

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180138-SU

APPLICATION FOR
STAFF-ASSISTED RATE CASE IN
VOLUSIA COUNTY BY NORTH
PENINSULA UTILITIES
CORPORATION.

_____ /

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 GILES FAY

DATE: Thursday, October 3, 2019

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: Item No. 10.

3 By the way, Mr. David, nice tie.

4 MR. DAVID: Thank you.

5 MS. THOMPSON: Good morning, Commissioners.

6 Takira Thompson with Commission staff. Item No. 10
7 is staff's recommendation regarding the application
8 for a staff-assisted rate case by North Peninsula
9 Utilities Corporation.

10 North Peninsula is a Class B wastewater
11 utility in Volusia County with approximately 433
12 customers. Based on our analysis, staff is
13 recommending a 10.66-percent revenue-requirement
14 increase, or \$25,988 annually.

15 A customer meeting was held in May of this
16 year and 16 customers were in attendance.
17 Additionally, one customer comment was filed in the
18 docket regarding the rate increase and maintenance
19 of the facility.

20 Staff and the utility are available for any
21 questions.

22 CHAIRMAN GRAHAM: Thank you, staff.

23 OPC?

24 MR. DAVID: Yes. Once again, Tad David on
25 behalf of the Office of Public Counsel. And again,

1 I'd like to thank you for your time this morning.

2 OPC is not going to expressly object to or
3 oppose the requested wastewater rates, but because
4 North Peninsula Utilities is currently not in
5 compliance with DEP and is, apparently, relying on
6 the proposed rate increases requested in this
7 docket to address those issues, among others, OPC
8 requests that the Commission include some assurance
9 in the order in this docket.

10 This assurance could come in one of two forms:
11 Either include a provision in the order requiring
12 that NPUC, within a year of the order, file a
13 report or other documentation demonstrating that
14 the problems proposed to be addressed and
15 alleviated by the additional funds have actually
16 been addressed or alleviated; or second choice
17 would be include a provision in the order requiring
18 that NPUC, as part of their next rate case,
19 demonstrate at that time that the issues have been
20 addressed or alleviated, to assure that -- that the
21 reasons behind the filing of this -- or the
22 apparent reasons behind the filing of this have
23 been fulfilled.

24 Once again, we're not going to expressly
25 oppose or object, but we would request that some

1 form of assurance be included in the order, please.

2 CHAIRMAN GRAHAM: Thank you, sir.

3 Commissioners. Commissioner Brown.

4 COMMISSIONER BROWN: Mr. David, that was
5 exactly why I pulled this item. I thought that it
6 was warranted to at least leave the docket open
7 until we had verification from the utility that the
8 pro forma items -- which have been outstanding, by
9 the way, for a year and a half, including holes in
10 the tank -- at least we have some type of
11 verification.

12 And I -- I like your suggestion of leaving it
13 open, but I was going to suggest that we put the
14 burden on the utility to get in contact with the
15 staff once these items have been completed.

16 And then I know Issue 14 has -- is the
17 docket -- leave the docket open. I would just
18 include that staff verify the pro forma projects
19 have been completed, add that language in there,
20 and I think that captures it.

21 Rather than putting a certain time frame,
22 maybe just put the burden on the utility to -- to
23 get with the staff, once each of the projects are
24 complete, since there is a growing list. And some
25 are more important than others, but -- that's all.

1 CHAIRMAN GRAHAM: I'll give you the time to
2 think of that motion, as Commissioner Polmann
3 speaks.

4 Commissioner Polmann.

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

7 I discussed several items in briefing with
8 staff on this. And I appreciate the concern, both
9 from OPC and -- and the Commission on the
10 performance by the utility.

11 And I'll -- I'll ask staff a general question.
12 Com- -- and -- and I understand it's difficult to
13 compare the specifics of the circumstances here of
14 this utility to -- to others, but in -- in the
15 general sense, speaking about reporting back, being
16 under a -- a consent order, keeping the docket open
17 and -- and so forth, would those types of things be
18 similar or different to how we've treated a utility
19 of this size in -- in the past?

20 I'm just trying to understand if -- if that --
21 if that kind of treatment would be unique, unusual,
22 and so forth. I -- I want to just frame that in
23 a -- in a context, so that we -- we're fully
24 informed about how we're -- how we're dealing with
25 this.

1 MR. BALLINGER: It -- I think it would be
2 slightly different, and here's why: Normally we'll
3 keep dockets open for pro forma items when there's
4 a Phase 2 rate, that those items are actually
5 funding and -- and creating a change in rates for
6 Phase 2. So, we'll keep the docket open until
7 they're completed and then the Phase 2 rates go
8 into place.

9 In this instance, since they're under the
10 operating ratio, the capital improvements aren't
11 really affecting the revenue requirements. And so,
12 the projects can go in and the revenue requirement
13 is established. That's why we have the -- the
14 cutoff date now and rates go into effect. So, it's
15 a little different.

16 In terms of compliance, what DEP does with
17 their compliance and consent orders is what DEP
18 does, whether they fine them or whatever it does.
19 And we leave that to DEP to and manage that and
20 their aspects. DEP may decide to grant them
21 another six months to complete the projects, that
22 kind of thing. So, that's out of our purview.

23 So, it is -- keeping it open like this is
24 slightly different in this instance because I don't
25 know what we would do by keeping the docket open;

1 are we holding the money subject to refund, things
2 of that nature. So, it's -- it's a slight change.

3 COMMISSIONER POLMANN: Well, I understand --
4 and correct me if I'm wrong -- that -- looking at
5 the -- the issues here, Issue No. 2 -- and this was
6 raised -- Mr. David and OPC -- even though there is
7 a -- the fact that the utility is not in
8 compliance, strictly with the -- with the DEP --
9 they are in a consent order, from our perspective.
10 That's satisfactory to us.

11 That's the way we've treated other utilities
12 that have -- that have -- they're under consent
13 order. They're moving forward. We found that to
14 be acceptable and we allowed DEP to deal with that,
15 as you've just said; is that correct?

16 MR. BALLINGER: Correct.

17 COMMISSIONER POLMANN: You've treated other
18 utilities that way.

19 MR. BALLINGER: And -- and the rules have
20 recently changed with the quality of service for
21 wastewater. Used to be that we would take those
22 things into account; the condition of the plant and
23 consent orders from DEP in -- in terms of the
24 quality-of-service issue.

25 Those have been separated out now, where the

1 condition of the plant is a separate management;
2 are they complying with DEP regulation kind of an
3 issue. And in that case, there's really not a
4 satisfactory or not. In this case, if you want to
5 say they are satisfactory, they're complying with
6 the DEP consent order in a timely manner.

7 COMMISSIONER POLMANN: Okay.

8 MR. BALLINGER: DEP has not fined them, so --
9 but it's not quality of service, as we're used to
10 dealing with.

11 COMMISSIONER POLMANN: So, if I understood
12 your -- your answer to my prior point, leaving the
13 docket open, we don't have, currently, an
14 opportunity to -- there's no consequence, per se --
15 receiving a report, subsequently from them -- I'm
16 trying to -- to understand Commissioner Brown's
17 question and -- and the follow-up that we would
18 have if they're not timely. I don't -- I'm not
19 quite sure what timely would be unless we go back
20 to --

21 MR. BALLINGER: Right.

22 COMMISSIONER POLMANN: -- suggestion from OPC
23 that it be dealt with in the next rate case.

24 MR. BALLINGER: Exactly. An example: We've
25 had utilities where they have a meter-replacement

1 program that they come in with a SARC and they're
2 going to replace 200 meters over the next couple of
3 years. Those monies are included in rates and they
4 go forward and do it.

5 We find out, the next rate case, they didn't
6 do those meter replacements because something else
7 came up, and they have to justify why they didn't
8 do the meter replacements. So, those things sort
9 themselves out in the process.

10 I have no problem with getting a report from
11 the utility on their progress with this. That's
12 fine. I maybe prefer going to close the docket
13 because, if something comes up where they're not
14 complying, perhaps staff could look at a show-
15 cause item or something of that nature.

16 But we can do it if you want. It's just --
17 it's a little -- little different.

18 COMMISSIONER POLMANN: Well, of course,
19 you'll -- you -- you'll do what we ask.

20 I -- I'm -- I'm just trying to have certainty
21 from which we could, then, have a subsequent action
22 that has some weight, and -- and I'm seeking, you
23 know, a technical understanding. And I'll -- I'll
24 look to our adviser here on what -- what is the
25 appropriate legal action that -- that makes sense.

1 If we close the docket, but then leave it to
2 the next rate case -- I don't want to disagree
3 with -- with the intent from Commissioner Brown.
4 I'm just looking for an understanding of what's the
5 best thing -- I'm not opposed to moving this thing
6 forward; I just want to have the right, subsequent
7 opportunity. That's all.

8 I'll -- I'll leave it at that, Mr. Chairman,
9 and see if -- if there's another response.

10 CHAIRMAN GRAHAM: Commissioner Brown.

11 COMMISSIONER BROWN: So -- so, I -- thank you,
12 Commissioner Polmann. I intended to leave it open
13 with the understanding that, you know, the dates
14 could shift, which would make it move outside of
15 that year period.

16 And this utility has not filed a rate case --
17 the last rate case was in 2000. So, I'd hate to
18 tie it to the utility filing another rate case,
19 which is why I wanted to have them at least leave
20 the docket open until staff can verify that the pro
21 forma improvements have been completed. And once
22 the actions are complete, the docket should be
23 closed administratively.

24 That being said, we can always show-cause them
25 if some of these items are not completed since they

1 will be ultimately in rate base; isn't that
2 correct, Legal?

3 MS. HELTON: I'm a little bit uncomfortable,
4 sitting here today saying that, if they don't
5 complete the pro forma that's laid out in the
6 recommendation, that we could show-cause
7 them for -- for not --

8 COMMISSIONER BROWN: I'm going to go to
9 Mr. Murphy. Mr. Murphy gave me a better answer
10 yesterday.

11 (Laughter.)

12 MS. HELTON: There -- I mean, just as in any
13 rate case, there are circumstances that can change
14 from the time that you set rates until they start
15 collecting the -- the revenues.

16 And I'm uncomfortable saying that, yes, we can
17 show-cause them. That is definitely something that
18 staff could look at. Staff could look at whether
19 they're being managed appropriately or not, but I'm
20 uncomfortable giving you that answer.

21 COMMISSIONER BROWN: Then I will ask you, what
22 is the best way to achieve the dis- -- what we
23 would like to do here today, and what are our
24 remedies.

25 MS. HELTON: Well, when I looked at the

1 recommendation -- I think the staff has recommended
2 that we keep the docket open until such time as
3 staff can verify -- no --

4 COMMISSIONER BROWN: No, it doesn't say that.

5 MS. HELTON: No, wait just a second.

6 COMMISSIONER BROWN: I asked that in --

7 MS. HELTON: Wait. The staff -- the docket --
8 and maybe I'm looking at the wrong one, but
9 Issue 14, the docket should remain open for staff's
10 verification --

11 COMMISSIONER BROWN: Just the tariffs sheets.

12 MS. HELTON: Oh, never mind. Then, keep the
13 docket -- you could keep the docket open, let staff
14 verify whether they have completed the pro forma --
15 pro forma or not, and if, after a certain period of
16 time, they haven't, staff can have discussions with
17 the utility and, if we think it's appropriate to
18 bring the matter before you, then we could do that.

19 CHAIRMAN GRAHAM: Keith has got a comment.

20 MR. HETRICK: Not to disagree with Mary
21 Anne -- far be it for me to ever disagree with the
22 guru here and -- but I would flip it a little,
23 though, and rather than put the burden on the
24 Commission to verify, have -- have the utility
25 report back and -- you know, within a year, as to

1 how they're in- -- implementing the pro forma.

2 You know, put the burden on them, so --
3 because we don't have an ongoing compliance
4 function, really, in this agency, so -- but you
5 do -- you can put the burden on them to report
6 back. If they don't report back --

7 COMMISSIONER BROWN: How about every six
8 months because the consent --

9 MR. HETRICK: Right.

10 COMMISSIONER BROWN: I imagine these items are
11 going to get pushed back.

12 MR. HETRICK: And that gives you a tag just on
13 the pure reporting issue, you know, to be able to
14 consider. And that -- that way we're not in a
15 compliance mode, but the burden is upon the
16 utility, and then we will know if they don't report
17 back.

18 COMMISSIONER BROWN: I think we have a motion
19 ready, Mr. Chairman.

20 CHAIRMAN GRAHAM: I am ready to hear it,
21 Commissioner Brown.

22 COMMISSIONER BROWN: Thank you. I would move
23 approval of all issues with the modification of
24 Issue 14 to require the utility to submit reports
25 every six months to verify the pro forma items have

1 been complete.

2 COMMISSIONER POLMANN: Second.

3 CHAIRMAN GRAHAM: It's been moved and
4 seconded. Any further discussion or clarification
5 on the motion?

6 Mr. Murphy.

7 MR. MURPHY: It still closes,
8 administratively, if they -- once they've completed
9 the pro forma.

10 COMMISSIONER BROWN: That was included in my
11 motion.

12 CHAIRMAN GRAHAM: Any further discussion?
13 Seeing none, all in favor, say aye.

14 (Chorus of ayes.)

15 CHAIRMAN GRAHAM: Any opposed?
16 By your action, you have approved that motion.
17 (Agenda item concluded.)

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STATE OF FLORIDA)
COUNTY OF LEON)

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DATED THIS 14th day of October, 2019.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
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