BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100149-WU

In the Matter of:

APPLICATION FOR INCREASE IN WATER RATES IN LEE COUNTY BY Ni FLORIDA, LLC.
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PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 7

COMMISSIONERS PARTICIPATING:
CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, January 25, 2011

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

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

P R O C E E D I N G S

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CHAIRMAN GRAHAM: Let's move on to Item Number 7.

MR. FLETCHER: Commissioners, I'm Bart Fletcher with Commission Staff.

Item 7 is Staff's recommendation to approve a rate increase for Ni Florida, LLC. The Office of Public Counsel and counsel for the Utility are here to address the Commission. Staff is prepared to answer any questions the Commission may have.

CHAIRMAN GRAHAM: All right. Who wants to start off first? Let's start with OPC.

MR. REILLY: Mr. Chairman, Commissioners, there are provisions in this recommendation we don't fully agree with. However, we believe the recommendation before you strikes a fair balance between the Company and the customers. We believe the recommendation more than adequately provides a fair return to the Company on its investment and utility property serving the public and compensates the Utility for all of its reasonable cost in providing service, and it does this arguably while imposing just and reasonable rates, rates that the customers can live with and perhaps not protest with this proposed PAA order.

We would like to reserve our comments to respond to the Company, should it desire to critique any of this recommendation, and would allow us to perhaps stand down for them to make their comments and then we would try to respond to anything that the Company might bring up at this time. Thank you.

CHAIRMAN GRAHAM: Mr. Friedman.

MR. FRIEDMAN: Thank you, Mr. Chairman, Commissioners. My name is Martin Friedman of the Law Firm of Rose, Sundstrom & Bentley, and we represent Ni Florida in this proceeding.

And we're going to limit our comments to Issue Number 12, and that deals with the adjustments made for the Utility's allocated overhead. And I hope that, that, that you have a handout that we have prepared that during the break was handed out to you that, that I think will help to explain the predicament that we're in.

In this issue the Staff adjusted the total ERCs upon which the corporate overhead was allocated based upon a post test year addition of 15,000 ERCs. So there were approximately 5,000 ERCs in the test year. The, the rate case was, was prepared with that test year and that number of ERCs. The first month subsequent to the test year a major acquisition was made and it added 15,000 more customers, basically tripling the number of, of customers in the system.

In making the Staff recommendation, however, the Staff has ignored the associated cost of adding 15,000 new customers to the system, and also the allocation within the corporate overhead between the acquisition and the management of utilities. What they have simply done is taken the test year expenses and added 15,000 more customers to allocate it over, which obviously changes that allocation from, down to about 3.71 percent. And we don't dispute that that would be the allocation if we were going to, to do that. The problem is that in doing that they have ignored the fact that you can't triple your number of customers without, number one, adding some expense at the corporate level. And, and also the fact that after that acquisition the corporate resources are reallocated from, from being structured towards acquiring the utility system more, now it is more into an operational mode so that substantially all of the corporate resources are directed towards the operations as opposed to acquisitions, and the Staff in their recommendation has ignored that allocation.

Now while there are economies of scale associated with the acquisition of these new customers, it doesn't, it doesn't take away the requirement that you match the customers with the expenses. In other words, in this case, in round numbers, they tripled the number of customers. The corporate overhead went up 25 percent. So you can see that's a big, that's a big economies of scale when you can triple your customers and your overhead only goes up 25 percent.

If you'll look at this handout that we, that we have, the overhead allocation takes into consideration two percentages. The first is the determination of the percentage of corporate overhead directed towards acquisition as opposed to the resources towards operations. During the test year it was prior to this big acquisition of the Palmetto system, the 15,000 customers, and a substantial amount of, of time and resources of the corporate during the test year were directed towards that acquisition, and that's reflected when you look at the, the, the sheet under Staff recommendation. The handout we have, during the test year, only about 47.09 percent of the corporate resources were directed towards operations as opposed to the major acquisition they were undertaking.

Now if you'll look at the actual 2010 on that schedule, you'll see that now with those acquisitions completed, and they were completed in January of 2010, as I mentioned, the day, the month after the test year, that the corporate resources now are directed almost, well, not completely, about 89.22 percent of the corporate resources are now into the operations.

And so the, the problem with the Staff's recommendation is, number one, is that when you look at the total corporate overhead, they've ignored that there is additional cost associated with tripling your number of customers. And then they've also ignored the fact that the direction of the Company is now in operations as opposed to acquisitions.

So our position is that if you're going to look at post test year changes, the adding of the 15,000 customers, you must also look at the post test year expenses and the change in the post test year allocations.

So to be true to true ratemaking principles, you should either stick with the test year and accept the, the concept that the test year is what we're setting rates on, or you have to accept that the addition of 15,000 customers comes at a, at a cost and you've got to balance that. You've got to have, you've got to match the times. You can't add the customers that are post test year and then ignore the post test year expenses.

And so we would think -- we suggest to you that the, the schedule that we have provided is that the appropriate amount of -- if you want to ignore the test year concept and say, okay, we're going to ignore it, there are more customers, let's take those in consideration, you can't do it in a vacuum and you need to, to include those. And we have provided the schedule that shows you the, the difference in revenue as a result of, of this, of making the ratemaking process fair and reasonable.

With me today is Mr. Ed Wallace who is the President of Ni Florida, and I'm going to ask him to make some comments, too. Thank you.

MR. WALLACE: Thank you. Good morning. I appreciate the opportunity to be able to participate. I thought that the Commissioners might benefit a little bit about maybe having a small history of Ni America.

Ni America was founded in 2007. We're a company made up of former water and wastewater executives. We started the company for the sole purpose that we believe very strongly in; we started it with a goal to consolidate small and mid-sized water and wastewater utilities and provide to those systems the experience and the capital that they need to bring those systems into compliance, and, more importantly, to provide a quality of service that's more at a level of what should be expected if you were in a larger system or a municipality.

We pride ourselves in the fact that we have a good reputation in every state we're in. We do as much as we can to meet with Staff in the beginning before we ever buy a company or go into a state. And when the Staff asks us to do something, I believe that we have a history that we do it.

In the case in point, in Tamiami, before we bought Tamiami we were asked to go through it and look at the map of Tamiami and how many customers were there and where the map went. We spent a considerable amount of money to do that. It didn't really help us from an operating standpoint. It only helped the Commission because they really wanted to have an understanding of the service area.

We were happy to do that. And since we've owned Tamiami, we looked at the issues that were there when we bought it. Tamiami was run by an absentee owner. It did not have any ability to flush the system, had leaks throughout the system. During the time we've owned it, we went through, fixed the leaks, changed the valves. They're now in a situation where we can, we have a normal flushing program that is a constant flushing program, but we can flush or fix an area of the system without shutting off the entire system and having to give them a boil water notice. So we think we've improved the quality of service significantly.

As we all know, 2009 was a really tough year. And when we started this company, we had 20 staff. And we had a history of buying in the past, so we believed that we could reach a critical mass that would absorb an overhead very quickly and we started the company with that in mind. Unfortunately, the economy, the banking crisis and the burst in the real estate bubble did not have that in mind. So very, very quickly we had to readdress and really think about what our overhead is.

So in the past we were focusing on

acquiring companies very quickly. We could do that because growth, as we all know, is a wonderful thing. It absolutely helps us all. It allows me to pay a little more, it allows you to allocate costs a little bit better. But growth has stopped in Florida. And so -- and that's true, by the way, in Texas and our other jurisdictions.

So we instantly said, you know what, we're not a company of 20 anymore, we're a company of seven. And anybody that's ever been through that process, it's not, it's not a fun process. All right? You don't easily let go your friends and family and associates without some hardships, but that's what we did. And we did it not because we wanted to be profitable, we did it because we looked at our future budgets of what we thought was in the pipeline, and the goal has to be that our number of customers that we have are consistent with the overhead that we can charge. So while at any one time now we never get there, we still have to be realistic and say we're going to get here. Okay?

So that really kind of brings us to -- pardon me. I'm optically challenged, so I have to flip back and forth here.

But -- so that brings us to really the

allocation process to us. I mean, we really take pride in the fact that we are not trying to overallocate our overhead. I mean, if you listened to what Marty said, we really have a three-step approach. We first deduct any overhead costs that are related to due diligence. We just take them off, which we should, by the way. I'm not arguing that that's a big thing, but we should do that. Then we go through on an individual-by-individual basis and we analyze what people do.

During the test year we were trying to close the two companies that we closed in 2009. We closed Brighton in May and we thought that we would close Palmetto in the last week of the year. We didn't, but we thought we would.

We go through and analyze people's times. And so as a result in the test year in 2009 we spent a majority of our time trying to acquire Brighton and Palmetto and less than half of our time running the utilities. So the first thing we did was we only allocated 47 percent of our total overhead to all of our utilities. And by the way, we consistently apply our overhead in every jurisdiction. We follow the same place everywhere.

So we took total overhead of $2 million, which sounds like a lot, but for seven executives in a company atmosphere with expenses is not a lot of money, and we've split that in half, and then we allocated that to the utilities. Now on an ERC our policy has always been that we put the company into our ERC calculation in the month in which we actually own the company. So in our -- it was our plan to put Palmetto into our ERC calculation in December. We would have put it in December had we closed -- we thought we were going to close but we didn't. We ended up for reasons not having anything to do with this case being pushed into January.

So from an overall perspective our goal when we do the allocation process is to come up with a fair number that is fair both for the customers and for us. In no way is it a number that is ever going to make us whole. We're a company that still loses money even after the Palmetto acquisition. And it's not a nonreal number; it's a number that means a lot to us.

Now if you look at the overall picture -- I won't go into the Staff's analysis. I think that Marty did that sufficiently. But if you look at the overall picture of where we are and what we include in our overhead number, I thought the Staff did a really nice job of listing out all the things that we thought we provide to our customers. I mean, if you look at the Issue 12 in their docket, they say we provide accounting, accounting reporting requirements, business development, capital improvements, cash management, contract administrations, engineering service, and the list goes on. That's fine, and we're -- and our goal again is to provide a professional aspect to this business, and so the level of service that we provide is much greater than what a mom and pop generally provides. But even with that, if you were to common sense -- let me take one step back.

The next thing we do in our allocation process that we didn't discuss is we really compare it to what is consistent in the industry. So for us we looked at quite a number of the businesses in Florida, we had a list of those, and we basically said, okay, after this allocation of overhead, how do we look with companies that are the same size?

What we found is O&M expenses were approximately 90 percent of revenue. After this allocation, our overhead expenses were approximately 90 percent of O&M expenses. So then we take a common sense approach. We say, okay, what is

$175,000? Is that a reasonable number to allocate to a utility with 700 customers? Well, let's ask that question. In most -- in our experience in most utilities with more than 500 customers there's four people at least employed, at least, not to mention a lot of professionals. Those four people really represent an owner whose job is to meet with developers, work on business aspects of the business, provide ratemaking, look at an overview of the customers, generally to provide the function that any owner or chief executive would provide.

And then there is a general office manager, some sort of service manager that really runs the office. That person runs the office, they probably do accounting, they answer the phones, they talk to customers, they pay bills, they address issues in the area, they make sure that all the permits are safe. Those two employees, okay.

Now under any reasonable thought pattern how much would it cost for those two employees in a mom and pop? Not to mention the fact that you have to consider that you have an office, so you have office expenses, you have rent, you have phones, you have paper, you have telecommunication, you have Internet; all those things go into an office. So the question I would have of the Commissioners, is it really that unreasonable that two people's salaries and office expenses would be $170,000 or $175,000?

Now let me say this, had we put Palmetto in in December the way we had planned and budgeted, that number would have been down to $160,000. Still a number though that I think the Staff would have had a problem with.

But here's my second question and I'll end with this. Is it reasonable to think that you could provide all those services, the services that we have on the list and the services I discussed, for $37,000? Those of you that's ever run an office knows that's impossible. I mean, my personal experience as an entrepreneur tells me it costs $10,000 a month to run an office. So the idea that you could do it for 37 is a little bit harsh to me. So with that I'll stop, and thank you very much for the opportunity to discuss it.

CHAIRMAN GRAHAM: Thank you.

Staff, would you guys like to comment on the Utility's comments?

MR. FLETCHER: Yes, Chairman.

With regard to the reason why Staff took into account the purchase of this large system, it was, it was a known change to us in a data request response from the Utility in November 19th of last year. With that great change and knowing the Utility's methodology of what they did in their filing, we felt it was appropriate to take that additional ERCs into account. It's no different than what the Utility had requested like outside the test year, which is the pro forma plant that he has requested in this case. That's out, that's beyond the test year, and we had -- they provided the documentation and we recommend they recover that plant that is beyond the test year.

Now in this case, looking at the Utility's handout, it was provided to Staff this morning, I do see that the percentage change there in their handout from 47.09 to 89.22, that was not readily apparent to me about the, I guess the operational shift. I, I will agree that if you take on more customers, the operating expenses might increase. I agree with that.

At the time whenever we got that information, we looked at it and we had the same thing that they show here. In September, from January to September, however, we didn't have any justification explaining the reduction in utility matter percentage. That wasn't clear to Staff at that time of their submission. And I will note that there is actually an increase that I just back, went back and looked at their data request they provided on November 19th. And taking the Utility's methodology, the asterisks that they show under actual 2010, it has changed a little bit by about, in the nature of about $136,000 more from what they provided to us, which was supposed to be actual from January to September. In the data request it was $1,880,468. And if you used -- and that was based on actual numbers in their data request response. And using their methodology on their handout here, if you take that and divide it by nine and multiply it by 12, I'm coming up with $2,507,290. And what they have in the handout is about $136,448 more in their handout here.

And I guess Staff's posture at the time when we received that data request was that we had a test year. Those were unaudited numbers. We didn't have a clear indication of the increase in operational cost versus the cost for acquisitions. And this company still, if you look at their website, their corporate strategy is to acquire systems and to work and take over, develop, you know, smaller systems. And I still think -- I don't think that the Company is going to change in their acquisition, but I will agree with some of the comments that the Utility stated that there will be a shift in some of those costs. And at this time I'm not able to, I guess, to speak to the 89.22 percent as far as whether it's going to be that much of a shift.

I can tell you looking at this from the first time today, I can tell you what they previously provided as actual cost from what is on this one, it's $136,000 more. So I guess that's really the only comments that I can make.

CHAIRMAN GRAHAM: Thank you.

Mr. Reilly.

MR. REILLY: Thank you, Mr. Chairman.

OPC believes you should look a little bit at the history, not just of Ni America but also the history of this particular utility. It's important to know that Ni Florida purchased this utility in 2008. It's a very small utility, it's about 750 connections, a little over $200,000 annual gross revenues, a very simple operation, no water treatment plant, just a water distribution system of water purchased from Lee County.

The problem is Ni Florida paid $745,000 for this small utility with a rate base of only $66,800. So Ni paid about 11 times rate base for this utility. This extremely high purchase price creates quite a problem for the investors of Ni Florida because $678,000 of their investment earns absolutely no return. This problem creates a tremendous pressure to find other ways and means perhaps through O&M expenses to provide some return for this, for this money. We believe that most of this allocated overhead expense for Ni Florida proposes for Tamiami customers to pay is, is an attempt to try to recover some of this money for its parent company, Ni Capital and Ni America. Tricia Merchant would like to go into the specifics of, of critiquing this particular issue.

CHAIRMAN GRAHAM: Ms. Merchant.

MS. MERCHANT: Good morning. Tricia Merchant with the Office of Public Counsel.

First I want to state that we do agree with Staff's analysis on this allocation issue. We don't, we don't disagree with the amount that Staff has recommended, but we do have some concerns with the allocation methodology itself for possibly a protest in the future or maybe the next rate proceeding that comes before the Commission, and I wanted to address some of those with you today.

This is a very small system, as Mr. Reilly said, but the parent company, Ni America, has pretty high salaries. And Mr. Wallace said a few minutes ago that they went from a company of seven -- of 20 employees down to seven employees, but several of the documents that they've provided throughout the case show them going from 20 to 19 to 11. So it's really not clear exactly how many employees they have at this time.

But looking at their 2010 organizational chart, they have a chairman, they have a president, they have a regional president, they have four senior vice presidents and they have two vice presidents, and those are, I don't know who of the seven they are right now, but those are all highly paid individuals that they have at this management level.

They also charge for the parent of Ni America, which is called Ni Capital. They put in $250,000 in corporate management costs for managing the assets and the debt of the company, which we don't believe those things are recovered through the rate of return on equity and possibly through debt costs. So those are not things that we would look at.

We would also be concerned with the level of corporate travel and rent. They have two corporate offices for this small number of ERCs. In 2009 they had 5,000 ERCs, and that's equivalent residential connections. And so those are just some of the areas of concerns that we have on that.

And if you get back -- another point, they provided us a schedule this morning, we were concerned with 2009 level of expenses of $2.1 million. Now they say they've gone up to 2.6, which Mr. Fletcher just mentioned. But they also, in the test year they did not provide any evidence to support the 47 percent allocated to utility. They just said this is based on a survey of our employees and this is the number itself. Now they've brought the number up to 89 percent. We would like to see some support behind this calculation to see if it's a reasonable level.

And you look at their organizational chart, there are a lot, there's several of those vice presidents that are titled due diligence. So right off the bat it says to me that this vice president spends time on due diligence and his salary should be taken immediately out, as Mr. Wallace said. So I don't believe that they did take out the due diligence cost in the 2009 allocation. They might do that now in 2010, but in the calculations that we saw provided to the auditors that we saw copies of, they didn't do that. They just took the total gross $2.1 million and took it, reduced it by the 47 percent and then allocated it based on the ERCs.

So those are the concerns that we have. Certainly we, in the long run we agree with Staff's recommendation. But in the future certainly you need reasonable affiliate charges. We just want to have something that we can, that we can put our hands on and we can say, yes, this is a reasonable number, this is utility operations, this is due diligence and belongs to the shareholders. So -- and I'm available for any questions, if you need to ask me. Thank you.

CHAIRMAN GRAHAM: Mr. Friedman, and then we'll come back to the board.

MR. FRIEDMAN: Thank you. Briefly in response to what, what Staff has done, it seems like the Staff has admitted that, that there are additional costs associated with adding, with tripling your number of customers, but it doesn't -- and even though we provided in our sixth data request response the financial information through September, the Staff made no attempt to, to find out what the real expense was. They just ignored it, didn't, didn't have any other data requests about explaining the expense. We gave them the data. They ignored it. They said, no, we don't need to match the new expense that you've got with these 15,000 new customers, we're just going to ignore it. And that's just wrong from a ratemaking standpoint. You can't triple your customers and not expect for there to be any increase in your expenses. And as I pointed out, there's substantial economies of scale that were accomplished here.

It, you know, this concept of adding something after the rate case is not something new. I mean, it happens frequently. And the Staff many times looks at both sides of it. I know a case we dealt with recently when the method of treatment at the sewage treatment plant changed, resulted in sludge hauling being reduced in the future. We didn't, nobody knew exactly how much future cost that was going to be, but they came up with an estimate of what that future cost was going to be and, and took it into account. And so they reduced the rates by whatever the, the reduction in the cost of sludge hauling was going to be as a result of the expenditure of these funds over here to upgrade the sewer plant, and, and they obviously at that time didn't have an actual number.

What -- you know, if you're going to do prospective ratemaking, you're going to have to do some estimating. You're going to have to use the best guess. You've got professionals there, you've got professionals at OPC and the Company has professionals, and you take that, that wealth of information and you make a recommendation that's based on sound ratemaking principles. And that is if you add customers, you've got to estimate some addition of expenses to go with those customers.

And I think that as, as Mr. Wallace pointed out, I mean, just look at the bottom line. What the Company has said in this filing, this handout that we've got is that all of these duties that the Staff has pointed out are being, are being handled at the corporate resource level. All of those duties are being provided for $87,000, and I think that's a, that's a substantial benefit. I don't think that the Staff recommending $37,000 --

to be able to get all of this expertise for $37,000 is just unreasonable. You're not going to get it.

And, and, and the customers should pay a fair price, but they should pay a fair price for getting a good quality of service. And they have gotten a substantial increase in quality of service by the addition of, of, of these type of services. The Company now has shutoff valves. So it used to be before that whenever there was an outage, excuse me, whenever there was an outage, the whole park got shut down and they had to do boil water notices. Ni came in and put in, and fixed the valves so that when there's a problem in one part of the system, they shut it down and they have a very limited area where they have to deal with, with the boil water notices. I mean, they have provided a professional type of, of operation that they didn't have before. Thank you.

CHAIRMAN GRAHAM: Thank you, Mr. Friedman.

Just -- Commissioner Brown.

COMMISSIONER BROWN: I think the crux of the question is what -- and first I want to commend the utility company because I think it's clear that the quality of service is, is good. Customer, customer satisfaction is there. Obviously, you know, after reading through the letters of the customers I discerned that there is some hesitation of any rate increases whatsoever, but that's not the issue that, that I, I want to talk about.

I just want to know what benefits from the economies of scale these customers are receiving that they were not receiving before? Specifically which, which economies of scale here, which functions of expenses?

MR. WALLACE: I think the key that the customer of a small utility gets when we take it over is the fact that we make it a part of our business to determine if their level of service is adequate. So we weren't forced to change the way we did the valves in the for instance so that we could flush the system. There were some comments that there should be a flushing program when, you know, it was looked at by the state. But we went in there and did that because we felt like we needed to. We have people on staff that looked at the service and the level and do that.

So what happens in a professional organization is you have certain people that if you just had a mom and pop, you couldn't have that. You couldn't have an Andy Thomas who makes too much money, whose whole job in the world is to spend time trying to fix small systems for the least amount of money. We're not a gold plate kind of a company. We go in there and try to figure out how to fix the problem without spending a bunch of money. It takes a pretty smart person to do that. We pride ourselves that we have a guy on the staff that can do that and he goes around to do that. That's the economies of scale.

You know, people don't -- you talk about your cost of service and money. But, but in able to have the capital to fix these systems as we buy them, we have to manage that. A small individual owner doesn't have the capital. That's why it's not fixed. You don't have the opportunity to do that if you don't have the ability to go get the capital to say we're going to fix it. So it really comes in on overall type of an operation in which can you provide a better level of service because you have equity behind you that allows you to do that, they understand what your plan is, and do you have the people on staff that have the ability to do that in a way that's beneficial both for the utility and the customer?

COMMISSIONER BROWN: And I guess the additional question I have is OPC made a very legitimate question about we do need support behind that 89 percent calculation on the handout. Is that readily available?

MR. WALLACE: We don't -- should I answer that?

MR. FRIEDMAN: Go ahead.

MR. WALLACE: We don't as a company generally do time reports, which is the only really thing that they would, you know, accept, which I appreciate. We don't do it because there's not many of us.

Now we're growing again. I mean, she rightly said that. We started out back at seven. But when we bought the South Carolina company, we had to add some people. We added a South Carolina president, right, because we hadn't done business in South Carolina before, and we added a South Carolina controller. So we're probably back up to 11. Okay?

But those people, their duties are pretty straightforward. Now one of the things that happened in 2007, it's interesting and I'm glad I got the chance to talk about it, is we didn't buy anything in two thousand, sorry, in 2010. We have no acquisitions in 2010. We have one acquisition in the pipeline which one guy is working on. Everybody else in the Company, including the head of due diligence, did nothing but try to figure out how to absorb these entities in, which is a major company. And, honestly, Palmetto is a little bit outside of our experience. We're used to doing 700 to 2,000 customer deals. A 15,000-customer system is a little bit bigger than we're used to, although it had all the same attributes: Lacked capital, didn't have professional management, didn't know how to do the things that we're able to do. So we thought it fit our niche even though it was larger. But we put all hands on deck to take that company in and still maintain a level of service with our Florida customers and our Texas customers that were the same.

MR. FRIEDMAN: Let me expand on that. We, we used the same methodology. I mean, they did the same evaluation that they did for the, for the initial 47 percent and apparently Staff accepted that number. They did the same thing, as, as Mr. Wallace pointed out, it's a small company, you can sit in the office and look around and, and, and tell what people, what people do without, without having to do time slips. Thank you.

CHAIRMAN GRAHAM: Staff, it looks like you're chomping at the bit. No?

MR. FLETCHER: Bart Fletcher. This is about the only thing I could add to Mr. Friedman's statements about the 37,000 of allocated cost. That's not the only cost that Staff has included in the O&M expenses. They also -- the Utility has retained contractual services, professional, to run the company as well in Florida, which we made no adjustment to. So it's not only the 37,000 that's in our rec, and that's included in our O&M expenses of 43,100 that we made no adjustments to.

And just to throw some out there about the, how the Utility looked at other utilities in Florida to come up with I guess their percentage of how much to allocate of their costs down to the systems, the regulated systems, they did provide in a data request basically a lot of companies here in Florida, a mixture of Class A, B and C utilities, and looked at the cost per customer for those. Staff had a few concerns about that analysis and the fact that they were A, B and C utilities.

With Tamiami, if you look at it in isolation, it would be a Class C company. Now Ni Florida as a whole is basically considered, because of their corporate structure, a Class A company. But just for Tamiami, they're a reseller only, and the mixture that they had in the response to the data request was A and B companies and they had treatment plants. Well, with the treatment plants, you can imagine that you're going to have probably a higher cost of doing business because you're actually more chemicals, there's just a lot more function, a lot more oversight that you have to have, like you have to have somebody there at a certain time to run the plant. This is a reseller company where they purchase the water from Lee County.

And Staff does agree with the statements made by Ms. Merchant that the, what was -- when the auditors looked at the allocation, their allocation for the test year was what you do is you take the gross amount and based on like an informal survey to the Utility's corporate employees, they basically came up with that 47.09 percent that is related to utility matters. So there's nothing in writing, there are no time sheets. That was just basically an informal study. Now once you get that amount, then you allocate it among the ERCs of the systems that they, that they own once you take the 47 percent.

Now I guess Staff was comfortable with our recommendation and the fact that if you look at reseller utilities only that are synonymous with Tamiami Village and you take the methodology that they had in their filing, which is to take the 47.09 percent from the gross amount and you allocate it based on the ERCs, taking into account that additional acquisition of the Palmetto system, then what that yielded was a cost per customer of about $275 per customer, and that was in line with some of the other utilities that we looked at. It was, it was in line. In fact, it actually worked out to be where it was comparable to the former utility owner.

If you took the last annual report that was under the prior owner and you were to take their O&M expenses for 2007, that was the year that they had, and you take those and index it up using the Commission price indexes, it is actually $3 higher, $278 cost per customer versus the 275 with Staff's adjustment. So we were comfortable with our recommendation that was filed on the 12th.

CHAIRMAN GRAHAM: Mr. Fletcher, I guess the question I have is with the information that's in front of you today, would you be making the same recommendation that you guys -- that's in front of us right now?

MR. FLETCHER: I think I would -- I don't think it -- I think there was cause that there is some need for an increase, but without further support I don't know what that number would be.

CHAIRMAN GRAHAM: Now I guess the question I have is, and this is to Staff and you can answer it or whoever needs to answer it, would this be best if we took, took a two-hour recess and came back after lunch and looked at these numbers, or do you want to defer this and come back at the next Agenda Conference?

MR. MAUREY: Commissioner, Andrew Maurey, Commission Staff. We'd like to defer the item, not to just one Agenda though. We would need more time than that. However, we would also need a waiver from the Company. We are at the statutory deadline today for this case. But we would need a waiver from the Company to extend that to provide additional time to, to review this information that came before us this morning.

CHAIRMAN GRAHAM: What sort of waiver? Just them saying on the record that they'll give you X number of days?

MR. JAEGER: Chairman Graham.

CHAIRMAN GRAHAM: Yes.

MR. JAEGER: Ralph Jaeger, legal staff. Basically the statute 367.081(8) says you must vote on the proposed agency action within five months, and that would have been December 28th of last year. They waived it through the 25th, today. And so what, what we'd need is just them saying they would waive 367.081(8) to a date, whatever date that is, some Agenda in the future.

CHAIRMAN GRAHAM: What date are you guys looking for?

MR. MAUREY: We'd need a little bit of time to talk amongst ourselves because it, it would require more than just a conversation.

MR. FLETCHER: Right. That, that would require the justification regarding, behind the 89.2 percent. And, and, again, that's the Company time to respond to certain data requests for that support. So I guess we'd have to get a little input from the Company. And as far as Staff's standpoint, to get the revised revenue calculations to our rate section, I would say at least about a two-and-a-half, three-month time period. But that again is dependent upon the, the Utility responding to those data requests.

CHAIRMAN GRAHAM: Let's, let's do this. Let's take -- I've got about seven minutes to 11:00. Let's take a recess until about 11:00 and you guys can decide how much time you need, and then we'll find out if they will, the Company on the record will give us that much leeway. I have two of the lights on, Balbis and Brown. Can you guys wait until after the recess?

COMMISSIONER BALBIS: Yes.

COMMISSIONER BROWN: Certainly.

CHAIRMAN GRAHAM: Okay. Let's take that seven-minute recess.

(Recess taken.)

Before I get back to Staff, I had Commissioner Balbis followed by Commissioner Brown have their lights on. Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chair. I have a couple of questions for Staff and also possibly the Utility.

Mr. Fletcher, there's been a lot of discussion about the acquisition and how it occurred outside of the test year. Was that a period of months, weeks, days after the end of the test year?

MR. FLETCHER: That was a period of about seven days.

COMMISSIONER BALBIS: Seven days. Okay. The other, the other question I had, they have the overhead costs. Okay. And it's one thing if you include the additional 15,000 customers or not in changing the distribution of those costs. Was the -- and I don't know if the question is for you or for the Utility, but my question is so you have the costs, and assuming that there's an increase in cost due to additional customers but the number stays relatively the same, around the

$2 million range, whether it's 2.1, 2.6, but then with the acquisition and the 15,000 additional customers, then those costs will be allocated over a greater amount, which is what Staff did in their recommendation. So the question, and I think it probably is better for the Utility, the question is now that the acquisition has occurred with the additional 15,000 customers, would you not allocate a portion of those costs to those customers as well?

MR. FRIEDMAN: Yes, Commissioner Balbis. That -- we agree. But what we're saying is if you're going to add the new customers, you'd have to add the new cost too. That's our only objection.

I mean, the way the Staff is doing it, it's a known change that occurred after the test year but we know the customers were added. And so we, we agree that that's sound ratemaking principle to add that known, a known change. We're just saying you have to do the other side of the equation too. If you're going to add the customers, you've got to add the, the additional, additional expense that goes with that.

MR. WALLACE: Our policy is to add the new utility in the month that we close. We do it that way because we can't always be looking backwards, we can only be looking forward. So, you know, in the month that we have it, we put it in. When we did the original test year, we put Brighton in in May. All right. And we had planned on putting Palmetto in in December, but we would have only put it in for one month because that would have been the only amount that it incurred.

Staff has taken a different position. But that's -- but the point is that, yes, absolutely, we put those new utilities in as we go. So in this year we have a new allocation that's based upon how much time we're spending and how the Utility fits into the overall structure on a month-to-month basis, and we use that consistently through every jurisdiction.

COMMISSIONER BALBIS: But as originally filed it did not include the additional customers and the overhead costs were only applied to the existing customers. And I guess I'm glad that Staff brought this to light because it was only a few days after the end of the test year because there may have been an opportunity to -- again, if you're going to collect from the new customers, again, a portion -- if you don't collect, you'd have a subsidization issue from the existing customer, customers to the new customers or you would have an overcollection issue. So I'm glad Staff pointed this out.

And I guess the argument or the next step would be to discuss what are the appropriate overhead costs, and if they are applied to all, what are the additional costs, if any? It may be just there's additional work to be done and not necessarily additional cost, but.

MR. FRIEDMAN: That, that's not reflected. You know, the MFRs, the minimum filing requirements, the financial data that utilities have filed are based upon test year and they don't include what happens after that test year. And the form, you know, we fill out the forms and it includes that. So if there's something that occurs after the test year, whether it's an increase in customers, a decrease in customers, change in the type of treatment, change in type of sludge hauling, you know, all of those things, if it's a known and identifiable change, it's certainly correct to include it. And that's why I'm not saying that what the staff has done in adding the customers is, is not good ratemaking principles. I'm just saying they didn't go far enough.

COMMISSIONER BALBIS: Okay. Thank you.

MR. WALLACE: Almost the result is, is we're going to end up with a new test year. I mean, that's basically what would happen if you looked forward.

CHAIRMAN GRAHAM: Commissioner Brown.

COMMISSIONER BROWN: My comment was just about, when I pushed the button was when we were talking about deferring the item. And I think it's certainly in the Utility company's best interest as well as the public interest to defer this item in case there's any reluctance on the Utility's part because we need to really analyze and have our Staff analyze the numbers so that we can make a reasonable decision based on the information that we have. So I do think it is in the public interest to defer it as, as much as we can to analyze it as -- to analyze the information sufficiently.

MR. FRIEDMAN: Thank you, Commissioner. And we did speak with the Staff and I think we've reached an agreement to, to waive this, the five-month rule for another two months until the 22nd agenda so that they can get that additional data.

COMMISSIONER BROWN: Thank you.

CHAIRMAN GRAHAM: Staff.

MR. MAUREY: To be specific, it was to waive it to the March 22nd agenda.

CHAIRMAN GRAHAM: You're looking to waive it to March 22nd?

MR. MAUREY: That's correct.

CHAIRMAN GRAHAM: And I guess on the record, the Utility is recipient to that, that you --

MR. FRIEDMAN: Mr. Chairman, that's correct.

CHAIRMAN GRAHAM: Okay. Ms. Helton, do you need anything else from us?

MS. HELTON: No, sir.

CHAIRMAN GRAHAM: All right. Well, then I move that we -- do we, General Counsel, do we lay this on the table, do we defer it until then? What's the terminology we want to do?

MS. KISER: I think just defer.

CHAIRMAN GRAHAM: So we defer to a date, date certain, which is March 22nd?

MS. KISER: Right. Uh-huh. Yes.

CHAIRMAN GRAHAM: Okay. All in favor, say aye.

(Vote taken.)

Those opposed? We're good. All right. If there's nothing else to come before us, then we are, we are adjourned.

(Agenda Conference adjourned.)

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

I, LINDA BOLES, RPR, CRR, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th day of January, 2011.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

NI Florida LLC - Water

Corporate Overhead Allocation

Description		Staff Recommendation 2009		Actual 2010*		Difference
Total Corporate Overhead	$	2,133,221	$	2,644,038	$	510,817
Percentage of Overheads Allocable to Utilities		47.09%		89.22%		42.13%
Corporate Overhead Allocable to Utilities	$	1,004,534	$	2,359,011	$	1,354,477
Ni Florida - Water ERCs		753		753		-
Total Company ERCs		20,283		20,283		-
Allocation Percentage		3.71%		3.71%		-
Corporate Overhead Allocated to Ni Florida - Water	**$**	**37,287**	**$**	**87,570**	**$**	**(50,283)**

*To annualize the 2010 amounts the January through September 2010 over head amounts were divided by 9 and multiplied by 12.

Parties/Staff Handout
Internal Affairs/Agenda
on 1/25/11
Item No. 7
100149-WU