

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180141-WS

PROPOSED ADOPTION OF RULE
25-30.4575, F.A.C.,
OPERATING RATIO
METHODOLOGY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, October 30, 2018

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

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: I forgot to do this at the
3 beginning of the meeting, my public service
4 announcement. Once again, thank you for all the
5 pink I see out there. It -- this time, it actually
6 came at the end of the month and not the beginning
7 of October, but remember, even though pink is for
8 breast cancer awareness, it's for all cancer
9 awareness, as far as I'm concerned.

10 Some of that stuff, you can check on your own;
11 if not, go to a doctor. I can't be more sincere
12 about this than I am right now. It's very
13 important. We've all been touched by it and it's
14 very serious and once -- once a year, I get to do
15 this, and this is my time. And please, take the
16 time to get it done.

17 We are adjourned and this meeting --

18 COMMISSIONER BROWN: Item 2.

19 COMMISSIONER POLMANN: Item 2.

20 CHAIRMAN GRAHAM: Oh, Item No. 2. I was so
21 close.

22 (Laughter.)

23 CHAIRMAN GRAHAM: Item No. 2 -- Item No. 2 --

24 COMMISSIONER BROWN: Yeah. Yeah. Yeah.

25 CHAIRMAN GRAHAM: -- staff.

1 MS. HARPER: Good morning, Commissioners. I'm
2 Adria Harper with the general counsel's office.

3 Item No. 2 -- in Item No. 2, staff is
4 recommending that the Commission propose the
5 adoption of a new rule. This is Rule 25-30.4575
6 F.A.C. It's for the operating-ratio methodology.

7 The SARC statute gives the Commission
8 discretion to assist certain water and wastewater
9 utilities that are in financial distress. For
10 those water and wastewater utilities that have a
11 rate base that is small or negative, the operating-
12 ratio methodology may be used to determine the
13 revenue requirement in a staff-assisted rate case.

14 The operating-ratio methodology is an
15 alternative to the traditional calculation of
16 revenue requirement and it substitutes the
17 utility's operation and maintenance expenses for
18 rate base and calculating the amount of return.

19 It's used to help ensure that utilities that
20 lack the funds to make necessary repairs are able
21 to provide safe and reliable service to customers.

22 The Commission first introduced the operating-
23 ratio methodology in 1996 in a SARC in the Lake
24 Osborne order. Since the Lake Osborne order,
25 approximately 167 SARCs have been filed with the

1 Commission, and staff has recommended applying the
2 operating-ratio methodology in 23 dockets.

3 The proposed rule provides that the operating-
4 ratio methodology may only be used for those
5 utilities whose rate base is no greater than
6 125 percent of operation and maintenance expenses.

7 Also, the rule provides that the operating-
8 ratio methodology may only be used for utilities
9 that continue to qualify for a SARC. If the
10 application of the methodology changes the
11 utilities' qualification for a SARC, the operating
12 methodology may not be applied.

13 Staff held a work development -- a rule-
14 development workshop. OPC and U.S. Water
15 participated and submitted post-workshop comments.
16 Utilities, Inc. of Florida also attended the
17 workshop, but did not submit post-workshop
18 comments.

19 In drafting the proposed rule, staff took into
20 consideration the comments and the experience staff
21 has gained with the application of the operating-
22 ratio methodology over the last 20 years.

23 Staff believes the rule set forth in the
24 recommendation would provide these financially-
25 distressed utilities with a lifeline to stay in

1 business so they are able to provide safe and
2 reliable water and wastewater services to their
3 customers.

4 Staff also believes the rule would help
5 accomplish the goal of assisting the troubled
6 systems to become financially viable again and
7 return to the traditional cal- -- revenue-
8 requirement calculation.

9 Staff is available for any questions. And
10 also, I would note, Mr. Rehwinkel from OPC would
11 like to address the Commission about this rule.

12 CHAIRMAN GRAHAM: Thank you, staff.

13 MS. HARPER: Thank you.

14 CHAIRMAN GRAHAM: Mr. Rehwinkel.

15 MR. REHWINKEL: Thank you, again, Mr. Chairman
16 and Commissioners.

17 Before I get started, I would like to
18 introduce some new staff members at the Public
19 Counsel's office who will be working on this
20 docket, if it goes forward.

21 You all got to know Trish Merchant and Denise
22 Vandiver as well as Erik Sayler. And they have
23 moved on to happier times, I'm sure. But they've
24 spent a lot of good time with the Public Counsel
25 and the Public Service Commission.

1 So, I just want to introduce Gina Price, who
2 is -- was our first hire to replace one of those
3 three. And Gina worked with the Public Service
4 Commission for three years during my tenure here
5 back in the 1990s.

6 Sarah Lewis is an accountant who has joined us
7 as well. And both of them just came -- went
8 through the rate school. And we are very happy
9 that they were able to -- to do that.

10 Tad David is our newest attorney who will hit
11 the ground running. We believe he has big shoes to
12 fill with Mr. Sayler, but we have every confidence
13 that you will be pleased with him -- his advocacy
14 on behalf of the customers.

15 But I just wanted to take this opportunity to
16 introduce them because we have made a major change
17 at the Commission -- at the Public Service -- at
18 the Public Counsel's office before the Public
19 Service Commission, and figured it would be good to
20 introduce them to you before they appeared before
21 you, which will probably not be long.

22 Commissioners, I want to thank you and your
23 staff for responding to our request that we take
24 the Lake Osborne order and put it into a rule; in
25 other words, to codify the policy that you have

1 developed over the past 21-plus years.

2 There's a lot in this proposed rule that we
3 like. There are some things in this proposed rule
4 that we are -- have concerns and objections to. I
5 am come here -- I have come here today prepared to
6 make lengthy comments and go through a contentious
7 presentation.

8 I would also add that we were late in talking
9 to staff and to U.S. Water, due to sort of the
10 backlog that we experienced after the hurricane as
11 we're all trying to catch up. And I know the
12 Commission and staff is, too.

13 But in the last few hours yesterday and this
14 morning, we've had some conversations in earnest
15 with Mr. Rendell and your staff about possible
16 areas of modification and compromise that we
17 believe -- and I believe your staff and Mr. Rendell
18 can confirm this -- have some promise.

19 Our core is to support the -- the policy that
20 you have developed so that small systems can get a
21 reasonable amount of assistance. So, we're not
22 here to stop the rulemaking whatsoever.

23 I have made complaints, if -- if you will, if
24 that's the right word, about the pace of this
25 process. And I've urged you to bring it to the

1 agenda and bring it to this day. Hurricane Michael
2 interfered with that a little bit.

3 Now, I find myself in the position of asking
4 for a slight delay so we can continue the
5 conversation and finish the process so we can bring
6 to you a result that I think would avoid not only
7 extensive administrative litigation, but appellate
8 litigation as well.

9 So, with that, I would urge that we -- we take
10 a -- a short pause and we will talk in earnest with
11 your staff and Mr. Rendell and any other
12 representative of the utility industry that wants
13 to communicate.

14 So, that's my request.

15 CHAIRMAN GRAHAM: Mr. Rendell?

16 MR. RENDELL: I'm not opposed to entering into
17 discussions. I came here to support staff's
18 recommendation, but I'm open to further
19 discussions.

20 CHAIRMAN GRAHAM: Well, we're in a difficult
21 spot right now that Rosanne is leaving, so -- I
22 don't know if we want to go to an appellate court.

23 Commissioner Polmann?

24 COMMISSIONER POLMANN: Thank you,
25 Mr. Chairman.

1 For staff -- Ms. Harper, is there a particular
2 time frame or a -- a time-limit constraint once we
3 approve commencement -- what exactly is the process
4 for rulemaking?

5 MS. HARPER: Well, if we deferred the rule, we
6 would not have any statutory dead- -- deadlines.
7 Right now, there are no statutory deadlines that
8 apply, but if we not- -- once we notice it as a
9 proposed rule, then they will apply. And so,
10 that's something for you to consider.

11 At this point, we could defer it and not have
12 any deadlines apply.

13 COMMISSIONER POLMANN: Once we notice it, what
14 would be the appropriate -- or the applicable time?

15 MS. HARPER: Well, then all the deadlines
16 apply -- kick in, like such as a comment period.
17 There's a 20-day comment period and things like
18 that. And then the rule can be challenged at that
19 point, but it's -- it's less flexibility for us at
20 that point.

21 COMMISSIONER POLMANN: Okay. Thank you.

22 CHAIRMAN GRAHAM: Commissioner Brown.

23 COMMISSIONER BROWN: Mr. Rehwinkel, how long
24 are you requesting that we defer this item? Since
25 I know you have stressed to us the importance of

1 moving forward expeditiously on this rule --
2 multiple times you've told us to.

3 MR. REHWINKEL: One agenda is -- I mean, I
4 really just need -- I need more time than just
5 today because I -- staff said that they don't want
6 to make edits on the fly. And I fully agree with
7 that. I think when you're doing a rule, you need
8 to make sure everybody thinks through all the
9 language and gets it right.

10 But we really just need beyond today, but we'd
11 be happy to have it come right back to the next
12 agenda or -- or the minimum amount of deferral that
13 the process that you have can accommodate. So, if
14 it's the next -- if it's the next month's or the
15 month after that is fine with us. We can get it
16 back quickly.

17 COMMISSIONER BROWN: Well, I have faith in our
18 Chairman and approving a deferral. So, we -- it
19 rests on his shoulders.

20 CHAIRMAN GRAHAM: Commissioner Polmann?

21 COMMISSIONER POLMANN: Thank you,
22 Mr. Chairman.

23 Mr. Rehwinkel, my question at this juncture
24 would -- would concern -- and I -- I appreciate
25 what you said. I -- I guess your opening remark

1 was you had a number of issues, but then in your
2 remarks, you kind of shifted over to in the -- in
3 the past few days, you -- you had some further
4 discussions and kind of came to a -- I don't want
5 to say meeting of the minds, but you were -- you
6 were making a lot of accommodation or -- or
7 something to that effect.

8 So, how close are you or do you feel are we
9 still on significant substance in terms of coming
10 to middle ground? Or are we talking about
11 language? Can you -- can you give us some hint?

12 MR. REHWINKEL: Yeah, I mean, there are three
13 numerical issues that we have a concern with. It's
14 the -- the increasing the percentage, the issue
15 about whether you increase the cap or take it off
16 altogether, and then the 125 on the rate base.

17 Those three issues, I believe, there's a path
18 forward and there's a solution that reasonable
19 minds could come to an agreement with that would
20 avoid litigation.

21 I mean, we have some dug-in positions on that,
22 but we're willing to compromise and I think there
23 are numerical compromises that we've had
24 preliminary conversations with staff -- I don't
25 want to communicate to you that we're -- we're

1 almost there, but I do believe that there's a
2 reasonable likelihood that we can get there.

3 COMMISSIONER POLMANN: Okay. Yeah, it's not
4 my intention here to --

5 MR. REHWINKEL: Yeah.

6 COMMISSIONER POLMANN: -- negotiate here
7 from -- from my seat.

8 It sounds like these are the types of things
9 that can be resolved over the next month.
10 Mr. Chairman, I -- it seems reasonable to come back
11 in a month or to give it that much time. My
12 discussion with staff on this item -- it seemed
13 that the rule was in pretty good shape. So, I
14 think 30 days sounds entirely reasonable.

15 Thank you.

16 MR. RENDELL: Commissioners, if I -- real
17 quick. My question -- because I had a brief
18 conversation this morning with Mr. Rehwinkel -- is,
19 is there room for compromise because I believe a
20 lot of what Mr. Rehwinkel brought up was already
21 contained in his January 2018 comments to the rule.

22 So, if we defer it, I just want to make sure
23 there is some openness to some negotiation or some
24 leeway because I'm here to fully support staff's
25 recommendation.

1 CHAIRMAN GRAHAM: Well, I am glad that OPC
2 came forward because I know he spoke before about
3 us bringing this to the table. And so, it's not
4 always easy to eat a little crow, asking for a
5 little deferment, but that's fine. I never had a
6 problem with anybody asking for a deferment, just
7 as long as it's statutorily allowed, though.

8 So, I don't have a problem with deferring this
9 for another cycle to the next hearing. And I -- I
10 think at that point, anything we can do for you
11 guys to come to an agreement and make sure this is
12 what we need is fine.

13 And if we're back at the same position next
14 week -- I'm sorry -- next month, then -- you know,
15 then the job is on us, as Commissioners, to make a
16 decision and move this thing forward.

17 So, that being said, we will defer Item No. 2.
18 And I think that, now, concludes -- I thank you all
19 for coming. Once again, cancer checks. And
20 everybody travel safe.

21 We will have our Gulf Power hearing in this
22 room in seven minutes, which is ten minutes 'til
23 11:00 by that clock in the back of the room.

24 (Whereupon, proceedings concluded at 10:42
25 a.m.)

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STATE OF FLORIDA)
COUNTY OF LEON)

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DATED THIS 8th day of November, 2018.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021