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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200169-WS

Application for staff-assisted
rate case in Lake County, and
request for interim rate increase,
by Lake Yale Utilities, LLC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 8

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER ANDREW GILES FAY
COMMISSIONER MIKE LA ROSA

DATE: Tuesday, March 2, 2021

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

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

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

2 CHAIRMAN CLARK: Moving to Item No. 8, Mr.
3 Futrell.

4 MR. FUTRELL: Thank you, Mr. Chairman. Good
5 morning, Commissioners.

6 Item 8 is staff's recommendation on the
7 application of the Lake Yale Utilities, LLC, on for
8 a staff-assisted rate case.

9 Lake Yale is a Class C utility providing water
10 and wastewater services to approximately 298
11 residential customers and one general service
12 customer in three subdivisions, Lake Yale Estates,
13 King's Peninsula and Sandpiper Manor in Lake
14 County. This is the utility's first rate case
15 before the Commission.

16 Staff is recommending that the utility's
17 quality of service is satisfactory, the water
18 revenue increase of 31 percent and a wastewater
19 revenue increase of 73 percent. These increases
20 are primarily due to the utility's increased
21 operating expenses and completed proforma projects.

22 Staff also recommends the approval of
23 non-sufficient funds charges and revised customer
24 deposits.

25 Staff conducted a virtual customer service

1 meeting on December 16th, 2020. Two
2 representatives spoke on behalf of the customers of
3 Lake Yale Estates and Sandpiper Manor subdivision.

4 The Commission received correspondence from 65
5 customers in this docket regarding the overall rate
6 increase, dissatisfaction with the water product
7 and wastewater treatment.

8 Representatives of the utility and the Office
9 of Public Counsel are available for questions, as
10 is staff.

11 CHAIRMAN CLARK: Thank you, Mr. Futrell.

12 Commissioners, any questions?

13 Commissioner Graham.

14 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

15 Colleagues, I pulled this one just because I
16 wanted to, I guess, talk through it with you guys.

17 Usually my issues with a lot of, like, the
18 water companies that we deal with when I bring them
19 up, the quality of the water is bad. In this case,
20 it's not the quality of the water that's bad but it
21 is their customer service and their interaction
22 with DEP, believe it or not, of all things.

23 If you read through the recommendation, this
24 is under Issue 2 you can see that constantly DEP
25 has got to circle back around and got on these guys

1 about different things.

2 The third paragraph down, or the second
3 paragraph down, it says the consent order was based
4 on three inspections that they failed to correct
5 these issues. So not only did they come in there
6 and told them once, they came back a second time,
7 they came back a third time. And the thing that
8 call my attention on this, you see DEP from time to
9 time give a consent order, but with our water and
10 wastewater cases, we rarely see them put a
11 financial fine on it. They have actually put a
12 fine on that and that, and so that kind of got my
13 attention and I wanted to talk to you about it.

14 Now granted, a wastewater system it's going to
15 have -- (inaudible) -- that's just part of the
16 deal. And there is things that we can do just to
17 get on top of that sort of stuff, but, you know, if
18 you are right up against it, there is going to be
19 a -- (inaudible) -- but for it to be constantly
20 there, for them to be getting these complaints, I
21 don't agree that it's satisfactory.

22 Now, staff and I have gone back and forth with
23 this sort of stuff where it was unsatisfactory for
24 the longest time, but on the day of, you know, we
25 went out there to visit, or the last time they did

1 the test, it was satisfactory. I don't think you
2 give them a pass for always being -- or being
3 unsatisfactory for all that time and then for one
4 day, for one snapshot, you got a satisfactory.

5 Now I get the fact that our job is to get
6 people in compliance, and so I get that strong
7 motivation there. But here, I think these guys are
8 little hardheaded, and I think we need to send them
9 a message. I don't mind banking them a couple
10 basis points, but I want to have that conversation
11 with you guys to see where you sit on it.

12 CHAIRMAN CLARK: All right. Commissioners,
13 any questions?

14 Commissioner La Rosa.

15 COMMISSIONER LA ROSA: Thank you, Chairman.

16 And I have similar sentiments, and I guess my
17 question -- or my thought process is where has this
18 been trending? When staff reviewed everything and,
19 you know, we were looking at some of the facts that
20 were being presented, at what point did it become
21 satisfactory, similar to what Commissioner Graham
22 is alluding to, and is there any hard facts kind of
23 backing that up, and I am curious to kind of hear
24 more if we can get the (inaudible) --

25 CHAIRMAN CLARK: Mr. Futrell.

1 MR. FUTRELL: I think we would like to see if
2 Damian Kistner with the Division of Engineering
3 could take a shot at answering Commissioner La
4 Rosa's question.

5 CHAIRMAN CLARK: Damian, are you on the line?

6 MR. KISTNER: So as far as quality of service
7 is concerned, we see that there has been all of
8 DEP's primary/secondary standards, as well as these
9 things that they have already been -- already been
10 a message sent with the DEP consent order signed,
11 and they did quickly fix the wastewater pond issue
12 when it came up again in November of 2020, it was
13 only a few days after DEP had mentioned that it was
14 overgrown again.

15 CHAIRMAN CLARK: All right. Thank you very
16 much.

17 Mr. Futrell, anything else to add?

18 MR. FUTRELL: I wanted to see if Ms. Ramos or
19 Mr. Ballinger have anything to add on to that?

20 MS. RAMOS: This is Marissa. I can add a
21 little bit more to that.

22 So staff, you know, look at the test year and
23 four years prior to get a better sense of the
24 narrative of what's going on with the utility, and
25 in this case, we definitely noticed that their

1 water was a few, a handful of complaints. In those
2 four years prior, a lot of the complaints and
3 customer correspondence in this particular case
4 came out as soon as the rate case started. And we
5 definitely took that into consideration, you know,
6 in making the quality of service recommendation.
7 And in this case, we felt, you know, the customers
8 had not expressed these sentiments to the utility
9 prior to the rate case, so we laid that out and,
10 you know, we wanted to give the utility an
11 opportunity to address those concerns, especially
12 those brought forth during the rate case.

13 So I just wanted to note that, that a lot of
14 the customer comments were made at the start and
15 during this rate case proceeding.

16 But just to add on to what Damian said, we did
17 lay out those compliance issues that the utility
18 had, and we thought that DEP did send the proper
19 message to the utility. And since that utility
20 incurred that fine, there has not been any
21 compliance issues, so we definitely think the
22 utility took that fine under advisement and has
23 made the appropriate changes.

24 CHAIRMAN CLARK: All right. Thank you very
25 much.

1 And I believe that Mr. Smallridge is on the
2 line as well. I would personally like to hear from
3 Mr. Smallridge regarding the steps that you have
4 taken and the assurances that you might could offer
5 to this commission that these matters are in the
6 past.

7 Mr. Smallridge.

8 MR. SMALLRIDGE: Can you hear me, Mr.
9 Chairman?

10 CHAIRMAN CLARK: Yes, we can hear you.

11 MR. SMALLRIDGE: Okay. First, if you don't
12 mind, I would like to say congratulations to
13 Commissioner Brown. I was appointed by the
14 Governor on the study committee that she chaired
15 and she did a fantastic job, and I wish her good
16 luck.

17 The issue at hand with the utility is that
18 this utility, when I purchased it from the former
19 owner, had very minimal maintenance done to it. It
20 hadn't had a rate increase in 20 plus years, and I
21 inherited the -- (inaudible) --

22 Me and my guys did a lot of things to that
23 utility that the former owner didn't do to get it
24 back in compliance and fix all of the issues that
25 hadn't been done for years and years and years in

1 order to provide the quality of water and to ensure
2 that the service would be available. So those
3 things are not always cosmetic. The things that
4 you are talking about with DEP are more cosmetic
5 things.

6 The fences that were around the sewer plant
7 were all wooden fences that were there. We tried
8 to patch them together until we could get, you
9 know, to properly replace them. But they were --
10 they were -- they were brought down in a hurricane
11 on the first instance, and then the second instance
12 was brought down by another storm.

13 So those are, you know, dealing with -- I
14 have, I don't know, 18 or 19 utilities and limited
15 manpower, so I have to prioritize what I got to fix
16 and what's got to get put back into service. And
17 to be perfectly honest with you, the fence around
18 the sewer plant that was kind of patched together
19 wasn't high on the priority list. I had other
20 issues at other utilities that were higher priority
21 to get people water and sewer. And so, you know,
22 these hurricanes and these, you know, strong
23 afternoon storms just came into factor there and
24 played havoc.

25 I have never denied to you or DEP that the

1 fence wasn't always in great shape, because it
2 wasn't, but it was something I inherited, and we
3 did the best we could with time allotted given the
4 situations to get it fixed. And really, that's --
5 everything there has been fixed since then.
6 Everything is back in compliance. And the, you
7 know, the utility is plugging along. It's a lot
8 better than what it was -- you know, what it's been
9 probably in the last 25 years, so --

10 CHAIRMAN CLARK: Mr. Smallridge, let me ask
11 you -- let me interject and ask you a question
12 here. You keep using the term inherited. How you
13 did acquire this system, and when did you acquire
14 it?

15 MR. SMALLRIDGE: I bought it from -- it used
16 to be called Lake Yale Associates, or something
17 like that. I don't remember the previous name, but
18 the -- I don't remember the date. I think it
19 was -- I don't remember the date, Mr. Chairman, to
20 be honest with you, but we spent --

21 CHAIRMAN CLARK: Five, 10 years ago? Can you
22 give me a ballpark how long you have owned the
23 system?

24 MR. SMALLRIDGE: I think it was 2018.

25 CHAIRMAN CLARK: Okay. You -- but I just

1 wanted to make sure I understood right. You were
2 using the term inherited, but you didn't inherit
3 it, you purchased it, right?

4 MR. SMALLRIDGE: Right, I am sorry, I should
5 have -- I purchased -- let me rephrase.

6 I purchased the utility, and the utility that
7 I purchased had been not been maintained, had not
8 had a rate increase. The previous owner had not
9 put any money back into it, and so I inherited a
10 maintenance system. I inherited a system that had
11 zero maintenance on it, and there was a lot of
12 things behind the scenes that customers don't see
13 that I had to get fixed in order to provide --
14 provide water.

15 There was -- there was one well pump that was
16 not working. There was check valves that were bad.
17 There was generators that were not working. There
18 were valves that were not working. There was just
19 a whole bunch of stuff that the customer doesn't
20 see that, you know, if one of them would have
21 broke, you know, there wouldn't have been any water
22 provided.

23 The sewer system had lift stations that had
24 only one pump in them, and they were struggling
25 and, you know, just kind of banded together

1 whenever things -- so I went back, and I -- my
2 choice was to fix things without any funding that
3 the utility needed to be able to provide service
4 and so people would have water in their tap and be
5 able to flush their toilets.

6 And so, you know, like I say, the fence just
7 wasn't -- it was the patched together. I will
8 admit it didn't look very pretty, but it was a
9 cosmetic item. So the way I looked at it, the way
10 my judgment was is if I spend the time and
11 resources, you know, fixing fences and painting
12 things and putting up flowers and everything they
13 wanted me to do, then I don't get to spend that
14 time and those resources fixing things that should
15 have been fixed.

16 CHAIRMAN CLARK: All right. Is this the
17 only -- how many systems do you own, Mr.
18 Smallridge?

19 MR. SMALLRIDGE: I think 18, and I have one --
20 one in docket to be transferred.

21 CHAIRMAN CLARK: Okay. I am just curious as
22 your experience. I mean, you purchased a system
23 and I assume did your due diligence in terms of
24 knowing what was there and how the -- kind of -- I
25 am comfortable with that. Thank you very much.

1 Any other questions for Mr. Smallridge.

2 Commissioner Graham?

3 COMMISSIONER GRAHAM: Not for Mr. Smallridge.

4 CHAIRMAN CLARK: Any Commissioners?

5 Thank you.

6 All right. Other questions for staff?

7 MR. REHWINKEL: Mr. Chairman?

8 CHAIRMAN CLARK: Yes.

9 MR. REHWINKEL: This is Charles Rehwinkel with
10 the Public Counsel's office. May I respond to --

11 CHAIRMAN CLARK: You are recognized, Mr.
12 Rehwinkel.

13 MR. REHWINKEL: Thank you, Mr. Chairman.

14 As I told staff, we did not join the Agenda
15 today to speak against staff's recommendation, and
16 we are not, but I would like to echo on behalf of
17 the customers who have contacted us.

18 I am kind of sitting in for Ms. Christensen on
19 this case, but in the short time I have been
20 involved in it, I have seen correspondence that
21 indicates that it's more than just at the time of
22 the rate case that customers have been unhappy with
23 the service they have received from the utility.
24 So I think Commissioner Graham is accurate that
25 that is a problem.

1 I would like just to put that on the record,
2 and I would like to say that we have not urged that
3 there be a penalty on return on equity given the
4 fragile circumstances behind the case, and the way
5 the return on equity is calculated, and how little
6 there is to actually penalize the company. We
7 believe that a penalty may well be in order, but we
8 have not advocated one.

9 I would like to state for the record that the
10 Commission is using the operating margin method for
11 basically a surrogate on a return on a rate base
12 that really does not exist, and we understand that,
13 and we appreciate that the Commission has adopted
14 that policy through the rule-making.

15 One of the things that I would like to point
16 out is that when you give an operating margin
17 element in the rate-making, it's not tied to any
18 specific cost that the company incurs. It is a
19 formulaic award of revenues that the customers pay.

20 I think you are giving them the maximum of 12
21 percent here, and we understand why. But you do
22 have discretion over that, and we would urge that
23 the Commission, at a minimum, take note of this
24 specific award in the context of these customer
25 issues so that in the future there cannot be

1 excuses as there wasn't money to pay for things
2 like this. And I am not going to second-guess
3 DEP's requirements about sensing. I don't know.
4 Maybe they have safety issues at issues, but it
5 shouldn't be second-guessed and pushed aside.

6 So we would certainly urge that the Commission
7 take seriously, even when you give an alternative
8 rate award, alternatively derived rate of award
9 that it -- that you exercise as much discretion and
10 authority as you can to ensure that the company
11 follows through on their obligations to the
12 customers.

13 So thank you, Mr. Chairman, for allowing me to
14 make these remarks. I hadn't intended to do so,
15 but I think Commissioner Graham is correct in this.

16 CHAIRMAN CLARK: Thank you, Mr. Rehwinkel.
17 Commissioner Graham.

18 COMMISSIONER GRAHAM: Thank you, Mr. Chair.

19 I am glad we pulled this. I am glad we've had
20 this dialogue and this conversation. I -- as I am
21 going through Issue 2, and we are looking at the
22 three different times dated June 22nd -- the last
23 paragraph -- June 22nd of 2018, Mr. Smallridge said
24 he picked up this property in 2018. Again, they
25 are out their October 26th of 2019. Just go to the

1 next page, November 16th of 2020. So three
2 different times it failed because of vegetation and
3 other things, but this last one was still because
4 of vegetation.

5 I think we need to change this recomm -- in
6 Issue 2, change it from satisfactory to
7 unsatisfactory. I don't think we need to
8 financially put a financial hit on this. I think
9 DEP did it this time. I don't think there is any
10 need for us to do it. But I want for the record to
11 be clear, especially the next rate case that comes
12 up that, you know, you were stumbling before, and
13 we think you are still stumbling, and so when it
14 comes up again, we are not giving him the benefit
15 of the doubt. I just want to make sure that we
16 don't think it's satisfactory, but we are not going
17 to penalize you financially.

18 CHAIRMAN CLARK: All right. Thank you,
19 Commissioner Graham.

20 Ms. Helton.

21 MS. HELTON: I just want to make sure the way
22 the issue is worded, if that's okay, Mr. Chairman
23 and Commissioner Graham?

24 CHAIRMAN CLARK: Yes, that's what I am trying
25 to determine, where we fit that in.

1 MS. HELTON: Yes.

2 The question before you as it's raised is: Is
3 the infrastructure and operating conditions of the
4 utility in compliance with DEP regulation? And so
5 as I understand the discussion today, it is now in
6 compliance, but maybe we could add to that, or you
7 could add to that in the motion, that it was un--
8 since Mr. Smallridge acquired the property, he had
9 three instances where he was in violation with DEP
10 even though he is in compliance today, and that is
11 unsatisfactory to have violations. Is that kind of
12 where you are going?

13 CHAIRMAN CLARK: Let me -- let me reask it in
14 a different way. If you go back to the issues,
15 quality service issues, Issue No. 1, was the answer
16 there just simply no?

17 COMMISSIONER GRAHAM: And this is when we
18 switched things up before, because it's kind of
19 hard for me to say -- because when I picture
20 quality of service, I picture what the customer --
21 that the customer -- the quality that the customer
22 is receiving at their home, and the quality that
23 the customer is receiving at their home is
24 satisfactory, but what they are doing at the plant
25 is not satisfactory, and so I don't know which is

1 probably the best way to articulate that.

2 MS. HELTON: I'm struggling with that a little
3 bit as well. Maybe if there is someone on the line
4 that has -- I don't know if Mr. Ballinger is on the
5 phone, or --

6 MR. BALLINGER: Yes, Mary Anne. This is --
7 this is Tom Ballinger.

8 Commissioner Graham, I understand your
9 question, and it is a little bit of a dilemma,
10 because currently they are in compliance with DEP
11 standards, but I understand your frustration with
12 the path to get there. It is really not a quality
13 of service of customer interaction or customer
14 response, which is more in Issue 1, or the product.

15 So I think what Mary Anne suggested is in
16 Issue 2, to recognize that while they may be in
17 compliance with DEP standards, the way they got
18 there, to get there, was unsatisfactory, in other
19 words, their responsiveness to DEP was
20 unsatisfactory. It should never have gotten to a
21 penalty phase.

22 COMMISSIONER GRAHAM: So we just ad to the
23 Issue 2, where we say that they are in compliance
24 with DEP standards, but the responsiveness and the
25 way they got there was unsatisfactory for this

1 agency.

2 MR. BALLINGER: I think that would --

3 CHAIRMAN CLARK: Hold on, Mr. Ballinger.

4 Mr. Baez, you have thought? Mark? I'm sorry,
5 either one.

6 MR. BAEZ: I think that that approach, that
7 special notation, even as -- even and they are
8 checking all the boxes in a way of saying this
9 is -- this is an issue for us and -- and I think
10 that that statement can probably live on into the
11 next, you know, as the utility operates into the
12 next -- (inaudible) -- that's something -- it sort
13 of works as putting the utility on notice that
14 their responsiveness, even DEP, how they are going
15 about it needs attention, and that in the future
16 that question is going to come up again, it's how
17 you have been responding, that's -- if I am
18 capturing the notion.

19 CHAIRMAN CLARK: So we are all on the same
20 page. What we are saying is that we are -- the
21 consideration here is to approve the items on move
22 staff as presented, with a caveat we want a
23 provision written under Issue 2 stating our
24 dissatisfaction with the way that they handled
25 their compliance, fair statement?

1 COMMISSIONER GRAHAM: Yes. So moved.

2 CHAIRMAN CLARK: It was so moved.

3 Do I have a second?

4 COMMISSIONER LA ROSA: Second.

5 CHAIRMAN CLARK: I have a motion and a second.

6 Any discussion?

7 All in favor say aye.

8 (Chorus of ayes.)

9 CHAIRMAN CLARK: Opposed?

10 (No response.)

11 CHAIRMAN CLARK: Motion carried.

12 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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I FURTHER CERTIFY that I am not a relative,
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DATED this 16th day of March, 2021.



DEBRA R. KRICK
NOTARY PUBLIC
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