

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060255-SU

In the Matter of:

APPLICATION FOR INCREASE IN
WASTEWATER RATES IN PINELLAS
COUNTY BY TIERRA VERDE
UTILITIES, INC.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 10

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER ISILIO ARRIAGA
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW
 COMMISSIONER KENNETH W. LITTLEFIELD

DATE: Tuesday, January 9, 2007

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

REPORTED BY: JANE FAUROT, RPR
 Official Commission Reporter
 (850)413-6732

1 PARTICIPATING:

2 STEPHEN C. REILLY, ESQUIRE, representing the Citizens
3 of the State of Florida.

4 MARTIN FRIEDMAN, Esquire, FRANK SIEDMAN, and JOHN
5 WILLIAMS, representing Tierra Verde Utilities, Inc.

6 SHANNON HUDSON, TROY RENDELL, BART FLETCHER,
7 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

CHAIRMAN EDGAR: That will bring us to Item 10.

MS. HUDSON: Commissioners, Shannon Hudson on behalf of staff.

Item Number 10 is a request for a rate increase by Tierra Verde Utilities, Inc. in Pinellas County. Subsequent to filing of staff's recommendation, an error was discovered. The error was in Issue 2 concerning staff's adjustment to purchased wastewater expense for excessive infiltration and inflow. In its calculation, staff did not included the 25 percent surcharge on the purchased wastewater that is assessed by the City of St. Petersburg when a customer is located outside the city limits.

To correct the error, purchased wastewater should be \$88,420 instead of \$69,721 as included in staff's original recommendation. As a result of this correction, staff's revised revenue requirement is \$731,965, which is \$19,856 lower than staff's original recommended revenue requirement of \$751,821. Based on the revised revenue requirement, Tierra Verde is entitled to an increase of \$114,428, or 18.34 percent.

Staff is also recommending an interim refund of 3.26 percent, or \$26,236 of annual revenues. The specific revisions to issues were previously distributed to the Commissioner's offices. Staff has discussed these changes with both the utility and the Office of Public Counsel, and both parties have

1 agreed to these revisions. Staff is prepared to answer any
2 questions you may have at this time.

3 CHAIRMAN EDGAR: Thank you. You are recognized.

4 MR. FRIEDMAN: Thank you, Commissioners. My name is
5 Martin Friedman. Our law firm, Rose, Sundstrom and Bentley,
6 represents the utility. With me also is Frank Siedman, and
7 also with me, sitting in the back here, you may recognize John
8 Williams, who is the new director of governmental affairs for
9 Utilities, Inc. and its subsidiaries, primarily working in the
10 Southeastern United States, so you will be seeing a lot more of
11 John in the future.

12 We accept this recommendation, the mistake that was
13 made in that. We do have a couple of comments about the staff
14 recommendation, and these are some issues that are going to
15 resonate. And while we've got -- Utilities, Inc. subsidiaries
16 have pending eight or ten rate cases now and these are the
17 first two to hit the agenda, I would expect that some of the
18 modifications that the staff made in this one they are going to
19 make in the future recommendations, also. And so while it will
20 sound like I'm really nit-picking about some of these issues
21 being small, as it relates to each of these utilities the
22 impact may be small, if you look at the same adjustments made
23 over all eight or ten rate cases, you have got a significant
24 amount of money.

25 And I want to address, first, there is a salary

1 issue. The staff has recommended a pro forma adjustment of
2 4.51 percent to the test year salaries. That does not take
3 into consideration that the utility has added two integral
4 employees since the test year that we think will obviously help
5 to improve our quality of service and our regulatory compliance
6 requirements. And the staff's recommendation just takes
7 whatever the salaries were in the test year and added
8 4.51 percent to it. It doesn't consider the fact that there is
9 a new, or two new employees in this case that are necessary and
10 add to that.

11 And they are the primary reason of the increase,
12 which in this case for this utility is a little under \$19,000 a
13 year. And we would suggest to you that the staff's
14 determination that there should only be a 4.51 percent increase
15 ignores the fact that there are new employees. It also ignores
16 the fact that the natural turnover that you have in a year,
17 sometimes when you hire new employees you may have to pay them
18 a higher salary than the employees who left. The company
19 endeavors to keep its employees, all of its employees all year
20 and not to have the turnover, not to have gaps in service, and
21 that is why we are requesting that the adjustment of \$18,823
22 that the staff has recommended, that it be reversed by the
23 Commission.

24 The second area is rate case expense. This case is a
25 little unusual --

1 CHAIRMAN EDGAR: Mr. Friedman, I'm sorry, can you
2 identify by number for us the issues as you are addressing
3 them? That would be helpful to me.

4 MR. FRIEDMAN: I apologize.

5 CHAIRMAN EDGAR: That's okay.

6 MR. FRIEDMAN: Okay. That is issue -- Tierra Verde,
7 it's Issue 14.

8 CHAIRMAN EDGAR: Okay. Thank you. And then --

9 MR. FRIEDMAN: Then Issue 17 is rate case expense,
10 and it involves a lot of different elements; the legal fees,
11 consultant fees, in-house fees. As I was saying, this case is
12 a little unusual in that the Public Counsel got involved in it
13 before the PAA order has been entered, which I have not seen
14 them do in any other PAA type case. And when they intervened,
15 they began sending out discovery. And so as a result, we had
16 not only data requests from the staff to answer, but we also
17 had discovery requests from the Office of Public Counsel to
18 answer.

19 One of the ways that the company dealt with that was
20 to hire some temporary employees to handle just the mechanics
21 of getting that data from the staff people up in Northbrook or
22 the staff people for the utility getting it into a format to
23 get it back to the staff of the PSC. And the staff
24 recommendation does include some of that, but it cuts it off
25 before we finished responding. I think they cut it off at the

1 end of September, and the utility had temporary employees and
2 staff after that time, which they paid to respond mostly at
3 that point probably to OPC's discovery, that the Commission --
4 that the staff has not recommended any rate case expense for.
5 And we think that that was -- we think that they should
6 recognize that temporary help. Number one, it's at a less rate
7 that if we had -- we don't want to have accounting people
8 standing at a copier or doing ministerial work, and they hired
9 these temporary people to do the ministerial work.

10 And then last there was a minor adjustment to rate
11 case expense for Federal Express charges, which the staff
12 believes is because the company keeps its records and has its
13 employees up in Northbrook. And I would suggest to you that
14 just -- that is not related to whether they are in Northbrook.
15 They could be in Miami, and they would have had the same Fed Ex
16 charges to Fed Ex than if they were in Northbrook.

17 And, you know, individually that's a minor
18 adjustment, but when we look at all ten of these cases, it is
19 more substantial. And so we would suggest that on those two
20 issues that the staff recommendation be modified to reflect
21 reasonable expenses that were incurred by the utility.

22 Thank you.

23 CHAIRMAN EDGAR: Thank you.

24 Mr. Reilly.

25 MR. REILLY: Thank you. We were the party that

1 pointed out the adjustment on the \$20,000. We did understand
2 this was move staff, so I wasn't going to comment on this
3 particular case, but since certain comments have been made, I
4 will try to respond.

5 Public Counsel went ahead and hired consultants to
6 begin looking at all of these Utilities, Inc. cases because of
7 the frequency and the number of them, the complexity of them,
8 and the fact that they would be hitting with such repetition
9 that we couldn't do our normal procedure to get on top of the
10 case and to try to understand the issues in the case, we would
11 have such a limited time to look at a PAA, a recommendation and
12 to get ready for agenda and then to have the time within which
13 to decide whether to protest or not. So we felt we needed,
14 given the number of cases, to become more engaged, more
15 involved and begin looking at the MFRs at a sooner point in
16 time.

17 As a result of that earlier engagement in these
18 multiple Utilities, Inc. cases, we did send out one set of
19 discovery. I would represent that it was not onerous and,
20 certainly, should not result in a large expenditure of rate
21 case expense. And, frankly, that was one of the reasons why we
22 restrained ourselves from engaging in too much discovery. I
23 believe there are a lot of economies involved in this,
24 attorneys and the various consultants and getting all of these
25 cases ready. We do not believe -- we think rate case expense

1 will, obviously, be very much a big issue in any of these cases
2 that end up getting protested.

3 You look at this case. It's a hundred -- it ends up
4 being perhaps a \$114,000 revenue increase. The company was
5 suggesting to spend -- now, that's on an annual basis, but to
6 spend \$190,000 worth of rate case expense to pursue its right
7 to this increase. Obviously, this figure is amortized over
8 four years, but we think that, really, rate case expense has
9 just gotten so incredibly high, and it does work a great
10 difficulty -- it really is a great burden on the customers.

11 And so I think staff has done a fairly good job. I
12 think in some of this rate case expense that staff disallowed
13 it was, frankly, because of lack of documentation and support.
14 And I think staff will be able to support its own
15 recommendation in that regard. But we, basically, wouldn't
16 offer any more other than to say that's why we got involved.
17 The involvement was very minimal, and certainly doesn't justify
18 this very, very high request.

19 CHAIRMAN EDGAR: And I would like to look to our
20 staff to speak to the questions and comments that were raised
21 on Items 14 and 17. But, first, let me look to Commissioner
22 Carter.

23 COMMISSIONER CARTER: Excuse me, Madam Chairman. I
24 know it may be out of the ordinary, but I would just like to
25 ask Public Counsel a question. Are you saying in this case

1 that you support staff recommendations? Is that what you are
2 saying?

3 MR. REILLY: Actually, I appreciate the
4 clarification. We are still studying these, and we are
5 involved, and we are further along than we would normally be in
6 the PAA process. I was not prepared -- I can't say that I
7 support everything in here, no. I think if I critique this
8 request, we would have more additional adjustments. But I do
9 believe that with the change that has been made, there is a
10 very strong possibility that when we meet with the customers
11 this will not be protested. But I can't make that decision for
12 them. That is their decision. But I think that that is the
13 way Tierra Verde is positioned at this time. That is why you
14 are not hearing more comments from me.

15 Now, when we get to Pennbrooke, the next case,
16 Pennbrooke, we have a number of serious concerns with the
17 staff's recommendation. If they do not get resolved in a way
18 that we think we can recommend to our clients, the Utilities,
19 Inc. of Pennbrooke looks like a case that much more likely
20 could be protested.

21 But to answer your question, no, I don't agree with a
22 lot of this, but I'm not going to nitpick it and tell you all
23 the ways that I would have done it differently. But I do
24 believe we have a recommendation that could past muster with
25 the customers, but I won't know that until I talk to my

1 clients.

2 COMMISSIONER CARTER: Thank you, Madam Chairman.

3 CHAIRMAN EDGAR: Thank you.

4 To our staff.

5 MR. FLETCHER: Commissioners, with regard to Issue
6 14, which deals with the pro forma salaries, staff sent out two
7 data requests. In the first data request the utility's
8 response as far as justification for the increases was, the new
9 employees and it was to reflect a full year of cost of living.
10 However, we didn't have the sufficient detail to get the number
11 of employees, and because of that lack of support there, we
12 sent out another data request of the total employees for the
13 Florida office, both managerial and nonmanagerial, and the
14 Florida operators, managerial and nonmanagerial, and then also
15 for the employees up in Northbrook that gets allocated down.

16 And based on that response, there was actually a net
17 reduction of employees from 2005, which is the test year in
18 this case, and 2006. And I will note that on 2006 we received
19 that data request response in November, but that was only
20 through -- the company only provided the employee changes,
21 number of employees and the salary information through June.
22 We annualized that salary, because that is the only information
23 we had at the time, and, again, there was a net reduction in
24 the number of employees across all of those categories.

25 And there was -- in the information we could not

1 attribute the increases in the changes in employees to any of
2 the UI's subsidiaries, specifically. You know, the Florida
3 office, it may increase managerial by one or two employees,
4 but, you know, that's direct -- excuse me. The operator may --
5 nonmanagerial operators may decrease, but we can't attribute
6 any of those 17 that decreased to, like for this company,
7 Tierra Verde, or to the other UI subsidiaries. That
8 information was not provided.

9 So based on that net reduction and looking at the
10 data that they provided, all we had is that over that period of
11 time from 2001 to 2005 the increase in salaries were
12 4.51 percent. So based on their information, we thought that
13 that was a reasonable pro forma adjustment to make for the
14 salaries in these respective UI cases, especially given the
15 fact that the Commission's 2006 price index was 2.74 percent.
16 That was representative of -- the 4.51 percent historical
17 increase was 177 basis points greater than the Commission's
18 2006 index, and in light of that net reduction of eight
19 employees, we felt that it was reasonable to limit the
20 pro forma salary increases to that historical salary increase.

21 CHAIRMAN EDGAR: Commissioners, any questions?

22 Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: In listening to Mr. Friedman,
24 I was led to understand that some of the expenses that you
25 question for rate case expense may not have been proper. And

1 what I understood was that there are about ten utilities that
2 belong to UI, and if you impose these penalties to one and then
3 multiply that by ten, it's going to be a huge number. Do you
4 agree with that?

5 MR. RENDELL: Commissioners, what is unprecedented is
6 Utilities, Inc. filed ten rate cases. They also filed five or
7 six in North Carolina and several in South Carolina. We
8 believe in this instance these temporary helps are the result
9 of that. There were so many rate cases filed by this company
10 that they had to go out and hire outside help. The burden of
11 proof is on them to provide the justification for all expenses.
12 As Mr. Fletcher indicated, the salary adjustment was based on
13 data requests, which is our normal procedure in any rate case.
14 We ask questions; they justify it.

15 We did a very thorough analysis of all employees, of
16 all the new positions, of all the people who had left. And in
17 Issue 14, the salary adjustment recommended is based on that
18 analysis that they actually had a net decrease. Mr. Friedman
19 alluded to two new positions. I was just informed of that this
20 morning. So that's outside the normal data request that we
21 have. We filed this recommendation in December, so that's even
22 outside when we filed the recommendation.

23 As far as the rate case expense, we are actually
24 allowing the actual costs for the temporary help, which is
25 approximately \$3,000. Based on our analysis, at the point we

1 got the update for rate case expense, there was no other
2 outstanding data request that they had to respond to. So they
3 wanted another \$16,000 to respond to data requests that didn't
4 exist. So that is why we believe that was unreasonable.

5 As our recommendation in Issue 17 indicates, we did
6 do an analysis of each and every aspect of the rate case
7 expense, and we determined what different items remained to
8 process the case and what actually occurred. We allowed -- we
9 made some adjustments to the actual costs, but we allowed the
10 majority of the actual costs and disallowed what we believe was
11 unreasonable estimates to complete the case in this case. So
12 we believe the utility did not meet its burden of proof on
13 either the salary or the rate case expense, and so we are
14 recommending appropriate adjustments to account for that.

15 COMMISSIONER ARRIAGA: And I appreciate the answer.
16 I think it is very informative. But, again, if those
17 disallowances are placed on this one utility, I understand, but
18 if this is going to be repeated over the next 10 or 15 or
19 whatever, I don't know how many, isn't that going to amount to
20 a huge amount of disallowances for that same company?

21 MR. RENDELL: Possibly. We are filing
22 three recommendations tomorrow, and we're filing
23 three recommendations on February 1st. Some of them are large
24 adjustments; some of them are not. Also, the amount of
25 customers that it is being spread over varies. There may be

1 thousands of customers to spread it over or just a few. Some
2 of the cases -- you know, I can't get into specifics since we
3 haven't filed a recommendation, each one of them varies. But
4 the analysis itself is consistent. We followed -- which we
5 have to be consistent with past rate cases, and in this case
6 how we treated each one of their requested amounts. But each
7 one of them have similar issues and each one of them have
8 different ones, so I can't give you a quantifiable yes or no to
9 that. I mean, yes, there is going to be similar adjustments in
10 each one of these nine rate cases, but I can't give you the
11 dollar amount.

12 COMMISSIONER ARRIAGA: Thank you.

13 CHAIRMAN EDGAR: Commissioner Carter.

14 COMMISSIONER CARTER: Just one itty-bitty question,
15 Madam Chairman, just for staff. And I think I heard you
16 correctly, that you said that the utility chose to file these
17 rate cases together. That was their option, was it not?

18 MR. RENDELL: That's correct.

19 COMMISSIONER CARTER: Okay. Thank you.

20 CHAIRMAN EDGAR: Commissioner Tew.

21 COMMISSIONER TEW: I have a question for staff, and
22 it goes more to process. At what point in time do you cut off
23 the information flow as far as what -- you said that you had
24 two sets of data requests, and that lead you to the
25 recommendation on Issues 14 and 17. And you said that you got

1 some more information this morning about the two additional
2 employees, and I'm assuming that you may get similar
3 information in these other cases. I don't want to delve too
4 far into that, but at what point -- at some point you have to
5 say this is what the utility has proven up so far, and we have
6 got to go with this. I mean, what generally is the process for
7 that?

8 MR. RENDELL: We have to have the -- I mean, the
9 review process at the Commission, the recommendation is filed
10 14 days before the agenda. The agenda typically is five months
11 in the PAA process. We typically have the revenue requirement
12 done probably four months -- three to four months after it's
13 filed, because we have to get those revenue requirements to the
14 rate analysts to calculate the rates, and we have to begin
15 writing the rate case itself.

16 In these particular cases, we were asking some
17 last-minute questions, just some clarification while we were
18 writing the recommendation. But you're right, there has to be
19 a cutoff point. If there are subsequent items that they fail
20 to provide staff in their data request, the answers, then those
21 are issues that can be addressed in the next rate case, or if
22 it is significant, they can come in for a limited proceeding.
23 But, we have to follow our normal procedures, ask the
24 questions, and then it's their burden of proof to respond. And
25 we have to have the time to analyze their answer. So a couple

1 of days before agenda is just not enough time to follow up on
2 any type of information.

3 COMMISSIONER TEW: One other follow-up. If you
4 believe the two additional employees were hired specifically to
5 litigate this case, would your recommendation be different?

6 MR. RENDELL: In this particular recommendation, no.

7 CHAIRMAN EDGAR: Commissioners, further questions,
8 discussion?

9 Commissioner Carter.

10 COMMISSIONER CARTER: Madam Chairman, if there is no
11 further discussion, I would move staff.

12 COMMISSIONER TEW: Second.

13 CHAIRMAN EDGAR: Okay. We have a motion and a second
14 in favor of the staff recommendation, which I believe includes
15 Issues 1 through 26. Is there further discussion?

16 Seeing none, all in favor say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN EDGAR: Opposed?

19 Show it adopted.

20 Thank you.

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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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 16th DAY OF JANUARY, 2007.



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