

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20170147-WS

APPLICATION FOR
STAFF-ASSISTED RATE CASE
IN LEVY COUNTY BY FIMC
HIDEAWAY, INC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 10

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

DATE: Tuesday, July 10, 2018

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

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

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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

2 CHAIRMAN GRAHAM: Okay, we are down to the
3 last item on our agenda, Item No. 10.

4 MR. SIBLEY: Good morning. I am Matthew
5 Sibley speaking on behalf of Commission staff.

6 Item No. 10 addresses FIMC Hideaway,
7 Incorporated's, application for a staff-assisted
8 rate case in Levy County. The utility is a Class C
9 utility providing water and wastewater service to
10 approximately 197 customers. The utility is
11 comprised of two systems with separate rates for
12 each system. The systems were interconnected in
13 April of 2013.

14 Staff is recommending a revenue increase of
15 15.10 percent for water and 9.79 percent for
16 wastewater due to the utility's increasing
17 operating expenses.

18 In addition, staff is recommending
19 consolidated service rates as well as marginal
20 quality of service, a meter installation charge and
21 discontinuance of all service availability charges.

22 As part of staff's recommendation that the
23 utility's quality of service be designated
24 marginal, staff is recommending that the utility
25 file its next primary and secondary tests with the

1 Commission. These tests are anticipated to occur
2 in August of this year.

3 There has been customer contact and staff
4 reduced filed to all relevant docket
5 correspondence.

6 OPC is present and would like to address Item
7 No. 10.

8 Staff is prepared to answer any questions at
9 this time.

10 CHAIRMAN GRAHAM: Thank you, staff.

11 OPC.

12 MS. PONDER: Thank you, Mr. Chairman,
13 Commissioners. I would like to address just a few
14 comments.

15 On quality of service, as stated, staff is
16 expecting the test results in August for the next
17 testing cycle, and OPC request the docket be left
18 open until the quality of service issue is fully
19 addressed. Specifically, we request staff file a
20 report or recommendation following its review of
21 the testing results indicating its assessment of
22 whether or not improvements in the water quality
23 have been achieved.

24 Regarding Issue 3, land and land rights, OPC
25 does not disagree with the adjustment to remove

1 land associated with the decommissioned water and
2 wastewater plants from rate base. However, since
3 the customers have been providing a return on these
4 properties while included in rate base, OPC
5 contends any gain on a future sale must be used to
6 lower rates by amortizing the proportion gain back
7 to the customers.

8 OPC requests the utility be required to notify
9 the Commission of any future sale, transfer or
10 reassignment of the properties within 60 days of
11 any such transaction.

12 In OPC's letter of January 24, 2018, to staff,
13 we noted the payroll tax proforma adjustment in the
14 staff report was double the amount that is required
15 by the IRS effectively proposing rates be set based
16 on a payroll tax rate of 15.3 percent. The
17 recommendation does not address this comment, nor
18 does it identify loading factors, or give any other
19 factual basis that would necessitate or support the
20 doubling of the IRS required payroll tax rate of
21 7.65 percent.

22 Because there is no basis for the
23 recommendation, OPC requests this error be
24 corrected such that the payroll tax rate of 7.65
25 percent that is specified by the IRS is utilized,

1 thereby reducing payroll taxes by 998 for water and
2 1,068 for wastewater. Alternatively, we would
3 request an explanation for applying a rate that is
4 twice the tax rate required by the IRS for payroll
5 taxes.

6 Lastly, just a brief comment regarding the use
7 of the operating ratio methodology. This is Issue
8 7.

9 As some of you may recall, Mr. Rehwinkel first
10 addressed the Commission regarding the use of the
11 operating methodology as being an improper
12 application of an unadopted rule during the
13 February 7 Agenda Conference in 2017 -- excuse me.

14 Following that comment, staff commenced rule
15 development publishing a notice of development of
16 rule-making on November 29, 2017. An informal
17 meeting was held December 14th, 2017. However, we
18 are not aware of any further rule development
19 activities that have occurred, nor have the notice
20 of proposed rule been published pursuant to
21 120.543(a) Florida Statutes.

22 Therefore, while we are appreciative of the
23 efforts that were taken from six months ago, those
24 efforts seem to have stalled, and the Commission is
25 continuing to base agency action that determines

1 the substantial interest of a party on an unadopted
2 rule in contravention to Section 120.571(e)(1)
3 Florida Statutes.

4 Again, we ask that you proceed expeditiously
5 to adopt appropriate rules with respect to the
6 operating ratio methodology to avoid unnecessary
7 litigation.

8 Thank you.

9 CHAIRMAN GRAHAM: Thank you.

10 Staff -- actually, the first one was a concern
11 that I had about the quality issue.

12 We said that they are going to report back to
13 us when they do their next primary and secondary
14 water standards in August 2018. My question is,
15 what mechanism do we have in place when that report
16 comes back in for us to react to it and it not sit
17 on somebody's desk?

18 MS. DUVAL: Yes. Margo DuVal with Commission
19 staff.

20 I think -- and also to respond to OPC. I
21 don't think that staff is necessarily opposed to
22 keeping the docket open for those results to be
23 filed in the docket, because any effects of
24 whatever the results are probably wouldn't be
25 handled within the SARC docket. I think that's why

1 we had contemplated closing the docket as usual,
2 and then just following up as the results came in.

3 We have prepared a -- not an alternative
4 recommendation, but just to build upon the timeline
5 for the results to come in. Staff would recommend
6 that the test results be filed no later than
7 November 1st of this year. And at that time, we
8 would hope that the utility would work with the
9 OPC, and also the customers as well, and we would
10 anticipate following up on the progress by
11 March 1st of 2019.

12 CHAIRMAN GRAHAM: Back up, you lost me. They
13 are going to give us the results by November 1st?

14 MS. DUVAL: I am sorry, that was what staff
15 would suggest, if we wanted a harder deadline,
16 instead of leaving the docket open.

17 CHAIRMAN GRAHAM: But if we left the docket
18 open -- either way you could leave the docket open,
19 correct --

20 MS. DUVAL: Correct.

21 CHAIRMAN GRAHAM: -- and request the data by
22 November 1st? And if it's -- if they pass both the
23 primary and secondary standards, then what happens?

24 MS. DUVAL: If the utility meets the primary
25 and secondary standards, at that point, upon

1 staff's of the results, then no further action
2 would be needed and I believe we could just close
3 the docket out with a memo.

4 CHAIRMAN GRAHAM: So administratively we will
5 just close the docket out?

6 MS. DUVAL: Yes.

7 CHAIRMAN GRAHAM: Now, if it does not pass
8 primary or secondary standards, then what happens?

9 MS. DUVAL: If the utility were not to pass,
10 we could still keep the docket open, but what staff
11 was anticipating would be that we would work with
12 the utility to encourage them to work with OPC and
13 meet with their customers to reach some sort of
14 resolution for the secondary water quality issues
15 where -- whatever is identified in the test
16 results, and then staff would ask the utility to
17 report back to us by March 1st of 2019. And at
18 that point, we would reevaluate the situation and
19 see if any further action would be needed.

20 CHAIRMAN GRAHAM: So November 1st, we have to
21 have the test by. If they are not successful, then
22 March 1st, we have to have some sort of resolution
23 proposed?

24 MS. DUVAL: Correct.

25 CHAIRMAN GRAHAM: And now do we bring that

1 back before the Commission here with the proposed
2 resolution, or what happens at that point,
3 March 1st?

4 MS. DUVAL: We could bring it back to the
5 Commission if you would like. If, at that point,
6 it appears to staff that a resolution is on the
7 horizon, we could just allow the utility further
8 time to work with OPC and their customers. And if
9 you would like for staff to bring those results
10 back to you, we can. We can put them in the docket
11 file. If it appears that the solution is not on
12 the horizon, then we can explore further options.

13 CHAIRMAN GRAHAM: I think the idea, if they
14 are successful November 1st, staff would just close
15 the docket. If they are not successful, then staff
16 would bring something back before us March 1st to
17 inform us, and we can give it a thumbs up or thumbs
18 down and deal with the closing of the docket at
19 that point.

20 MS. DUVAL: Okay.

21 CHAIRMAN GRAHAM: That was the first one. The
22 second one was Issue No. 3, when OPC talked about
23 the land sale. Any comments on that?

24 MR. BROWN: I think staff is agreeable to
25 that, Chairman. I believe that's similar to what's

1 been done in other dockets here before the
2 Commission. I am thinking back to WMSI, and I
3 believe that was a situation that was used there.

4 CHAIRMAN GRAHAM: And Issue No. 6, we are
5 talking about the payroll taxes.

6 MR. BROWN: Yes, sir. On the payroll taxes,
7 what staff did was apply the self-employed rate in
8 that particular case, and it's a probably a little
9 different than what we've done in most of the
10 SARCs, but looking at the owners who are also
11 essentially the utility's only employees, we
12 thought it was appropriate to apply the
13 self-employed tax rate versus the standard.

14 COMMISSIONER BROWN: Okay. And, Ms. Ponder,
15 did you also have Issue No. 7, or are you just a
16 comments on that one?

17 MS. PONDER: That was just a comment. And if
18 there is any response to the status of the rule
19 development, that would be appreciated, certainly.

20 MR. BROWN: And I can shed some light on that,
21 Chairman.

22 The operating ratio methodology, staff is
23 still working on a recommendation to bring the
24 draft rule before the Commission. Right now, we
25 are looking at bringing that to the September

1 agenda.

2 CHAIRMAN GRAHAM: Okay. Thank you.

3 Commissioners -- Commissioner Polmann.

4 COMMISSIONER POLMANN: Thank you, Mr.
5 Chairman.

6 Mr. Sibley, have you appeared before the
7 Commission before? You have?

8 MR. SIBLEY: Yes, sir, I have. I did a late
9 payment charge for North Peninsula.

10 COMMISSIONER POLMANN: You look familiar.
11 That's a good thing. Otherwise, I would have
12 questions for you.

13 MR. SIBLEY: We wouldn't want that.

14 COMMISSIONER POLMANN: But I do have other
15 questions.

16 Did you say there were customer complaints, or
17 customer concerns in your introductory remarks?

18 MR. SIBLEY: There was one customer complaint
19 that was sent after the customer meeting addressed
20 to Engineering, and Engineering had responded back
21 to that before the 30-day limit.

22 COMMISSIONER POLMANN: Okay. The quality of
23 service that staff has recommended a marginal
24 rating, was that based solely on the secondary
25 water quality results?

1 MR. GRAVES: Commissioner, it was based on the
2 secondary water quality results and the utility's
3 failure follow up with DEP. DEP requested them to
4 perform another test and they failed do that.

5 COMMISSIONER POLMANN: But there was no
6 response -- no follow-up action by DEP on that, is
7 that correct?

8 MR. GRAVES: That's our understanding, yes,
9 sir.

10 COMMISSIONER POLMANN: Have we had any further
11 discussion or any review of DEP files subsequent to
12 that?

13 MR. GRAVES: Yes, sir --

14 COMMISSIONER POLMANN: Microphone. Turn your
15 mic on.

16 MR. GRAVES: Yes, sir. We reviewed their
17 on-line filing, OCULUS, and we haven't seen
18 anything in that.

19 COMMISSIONER POLMANN: Okay. The Commission
20 has had discussion on prior matters on the issue of
21 the quality of service being satisfactory or
22 unsatisfactory, and we've had discussion about the
23 use of the marginal rating. I have some concern
24 about what we do with that.

25 To staff here, the recommendation of marginal,

1 have you had any further discussion among staff as
2 to, in this particular case, other than reviewing
3 the water quality results within the coming months,
4 do you have any follow-up, any penalty consequence
5 or any -- any other recommendation?

6 MR. GRAVES: Not at this time we are not
7 recommending any penalties. Again, as Ms. DuVal
8 suggested, following March 1, we will take another
9 review and look at things and see if something
10 needs to be done at that time.

11 COMMISSIONER POLMANN: The Chairman had
12 indicated -- I am sorry, Ms. DuVal, you had
13 indicated, depending on the results, that, quote,
14 if they pass -- I don't know if you indicated
15 pass -- that no further action would be needed. I
16 don't know that I agree with that, because the --
17 as we discussed also that the primarily and
18 secondary standards are met at the treatment
19 facility, which may or may not represent what the
20 customer is receiving, so -- but then again, we
21 haven't really identified any customer concerns, so
22 that may well be satisfactory in this case.

23 Now, the August date that's identified, that
24 is the date of sampling, is that the case?

25 MR. GRAVES: Yes, sir. That's my

1 understanding.

2 COMMISSIONER POLMANN: Okay. And given the
3 class of this utility, that's an every three year
4 type of an event?

5 MR. GRAVES: Yes, sir.

6 COMMISSIONER POLMANN: Okay. Have you
7 discussed with them the November timeframe for
8 filing the results with us? Is that --

9 MR. GRAVES: Yes, sir. I spoke with the
10 owner, and he said that that's reasonable for him.

11 COMMISSIONER POLMANN: Okay. Is there a
12 reason they can't provide that sooner, or is that
13 just --

14 MR. GRAVES: I think, from our discussion with
15 the owner, I believe he could provide it earlier.
16 That was sort of built into the margin. Certainly
17 the date we are suggesting is no later than
18 November 1st. If they got it to us sooner, that
19 would be great.

20 COMMISSIONER POLMANN: Okay. I mean, there
21 are some things that -- you know, there is a wide
22 range of parameters in the primary and secondary,
23 certain things that they could do within a few days
24 or a week. Some things they send to a lab, it
25 takes a couple of weeks. You know, November seems

1 like quite a long time to me, but, you know,
2 November is the deadline. I guess sometime sooner
3 than that would be to their benefit, but if that's
4 what you have already discussed, I guess that's
5 reasonable.

6 And then we don't know what the response would
7 be, but as you said, if there is a response
8 necessary, your recommendation isn't for a number
9 of months later, so okay.

10 Mr. Chairman, I don't have any other
11 questions. Thank you.

12 CHAIRMAN GRAHAM: Mr. Willis.

13 MR. WILLIS: Mr. Chairman, thank you.

14 I would just like to make a further comment
15 about the way payroll taxes. If y'all are familiar
16 with having to pay payroll taxes as any sole
17 proprietor, which I have recently, you know that
18 you have to pay not only the employer's portion,
19 but you also have to pay your own portion. If you
20 are employed by a company or by the State, you know
21 that as part of your paycheck, you have a deduction
22 for your portion out of your paycheck, but the
23 State or a company would pay the other half.

24 There is no reason, just because you are a
25 sole-proprietor, that you should have to -- the

1 customer should have to pay both of those. I
2 understand that when they file their tax return,
3 they are going to pay both the employee and the
4 employer's portion of it, but there is no reason
5 customers should have to pick up both just because
6 they are a sole-proprietor.

7 CHAIRMAN GRAHAM: Staff.

8 MR. BROWN: I honestly don't know what to say
9 in response to that. Staff -- just given -- given
10 the size of the utility, the fact that, you know,
11 you have got Mr. and Mrs. McBride running it, this
12 is the first time they are receiving salaries for
13 running the utility. They have previously not had
14 salaries included in their rate base. Staff just
15 believed it was appropriate under the circumstances
16 specific to this case, not necessarily that it
17 would be applied to other dockets before the
18 Commission, but under the circumstances here, we
19 believed it was appropriate.

20 We are not married to it. If the Commission
21 believes we should revert back to the standard
22 rate, we can certainly make that change.

23 CHAIRMAN GRAHAM: If I can get -- Commissioner
24 Brown.

25 COMMISSIONER BROWN: Thank you.

1 I think this is a very modest, tight-run
2 utility, but I do think that the Best Practice is
3 probably back to the standard, would you agree?

4 MR. BROWN: We could certainly do that. Yes,
5 ma'am. It is kind of out of the ordinary. I don't
6 know that we've done it before.

7 COMMISSIONER BROWN: I mean, I understand why
8 you did it --

9 MR. BROWN: Yes, ma'am.

10 COMMISSIONER BROWN: -- based on the modest
11 structure of this utility, but you are giving them
12 salaries now, the owners salaries, so...

13 MR. BROWN: And we can certainly make that
14 change and reflect that in the order when it comes
15 out.

16 COMMISSIONER BROWN: I think that's fair.

17 MR. BROWN: Okay.

18 CHAIRMAN GRAHAM: OPC, if I can get you to
19 restate your recommendation on Issue No. 3.

20 MS. PONDER: Yes.

21 Again, our request was that on the utility be
22 required to notify the Commission of any future
23 sale, transfer, reassignment of the properties
24 within 60 days of any such transaction, basically
25 because we contend that any gain on a future sale

1 must be used to lower rates by amortizing the
2 proportion gained back to the customers since they
3 have been putting in -- paying in.

4 CHAIRMAN GRAHAM: Okay. I don't have any
5 lights on, so if I can get a motion, and we need to
6 make sure that we get Issue No. 1 correct, where
7 they need to get back to us by November 1st with
8 the test data. And if it's successful, it's over;
9 if it's not successful, then staff needs to get
10 back to us by March 1st with some sort of gain
11 plan. And OPC's Issue 3, we just heard them state
12 that. And, Commissioner Brown, you just mentioned
13 Issue 6, so I am ready for your motion.

14 COMMISSIONER BROWN: Great.

15 So I am going to do it -- I think I have all
16 three issues, and we don't need to make one on
17 Issue 7 since they are aware of the rule-making.

18 So would you like to do it by motion -- by
19 issue by issue, or would you just like do it
20 because there are three modifications?

21 CHAIRMAN GRAHAM: That would be fine.

22 COMMISSIONER BROWN: Okay. I would move to
23 approve staff augmentation recommendation on all
24 issues with the caveat that Issue 1, that the
25 utility provide the results of the primary and

1 secondary standards by November 1st, 2018, to the
2 Commission, and if they are found to be --

3 CHAIRMAN GRAHAM: Not successful.

4 COMMISSIONER BROWN: -- not successful, then
5 staff will come back to the Commission to address
6 that --

7 CHAIRMAN GRAHAM: By March 1st.

8 COMMISSIONER BROWN: -- by March 1st.

9 With regard to Issue 3, that the utility
10 provide the Commission with notice within 60 days
11 of any sale of the land.

12 And with regard to Issue 6, I would like a
13 little suggestion here, staff, on that issue, given
14 that discussion that we had.

15 MR. BROWN: I think staff would just revert
16 back to the 7.65 percent, the standard IRS
17 withholding rate.

18 COMMISSIONER BROWN: Thank you.

19 My modification would be, then, to utilize the
20 7.65 percent amount. And then also with regard to
21 the final issue about close the docket, that we
22 would leave it open -- right, is that correct?

23 CHAIRMAN GRAHAM: Yes.

24 COMMISSIONER BROWN: Yes, leave the docket
25 open until further notice.

1 CHAIRMAN GRAHAM: It's been moved and
2 seconded.

3 Ms. DuVal, did you have a clarification or
4 question?

5 MS. DUVAL: No, Chairman. That's what I was
6 going to add.

7 CHAIRMAN GRAHAM: Okay. Commissioner Polmann.

8 COMMISSIONER POLMANN: On the issue -- thank
9 you, Mr. Chairman. On the issue of the land --

10 MS. DUVAL: I apologize, Chairman. I was
11 mistaken. Staff would need administrative
12 authority to close the docket if the test results
13 are successful.

14 CHAIRMAN GRAHAM: Successful?

15 MS. DUVAL: Yes.

16 COMMISSIONER BROWN: Okay. That was in my
17 motion.

18 MS. DUVAL: Okay. Thank you.

19 CHAIRMAN GRAHAM: I heard it.

20 COMMISSIONER BROWN: Yeah.

21 COMMISSIONER POLMANN: Commissioner Brown, the
22 issue of the land, if I understood, you wanted
23 notification of the sale and closure.

24 COMMISSIONER BROWN: Notification to the
25 Commission within 60 days of any purchase agreement

1 of a sale of the land, as we have done in previous
2 dockets.

3 COMMISSIONER POLMANN: I think OPC was seeking
4 something about proceeds from the sale, is that not
5 included in your motion?

6 COMMISSIONER BROWN: No, it's not. They were
7 talking about the gain of any future sale used to
8 lower the rates.

9 COMMISSIONER POLMANN: Okay, so the other
10 issues would be dealt with --

11 COMMISSIONER BROWN: Any future proceeding.

12 COMMISSIONER POLMANN: -- would be dealt with
13 later, okay, so...

14 COMMISSIONER BROWN: Yes.

15 COMMISSIONER POLMANN: Thank you. I would
16 second everything you said.

17 MS. DUVAL: My apologies again, if I may.

18 Staff would also need administrative authority
19 to make the appropriate changes in rates based on
20 the changes in the payroll taxes.

21 COMMISSIONER POLMANN: Inclusive of all of
22 that, it was your motion?

23 COMMISSIONER BROWN: That was included in my
24 motion. So we will give -- let me -- you want me
25 to restate it, clerk? Would you guys like me to

1 restate is it? Okay. Redo?

2 CHAIRMAN GRAHAM: Sure.

3 COMMISSIONER BROWN: All right. I would like
4 to move to approve staff recommendation on all
5 issues with the caveat on Issue 1, that the utility
6 provide -- or pardon me, that the utility provide
7 the Commission with the report on primary and
8 secondary standards by November 1st, and if that
9 results are unfavorable, then staff will come
10 back --

11 COMMISSIONER POLMANN: That would be in or not
12 in compliance -- I am sorry.

13 COMMISSIONER BROWN: If the results are
14 unfavorable, then staff will come back to the
15 Commission to handle that by March 1st, 2019.

16 With regard to Issue 3, regarding land rights,
17 that the utility will provide notice to the
18 Commission within 60 days of any purchase agreement
19 on the sale of land.

20 With regard to Issue 6, that the payroll taxes
21 be reduced to 7.65 percent.

22 With regard to the close the docket issue, the
23 Commission would leave that open on all issues.

24 The Commission would give administrative authority
25 to handle any fallout issues as a result of this

1 motion.

2 COMMISSIONER POLMANN: Second.

3 CHAIRMAN GRAHAM: It's been moved and
4 seconded.

5 Any further discussion?

6 Seeing none, all favor say aye.

7 (Chorus of ayes.)

8 CHAIRMAN GRAHAM: Any opposed?

9 (No response.)

10 CHAIRMAN GRAHAM: By your action, you have
11 approved the Brown motion.

12 COMMISSIONER BROWN: Not easy.

13 CHAIRMAN GRAHAM: I thank y'all very much.
14 This concludes our meeting.

15 We are going to move over to the IA room in 10
16 minutes, which would be -- we will call it 11:35.

17 If you are not going to IA, please travel safely.

18 We are adjourned.

19 (Agenda item concluded and proceedings were
20 adjourned.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court 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'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 18th day of July, 2018.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020