BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140239-WS

APPLICATION FOR STAFF-ASSISTED RATE CASE IN POLK COUNTY BY ORCHID SPRINGS DEVELOPMENT CORPORATION.
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PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 4

COMMISSIONERS PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Thursday, November 5, 2015

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

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

MS. THOMPSON: Good morning, Commissioners. Kelly Thompson on behalf of Commission staff.

Item 4 is Orchid Springs' request to increase water and wastewater rates in Polk County. Orchid Springs is a Class C utility that has been providing service since 1969 and under Commission jurisdiction since 1998. The utility serves approximately 310 customers.

Ms. Steve Cassidy and Carol Rhinehart are here on behalf of the utility, and Trish Merchant and Charles Rehwinkel are here on behalf of OPC. I believe both parties would like to address the Commission. Staff is prepared for any questions.

CHAIRMAN GRAHAM: Thank you, staff. Orchid Springs.

MR. CASSIDY: Mr. Chairman, I'm Steve Cassidy. To my left, my sister Carol. We appreciate the opportunity to be heard this morning. Orchid Springs is a Class C utility. We have 330 metered services that service a little over 520 customers. I wanted to be clear on that because I believe Kelly mentioned that there was only 330 customers. That's our metered accounts. 520 approximate customers that we service.

We last had a rate case in 1998, some

16.5 years ago, and it's come to the point now where we had to apply for a SARC and submitted it December 11th of 2014 just simply because of continuing operating losses that we've been incurring year over year. A lot of that has been the result of costs that we have incurred from the City of Winter Haven where we send our wastewater. Those increases have been significant. And then simply because of the age of our system, it is now 46 years old, it's requiring a lot more expense in maintaining it.

So we've got to -- we've come to that place where we cannot continue to operate on a loss year over year. We have currently -- we started off 2014 with retained earnings of negative $402,000. We finished the test year with a net loss of $40,000. So our total capital at the end of 2014 was negative 442,000 bucks. We just cannot continue to, you know, feed, you know, this utility. We need to, you know, take the steps necessary to get our revenues to a level where it can support itself.

When I look at the test year revenues, we did 215,000 in revenue. Our total expenses, and I'm taking this off of our 2014 annual report, we incurred 255,000 in total expenses, and that's where our negative 40,000 operating loss came from. What that doesn't reflect is that for the past eight years beginning in 2008 we suspended paying the management fees that were allowed in the '98 SARC, so the president, the secretary, the utility manager and our accountant have not been paid out of the utility. It's been one of those jobs that we just do. This is a legacy asset from back in the day when my dad developed this particular community. It's been 100 percent developed out since the '80s, and it's just remained in our family throughout time.

So we come here today and want to appeal to the Commission. I know the staff has been very, very good to work with. We had a great relationship with Amber Norris in accounting, Traci Matthews in engineering, especially Kelly Thompson in economics. Very, very good relationship that we had working with staff. I commend them. They did a great job.

However, when I looked at the recommendation that staff has presented to the Commission this morning and I look at the revenues that they are approving, the appropriate revenues that they are calling for, it puts us in a predicament where we're going to be -- we're going to continue to lose money in this utility. And let me just explain.

If I take the test year expenses of 255,000 and I add to that the management fees that we had suspended and begin charging those like we were -- had been allowed to under the '98 SARC and then I added to that a rate -- a return on equity that we're allowed to collect on the monies that we've had to loan to the utility to keep it operational and then add to that the rate of return that we're allowed to make on our water and sewer rate base, I show that my revenue should be approximately $409,000. The staff is recommending $292,000.

So, you know, I appreciate the fact that it is a significant increase from the '98 level, but it's still significantly less than what we need to continue to operate as a viable utility and provide the level of service to our customers that they need.

CHAIRMAN GRAHAM: Before I go to OPC, staff, would you like to comment about the revenue requirements?

MS. NORRIS: Without specific, you know -- I guess, focusing, going back to management fees this is something, and Mr. Cassidy referred to in adding the additive amount from the '98 SARC, we certainly -- especially, you know, it has been a while. They're changing in the management structure of the organization. Now a lot of outside work is done by the City of Winter Haven per contractual services agreement.

We really, you know, go back and take a look at that from a narrow perspective now and look, and certainly did those data requests to see what type of changing in operations would reflect a more commiserate salary at this point in time.

As I said, you know, a big part of that was the switchover. The wastewater treatment plant did go -- the service by the City of Winter Haven now. The City of the Winter Haven, as a part of those two agreements, also provides, you know, a lot of contractual services for the utility. So there are many aspects going back to the '98 SARC that no longer applied in the management fees that were provided as well as some additional contractual. That specifically, you know, in addressing that, but certainly when test -- or when staff looks at the audited test year, not so much the annual report, you know, we certainly -- as the recommendation encompassed different adjustments, some expenses were capitalized. So it's not always going to reflect, you know, back onto the annual report.

Certainly we're open to specific, I guess, examples of any expenses they feel maybe were not adequately examined, but I think at a broader level that's speaking to, you know, some of the specifics I did hear.

CHAIRMAN GRAHAM: I guess my question to you is there is no new -- this is not no -- this is not new information to you.

MS. NORRIS: Correct. Right. We have -- you know, we did hear concerns from the utility about the management fees specifically, you know. But like I said, that's more -- you know, specifically what I can recall as far as looking at those expenses. But like I said, I do know there were certain expenses we ultimately capitalized or amortized that would decrease that total expense.

CHAIRMAN GRAHAM: Mr. Cassidy.

MR. CASSIDY: Mr. Chairman, in 1998 the Public Service Commission approved us for the following management fees: The president, 25,000 a year; the secretary, 26,000; the utility manager, 15,000; and a bookkeeper for $1,872. For the past eight years we haven't charged that to the utility because it didn't have the money to pay it.

When we submitted our SARC in December of this year -- I mean, of last year, we had requested an increase on those numbers to 28,000 for the president, 31 and some change for the secretary, 20,500 for the utility manager, and 2,500 for our bookkeeper. It was an increase of approximately 13,000 over what had previously been approved in 1998. When we received the staff recommendation, that number had been reduced to -- the president could charge 10,400. The argument there being that, you know, I put ten hours a week into the utility and an appropriate pay for my time and services was 20 bucks an hour, which I find kind of offensive.

The secretary, that was increased. They increased that to 31,694. The utility manager basically stayed the same, and they gave no consideration for the bookkeeping service that's provided. So instead of going from 67,872 in management fees to the 82,736 that we requested, staff reduced that number to 57,000. That's 10,000 less than what we were approved for in 1998, and I just have a problem with that.

Now staff did mention to you that in 2008 we were under a consent order from DEP because our perc ponds were insufficient to handle the amount of treatment that was required and we were unable to treat the volume of wastewater coming into our plant. So we ended up doing a deal with the City of Winter Haven where we now send them our wastewater. When we did that, we no longer had to have a plant manager -- or plant manager -- operator, a plant operator. So in the '98 SARC we had -- there was a $34,000 allowance for the plant operator. That's gone away and that is not included in my numbers. So that expense we don't have. It's not reflected in the numbers that I've given you previously. But the services and the work and the effort that we perform on a daily basis has not changed. The only thing that's changed is we don't have a plant operator because our wastewater goes to the City of Winter Haven today. So I don't understand why our services, the time that we put into running this facility would be reduced from the '98 level and not increased.

You know, the amount of time that it takes today to manage this utility is becoming greater, not less time intensive because of the nature of the system. The system is 46 years old. We have to now start looking into, you know, phased capital improvements of both the water distribution as well as the sanitary sewer systems in order to keep, you know, the system, you know, working properly.

I don't know how I can do that. If I'm not going to get paid for my time, if I'm not going to be able to generate the revenues that we require to pay our bills and be able to retire the note payable, I just -- I'm at a -- I'm just scratching my head. I don't understand where we're at in terms of the amount of revenue that the staff is recommending that you approve today because it's sufficiently below -- or significantly below a level that I find to be appropriate.

CHAIRMAN GRAHAM: Thank you, sir.

OPC.

MR. REHWINKEL: Thank you, Mr. Chairman and Commissioners. We're here today in a supportive mode. The Public Counsel here is only here to ask you that you not include in the PAA order that you issue in this case the language that appears on page 20 of the staff recommendation under Issue 6 that is contained in the sentences that are in the first 14 lines of that paragraph. So it's everything up to the word "Therefore, staff believes the costs." Everything before that we would ask that you strike. And the reason for that I'll explain.

The Public Counsel does not object to the bottom line of this staff recommendation nor the bottom line on Issue 6 related to the amortized expenses. The staff is proposing to defer and amortize the costs related to the wastewater treatment plant removal costs. We concur in this result. We believe that this is a reasonable accounting adjustment based on the fact that these costs are properly considered costs of removal, which is functionally a component of depreciation. As such, the utility is entitled to recover these costs over the life of the asset. And if the normal depreciation expense does not fully recover such costs over that life, they can be amortized over a reasonable time period. We believe that time period should be left to your discretion based on alternatives that the staff has given you, but, if asked, we would support the 15 years.

The language that the Public Counsel asks to be stricken is overly broad and could result in unintended consequences in the ratemaking for water and even electric companies. While we understand the intent behind the language and we laud the staff's efforts to achieve a just result, the potential exists for unwarranted expansion of the Environmental Cost Recovery Clause statute for both water companies and electric companies.

This language that we've asked that you take out by its unlimited reach back and the elimination of the pre-approval requirement for deferring costs could further undermine the principles of deferral accounting and the implementation of the environmental cost recovery statutes that have served the regulatory process in Florida well over decades.

Furthermore, and this is important, by

removing the language and instead utilizing principles of depreciation accounting the specter of retroactive ratemaking is avoided. For these reasons, we respectfully ask that the staff recommendation be amended in substantially the form that we request. Our position of support can be acknowledged in your order. Even though we are not a party, we are prepared to intervene in this docket solely for the purpose of litigating this issue because of its importance. We hope to avoid that by modification, and we think that gets the company where they need to be in a cost recovery position that is reasonable and just. Thank you.

CHAIRMAN GRAHAM: Thank you.

Staff, would you like to speak to OPC's concerns?

MR. FLETCHER: Commissioners, Bart Fletcher with Commission staff. Particularly with the language there on page 20 in the first 13 lines there, staff believes that there's no error or omission there as it relates to accounting standard codification 980 that has superseded the former predecessor accounting standard FAS 71.

In this one with regard to the retroactive ratemaking, the point that was brought up when you have a statute that gives a clear authority for full recovery, we don't believe that there can be -- there wouldn't be any retroactive ratemaking because the statute says if it's environmental compliance costs, you get full recovery of it. We believe in NEC 980 that because the standard had changed this is the forum in this rate proceeding, even though the cost had occurred over a period of time of 2008, '09 and '10, that this is the forum for the utility to seek that rate relief in accordance with the statute 367.2(a)(2)(c), and it's -- they shall recover the environmental compliance cost is what the statute says. This was basically covered in the DEP consent order. It was revised over a period of time, several years, and the ultimate plan was, that generated this cost, a significant amount of this cost was that perc pond had to be -- the sludge had to be removed from the pond and then filled. And that's predominantly at least 78 percent of the cost -- 77, 78 percent of the 122,250 relates to that.

That is, in staff's mind, an nonrecurring expense, and under the new ASC 980 it is permissible at this time for the utility to get recovery in rates in accordance with the -- that accounting standard as well as the statute granting full recovery.

I will note that the standard is out there in

980, it's just reflected kind of here in the staff's recommendation. But regardless, it is what it is. If -- it being in the rec or not being in the rec, that is the standard.

CHAIRMAN GRAHAM: Ms. Merchant.

MS. MERCHANT: Thank you. I guess I was wondering what is the language in the standard that Mr. Fletcher is referring to? Because my understanding is that generally accepted accounting principles dictates what you should capitalize and what you should expense. And if you want to do something different, this is my understanding of -- I don't know the accounting standard number anymore. It used to be FAS 71. They recodified it and it has a different number now. But if you wanted to do something different, you had to come into the Commission and ask for an order to get approval to defer something that was normally required to be expensed or if you wanted to capitalize something that was normally required to be expensed. To get any kind of deviation from generally accepted accounting principles you had to have a specific order from the Commission. The Uniform System of Accounts for water and wastewater utilities, for Class A utilities and B, require if you're going to defer something that's normal -- normally expensed, you have to have Commission approval. You just can't do it unilaterally on your own.

And that's -- so those are the two things. We're concerned about the theory of blanket approval to defer something on your own -- the utility's own basis without coming in to the Commission. But we really don't believe that that's the issue in this case. We believe this is a capital cost. It's the cost of removal, and the Uniform System of Accounts also instructs the Commission or the utilities how to account for that, and they have to add it back into accumulated depreciation. But if it's an asset that's gone away, then you've got to deal with that. It's no longer a viable asset and you've got to set up some type of schedule, as Mr. Rehwinkel said, to amortize that over some time.

We think the end result is a reasonable result of what the staff is doing. The 15-year amortization period is essentially what it would be if it were booked into that same plan account. So that's why we believe that that's reasonable. We just don't agree with the language specifically regarding the deferral that a company could do that on their own basis without coming in to the Commission. And that's why we're asking just for the language to be removed because, you know, this is a small water and wastewater company. If we want to get into this issue, it would be a better issue to develop when you had a bigger company where you could actually dispute that in a, you know, a larger forum, so to speak, but not in a staff-assisted rate case, and that's basically why we want to have the language removed. Okay. Thank you.

CHAIRMAN GRAHAM: Mr. Rehwinkel.

MR. REHWINKEL: Mr. Chairman, I don't disagree with what Mr. Fletcher says. I don't think staff is wrong. We are only asking that in this case you can get to where you need to be without any unintended consequences occurring if you just take the language out because we think that staff has done the right thing.

So I'm not disagreeing with Mr. Fletcher. I think he's correct in his analysis. The language, we believe, is not necessary to get to the result that's fair to the company.

CHAIRMAN GRAHAM: Mr. Fletcher, do you have anything to add before I bring it to the Commission?

MR. FLETCHER: Yes. I would point out that the provision in 980 that wasn't initially -- or wasn't in the old FAS 71, and I'll read it, "A cause that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date." Two criteria is that it is going to be probable for future revenue and you have a base -- the second criteria is it's based on an available evidence that future revenue will be permitted recovery of a previously incurred cost rather than to provide -- rather than to provide the expected levels of a similar future cost.

So in our reading of that new standard, the first sentence, the costs incurred in 2008 through 2009, the second criteria being met would be in a rate relief petition. This is the -- it's ripe for the criteria and it -- and, again, the only other point I would say is, again, the provisions that were mentioned earlier in the Uniform System of Accounts for a Class A or B, those are, again, for Class A or B. They're not for a C. There is far less sophisticated -- the accounting instructions for a Class C and there is a wide variation there that is applicable to the small mom and pop companies. And we can live with the language being stricken.

CHAIRMAN GRAHAM: Commissioners, I guess first do you want any further clarification or question, comments either from the utility or from OPC, or if you want to just dive into this?

Okay. Let me move this along. I don't have a problem with the staff recommendation, I don't think, on any of the issues. On Issue No. 6, I'd like to go with the alternative, so let's start with Issue No. 6, if anybody wants to speak to that. Commissioner Brown.

COMMISSIONER BROWN: Mr. Chairman, I would agree with you on that. I'm happy to hear that we are of like minds. I'm supportive of the alternative and I don't have any issues with any of the staff recommendation on all items other than that one. But that also affects Issue 14 as well as they deal with -- they use the primary recommendation for, I believe, Issue 14 and handling when the rates should be reduced.

CHAIRMAN GRAHAM: Anybody else on Issue No. 6? Okay. Anybody else on any of the other issues? I will entertain a motion.

MR. REHWINKEL: Mr. Chairman, is there not going to be an amendment to the language?

CHAIRMAN GRAHAM: We'll see.

MR. REHWINKEL: Oh.

CHAIRMAN GRAHAM: Yes, sir.

MR. CASSIDY: I'm not sure if I'm clear, but is Issue 6, is that the -- we're talking about the operating expenses?

CHAIRMAN GRAHAM: Yes, sir.

MR. CASSIDY: Okay. I just want to make the comment that the amortization of these costs are factored into staff's recommendation of 292,629 per year. They're amortizing $8,150 over a 15-year period of time. My contention is that the 292 doesn't come close to reflecting the revenues that I need to operate this utility and to pay my staff.

The other point was that in the -- what is the appropriate return on equity, which was Issue No. 4, you know, that factors into this issue because I've got, as of -- at the beginning of the test year I had negative capital of $442,000 that I'd like to earn a rate of return on. This recommendation that staff has given you of 292,629, I can't find where I'm getting any rate of return on the capital that I've had to put into the utility to keep it viable. So it -- there's more to it here than kind of meets the eye.

CHAIRMAN GRAHAM: Okay. Thank you.

Commissioners? I can't make a motion.

Commissioner Brown.

COMMISSIONER BROWN: Ms. Thompson, Ms. Norris, can you please respond to some of the concerns that the utility just had with regard to the operating expense?

MS. NORRIS: Operating expense -- Amber Norris, Commission staff. Yes. In going back in some of the highlights Mr. Cassidy touched on, specifically being able to, you know, pay his staff, and we certainly are sympathetic towards a lot of these roles that were carried on in the past, you know, 15 years or so since the last rate case, and we certainly when we, you know, set out to examine those different roles, you know, and we asked specific questions as far as roles that were compensated and non-compensatory to really get a better makeup of the management and looking specifically at their current duties and responsibilities. As Mr. Cassidy said, we did increase the secretary's salary, and in her -- in the data response some of those responsibilities included specifically billing from start to finish, some basic bookkeeping responsibilities. We also felt an additional salary for bookkeeping was duplicative of accounting expenses that were included in miscellaneous services.

The utility manager, we did increase his salary on the water side for his duties and responsibilities as there is still a water plant. The wastewater treatment plant is no longer there. Many of the responsibilities that were incorporated in the '98 case were specifically overseeing staff to, you know, to manage the plant in different aspects. The City of Winter Haven now answers everything from customer complaints and calls going out for both sides of the system. So we certainly, you know, looked at that differently.

The president's salary is probably the largest decrease we made in the recommendation. And in the last case, the salary, there was a large part that was contingent upon the efficiency for which the utility was run. And in light of the change in operations, we really felt that we needed to step back and look at it based on hours and looking at a recent Commission decision, kind of being able to gauge the reasonableness of that expense, and that's why we essentially used that methodology to come up to really formulate the president's salary.

And as far as the operator went, you know, what's also incorporated in the City of Winter Haven expense includes a plant operator. So it's not as though that expense is just no longer there. Certainly it's still needed on the water side. It's just a shift in the components.

Certainly a large -- as I said, I'm sympathetic to a large component of the changing of expenses was the purchase of wastewater treatment from the City of Winter Haven. You know, I'm really trying to touch on all the different concerns.

We did take the negative equity -- or the, you know, the, as Mr. Cassidy referenced and as Commission practice, put that into common equity. So that was the treatment in the capital structure in the formulation of the return on equity and rate of return, so.

COMMISSIONER BROWN: Good. Thank you. And also you are recommending the operating ratio methodology.

MS. NORRIS: Correct. Yes. For the water. Right.

COMMISSIONER BROWN: In addition to -- and that addresses all of my concerns very thoroughly, Ms. Norris, so thank you. I appreciate it.

And, Commissioners, if nobody else would like to comment, I could move on this particular Issue 6.

CHAIRMAN GRAHAM: Sure.

COMMISSIONER BROWN: I would move approval of Issue 6 with the alternative recommendation for amortization of the wastewater treatment plant removal. In addition, I would strike the language on page 20 beginning with "The concepts of deferral accounting" and proceeding forward 13 lines down, and all other items would remain as is on this issue.

COMMISSIONER PATRONIS: Second.

CHAIRMAN GRAHAM: So that was starting with the second paragraph starting with "The concepts of deferral" concluding with "nonrecurring and substantial"?

COMMISSIONER BROWN: Thank you for that clarification, Mr. Chairman.

CHAIRMAN GRAHAM: Okay. And that's been moved and seconded. Any further discussion? Seeing none, all in favor, say aye.

(Vote taken.)

Any opposed? By your action, you've approved the motion for Issue No. 6.

MS. THOMPSON: Excuse me, Commissioner, Commissioners. With the approval of the alternate recommendation in Issue 6 --

CHAIRMAN GRAHAM: That's coming.

MS. THOMPSON: Okay.

CHAIRMAN GRAHAM: We understand where you're coming from.

Okay. So let's wrap this up with one motion. Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman. I move approval of all items with the inclusion of the changes from Commissioner Brown's motion, and direction to the staff to make whatever fallout adjustments are necessary.

COMMISSIONER BROWN: Second.

CHAIRMAN GRAHAM: It's been moved and seconded, we'll call it the Edgar motion. Any further discussion on that? Seeing none, all in favor, say aye.

(Vote taken.)

Any opposed? By your action, you've approved the Edgar motion on this item.

Paul, I wish you all the very best in your retirement. Congratulations. I think one of these years I may be able to get there, but I applaud you and everything you do, and God speed to you and your family.

MR. VICKERY: Thank you.

CHAIRMAN GRAHAM: If there's nothing else to come before us, we are adjourned.

(Commission Conference adjourned at 11:20 p.m.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, CRR, RPR, Official Commission 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 12th day of November, 2015.

Linda Boles

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734