

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150257-WS

APPLICATION FOR STAFF-ASSISTED  
RATE CASE IN MARION COUNTY, BY  
EAST MARION UTILITIES, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 5

COMMISSIONERS  
PARTICIPATING: CHAIRMAN JULIE I. BROWN  
COMMISSIONER ART GRAHAM  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER JIMMY PATRONIS  
COMMISSIONER DONALD J. POLMANN

DATE: Tuesday, February 7, 2017

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

1  
2           **CHAIRMAN BROWN:** Moving on to Item 5.

3 Mr. Smallridge, you are in town.

4           **MR. SMALLRIDGE:** Good afternoon.

5           **CHAIRMAN BROWN:** I'm not trying to give you a  
6 hard time. You ran into some traffic, traffic on the  
7 interstate?

8           **MR. SMALLRIDGE:** That's what it was.

9           **CHAIRMAN BROWN:** Mike, mike.

10          **MR. SMALLRIDGE:** Oh, sorry. Now is it on?

11          **CHAIRMAN BROWN:** All right. We are going to  
12 have staff do an introduction at this time of this item.  
13 And to see Mr. Rehwinkel on a SARC, I think that's the  
14 first since I've been here. Second.

15          **MR. VOGEL:** Good morning, Commissioners.  
16 Matthew Vogel with Commission staff.

17                 Item 5 is the application for a staff-assisted  
18 rate case in Marion County by East Marion Utilities,  
19 LLC. East Marion is a Class C utility that serves  
20 approximately 103 water and 92 wastewater customers in  
21 Marion County.

22                 Staff is recommending a water increase of  
23 \$4,607, or approximately 19 percent, and a wastewater  
24 increase of \$3,667, or approximately 10 percent.

25                 Staff does have an oral modification for

1 Issue 6 that has been provided to you. I'd like to go  
2 over that at this time, if you desire.

3 **CHAIRMAN BROWN:** Please.

4 **MR. VOGEL:** Okay. The utility incurred three  
5 prudent expenses relating to Florida Department of  
6 Environmental Protection licenses and permits. These  
7 expenses were believed to be included in staff's  
8 original recommendation as they are recurring by nature.  
9 The expenses increased miscellaneous expense by \$100 for  
10 water and by \$702 for wastewater. Changing the  
11 recommended amount in miscellaneous expense will affect  
12 the fallout issues regarding rate base, operating  
13 expense, revenue requirement, rates, and temporary  
14 rates. The oral modification also corrected a  
15 scrivener's error in the recommendation statement for  
16 Issue 6.

17 Commissioners, Mr. Rehwinkel, from the Office  
18 of Public Counsel, is here on behalf of the customers,  
19 and Mr. Smallridge is here on behalf of the utility. At  
20 this time, staff is prepared to answer any questions.  
21 Thank you.

22 **CHAIRMAN BROWN:** Thank you, Mr. Vogel.

23 Mr. Smallridge, would you like to address the  
24 Commission?

25 **MR. SMALLRIDGE:** Yes, ma'am. Thank you.

1 First of all, I want to thank staff for being gracious  
2 and able to work with me on these little things that we  
3 found out about, and we were able to get them corrected.  
4 That was great.

5 There was one issue that I wanted to address  
6 with the Commissioners, and that was I had engaged a  
7 consulting company to look at my whole operation as far  
8 as salaries for staff and myself and come up with a --  
9 I'm going to call it a neutral submission that I can  
10 make to staff that kind of kept me out of the loop. We  
11 were able to get the American -- AWWA compensation  
12 survey and submit to staff that.

13 When the staff report came out, we noticed  
14 that the two thousand -- that staff had used the 2015  
15 AWWA study, and so we resubmitted back to them with the  
16 2016 small system AWWA study. And the particular issue  
17 was for -- the whole study was for my whole company in  
18 its entirety, but the particular issue I'm talking about  
19 now is for my salary, which is what we submitted.

20 The number was -- there was some difference  
21 between what we submitted and what staff came up with in  
22 the initial report. And so I think being able to submit  
23 the 2016 actual numbers --

24 **CHAIRMAN BROWN:** What's that amount?

25 **MR. SMALLRIDGE:** I don't remember, to be

1 honest with you.

2 **MR. VOGEL:** Is that for the 2016 AWWA?

3 **MR. SMALLRIDGE:** What we submitted, yeah.

4 **MR. VOGEL:** What -- the utility submitted the  
5 compensation study, and they had requested \$93,800 for  
6 the officer's salary. But updating the 2016, the  
7 methodology that I used running my analysis, I updated  
8 it to \$72,704 up from the \$70,023.

9 **CHAIRMAN BROWN:** So just about a 2,000 --

10 **MR. VOGEL:** About \$2,700 basically, yes.

11 **CHAIRMAN BROWN:** Okay. Do you have an  
12 objection to that?

13 **MR. VOGEL:** I don't. He was able to give me  
14 the 2016, like the full 2016. I was able to go through  
15 it, and I'm agreeable to that.

16 **CHAIRMAN BROWN:** Okay. Fair enough. Anything  
17 else?

18 **MR. SMALLRIDGE:** I have an objection to that.  
19 I mean, that's pretty insulting to me.

20 **CHAIRMAN BROWN:** All right, Mr. Smallridge.  
21 Any other issues you'd like to address in the staff  
22 recommendation?

23 **MR. SMALLRIDGE:** No.

24 **CHAIRMAN BROWN:** Okay. Thank you.

25 Mr. Rehwinkel.

1                   **MR. REHWINKEL:** Thank you, Madam Chairman.

2 Charles Rehwinkel with the Office of Public Counsel.

3                   And I'm not here today to speak specifically  
4 in opposition to the staff's recommendation. The result  
5 that the staff came up with we find to be reasonable  
6 under these circumstances.

7                   I am here today to make a brief statement to  
8 the Commission. Hopefully I won't have to make this  
9 every time a case like this comes out, but we will if we  
10 have to.

11                   We believe that the use of the operating  
12 margin as incorporated in the staff's recommendation  
13 possibly is a violation of *Florida Statutes* in that it  
14 is an unadopted rule. The *Lake Osborne* case that the  
15 Commission staff cites and that you have been using was  
16 adopted on March 13th, 1996, a few weeks short of 21  
17 years ago. And Section 120.54(1) says that this  
18 Commission shall adopt rules, and it has exceptions,  
19 which a 21-year-old order is no longer incipient policy.  
20 So we are here today to make the first stake in the  
21 ground that we will be saying this again, and we will,  
22 of course, be glad to work with you and your staff about  
23 a rulemaking process that can incorporate the operating  
24 margin appropriately.

25                   I would commend the Commission and staff and

1 the parties to the dissent of Commissioner Deason in the  
2 *Lake Osborne* case. We think those issues exist today,  
3 the objections that were phrased in that dissent, in  
4 that 3-to-2 decision, and we would urge that the  
5 Commission take it seriously.

6 Our problem with adopting a policy this way in  
7 a staff-assisted rate case where it is impossible to  
8 litigate improper application of policy, even if it's  
9 incipient policy, is not the way to do rulemaking. We  
10 think the legislature expects the Commission to do  
11 rulemaking, and that rulemaking ought to occur in a  
12 forum where all parties can bring their issues to the  
13 Commission. We can't go to court and say, "Stop this."  
14 It wouldn't be fair to the company and what  
15 Mr. Smallridge is doing to improve the system and to  
16 serve customers. But if a lawyer sneezes, it doubles --  
17 it materially increases the cost, as you've seen in the  
18 addendum, for -- that the customers have to bear. So we  
19 have to find another alternative, and we will be looking  
20 for an alternative to challenge this process if we can't  
21 work it out as a rule.

22 So kudos to staff for what they've done to --  
23 for the customers, and we just wanted to make that  
24 statement for the record. Thank you.

25 **CHAIRMAN BROWN:** Thank you, Mr. Rehwinkel. I

1 did not expect that coming, but I -- we hear -- I hear  
2 your concerns on it. You did not propose necessarily an  
3 alternative to Issue 7. It sounds like you're still  
4 supportive of the staff recommendation on all issues.

5 **MR. REHWINKEL:** We have no objection to the  
6 staff recommendation. Thank you.

7 **CHAIRMAN BROWN:** Okay. Staff, legal,  
8 Mr. Hetrick or Ms. Helton, do you want to respond?

9 **MR. HETRICK:** Yeah. Madam Chair, I mean, this  
10 is the first we've heard of this. We're going to look  
11 into it and we'll get right back to you. We take that  
12 very seriously. I, above all --

13 **CHAIRMAN BROWN:** Uh-huh.

14 **MR. HETRICK:** -- won't tolerate any kind of  
15 unadopted rule. So we'll look into it, but we need time  
16 to look into it. It's the first we've heard of it  
17 today.

18 **CHAIRMAN BROWN:** Thank you.

19 Any further comment on that? All right.

20 Commissioners, any questions? Does anybody  
21 want to address Issue 6, which -- the salaries and wages  
22 issue that staff said that they didn't have an objection  
23 to updating the president's salary? They recommended,  
24 in the recommendation, 70,000. Updating it would be  
25 72,704; is that correct?



1           **MR. VOGEL:** That's correct.

2           **CHAIRMAN BROWN:** Mr. Smallridge, we did hear  
3 from you. Do you have an additional point to make?

4           **MR. SMALLRIDGE:** Yes, ma'am, I do.

5           **CHAIRMAN BROWN:** Sure.

6           **MR. SMALLRIDGE:** Yes, ma'am, I do. I -- the  
7 difference between what the utility submitted and what  
8 staff is coming up with is, you know, the low point and  
9 the high point of what the AWWA study came out with.  
10 The reason that we asked for the higher end of the range  
11 of that, that I did, and I want the Commissioners to  
12 know this, is that I don't take any health benefits from  
13 the customers at all. The only thing I get is a  
14 straight salary. So none of those costs are incurred  
15 against, you know, against the customers. And all the  
16 filings, all the regulatory work, I do all that stuff  
17 in-house. So if I separated all that out, you know,  
18 there would be a lot more cost to the customers.

19                   And the last thing I wanted to say is there's  
20 a big difference between running a utility with 2,000  
21 customers as opposed to running ten utilities with 2,000  
22 customers. The multiplier is there. So I have a lot  
23 more of the work, so I hope you --

24           **CHAIRMAN BROWN:** How many companies do you own  
25 now?

1           **MR. SMALLRIDGE:** That you've approved? I  
2 think we're at nine.

3           **CHAIRMAN BROWN:** We just approved one today.

4           **MR. SMALLRIDGE:** Okay. So ten.

5           **CHAIRMAN BROWN:** How many?

6           **MR. SMALLRIDGE:** Ten.

7           **CHAIRMAN BROWN:** Ten? Was -- Mr. Smallridge,  
8 was there a time when -- I think it was within the past  
9 year or two that you represented to the Commission that  
10 we -- that you weren't going to buy any more?

11           **MR. SMALLRIDGE:** No. You tried to get your  
12 little unconstitutional thing through, but you guys  
13 approved it to -- because you changed the rules. You  
14 changed the rules to say that the utility had 90 days  
15 to -- to let you know of the transfer.

16           **CHAIRMAN BROWN:** All right. I must be  
17 dreaming. What about this credit card? So your -- some  
18 of your miscellaneous service fees are going up, it  
19 looks like, uniformly across the different sister  
20 utilities.

21           **MR. SMALLRIDGE:** Yes, ma'am.

22           **CHAIRMAN BROWN:** But we just approved -- I  
23 thought we had just approved for, like, a convenience  
24 charge. It was just last month for \$3, and now it's  
25 already jumped up.

1           **MR. SMALLRIDGE:** You did, and the credit card  
2 companies raise them literally every month.

3           **CHAIRMAN BROWN:** Okay.

4           **MR. SMALLRIDGE:** Yeah. So whenever -- so what  
5 I do is -- what you're seeing there is a reflection of  
6 -- I've brought a new utility online, and I went to the  
7 company and said, "We want to be able to accept payments  
8 with debit cards or credit cards," and that's the fee  
9 that they give me. So that's basically an update. But  
10 that stuff literally goes up every month.

11           **CHAIRMAN BROWN:** Yeah. I mean, I think it's  
12 reasonable. I just wanted to understand that a little  
13 bit more.

14           Commissioners, do -- oh, Commissioner Polmann.

15           **COMMISSIONER POLMANN:** Thank you, Madam  
16 Chairman. I just want to clarify with staff, the salary  
17 analysis is based on the AWWA survey and data; is that  
18 correct?

19           **MR. VOGEL:** Yes, sir. Staff performed three  
20 different analyses, came up with a good solid range.  
21 And the AWWA seemed to fit the range the best, and I  
22 could get a reasonable, appropriate number using that  
23 system.

24           **COMMISSIONER POLMANN:** Okay. And using the  
25 2016 data, the revision is up to 72,704?

1           **MR. VOGEL:** Yes, sir.

2           **COMMISSIONER POLMANN:** And are we -- are we  
3 able to reproduce in our calculations the value that  
4 Mr. Smallridge has provided?

5           **MR. VOGEL:** For his requested salary?

6           **COMMISSIONER POLMANN:** Yes, his requested  
7 salary. Can we recalculate that? Do we know -- do we  
8 understand where that came from?

9           **MR. VOGEL:** Yes, sir. The requested salary  
10 was actually the maximum range for a utility in the  
11 rural water for 2016 for his position. So they give you  
12 a minimum range, a midpoint of the minimum and maximum,  
13 and then a maximum. And his was -- I want to say it was  
14 around \$23 or \$30 below the maximum amount. I think it  
15 was \$93,823.

16           **COMMISSIONER POLMANN:** Okay. Okay. And the  
17 staff value, is that in the middle or the lower?

18           **MR. VOGEL:** For my recommendation?

19           **COMMISSIONER POLMANN:** Yes, sir, your  
20 recommendation.

21           **MR. VOGEL:** It falls between the minimum and  
22 midpoint of the average salary range that they provide.

23           **COMMISSIONER POLMANN:** Okay. Thank you.  
24 Madam Chairman, may I ask a follow-up?

25           **CHAIRMAN BROWN:** Please.

1                   **COMMISSIONER POLMANN:** Mr. Smallridge, can you  
2 please explain to the Commission why it would be  
3 appropriate for your salary to be at the maximum of the  
4 range?

5                   **MR. SMALLRIDGE:** Well, please understand that  
6 I hired a consultant to do this. I didn't have any  
7 input into this whatsoever. So the consultant looked at  
8 my total company, looked at all the tasks that I  
9 perform, and so this is a big picture sort of number.  
10 The consultant -- the number that he submitted takes  
11 into account the fact that I don't take any -- any  
12 retirement or health insurance benefits from the  
13 customers, and that a lot of the work that a lot of  
14 utilities hire out through contractors or consultants I  
15 do myself in-house. So it saves the customers, you  
16 know, a lot of money going down the road as opposed to  
17 contracting stuff out. For instance, all these -- all  
18 the stuff before the Commission and water management  
19 districts and whatever regulator, I do all that, with  
20 the obvious exception of if I need an attorney or an  
21 engineer or something I'm not licensed to do. But a  
22 vast majority of that is done in-house. And, you know,  
23 our overhead is, you know, is pretty low.

24                   So what the consultant come up with, looking  
25 at the whole big picture, was the -- because we do so

1 much stuff in-house, the upper end of the pay scale was  
2 warranted because it's something I do all myself and I  
3 don't take other benefits from the customers.

4 **COMMISSIONER POLMANN:** Thank you,  
5 Mr. Smallridge.

6 **MR. SMALLRIDGE:** Did I answer your question?

7 **COMMISSIONER POLMANN:** Well, let me make an  
8 observation, if you will. You're indicating that the  
9 consultant did this work for you. Is it the  
10 consultant's opinion that the upper range, to the best  
11 of your knowledge, the upper range of this bracket is  
12 appropriate for your salary and that you have no opinion  
13 on that? I think that's what I heard you say.

14 **MR. SMALLRIDGE:** Yes, sir, that is correct.  
15 And I did that intentionally to keep me and my personal  
16 feelings, you know, out of this scenario.

17 **COMMISSIONER POLMANN:** Okay. Okay. I think  
18 in earlier discussion, if I heard correctly, you said  
19 you were insulted.

20 **MR. SMALLRIDGE:** Well --

21 **COMMISSIONER POLMANN:** That's all. Thank you.

22 **CHAIRMAN BROWN:** So you still take it  
23 personal.

24 Commissioner Brisé.

25 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.

1           So to staff, so you would probably  
2 characterize the range or the number that you selected  
3 for the salary to be in the lower quartile; right?

4           **MR. VOGEL:** You could look at it that way.  
5 Actually the 50th percentile of salaries, like the  
6 median salary, is around 69,000 for that position.

7           **COMMISSIONER BRISÉ:** Okay. So it's above  
8 that.

9           **MR. VOGEL:** On the 2015, on the 2015.

10          **COMMISSIONER BRISÉ:** Okay.

11          **MR. VOGEL:** But it -- the number for the AWWA  
12 is pretty small, the sample size, so that's not really a  
13 good barometer of the average salary range. But, yes, I  
14 took about the 20th percentile of the average salary  
15 range, yes.

16          **COMMISSIONER BRISÉ:** Okay. So follow-up to  
17 that. Are there any distinguishing factors that exist  
18 in differentiating how those salaries are -- fall into  
19 that range? Is there a set of responsibilities that  
20 exist for the company -- for the CEOs or presidents of  
21 the companies that receive the higher range versus what  
22 they receive on the lower range to see if we are truly  
23 talking apples to apples?

24          **MR. VOGEL:** There isn't anything in the study  
25 that really distinguishes what makes an average salary

1 range on the highest or the lowest or the midpoint. I  
2 will say that the consultant says that the maximum  
3 salary range was used based on the executive level  
4 employees that have obtained and performed the advanced  
5 skills required for their respective position. So it  
6 doesn't really tell you what skills each manager has and  
7 why their salary varies. It could be jurisdictional.  
8 It could be any number of things.

9 **COMMISSIONER BRISÉ:** Got you. So it's just  
10 these are the -- this is a group of similar-sized  
11 companies, this is the range, and this is where you fall  
12 on the range?

13 **MR. VOGEL:** Yes, sir.

14 **COMMISSIONER BRISÉ:** All right. Thank you.

15 **CHAIRMAN BROWN:** And a follow-up to  
16 Commissioner Brisé. That salary for the president,  
17 though, that is allocated to each of the sister  
18 companies, and that's a total salary for Mr. Smallridge  
19 for all of the companies that he owns; is that correct?

20 **MR. VOGEL:** Yes, ma'am, that is correct. And  
21 it's the systems that we got from the audit response.  
22 He gave us an updated list. And using that ERC count,  
23 that's the updated amount. It's 5 -- just over  
24 5 percent.

25 **CHAIRMAN BROWN:** What did we approve in the



1 last rate case for a sister utility for his salary?

2 **MR. VOGEL:** It was \$60,000.

3 **CHAIRMAN BROWN:** Okay.

4 **MR. VOGEL:** For his total salary was \$60,000.

5 So we're increasing it from 60 --

6 **CHAIRMAN BROWN:** Thank you.

7 **MR. VOGEL:** -- to \$70,072, if it's approved.

8 **CHAIRMAN BROWN:** All right. Commissioners,  
9 any further discussion on that? And if not, is there a  
10 recommendation? Personally I'm fine with updating the  
11 salary to the 2016 AWWA, a little bit above the  
12 midpoint.

13 Commissioner Graham.

14 **COMMISSIONER GRAHAM:** I'll make -- I'll  
15 attempt a motion.

16 **CHAIRMAN BROWN:** Thank you.

17 **COMMISSIONER GRAHAM:** I'll move staff  
18 recommendation on all issues, including the oral  
19 modification and fallout issues from those oral  
20 modifications and bumping the salary to the 72,000 --  
21 was it 704?

22 **MR. VOGEL:** Yes, sir.

23 **COMMISSIONER GRAHAM:** Okay.

24 **COMMISSIONER PATRONIS:** Second.

25 **CHAIRMAN BROWN:** Any further discussion? All

1 those in favor, say aye.

2 (Vote taken.)

3 All right. Thank you. Thank you,  
4 Commissioner Graham, for that.

5 (Agenda item concluded.)

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

4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

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

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

18 DATED THIS 20th day of February, 2017.

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