seven years later, and say, oh, by the
5 way, we are going to -- we are going to change --
6 we are going to take away your AFPI, even though
7 they admitted in the last rate case that the
8 utility was only about 58 percent used and useful.
9 They said, now we are going to take away your AFPI.

10 As a result of that, the utility ended up
11 filing a tariff, as you know, and got reinstated
12 AFPI charges, but they start from Dec-- January of
13 2016 would be the first date. And the Commission
14 said that they can collect the AFPI starting in
15 January 2016 until they get to 1,471 ERCs.

16 And what -- what exacerbates the problem with
17 giving a refund is that these connections were made
18 after January 1, 2016. And if we refund those AFPI
19 charges, the utility lost how many ERCs that is off
20 of that 1,471 ERC count, but they are not getting
21 the AFPI for it.

22 So they are getting the double penalty for
23 that. They are getting -- they are getting the
24 ERCs counted off the number that they are entitled
25 to collect AFPI on, and at the same time saying,

1 but you are going to have to refund this AFPI that
2 you collected. And that's -- that's not fair,
3 reasonable or just.

4 These are charges that a developer pays
5 because a developer wants to have committed
6 capacity when they build a system. And until they
7 get a connection that the utility is going to start
8 earning -- being able to earn a return on, this
9 AFPI charge accomplishes that.

10 And if you are going to have a used and useful
11 rule as stringent as you do, then I think you have
12 to have an AFPI rule that allows a utility an
13 opportunity to recover for prudently invested
14 plant.

15 Thank you.

16 CHAIRMAN GRAHAM: Mr. Rehwinkel.

17 MR. REHWINKEL: Yeah, Mr. Chairman, Charles
18 Rehwinkel, Deputy Public Counsel. I have some
19 remarks to make that aren't germane to this issue.
20 I can save them until the dust settles or make them
21 now. What's your pleasure?

22 CHAIRMAN GRAHAM: Let's wait until the dust
23 settles.

24 MS. CHRISTENSEN: All right. Well then, Patty
25 Christensen for the Office of Public Counsel, and I

1 have some comments that are germane to this
2 proceeding, as well as Ms. Vandiver.

3 In Order PSC 2017-0361-FOF, issued
4 September 25th, 2017, in this utility's last rate
5 case, the Commission found that a new docket shall
6 be opened to conduct a full audit in order to
7 determine the amount of over-collection for AFPI
8 charges and the disposition of any
9 over-collections.

10 The key words are, we believe, full audit.
11 However, it appears from the recommendation, at
12 page five, that an investigation was done using
13 data request.

14 OPC believes that an investigation and a full
15 audit are substantively different. And here to
16 address why we believe that a full audit should be
17 completed, as was ordered by this commission in the
18 last rate case, is Ms. Vandiver. And she will also
19 briefly address some of the issues raised by Mr.
20 Deason.

21 Thank you.

22 CHAIRMAN GRAHAM: Ms. Vandiver.

23 MS. VANDIVER: Thank you, Commissioners.

24 My first -- I will first address the issue
25 about the full audit. As you had a specific order

1 in September that required staff to open a new
2 docket and conduct a full audit. Using a term such
3 as full audit means something very special to me.

4 Based on my 30 years experience as a CPA,
5 working in utility accounting issues, including 16
6 years here as head of the Auditing Department, it
7 is my opinion that an audit means something more
8 than a review.

9 I understand staff reviewed the annual reports
10 to determine if the utility reported AFPI revenues
11 for the period covered. Staff further asked for
12 the utility to submit a schedule showing what AFPI
13 was collected. Both of these actions are very
14 helpful in starting an audit; however, they are
15 merely self-reporting by the utility.

16 An audit is defined as an official inspection
17 by an independent body to verify the accuracy of
18 the information. Because AFPI is only charged to
19 new customers connecting for the first time, in
20 order to audit it, an auditor would go to the
21 utility's financial records and find payments made
22 by new customers, and determine the amounts paid
23 and trace those amounts to the tariff and the name
24 of the accounts where these amounts were recorded.

25 This would independently verify the accuracy of the

1 utility's self-reported amounts. Therefore, we ask
2 that a full audit be performed as previously
3 ordered by the Commission in your own order.

4 I second would like to mention the staff
5 recommendation addressed most of the issues that
6 Mr. Deason raised, but I would like to reiterate
7 it.

8 AFPI was approved by the Commission order.
9 The order was specific on how many ERCs the AFPI
10 was approved for. It doesn't really matter that
11 the rule says one thing and that the tariff says
12 something else, your order specifically said this
13 many ERCs.

14 The utility has never come in for a revised
15 AFPI. They've never asked for additional ERCs or
16 additional costs. Therefore, we believe that the
17 staff is correct of its interpretation that the
18 utility is limited to those number of ERCs.

19 Thank you.

20 CHAIRMAN GRAHAM: Mr. Friedman.

21 MR. FRIEDMAN: Yeah, let me just point out,
22 the order doesn't say when you get to 456 ERCs you
23 quit collecting AFPI. I mean, read the order. It
24 doesn't say that. They are suggesting that there
25 is 450 -- 400 -- I am sorry, 545 ERCs left, but

1 they never in here say anywhere that when you get
2 to 546 you have to quit collecting them.

3 Normally, as you know, if you look at the
4 tariffs, the tariffs -- and the utility inherited
5 this tariff. They weren't around when this order
6 was entered. They bought the system afterwards.

7 But if you look at the tariffs today, the
8 tariffs say you collect it up until you get to so
9 many ERCs. Everybody knows the game. Everybody
10 knows the rules, and everybody plays by the rules.
11 But in this particular case, we have a tariff that
12 doesn't have any -- any cutoff. We never have
13 100 percent used and useful, we ought to have
14 always have an AFPI. That seems simple to me.

15 And this is money that Ms. Vandiver said is
16 collected from customers, this is not money
17 collected from customers. This is money collected
18 from developers. So customers aren't going to get
19 any of this money.

20 CHAIRMAN GRAHAM: Staff, any comments on
21 either from OPC or the utility?

22 MS. HUDSON: The comment in regards to what
23 Mr. Friedman just pointed out, that the tariffs --
24 or the order did not specify when you reach 546
25 that it should be discontinued. The nature of the

1 AFPI charges, the mechanical nature is designed for
2 a specific number of ERCs. The calculation is
3 based on a specific number. And if that number
4 changes, then it would be a different AFPI charge.

5 So if the capacity increased over time, that
6 also increased the number of ERCs, so it would have
7 been a different calculation had the utility asked
8 for it to be revised when they increased the
9 capacity of the wastewater treatment plant.

10 As far as the full audit; in the order it did
11 say we would conduct a full audit, and I understand
12 Ms. Vandiver's definition of, you know, what she
13 perceives a full audit to be.

14 And our audit staff, who normally partakes in
15 those type of things do do full audits, but what we
16 did, we did review annual reports and we -- first
17 we asked the utility for -- to provide us the
18 information. How much did you collect from
19 inception of these charges? And what they provided
20 was that they only collected the 165,000. And
21 going back through the annual reports, we matched
22 that up.

23 We could not find anywhere where they recorded
24 AFPI for any other years that -- other than the --
25 well, the 2017 annual report was not available to

1 us at the time. But from that point through
2 inception of the charges, to 2016, we could not see
3 where they over-collected anything outside of what
4 we are recommending here.

5 We also looked at the minimum filing
6 requirements, because they had come in for numerous
7 rate cases, to just kind of get a sanity check of
8 whether or not what had they collected during that
9 time period. So at that time, we just chose to
10 rely on those documents to determine how much --
11 should be reduced funded.

12 MR. FRIEDMAN: The one thing I haven't heard
13 is I haven't heard any explanation for how we went
14 through two rate cases where service availability
15 charges and AFPI were considered, and this was
16 never changed.

17 I mean, obviously, if it would have -- if the
18 staff would have said, oh, you have already -- we
19 blew past that -- by the time the company bought
20 that, by the time they dealt with that rate case,
21 they had already blown past that 545 ERCS.

22 So it's perplexing to me. I mean, if the
23 staff would have said -- told us this back in first
24 2010 rate case, we would have said, okay, we will
25 include a request for an AFPI.

1 We went through two cases, and then they wait
2 until after the crash, and we are finally starting
3 to get some development activity, and all of a
4 sudden now they -- they want to penalize the
5 utility for those charges from the developer.

6 I don't -- I still haven't heard any
7 explanation how they can justify going through two
8 rate cases, and the utility is being prejudiced by
9 that. And I don't think we should have to refund
10 anything to this developer.

11 CHAIRMAN GRAHAM: Ms. Christensen.

12 MS. CHRISTENSEN: Yes, just briefly.

13 Looking at the last order, the order that
14 initiated the tariff filing, it says that it will
15 be 545 residential equivalents until it's built
16 out. And then as staff has pointed, as a
17 mechanical function, that should have ended the
18 AFPI charge.

19 The request to install, or implement a new
20 AFPI charge is really incumbent upon the utility.
21 It's their burden to come in and ask for a new AFPI
22 charge.

23 And we might have an issue here if they had
24 collected any monies during the time period that
25 there were rate cases in the AFPI charge were in

1 affect and the utility had -- it was blessed at
2 that point by the Commission through a rate case.
3 But what we are talking about is this was placed at
4 issue in the last rate case. The Commission staff
5 raised the issue in the last rate case. And my
6 understanding from today's conversation is those
7 charges weren't collected until after the last rate
8 case.

9 So the utility was on notice that the
10 Commission was going to take a look at the AFPI
11 charge and that they had not been appropriate, or
12 needed to be relooked at. So that's why we are
13 here today.

14 I mean, I think the noticing issue that Mr.
15 Friedman is raising is without merit, because it's
16 the utility's burden to know when they -- they've
17 collected the AFPI charge, and/or to request an
18 additional AFPI charge based on the circumstances
19 of additional capacity, and they -- and the utility
20 did neither until recently.

21 Thank you.

22 CHAIRMAN GRAHAM: Commissioners.

23 Commissioners, any questions?

24 Yes, sir.

25 MR. DEASON: I just want to respond to Ms.

1 Christensen's statement. She made a statement that
2 we collected this AFPI after the last order. That
3 is incorrect. The order came out in September of
4 2017. This AFPI was collected in March of 2017, at
5 a time when we had an approved tariff by this
6 commission.

7 CHAIRMAN GRAHAM: Mr. Rehwinkel.

8 MR. REHWINKEL: Yes. Thank you, Mr. Chairman.

9 It's -- Mr. Kelly can't keep good help. This
10 is a mixed -- a day of mixed sadness and happiness.
11 We believe this will be Ms. Vandiver's last agenda
12 after serving the public for 35 years, 26 of them
13 with this commission, and nine -- the last nine
14 with the Public Counsel's office.

15 She's already given you her qualifications
16 that I was going to mention, that she was the Chief
17 of Auditing here for many years. And again, just
18 like Ms. Merchant, she was trained by -- or
19 supervised by the best, Dale Mailhot, when she was
20 here.

21 And where at legal, we would probably try to
22 coerce her into staying much longer, but she has to
23 leave based on her commitments that she made. We
24 are sad to see her go, but I saw Ms. Merchant at
25 her retirement dinner, and she had a big smile on

1 her face, and I think Denise will have the same
2 thing, and we wish her happiness. And we want to
3 thank her before everyone that she has served here
4 today for her service.

5 Thank you.

6 (Applause from the audience.)

7 CHAIRMAN GRAHAM: Denise, I know you were
8 probably one of the first faces I saw my first
9 hearing eight years ago. And you have been -- you
10 have definitely been one of those constants. And I
11 have always appreciated the information. You
12 always seem like you do a deeper dive than most.
13 And not that we always necessarily come to an
14 agreement at the end, but I do know that you are
15 very diligent, and you -- and I think you provide
16 very good information to us, and you have been very
17 helpful.

18 MS. VANDIVER: Well, thank you very much.

19 CHAIRMAN GRAHAM: Commissioner Brown.

20 COMMISSIONER BROWN: I just want to add to Mr.
21 Chairman's comments. And I do believe that you
22 have made a difference for the entire state of
23 Florida. So thank you so much for your service and
24 dedication to all citizens here.

25 MS. VANDIVER: Thank you, too.

1 CHAIRMAN GRAHAM: And good luck on your future
2 endeavors.

3 MS. VANDIVER: Okay.

4 CHAIRMAN GRAHAM: Okay. Back to the -- the
5 item at hand. I am ready for a motion on Item 13.
6 Commissioner Brown.

7 COMMISSIONER BROWN: I would move to approve
8 staff recommendation on all issues.

9 COMMISSIONER POLMANN: Second.

10 CHAIRMAN GRAHAM: It's been moved and seconded
11 to approve staff recommendations on all issues.

12 Any further discussion?

13 Seeing none, all in favor say aye.

14 (Chorus of ayes.)

15 CHAIRMAN GRAHAM: Any opposed?

16 (No response.)

17 CHAIRMAN GRAHAM: In by your action, you have
18 approved staff recommendation on Item No. 13.

19 Question for staff on parliamentary
20 proceeding, question on Issue No. 9, Item No. 9.
21 We had a motion and a second on the table before I
22 deferred it. Do we need to withdraw those motions,
23 or the deferral just stands on its own?

24 MR. BUTLER: I don't recall it being seconded.

25 CHAIRMAN GRAHAM: It was seconded.

1 MR. BUYS: Was it?

2 CHAIRMAN GRAHAM: Yeah, I seconded it.

3 MR. BUYS: Okay. All right.

4 CHAIRMAN GRAHAM: Do we need to withdraw
5 those?

6 MR. HETRICK: I don't think you need to
7 withdraw them because you actually didn't act on
8 them, so you deferred it, and that was your final
9 action.

10 CHAIRMAN GRAHAM: I just wanted to make sure
11 that was done.

12 All right. It is 11:33 by that clock. We
13 have IA in the IA room. Let's do that at 11:45, so
14 12 minutes.

15 We are adjourned. Thank you very much.

16 (Agenda item concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)

4

5 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED this 1st day of May, 2018.

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DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020

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