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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100049-WS

PETITION FOR APPROVAL OF CHANGE
IN REUSE RATE BY AQUA UTILITIES
FLORIDA, INC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 13

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, August 31, 2010

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
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P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** And we will move to
3 Item 13.

4 Ms. Thompson, you're recognized.

5 **MS. THOMPSON:** Good morning,
6 Commissioners. I'm Kaley Thompson with staff.

7 **CHAIRMAN ARGENZIANO:** Good morning.

8 **MS. THOMPSON:** Item 14 is staff's
9 recommendation addressing Aqua Utilities Florida,
10 Inc.'s petition for approval of a change in their
11 reuse rate. Staff analyzed the facts of the case
12 and believes that establishing a zero cost for reuse
13 is in the best interest of the general body of
14 ratepayers. Staff recommends the Commission should
15 approve a special reuse rate which would allow Aqua
16 Utilities Florida, Inc. to provide effluent to South
17 Seas Island Resort at no cost.

18 Representatives of the company are here
19 and are available to answer your questions.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Madam
22 Chair. Madam Chair, I just have a few questions for
23 staff as it pertains to this recommendation.

24 Staff, on Page 2 of the recommendation, at
25 the bottom of the first paragraph it states that the

1 current reuse agreement with SSIR was executed with
2 the understanding that all costs to pipe and deliver
3 the effluent to SSIR would be borne by AUF, and that
4 SSIR would pay for the volume of effluent delivered
5 pursuant to the reuse rate set forth in AUF's
6 existing tariff.

7 And that's the staff's understanding of
8 the original agreement, is that correct?

9 **MS. BRUBAKER:** That's the understanding
10 that was conveyed to us, yes.

11 **COMMISSIONER SKOP:** And I believe that a
12 situation has arose where the SSIR Golf Course uses
13 the effluent for irrigation, and there is an
14 existing tariff, is that also correct?

15 **MS. BRUBAKER:** That is also correct.

16 **COMMISSIONER SKOP:** Okay. Now, this
17 tariff, I believe, has been in place since 1989, is
18 that correct?

19 **MS. THOMPSON:** (Indicating affirmatively.)

20 **COMMISSIONER SKOP:** And on Page 3 of the
21 Staff Recommendation, in AUF's last rate case the
22 current reuse rate was approved, as it states by
23 footnote in the order, and then according to AUF's
24 petition, SSIR has refused to pay AUF the tariffed
25 rate for the effluent since November of 2006 despite

1 AUF's diligent efforts to collect its tariff reuse
2 rate from SSIR. And that is also correct, right?

3 **MS. THOMPSON:** That is correct.

4 **COMMISSIONER SKOP:** And then a little bit
5 further down on the page that according to AUF's
6 petition, SSIR continues to assert that it is
7 entitled to receive effluent from AUF's wastewater
8 treatment plant at no cost. And further down on
9 that page, AUF had offered a payment plan to SSIR,
10 which they rejected, and also SSIR has made it clear
11 that it will cease to allow AUF to dispose of its
12 effluent on the SSIR Golf Course if AUF continues to
13 insist on imposing and collecting its tariffed reuse
14 rates, is that correct?

15 **MS. THOMPSON:** That's correct.

16 **COMMISSIONER SKOP:** Okay. And if that
17 were to occur due to environmental regulations, it's
18 my understanding that AUF has to take the effluent
19 and dispose of it elsewhere causing its customers
20 additional money, is that correct?

21 **MS. THOMPSON:** That's correct.

22 **COMMISSIONER SKOP:** Okay. So, I think
23 that -- I think, you know, in a nutshell it seems
24 like that the SSIR golf course refuses to honor the
25 contractual agreement, won't pay its past due

1 amounts, and asserts that it will deny AUF the
2 ability to continue to dispose of its effluent on
3 its property, and that will cause the AUF customers
4 to incur the disposal costs we talked about.

5 It seems like this is, you know, torn up
6 in a contractual issue and that the staff
7 recommendation, you know, seeks to change the reuse
8 rate to set it back to zero. And I think that's the
9 basis of my discussion, because I am wondering, you
10 know, if there might not be a better option that
11 would be win/win for all the parties for AUF, for
12 the golf course, and for AUF's customers.

13 Now, obviously absent litigation, which
14 the Commission has no jurisdiction to enforce a
15 contract amongst the two parties, absent litigation
16 in a county court to seek enforcement of the
17 agreement, you know, AUF needs an option and SSIR
18 has refused to pay. So from a financial benefit
19 perspective, in the near term, absent litigation, it
20 does not seem that AUF would be able to collect the
21 disputed amounts from SSIR. And so as a result of
22 that, the default looking at the risk/reward, and
23 absent litigation, I think staff is recommending we
24 will just change the tariff back to zero.

25 I guess the question I have for probably

1 Ms. Thompson or Mr. Willis is that in the regulation
2 of rates -- when rates are set, utilities,
3 particularly water utilities also have their taxes
4 paid, is that correct, by customers?

5 **MR. WILLIS:** That's correct, Commissioner.

6 **COMMISSIONER SKOP:** Has anyone given a
7 thought to instead of looking at this from a
8 financial benefit perspective, looking at the tax
9 benefit that might be achieved in the
10 recommendation? And where I'm going with this --
11 and this gets into perhaps a win/win -- is certainly
12 the reclaimed water has a value set forth by their
13 reuse tariffed rate, or reuse rate tariff, and that
14 value is well established. That is \$3,053 a month
15 which works out to \$36,636 a year.

16 Now, it seems to me that, you know,
17 pursuant to the underlying agreement, AUF has
18 incurred all the costs for the piping and the
19 pumping to deliver and the other side is just in --
20 you know, for lack of a better word, breach where it
21 says we are not honoring the terms of our agreement.
22 All right. So where does that leave us? AUF is
23 stuck with effluent that it otherwise has to dispose
24 of, SSIR wants it for free, and the customers have
25 to pay either way.

1 And it would seem to me that if SSIR
2 refuses to pay, and if AUF wants to avoid litigation
3 on this matter, then perhaps AUF could just merely
4 donate that amount to the golf course, or a gift in
5 kind, and I wonder whether that would have a
6 positive tax benefit to reduce taxes at the
7 effective tax rate that would benefit AUF's
8 customers.

9 So that's kind of where I'm going with
10 that, because obviously one party doesn't want to
11 pay, the effluent has value, a cost to dispose of it
12 otherwise, but it seems to me maybe a happy
13 compromise is SSIR doesn't want to pay, AUF agrees
14 give this to them, but there is a value. And, you
15 know, if it were a donation, perhaps there may be a
16 resulting tax benefit that might accrue to AUF that
17 could be passed through to lower its tax allocation.
18 I'm kind of thinking outside the box. It may not be
19 workable.

20 **MR. WILLIS:** I understand where you are
21 coming from, Commissioner, but AUF currently is
22 incurring the cost of pumping, electricity, the
23 whole works to treat that effluent, and that is
24 already a write-off as far as they are concerned as
25 an expense on their tax return. So they are getting

1 the tax benefit that way.

2 The benefit is only there if you can sell
3 it. The problem we have here is we have a contract
4 between AUF and the company, or AUF and the golf
5 course that I understand that isn't very clear. It
6 requires the golf course to take the effluent, it
7 doesn't say you have to pay for the effluent. And
8 it may be a poorly written contract, but the problem
9 is inherent in the contract.

10 We also have a water use permit that isn't
11 very clearly written to allow the golf course to be
12 required to take that reuse first. I looked at the
13 contract, the water use permit this morning just to
14 get ready for the agenda, and it appears to me from
15 reading it, it looks like the golf course has got a
16 water use permit right now to extract 7.5-something
17 million gallons from the aquifer if 13 million
18 gallons of reuse isn't available.

19 The point there is that my understanding
20 from talking to staff is that the golf course
21 apparently doesn't need the full amount of reuse
22 and, therefore, it is quite happy with its
23 7 million gallons. So with that in place, there is
24 nothing to restrict the golf course and requiring
25 them to take the effluent.

1 **COMMISSIONER SKOP:** I understand. But I
2 think staff is, perhaps, missing my point. My point
3 is I have read that, and that is on Page 3 of the
4 staff recommendation. I know what the situation is.
5 You know, certainly they can pump from the aquifer,
6 that's not preferable.

7 The dispute here is whether the agreement
8 is enforceable and under the reuse rate tariff as to
9 the amount, and what I'm saying is obviously there
10 is a value, intrinsic value into the effluent, it's
11 just the one party refuses to pay and says we are
12 going to pump from the ground and we won't take it.
13 Well, I understand the ramifications of that. But
14 what I'm also looking at instead of, you know,
15 merely setting the tariff to zero is trying to find
16 a win/win. It seems to me that you just asserted
17 that they're writing off the cost of pumping and the
18 electricity. Well, that write-off is probably small
19 in comparison to what the tariffed rate is of \$3,053
20 a month.

21 So, again, getting to my central question,
22 which, again, is a subtle but important point,
23 everyone wins if you take a tax benefit from this.
24 No one has to pay. You know, AUF delivers it, SSIR
25 is happy because they don't have to pay their pump

1 to run their irrigation to pump from the aquifer, so
2 it's a cost savings to them. So it's merely a
3 donation. Call it a gift in kind; call it just an
4 outright donation, but it's a donation with a value
5 as set by the tariff that is currently in force -- I
6 mean, currently in place.

7 It seems to me that if you just
8 deliver it, it has value. Even you don't get paid,
9 call it a donation and that serves to reduce your
10 taxable base at the effective corporate tax rate,
11 which would arguably help AUF customers, I think.
12 Maybe I'm wrong.

13 **MR. WILLIS:** And, Commissioner, I didn't
14 go far enough with my answer with you. The benefit
15 is there, but the part you're talking about is the
16 part the company is writing off as a bad debt
17 expense each year. They are taking the exact amount
18 of the tariff rate and should be writing that off as
19 a bad debt expense, so it is coming off the tax
20 return.

21 **COMMISSIONER SKOP:** But bad debt is debt
22 that has been incurred not on a forward-going basis,
23 and what I'm looking at -- I don't care about the
24 bad debt. Yes, I agree the bad debt could be
25 written off as a provision. I'm talking about what

1 happens on a forward-going basis. Obviously they
2 can take a bad debt expense and write it off against
3 their taxes and incorporate that into rates, and
4 that is the very crux of what I'm talking about
5 here. That works for costs that have been accrued
6 today. Account receivables, you are writing them
7 off, okay?

8 On a forward-going basis, if you set the
9 tariff to zero, there is no benefit that accrues
10 going forward, and that's where the donation part
11 becomes important because it provides a tax benefit.
12 So I'm asking whether staff has, perhaps, looked at
13 this a tax benefit analysis or the company to the
14 extent that it's a win/win. It causes no parties
15 harm, and it's just merely, hey, we have got
16 something of value we are just giving you, and we
17 are going to use it for our tax benefit. It costs
18 you nothing, and it helps our customers at the same
19 time.

20 Mr. May, do you have anything?

21 **CHAIRMAN ARGENZIANO:** Perhaps.

22 **COMMISSIONER SKOP:** I didn't notice him.

23 He's got a mustache.

24 **MR. MAY:** Thank you, Commissioner Skop and
25 Madam Chairman.

1 Just to be clear, and I think you picked
2 up on this, Commissioner Skop. Not only are we
3 taking bad debt expense, we are also accruing the
4 revenue as if the revenue were coming into the
5 company. So we are actually paying income tax on
6 really phantom revenue there.

7 I haven't personally looked at the income
8 tax benefits to the customers. I'm not an
9 accountant; I'll confess that at the front end. We
10 are not opposed to looking at that from a win/win
11 perspective and think it might be something that we
12 could look into further, but at this juncture we
13 have not looked at that.

14 **COMMISSIONER SKOP:** Madam Chair.

15 And, thank you, Mr. May. Again, that was
16 my concern that I thought that you might be
17 accruing, as you astutely stated, phantom revenue
18 that would never be collected, that would be merely
19 written off to bad debt, which would be ultimately a
20 tax write-off. And that doesn't help the company
21 when you're projecting revenues that don't exist.

22 But, again, if this effluent has a value,
23 and it's consideration afforded to the golf course
24 and they refuse to pay, then if it were donated to
25 them, then it would not be revenue to the company,

1 it would just be merely a donation which I believe
2 would be -- you know, be able to be deducted on the
3 taxes which might ultimately enure to a lower tax
4 accrual for the company on that particular
5 wastewater facility, if you will.

6 And I don't think that harms the company.
7 I think, if anything, it helps the customer. I
8 think it is just merely you have got to do something
9 with this, and it is more expensive to haul it away.
10 So if you find a win/win where everyone benefits
11 from this, you benefit because you get to dispose of
12 it on the island, and we have been to that facility
13 before when we had the service hearing out there.
14 The golf course wins because they get free
15 irrigation that otherwise would cost them money.
16 And the consumer wins because they get an
17 incremental benefit on a reduced tax for that
18 particular system. So it seems to me that it might
19 be something that might want to be explored, and I
20 don't know what the effective corporate tax rate is,
21 but I imagine it's about 36 to 40 percent for there,
22 but I don't know.

23 But, again, I thought it was a question
24 worth asking in light of, you know, the good faith
25 effort that AUF has put forth to try and resolve the

1 agreement, and, you know, the contract is what it is
2 and may or may not be enforceable. No one wants to
3 get into litigation, so it seems to me if you have
4 an arm-shake agreement and you have set something
5 and you have a value, then that is just merely a
6 donation and it can be deducted and we know what
7 that value is, so --

8 **CHAIRMAN ARGENZIANO:** Okay. Saying that,
9 where does that leave us, a recommendation?

10 **COMMISSIONER SKOP:** Yes. If this is
11 non-time critical, maybe that is something the
12 company could explore. I wouldn't expect a lot of
13 effort would need to be dedicated to that on the
14 company's part or staff's part, but it seems to me
15 that, you know, you strike that bargain everyone
16 wins. But, you know, again, I don't want to tell
17 the company what to do.

18 **CHAIRMAN ARGENZIANO:** Mr. May.

19 **MR. MAY:** Again, this is the first time I
20 have been confronted with the issue, and I
21 appreciate the thought. Just a couple of
22 challenges, I think, that we will have to go through
23 if we proceed down this path. One, I think we'll
24 have to come to grips with valuing the donation,
25 what is the value of the donation. That is

1 challenge number one. That may be overcome.

2 I think the more problematic obstacle is
3 that the company may have to get a ruling from the
4 IRS, and we'll need to look to at how other
5 utilities are treating this zero rate for purposes
6 of their taxes. So there are other utilities with
7 zero rate for reuse, so without looking at that
8 closer I'm a little bit reluctant to say we can do
9 this.

10 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you.

12 And thank you, Mr. May. And I think that
13 that was my concern with just arbitrarily setting
14 the reuse rate tariff to zero. If it is maintained
15 at what it currently is, then there is a value, so
16 that provides the basis for valuing the donation.

17 Now, certainly the company is not
18 precluded from having an agreement, which it already
19 does, that would say, hey, we're doing this because
20 it is more expensive otherwise, but, you know, we
21 recognize the value per the tariff, but we're not
22 going to make them pay because of our unique
23 situation. So I think that the existing tariff
24 provides a valuation, and I think that from a tax
25 perspective, you know, given that we have regulatory

1 authority provides adequate valuation of what that
2 gift in kind or donation would be worth on a monthly
3 basis. But, again, it's just an idea. I think it's
4 a good one, but, you know -- because ultimately if
5 there is a benefit and there is a donation, then
6 everyone wins including the customer.

7 **CHAIRMAN ARGENZIANO:** Again, where does
8 that leave us?

9 Commissioner Edgar.

10 **COMMISSIONER EDGAR:** Madam Chair, thank
11 you.

12 I would suggest that the staff
13 recommendation, which includes a valuation of zero,
14 was not arbitrary. I do know some analysis probably
15 went into that. But my thinking at this time would
16 be to move forward with the staff recommendation,
17 but yet with the further direction that the staff
18 continue to work with the company, as they always
19 do, and look into the issues that Commissioner Skop
20 has brought up and see if down the road as more
21 information is gathered if, indeed, that might a
22 change or a suggestion worth bringing forward.

23 **CHAIRMAN ARGENZIANO:** Is that a motion?

24 **COMMISSIONER EDGAR:** And I can put that in
25 the form of a motion, or consider it in the form of

1 a motion.

2 **CHAIRMAN ARGENZIANO:** Do we have a second?

3 **COMMISSIONER BRISÉ:** Second.

4 **CHAIRMAN ARGENZIANO:** Okay. Discussion?

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam
7 Chairman. Again, I respect what staff has done. I
8 think merely setting the tariff rate to zero is just
9 recognizing the fact nothing more than SSIR has
10 refused to pay has really probably not a lot of
11 thought given to it other than the fact that the
12 situation is what it is.

13 But, again, I think that, you know, I
14 would have supported a deferral to, you know, have
15 perhaps the company take a look at striking a
16 win/win with the golf course. I think it benefits
17 the ratepayers, and I'm not so sure that this would
18 ever get thoroughly looked at by approving the staff
19 recommendation, so I'll vote my conscience on the
20 motion. Thank you.

21 **CHAIRMAN ARGENZIANO:** Let me just -- Mr.
22 Marshall. I don't why I want to keep calling you
23 Mr. Marshall.

24 Mr. Willis.

25 **MR. WILLIS:** It's okay with me.

1 Commissioner Skop, to your last response,
2 there is a rate case coming in the door in September
3 where that can actually be addressed for this
4 system; so if it doesn't get addressed here, we can
5 address it there.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop
7 brings up a good point. It's a valid point to look
8 into and I'm sure the company would think it was,
9 and it's incumbent upon them, also, to do that, I
10 would imagine. And for us for the ratepayer, if it
11 is a benefit for the ratepayer, something to look
12 at.

13 But we have a motion. Is there any other
14 discussion? All those in favor of the motion say
15 aye.

16 Aye.

17 **COMMISSIONER EDGAR:** Aye.

18 **COMMISSIONER GRAHAM:** Aye.

19 **COMMISSIONER BRISÉ:** Aye.

20 **CHAIRMAN ARGENZIANO:** Opposed?

21 **COMMISSIONER SKOP:** Aye.

22 **CHAIRMAN ARGENZIANO:** Okay. Show the
23 motion passing.

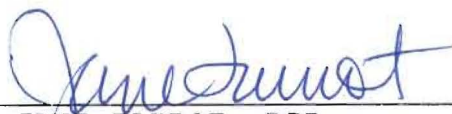
1
2 STATE OF FLORIDA)
3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)
5

6 I, JANE FAUROT, RPR, Chief, Hearing Reporter
7 Services Section, FPSC Division of Commission Clerk, do
8 hereby certify that the foregoing proceeding was heard
9 at the time and place herein stated.

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

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

20 DATED THIS 6th day of September, 2010.

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23
24
25


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