

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150102-SU

APPLICATION FOR INCREASE IN
WASTEWATER RATES IN CHARLOTTE
COUNTY BY UTILITIES, INC. OF
SANDALHAVEN.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 23

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

DATE: Tuesday, July 21, 2015

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

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

P R O C E E D I N G S

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2 **CHAIRMAN GRAHAM:** Okay. Let's move on to Item
3 No. 23.

4 **MS. BRUCE:** Good morning, Commissioners. I am
5 Sonica Bruce on behalf of Commission staff.

6 Item No. 23 is Utilities Inc. of Sandalhaven's
7 application for increase in water and wastewater
8 rates -- I'm sorry -- for wastewater rates in Charlotte
9 County.

10 Sandalhaven is a wastewater-only utility
11 serving 835 customers. The utility is requesting
12 interim rates, and staff recommends that an interim rate
13 increase of 17.92 percent be approved. The utility's
14 last rate case before the Commission was in 2007, and
15 the current rates were set by Charlotte County in 2012.

16 Staff has an oral modification due to a change
17 in used and useful. The fallout changes have been
18 previously provided. OPC and the utility are present.
19 Staff is prepared to answer any questions that you may
20 have.

21 **CHAIRMAN GRAHAM:** Commissioners, any questions
22 of staff?

23 Okay. Let's go to the utility.

24 **MR. FRIEDMAN:** Thank you, Mr. Chairman,
25 Commissioners. Marty Friedman of Friedman & Friedman on

1 behalf of Utilities, Inc. of Sandalhaven. Also with me
2 is Mr. Jared Deason, who is the financial -- new
3 financial analyst in Florida for the Utilities, Inc.
4 Florida companies.

5 Utilities, Inc. of Sandalhaven disagrees with
6 staff's recommendation. We support, in fact, the
7 initial recommendation that the staff came up with. We
8 think that the used and useful adjustment that was made
9 at the last minute is not consistent with prior
10 Commission orders, or the methodology is not consistent
11 with prior Commission orders.

12 This -- the real driver in this rate case is
13 the fact that the Department of Environmental Protection
14 is requiring the utility to abandon its existing
15 wastewater plant, which will be offline by the end of
16 August, which is a month away. All of that flow is now
17 having to be diverted to the Englewood Water District,
18 which will be more expensive than the portion that was
19 treated by Utilities, Inc. of Sandalhaven itself.

20 And I think that that is where the -- the
21 staff has failed to include in its analysis the fact
22 that when these interim rates are in effect for most of
23 the time, almost all the time the interim rates are in
24 effect, all of that flow will go to Englewood Water
25 District. And I would suggest to you that -- I mean,

1 the company is losing money. I mean, even with -- even
2 with the interim rate increase, the company is going to
3 be in a negative situation.

4 They're interim rates. It's -- if we guess
5 wrong on interim rates and we guess too high, nobody is
6 harmed. The customers get a refund with interest. If
7 you're too conservative in your analysis of interim
8 rates, the utility never can get that lost revenue.
9 It's gone.

10 So I would suggest to you, as I think the
11 intent of the interim rate statute, is that when you
12 err -- if you have to err, you should err on the side
13 of -- of having -- going with the higher interim revenue
14 number.

15 I know the Public Counsel has got some issues
16 they want to address, and I -- depending upon what
17 they -- they say, because I don't know exactly what
18 they're going to say, I would like to respond to them as
19 well.

20 But I would suggest to you that -- that the
21 last-minute change in the staff rec is -- you know,
22 doesn't allow us to the opportunity to analyze the
23 methodology. And as a result, we think that the -- it's
24 more prudent for the Commission to go with the staff's
25 original recommendation.

1 We've got the -- the -- our corporate
2 undertaking and corporate guarantees in place. We're
3 ready to implement those rates with all the appropriate
4 guarantees that the customers will get a refund of every
5 penny if it's ultimately determined that the rates
6 are -- interim rates were too high with interest. So
7 the customers are not going to be harmed by following
8 the Commission's -- I mean, the staff's original
9 recommendation, and I would respectfully request that
10 you adopt the original recommendation. Thank you.

11 **CHAIRMAN GRAHAM:** OPC.

12 **MR. SAYLER:** Thank you, Mr. Chairman,
13 Commissioners. Erik Sayler on behalf of the Sandalhaven
14 customers here today. Thank you for the opportunity to
15 speak on interim rates. Normally the parties aren't
16 usually speaking to it, but with this large change, we
17 do appreciate that.

18 First off, I'd like to thank staff for the
19 oral modification today because it did resolve a number
20 of issues that Public Counsel had with the proposed,
21 initially proposed interim rate recommendation.

22 With that, for the record, the Public
23 Counsel's office does not entirely concur with the
24 staff's interpretation of the interim rate statute.
25 However, we do not object to the results being

1 attained -- obtained because we believe that it yields
2 fair results, interim rates not only for the customers
3 but also for the utility.

4 One thing that -- Mr. Friedman did mention why
5 he believes the prior interim rate should be used as it
6 relates to the retirement of the Sandalhaven Wastewater
7 Treatment Plant. OPC would like to note that that is an
8 adjustment that takes place outside of the test year,
9 and interim rates should be based upon things within the
10 test year. As it states within the interim rate
11 statute, the rate of return for the most recent 12-month
12 period. So for those reasons, we -- we agree with
13 the -- we're thankful for the revised interim rate
14 recommendation and support it.

15 **CHAIRMAN GRAHAM:** All right. Staff, my -- I
16 guess I'm trying to understand. My understanding of the
17 way the interim rates are, it's very prescriptive, so it
18 doesn't give us a whole lot of flexibility; correct?

19 **MS. BROWNLESS:** Yes, sir, that's correct.

20 **CHAIRMAN GRAHAM:** And explain to me the
21 difference with your first staff recommendation and the
22 changes that were made. Let's go -- let's start with
23 that position first.

24 **MS. BROWNLESS:** My understanding is the
25 difference between the first two has to do with the

1 calculation of used and useful. And we went back to our
2 original 2007 order, and that is the order we used to
3 meet the requirements of the interim statute. We did
4 not go back to the 2010 Charlotte County order. We used
5 the 2007 order because use of the 2000 order was
6 consistent with previous Commission decisions, and that
7 order had audited results.

8 In our original rec, we looked at the sewer
9 plant as being 100 percent used and useful, and that
10 resulted in a significant rate base. And also we did
11 not make adjustments to the interconnection with EWG --
12 EWD. When the engineering staff went back and looked at
13 our original order, we realized that there were other
14 adjustments in the original order that were made to the
15 interconnection agreement with EWD: the master lift
16 station, the force main, and the sewer plant. And when
17 those appropriate adjustments were made, which would
18 bring our adjustments in line with what was done in the
19 2007 case, the result were the modifications that we
20 discussed and the lowering of the interim rates.

21 **CHAIRMAN GRAHAM:** So staff is comfortable with
22 the latest --

23 **MS. BROWNLESS:** Yes, sir. The modifications
24 are what we think are appropriate. Because in an
25 interim you're not supposed to make pro forma

1 adjustments, and at the time -- at this time it's my
2 understanding that current customers are not actually
3 hooked up and receiving service. The wastewater
4 treatment plant is still online, and that was certainly
5 true during the interim test year which ended
6 December 31st of 2014.

7 So since interim rates do not allow for pro
8 forma adjustments, even if the customers are transferred
9 over in August of this year, that happened outside the
10 test period used for establishment of interim rates.

11 **CHAIRMAN GRAHAM:** So what happens if we set
12 the interim rates too low and the utility is losing
13 during those interim rates? Is there a mechanism for
14 them to be made whole after we move to the regular
15 rates?

16 **MS. BROWNLESS:** No, sir. The interim rates
17 are established in such a way that they're subject to
18 refund so the customers are made whole if the rates
19 subsequently are lowered, lower than the interim rates,
20 but the utility moves forward.

21 **CHAIRMAN GRAHAM:** So if the rates -- if the
22 interim rates are set too high, there's a mechanism for
23 the customers to be made whole?

24 **MS. BROWNLESS:** Yes, sir.

25 **CHAIRMAN GRAHAM:** But it doesn't cut the other

1 way. Why is that?

2 **MS. BROWNLESS:** That's the way the interim
3 statute is set up. The idea of the interim statute is
4 not to -- it's to keep the company, give the benefit to
5 the company of the last rate decision, in a sense, to
6 maintain the status quo. And that's -- I mean, it's a
7 very prescriptive statute. That's how it works.

8 **CHAIRMAN GRAHAM:** Okay. Commissioner Brown.

9 **COMMISSIONER BROWN:** So I guess then the
10 essential question, Ms. Brownless, is with the oral
11 modification and the adjustments made by staff, would
12 the utility then be earning outside -- below the range
13 of reasonableness of its ROE?

14 **MS. BROWNLESS:** No, ma'am. The utility -- the
15 modifications allow the utility to earn the range, the
16 low range of the last ROE set in 2007. So the ROE they
17 would be earning, I believe, would be 11 percent. Is
18 that correct? I think it's 11 percent.

19 **COMMISSIONER BROWN:** Thank you.

20 **CHAIRMAN GRAHAM:** Commissioners, any other
21 questions, concerns, outward thinking?

22 Well, then I will entertain a motion.

23 Commissioner Brisé.

24 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
25 I'm prepared to move staff on all issues.

1 **COMMISSIONER EDGAR:** Second.

2 **CHAIRMAN GRAHAM:** It's been moved and
3 seconded, staff recommendations on all issues on Item
4 No. 23. Any further discussion? Seeing none, all in
5 favor, say aye.

6 (Vote taken.)

7 Any opposed? By your action, you've approved
8 the staff recommendation on Item No. 23.

9 Before we leave, where's J.R.? Come on up
10 here, Mr. Kelly. I guess you can use that mike right
11 over there by our General Counsel.

12 **MR. KELLY:** Thank you, Mr. Chairman and
13 Commissioners. I just wanted to take a couple of
14 minutes. I will not go on for a long time. But today
15 is a little bit of a bittersweet day.

16 Back in 1986, some 29 years ago, a young
17 lawyer joined our office, and today is his very last
18 agenda, and that's Steve Reilly. Steve is going to be
19 leaving us in mid-August. He's finishing his drop
20 period. And I wanted to take a few minutes just to
21 recognize Steve. And he's going to kill me later, but
22 that's okay.

23 But all of you that know Steve know that he
24 has been an extremely strong voice for the water and
25 wastewater customers. And I have to tell you real quick

1 one of the funny things about Steve is -- Charles and I
2 were talking -- and he may correct me on this, I think
3 this is right, in all the 29 years Steve has been with
4 us, he's worked on all water and wastewater cases except
5 one electric case. And it was a case that had nothing
6 to do with ratemaking and so forth, but it was a deal
7 type of case. And I believe Jack brought -- Jack Shreve
8 brought Steve in to do what? What he does better than
9 anybody, come up with a deal. And he created an
10 extremely innovative deal making in that case. And I
11 think that that's been the signature of his practice
12 over the last 29 years is, is he's worked with staff,
13 he's worked with the utilities, and he's worked with
14 customers to make it a win, win, win in many, many
15 situations.

16 The consumers are going to be losing a very
17 strong advocate. And we'll never be able to replace
18 him, but we hope to have somebody coming on in a couple
19 of weeks that can train under him for at least a couple
20 of weeks.

21 But, Mr. Chair, I really appreciate the
22 opportunity for you to allow me to recognize Steve today
23 for his very last agenda. Thank you.

24 **CHAIRMAN GRAHAM:** Thank you, J.R.

25 Well, Steve, I have to say in my short five

1 years it's been nothing less than entertaining,
2 especially when -- I think when we first got here, we
3 had some very, as we would call them, interesting water
4 and wastewater cases. And, you know, it's funny, as I
5 travel in my -- in my NARUC life, those cases come up
6 quite often. But I do -- I appreciate all you've done.
7 And I think J. R. is right, that you are a huge advocate
8 for the consumer, and I think there's going to be a big
9 loss there. But I do applaud your 29 years, and we're
10 going to miss you.

11 Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
13 I just want to add to the chorus here and say that,
14 Steve, we certainly appreciate your service to the State
15 of Florida. A lot of times consumers will never even
16 realize that you were the one that was fighting for
17 their interests, and -- but your work has definitely
18 left an impression, and hopefully you will be able to
19 share that and pass that on to the next individual that
20 will be coming into the office. So thank you once again
21 for your service.

22 **CHAIRMAN GRAHAM:** Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you. And, Steve, I
24 would echo those sentiments. And just to add to that,
25 your institutional knowledge has been so helpful to us

1 and has helped shape legislation that's come into place.
2 During my time with the study committee for the
3 investor-owned utilities for the water and wastewater
4 industry, your participation was integral to many of the
5 changes that were ultimately approved, and then
6 subsequently legislation passed. So for that, you
7 should be very proud of your work. Thank you.

8 **CHAIRMAN GRAHAM:** And Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
10 I would just say, Steve, I don't know if you remember
11 this, but I remember it vividly, a number of years ago
12 at one of my very first meetings here in this room as a
13 Commissioner we had a very contentious item which was
14 dealing with a company at that point called Aloha, and
15 it remained contentious. But that was part of my -- my
16 christening, so to speak.

17 And over the next few years of OPC working
18 with our staff and with others with your leadership did
19 very, very good work, I believe, for the customers in
20 that area that had had significant issues for quite a
21 period of time. And I will always remember your good
22 work on that, and your coordination to come up with a
23 go-forward solution. So thank you for all of your work,
24 but I do remember that one in particular.

25 **MR. KELLY:** Mr. Chairman, if I could add one

1 thing, you know, the one amazing thing is that, even
2 though it was a little darker at the time, Steve's doing
3 all of this and he still has a full head of hair.
4 That's -- that's a heck of an accomplishment.

5 **CHAIRMAN GRAHAM:** That's just not right.

6 Steve, thank you very much for your service.

7 (Applause.)

8 Okay. We are going to have IA here in this
9 room in ten minutes, which would be 10 till noon -- or
10 11:45. And if nothing else, we are adjourned. Thank
11 you.

12 (Agenda conference adjourned at 11:34 a.m.)

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

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 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 31st day of July, 2015.

19 *Linda Boles*

20 _____
21 LINDA BOLES, CRR, RPR
22 FPSC Official Hearings Reporter
23 (850) 413-6734
24
25