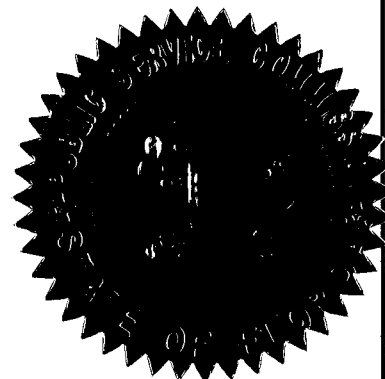


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060285-SU

In the Matter of:

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



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 11

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. McMURRIAN
 COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, October 9, 2007

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

REPORTED BY: JANE FAUROT, RPR
 Official FPSC Reporter
 (850) 413-6732

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1 PARTICIPATING:

2 CHARLES J. BECK, ESQUIRE, PATRICIA CHRISTENSEN,
3 ESQUIRE, and PATRICIA MERCHANT, Office of Public Counsel,
4 representing the Citizens of the State of Florida.

5 MARTIN S. FRIEDMAN, ESQUIRE, and FRANK SEIDMAN,
6 representing Utilities, Inc. of Sandalhaven.

7 KENNETH HOFFMAN, ESQUIRE, representing Placida HG,
8 LLP. of Sandalhaven.

9 MARTHA BROWN, ESQUIRE, TROY RENDELL, and BART
10 FLETCHER, representing the Florida Public Service Commission
11 Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: Commissioners, that will bring us to
3 Item 11.

4 MR. FLETCHER: Commissioners, I'm Bart Fletcher with
5 Commission staff.

6 Item 11 is staff's recommendation to approve a
7 two-phase rate increase for Utilities Inc. of Sandalhaven. The
8 utility's attorney, Mr. Marty Friedman and Sandalhaven's
9 engineering consultant, Mr. Frank Siedman, are present.

10 From Office of Public Counsel we have Mr. Charlie
11 Beck and Ms. Patty Christensen, as well as Ms. Trisha Merchant.

12 Also, Mr. Ken Hoffman is here representing Placida
13 HC, LLP. Placida is a developer who has been granted
14 intervention in this docket.

15 Staff is prepared to answer any questions the
16 Commission may have.

17 CHAIRMAN EDGAR: Thank you.

18 Mr. Friedman, would you like to start us off?

19 MR. FRIEDMAN: Yes. Thank you very much. Good
20 morning. My name is Martin Friedman of the law firm of Rose,
21 Sundstrom & Bentley, and we represent Utilities Inc. of
22 Sandalhaven in this case.

23 As Mr. Fletcher said with me also is Frank Seidman
24 who is the engineering consultant in this matter, and also
25 Mr. John Williams is also here to answer questions that may

1 arise.

2 We have two issues with the staff recommendation that
3 we would like to raise, and then obviously we would like to
4 reserve an opportunity to respond to any of the issues which
5 may be raised by Office of Public Counsel or by Mr. Hoffman on
6 behalf of his client. And I'm going to turn it over to
7 Mr. Seidman to address the two engineering questions, which are
8 Issues 5 and 26, and he will take them up in that order.

9 CHAIRMAN EDGAR: Thank you.

10 Mr. Seidman.

11 MR. SEIDMAN: Thank you, Commissioners.

12 Issue Number 5 deals with used and useful adjustments
13 that were made for what are called Phase I rates in this
14 procedure, and Issue Number 26 is not an engineering issue, it
15 is a rate issue. It's an issue in which the staff has
16 recommended a change in the method of billing multi-family
17 customers.

18 I'll address Issue 5 first. This is not so much
19 taking issue with what the staff's recommendation, as much as
20 interpretation of the facts behind their calculation.

21 CHAIRMAN EDGAR: And, Mr. Seidman, I'm sorry to
22 interrupt, but just so I can be sure that I'm following along
23 accurately with your comments, you are talking about Issue 5.
24 Will you also be addressing Issue 7, or just 5?

25 MR. SEIDMAN: What is Issue 7?

1 CHAIRMAN EDGAR: Used and useful percentages for the
2 wastewater treatment plant, collection and reuse systems.

3 MR. SEIDMAN: No.

4 CHAIRMAN EDGAR: Just 5.

5 MR. SEIDMAN: Just 5, yes, ma'am.

6 CHAIRMAN EDGAR: Okay. Thank you.

7 MR. SEIDMAN: Issue 7 deals with Phase II.

8 We're only dealing here with interpretation of the
9 facts for calculations for Phase I.

10 CHAIRMAN EDGAR: Thank you.

11 MR. SEIDMAN: We have a unique situation here with
12 this utility. This is a utility that has lumbered along with a
13 steady customer base for many years and is now suddenly facing
14 a situation where its customer base is going to double within a
15 very short period of time, three or four years. In addition to
16 that, they are also faced with the situation where -- this is a
17 sewer-only company -- where they are going to have to take
18 their wastewater treatment plant out of service because they
19 are losing their only viable method of getting rid of effluent.
20 And after studies done by their design engineer and economic
21 evaluation, they have gone ahead and made arrangements to send
22 their sewage for treatment and disposal to the Inglewood water
23 district.

24 So we have a whole lot of things that are going on
25 and a lot of plant that had to be put in in a short period of

1 time. And because of the change, during the change from going
2 from treating its own wastewater flows to sending it to
3 Inglewood water district there is going to be a period when
4 some of the existing customers are still going to be using the
5 wastewater treatment plant, and some of the newer customers are
6 having their flow sent to Inglewood water district.

7 That will continue for about a year or so during
8 which period the utility will be diverting flows from the
9 existing customers into the main force main going to Inglewood
10 water district. And until that happens, until that work is
11 completed, and until an additional pump station is added, the
12 staff has gone ahead and said let's put in a Phase I rate that
13 will recognize that transition period. And that's what we are
14 dealing with here.

15 And what they have done in their recommendation is
16 with regard to two major investments that are being made, the
17 main force main which will be taking all of the flows from the
18 service area to the district and the master pump station that
19 will be the force behind those flows getting there are going to
20 be used for only -- they're recognizing it is only going to be
21 used for a limited amount. And when they went ahead and made
22 their calculation, they used for the numerators, which you
23 would expect, the flows they expect to be going through those
24 lines, that force main and the lift station, against what they
25 perceived was the capacity of that lift station and the force

1 main.

2 Our problem is we do not believe they used the right
3 capacities for that lift station and for the force main for the
4 calculation. In looking at the lift station calculation, they
5 used a 500,000-gallon per day denominator saying that was the
6 capacity of the lift station. 500,000 gallons per day is the
7 commitment between Inglewood water district and the utility for
8 flows that Inglewood will sell to the utility over a period of
9 time. Not all of those flows have been purchased. In this
10 case, only 300,000 gallons of that has been purchased and that
11 is what is recognized in putting together the rates here.

12 In addition, the design engineer for the utility has
13 indicated that under the configuration of this master lift
14 station, only 275,000 gallons per day on average can be
15 treated, or passed through it. So our problem with staff's
16 calculation is that instead of having a 500,000-gallon base, it
17 should be a 275,000-gallon base. This information that was
18 provided by the engineer has been provided to staff in the
19 normal course of their discovery. It's not something that just
20 came up. They have known about it and the other parties have
21 known about it, and I think it was just a misinterpretation
22 that got us to that point. So we are recommending that that
23 change be made, that a 275,000-gallon per day base be used.
24 And that would change their used and useful calculation from
25 10.59 percent to 19.25 percent, according to my figures.

1 The other half of this situation is the capacity of
2 the force main. They have assigned a capacity of the force
3 main of a million gallons per day. A million gallons per day
4 is what is expected to be the average flow of this whole
5 service area if it is all built out in the future. This
6 includes development that is going on now and undeveloped lands
7 that some day may be developed.

8 The problem we have here is that it is really
9 difficult to pin down what is the capacity of a force main. It
10 has no inherent capacity on its own. I mean, a force main is
11 nothing but a pipe. It doesn't have anything that goes with
12 it. It derives its capacity from the pumping forces that come
13 from the lift station. And, the engineer, the design engineer
14 for this project has pointed out that when you pick the size of
15 a main, you pick it in an integrated fashion with the size of
16 the lift station. You can't do one without the other. And the
17 reason for this is that as you change the size of the main, you
18 change the force against which the lift station is working and,
19 therefore, the smaller the main, the more force it has to go
20 against the lift station, and the larger the horsepower has to
21 be to let the same amount of flows go through it.

22 They have done an economic evaluation, and on that
23 basis they came up with the conclusion that there should be a
24 12-inch force main here. They looked at smaller ones and said
25 it would not be economical because -- I mean, it's massive

1 differences. We are talking about going from having
2 88 horsepower pumps in a lift station to 300 horsepower pumps
3 to pass the same amount of water through it.

4 So the economic benefits of putting in a 12-inch
5 force main benefits everybody in this and it's a one-time shot
6 to get this force main in the ground. I mean, it's a timing
7 issue of where you can put it, what types of permits you need.
8 And timing-wise they decided to go ahead and put the 12-inch
9 main in, and even though it can handle flows up to complete
10 build-out, it is still the most economical size to go ahead and
11 provide for the capacity and the demands of the number of
12 customers that are included in this case.

13 Okay. So for purposes of interim rates here, we are
14 looking at the fact that the capacity of the force main should
15 be the same as the lift station on an interim basis, the
16 275,000, which would bring the used and useful up from the
17 staff's calculation of 5.3 percent to 19.25 percent.

18 This doesn't affect what happens on the other end
19 when it is built out. On build-out we have no problem. We
20 believe it is 100 percent used and useful, as staff does. I
21 hope I haven't made this overcomplicated, but, anyway, that's
22 the basis for our differences.

23 CHAIRMAN EDGAR: Mr. Seidman, do you want to go ahead
24 and speak to Issue 26, too?

25 MR. SEIDMAN: Okay. I'm going to give you a handout

1 for this one, which again, I hope doesn't overcomplicate the
2 situation. What we have here is the way rates were constructed
3 for this utility on a going-forward basis was the same rate
4 structure that is now in effect. For multi-family customers,
5 that structure is now that the base facility charge for
6 multi-family units, say there's 30 units in a building, the
7 base facility charge would be the single-family residential
8 base facility charge times the number of units in the building.
9 Staff is recommending that that be changed to the base facility
10 charge based on the meter size serving the building rather than
11 the number of units in the building. This is consistent with
12 what they have been doing in converting rate structure in cases
13 as we have gone forward.

14 Again, we're not taking issue with what they are
15 doing as much as the fact that we believe they used the wrong
16 billing determinants in calculating their rate structure. And
17 this is really no one's fault. The thing is when we made this
18 application the minimum filing requirements showed only one
19 line item for each of the multi-residential units. They were
20 line item by meter size to those developments, but it did not
21 indicate how many meters of that size were serving the
22 developments. So what we have here is we had -- in the revenue
23 projections we had four line items, a 1-1/2 inch
24 multi-residential charge, a 2-inch, a 3-inch, and a 6-inch. My
25 understanding is that staff assumed that each of those would

1 require one 1-1/2-inch meter, one 2-inch, one 3-inch, and one
2 6-inch. They did not have information available from the
3 minimum filing requirements to know anything else, and we never
4 provided it because it wasn't requested and we weren't
5 proposing it. And I understand that this didn't come up with
6 staff, they didn't recognize it until they were preparing the
7 recommendation, so there was really no time to get that
8 information to them. So we are doing it here so you can make a
9 comparison.

10 We went back and we looked at each of those
11 customers. Each of those lines represents one customer, and
12 determined from the water company, which is -- Charlotte County
13 provides water to these customers, what meters they put in to
14 serve these developments or what meters they are projecting to
15 put in to serve these developments. And we provided them with
16 a number of meters for each of those meter sizes and the number
17 of billing determinants that would fall out of that as a result
18 of it.

19 And what I have handed out to you basically
20 summarizes that, and we have provided this to staff ahead of
21 time so that they could look at it and discuss it with you
22 today and either offer their opinion within one way or the
23 other. But that is the basis for what we are doing here. We
24 are just bringing it up-to-date.

25 CHAIRMAN EDGAR: Thank you.

1 Commissioners, any questions for Mr. Seidman before
2 we hear from the others before us?

3 Okay. Then we will go along and see if there are
4 questions after that.

5 Mr. Beck.

6 MR. BECK: Thank you, Madam Chairman. And good
7 morning, Commissioners. Charlie Beck, Patty Christensen, and
8 Trisha Merchant from the Office of Public Counsel.

9 Madam Chairman, with your permission I would like to
10 make just a few comments about the Charlotte County resolution
11 that was passed two weeks ago, and then Patty Christensen would
12 have some remarks also.

13 It was two just two weeks ago that the Charlotte
14 County Commission passed a resolution rescinding PSC
15 jurisdiction over water and wastewater cases in their county.
16 Again, that was just two days before the staff issued their
17 recommendation.

18 Before you you have a two-phase rate increase
19 proposed by the staff. The Phase I is for a test year --
20 actual part projected for this year, calendar year 2007. The
21 Phase II has a projected test year for the year ended
22 June 30th, 2010, which is quite far out, and I think it's a bit
23 unusual to see a projected test year that far out.

24 I think the issue with the Charlotte County
25 resolution that arises is whether the Commission should be

1 exercising jurisdiction that would set rates for a test year
2 that is so far out when the Charlotte County Commission has
3 indicated that they wish to exercise jurisdiction on a
4 going-forward basis over water and wastewater companies in
5 Charlotte County.

6 We would recommend that the answer is that you should
7 not exercise your jurisdiction, and I think you have it and
8 that you could exercise that, but the better approach would to
9 be allow Charlotte County to judge the growth that will take
10 place, and I think there is wide agreement there is going to be
11 growth, but exactly what, when you are projecting out that far
12 in the future, nobody knows. It is best estimates.

13 Charlotte County, I think, would be in a better
14 position to make those judgments. And, again, they have told
15 you that they wish to exercise that jurisdiction. So we would
16 recommend that you issue a proposed agency action, which is
17 deal with what you have to, which is in front of you, which
18 would be the Phase I and not go forward on the Phase II and
19 leave that to Charlotte County.

20 MS. CHRISTENSEN: In addition to the comments that
21 Mr. Beck has made, in reviewing the recommendation, the Office
22 of Public Counsel also has some additional concerns regarding
23 the proposed Phase II rates.

24 First, we believe that the used and useful
25 adjustment, an additional used and useful adjustment is

1 warranted on the force main. Even at 80 percent build-out of
2 the next 1,392 customers, the force main will only be
3 approximately 50 percent used and useful for those customers.
4 So, we believe that an additional used and useful adjustment
5 will be necessary.

6 In addressing the argument that there is a
7 cost/benefit to putting in the larger force main, the economics
8 of that decision are not provided in the recommendation and
9 were not provided as to what kind of economic benefit was
10 derived from putting in the larger main versus putting in a
11 smaller main. We have some anecdotal discussion about it, but
12 we don't have the economic facts. We do know that it can pump
13 up to a million gallons per day, and with the expected growth
14 in the next two or three years, you would still end up with a
15 50 percent used and useful on that force main.

16 An additional issue that we have is also with the
17 AFPI, the allowance for funds prudently invested. We believe
18 that there would need to be a corresponding adjustment for used
19 and useful regarding the force main. Moreover, we think that
20 there is a timing issue regarding the AFPI. When customers
21 start to pay the Phase II rates, which would happen under
22 staff's recommendation automatically once those older customers
23 are interconnected, they will be under staff's recommendation
24 paying rates that are based on 100 percent used and useful for
25 the interconnection plant. And, therefore, you may have some

1 overlapping of what the AFPI charge covers as well as what the
2 rates are covering.

3 Third, implementing the Phase II rates shifts the
4 risk of whether or not customers, these new customers, the
5 1,392 which are expected to come on in the next two or three
6 years, from the utility to the current customers if that
7 expected growth doesn't happen. So there are some areas of
8 concern. And when you do that, and the county now has
9 jurisdiction, there is no way for this Commission to go into
10 the future. If something were to happen that the Commission
11 felt that it needed to address, you no longer would have
12 jurisdiction, which is one of the reasons that we are
13 recommending that the Commission only act as far as is
14 necessary in this case and let then allow the county to make
15 the necessary adjustments in two or three years when it's more
16 sure as to what kind of customer growth will take place.

17 And essentially that is the summary of our comments
18 regarding the recommendation. Thank you.

19 CHAIRMAN EDGAR: Thank you.

20 Ms. Christensen, could you speak to the point of if
21 this Commission were not to go forward with the Phase II
22 portion of the recommendation, then that would require another
23 rate case ratemaking, wouldn't it? Which I understand under
24 the current scenario would then be before the county rather
25 than before this Commission. But I guess my concern is, or the

1 question I'm trying to get clearer in my mind is the burden on
2 the consumers for that rate case expense, one time versus two
3 times, maybe.

4 MS. CHRISTENSEN: Mr. Beck wants to address that.

5 MR. BECK: There may be rate case expense either way.
6 If you have a protest by the company, or the developers, or by
7 our office, you know, there might be rate case expense one way
8 or another. The Charlotte County Commission will have the
9 benefit of the work that has been done and they will have the
10 analysis and they can use it as they see fit. I think for rate
11 case expense if you issued a proposed agency action just on the
12 Phase I, and if it went through, then that would save
13 customers, I think, considerable rate case expense. Whether
14 that will happen or not, I don't know, but the work that is
15 done is not lost. They can use that to whatever extent they
16 would see fit.

17 CHAIRMAN EDGAR: Commissioners, any other questions?
18 Commissioner McMurrrian.

19 COMMISSIONER McMURRIAN: Thank you.

20 It's along the same lines as your question for
21 Mr. Beck. What happens if we take you up on your proposal to
22 only address Phase I and the utility protests? Do you think we
23 have the discretion to not take up that protest here?

24 MR. BECK: Well, it would have to be a disputed issue
25 of fact to be entitled to an evidentiary hearing. If you don't

1 take up Phase II, I don't see what the disputed issued of fact
2 would be. It is really policy. It would just be a brief on
3 that issue, as I see it.

4 COMMISSIONER McMURRIAN: Chairman, if I --

5 CHAIRMAN EDGAR: Please.

6 COMMISSIONER McMURRIAN: I guess what I'm struggling
7 with is they filed it including all the customers that would be
8 Phase I and Phase II. I realize when they filed it there was
9 no Phase I and Phase II, that that was something that came
10 later. If we were to take the action you are saying, I guess
11 I'm thinking beyond that, and let's say the utility protested.
12 Let's say that even we decided there was no issue of material
13 fact, and they took that to court under the law that we have
14 about that we have to continue with the cases we have before
15 us. I mean, wouldn't we --

16 MR. BECK: I think the law is you have to deal with
17 it. I mean, you can't ignore what they filed, but I think your
18 action can be that you are going to do what you have to do. I
19 mean, they could have asked you to set rates in 2020. That
20 doesn't mean you have to do that. And so I think you have the
21 right to -- you simply have to deal with the issue that has
22 been presented. It doesn't mean you have to go along with
23 them.

24 COMMISSIONER McMURRIAN: I guess I would like to hear
25 perhaps staff's input on that as well as the utility, if they

1 have anything to add.

2 MS. BROWN: Well, Commissioner, first, I agree with
3 Mr. Beck that you have the authority to hear this whole case
4 even though Charlotte County is taking jurisdiction back.
5 That's what this 367.171 says. I think there probably is
6 discretion to approve or disapprove certain rates, so within
7 that context, you could deny Phase II if you wanted to.

8 If the utility then protested your PAA approving just
9 the first phase, I think you would be required to follow the
10 APA and proceed with an evidentiary hearing if there was a
11 disputed issue of fact, which I'm sure there would be. Mr.
12 Beck says no, but I'm pretty sure there would be. You would
13 need to continue with that. And then the whole idea of the
14 Phase II rates would come up again. That's my view of it. But
15 I think you would have to proceed with an evidentiary hearing
16 if the case were protested.

17 COMMISSIONER McMURRIAN: I'm sorry, I know that you
18 didn't open it up for other parties to --

19 CHAIRMAN EDGAR: We'll get there.

20 COMMISSIONER McMURRIAN: I don't think Mr. Beck posed
21 it as denying Phase II rates, it sounded to me like we would
22 just not make a decision on Phase II. Maybe we need to get
23 clarification from him on that. But do we have an obligation
24 to decide one way or the other on Phase II rates? I mean,
25 because you said we had the authority, you thought, to deny

1 Phase II, of course.

2 MS. BROWN: Well, I'm not sure -- I mean, from my
3 view that's a semantic issue, really. I think the protest
4 would still be the same whether you decided not to make a
5 ruling on the Phase II rates or whether you denied them. I
6 suspect if the utility were going to protest they would do it
7 either way and we would end up at the same place.

8 COMMISSIONER McMURRIAN: Can I ask Mr. Beck if he
9 wants to clarify which one he was asking?

10 CHAIRMAN EDGAR: Mr. Beck.

11 COMMISSIONER McMURRIAN: Is it semantics to you, too?

12 MR. BECK: You would simply decide that you are going
13 to defer to the stated desire of Charlotte County to exercise
14 jurisdiction on a going-forward basis. I don't know if you
15 want to cast that as a denial or just you are not ruling on it,
16 but I think that would be the decision. I don't think there's
17 any dispute that Charlotte County has passed a resolution
18 stating they wish to exercise jurisdiction on a going-forward
19 basis. So it would simply be you're not going to decide what
20 you don't have to decide.

21 CHAIRMAN EDGAR: Mr. Friedman.

22 MR. FRIEDMAN: Yes, thank you. I do have a couple of
23 comments. First of all, I would point out that unlike what
24 happened in Bay County several years ago, Charlotte County did
25 not take back jurisdiction because of this case. Charlotte

1 County took back jurisdiction because of a service area case
2 which you all will get to at some point in the future. But it
3 wasn't like Bay County, where they took it because they thought
4 that you all were going to mess up this rate case.

5 Second is that, you know (Audience laughter.) --
6 Public Counsel took a different position when Bay County took
7 back jurisdiction, and that was the sole reason they took back
8 jurisdiction was because of that Bayside Utility rate case.

9 But, that notwithstanding, the county as we sit here
10 today they have adopted an ordinance taking back jurisdiction,
11 but they have not taken any action to adopt any ordinances
12 required in order to implement taking back that jurisdiction.
13 And that requires that they adopt an ordinance that's
14 consistent with Chapter 367, portions of Chapter 367.

15 The Public Counsel kind of wants you to view -- take
16 Phase I rates like they are all by themselves and Phase II
17 rates like they are all by themselves, and that's not the way
18 the case was developed. The case was actually developed as
19 a -- it wasn't called Phase II, you know, that was the rates
20 that we wanted to implement are what we now call the Phase II
21 rates, and what developed out of that was, well, you really
22 should -- until you get all the customers connected we really
23 ought to have a lesser rate, and that's how the Phase I rate
24 was developed.

25 And as you noticed, the Phase I rate provides

1 negligible return to the utility. So you can't isolate Phase I
2 rates and put them in a vacuum over here and Phase II rates and
3 put them in a vacuum over here. The two rates are intertwined
4 and are part of a whole package in order to provide this
5 utility with a reasonable rate of return on its investment.

6 And so we think that it's clear that the Commission
7 really should exercise jurisdiction to adopt the methodology
8 that the staff has recommended, which is to go with a phase-in
9 rate system where we do Phase I rates for some period of time,
10 and at the time all the customers are receiving treatment from
11 Inglewood water district, then the Phase II rates kick into
12 effect. And, like I say, I think those are both together.
13 They call them Phase I and Phase II, but like other cases where
14 you have that you may phase in rates, it is really you can't
15 isolate one phase from the other, and we think that would not
16 be good regulatory practice to do that.

17 Do you want us to wait to respond on the other
18 questions that the Public Counsel has raised?

19 CHAIRMAN EDGAR: Yes. Let's hold on that.
20 Commissioner Skop, I know, has been holding a question, so
21 let's go ahead and get that out and then we can all respond.

22 Commissioner Skop.

23 COMMISSIONER SKOP: Thank you, Madam Chairman.

24 Again, I have the same concerns that Chairman Edgar
25 had with respect to the additional rate cases expenses that

1 would be absorbed by the consumer. So I thought that was an
2 excellent point which I share, and probably many of my
3 colleagues do also. I also had the same concern with the point
4 that Commissioner McMurrin raised about the procedural
5 ramifications resulting from bifurcating the phases and just
6 declining or abstaining from hearing the whole case.

7 Finally, my concern would be that I know that
8 Charlotte County has passed a resolution to rescind our
9 jurisdiction over the utility, but equally at any future point
10 in time they could decline -- I mean, they could equally decide
11 that they were in over their head and toss it back over to us,
12 which would put us in the same situation of having to go
13 through this whole process again.

14 So, I do think, as was just raised, there is
15 something to be said for having uniform and consistent outcomes
16 and sound regulatory practice. And I think that in that regard
17 that's a point that should be considered to the extent that if
18 the county were to ever deed back jurisdiction to the
19 Commission, I think that we would need to consider the
20 ramifications of that and our decision here today that's before
21 us.

22 Thank you.

23 CHAIRMAN EDGAR: Thank you.

24 Commissioner Carter.

25 COMMISSIONER CARTER: Thank you, Madam Chairman.

1 I just wanted to kind of follow up on what
2 Commissioner Skop was saying. Just for staff, during these
3 proceedings, the county was on notice that this proceeding was
4 going on, is that correct?

5 MS. BROWN: Yes.

6 COMMISSIONER CARTER: And I think I heard maybe one
7 of you guys or maybe Public Counsel's Office say that they
8 took -- they passed a resolution on the day that your
9 recommendation was public?

10 MR. RENDELL: It was approximately a week before --

11 COMMISSIONER CARTER: A week before.

12 MR. FLETCHER: Actually, it was two days before the
13 rec was filed.

14 COMMISSIONER CARTER: Okay. Two days before it was
15 filed.

16 And it is correct that it is at the discretion of the
17 county to how long they would hold this jurisdiction. If they
18 decide tomorrow, you know, we goofed, so see you later,
19 alligator. If they did that, then we are right back --
20 procedurally, where does that put us if we were to not deal
21 with the situation as presented to us? I understand phasing in
22 the rates, and Phase II may or may not be semantics, but where
23 does that put us if we were to bifurcate the process and then
24 the county decides, well, you know, this is going to be a
25 little much, we don't really want to do that and we are back

1 and gives it back to the Commission. We don't have the
2 discretion to say whether or not we'll take it if they decide
3 to deed it back, do we?

4 MS. BROWN: No.

5 COMMISSIONER CARTER: That jurisdictional issue
6 concerns me greatly in the context of it's one way but it's not
7 another. I'm just kind of thinking aloud, Madam Chair.

8 MR. RENDELL: Commissioners, if I might, Troy Rendell
9 on behalf of staff.

10 This is a novel approach. When the utility
11 originally filed they were asking for an over 300 percent
12 increase, which contemplated a retirement of the wastewater
13 treatment plant and this growth. When I went down to the
14 customer meeting, I made it very clear to the customers that
15 this case is being driven by this improvement for future
16 growth, and staff would take a very serious look at it; we
17 would look at the issue and we would present it before the
18 Commission.

19 That resulted in several meetings with the parties.
20 We had several telephone conferences with all the parties to
21 discuss this to see how can we address this. What we came up
22 with was a novel approach. We have not contemplated this
23 within a rate case, but it has significant benefits to the
24 existing customers as well as the future customers. It takes
25 into consideration that there is a tremendous amount of growth

1 there and that they are going to double in size. Without that,
2 the customers would see rates possibly double what's in the
3 staff recommendation. We looked at it in isolation and it
4 actually increases the rates.

5 With the two-phase rate increase there are several
6 benefits, as I indicated earlier. One of particular concern is
7 the rate case expense. I agree with the utility that the money
8 has been spent. The investment is there. The Phase I rate has
9 a very low rate of return as well as a very low rate base.
10 Financially, they would have to come in for another rate case
11 before Charlotte County, which on their part would be a
12 tremendous amount of rate case expense, because they would,
13 again, have to refile all the MFRs, go out and hire the
14 consultants and present its case to the Commission.

15 So staff is cognizant of that and wants to minimize
16 that if at all possible. So instead of having two sets of rate
17 cases and two sets of rate case expense, we believe it's very
18 important to vote on the two phases. They're intertwined; you
19 can't separate one from the other. So from a technical
20 standpoint we believe we have addressed all the concerns of the
21 customers that the future costs would not be borne by the
22 existing customers, and we believe this is a good compromise
23 for the customers as well as the utility.

24 CHAIRMAN EDGAR: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I guess a question to

1 Mr. Beck about what staff just had said. I just need your
2 clarification of how that would impact, to have the company go
3 to a second rate case with the county, the cost to the
4 consumer.

5 MR. BECK: I agree there is countervailing
6 considerations. This is not a case where we can just say here
7 is the right answer, period, end of story. The work that has
8 been done is not lost. I mean, it's there. The other side of
9 the issue, of course, is the projected test year ending
10 June 30th, 2010. You know, does the Commission wish to
11 exercise jurisdiction in October of 2007 setting rates based on
12 projections that far out. And it just seems to me with the
13 county saying they are exercising jurisdiction -- I mean,
14 that's all we have. We have a resolution saying they are
15 exercising jurisdiction on a going-forward basis of the water
16 and wastewater companies.

17 Do you think it is appropriate to exercise the
18 authority you have setting rates that far out when the county
19 has said they want to take jurisdiction? It's not an easy call
20 and there are very appropriate countervailing considerations.

21 COMMISSIONER ARGENZIANO: And, Madam Chair, for
22 staff, do we normally look that far out?

23 MR. RENDELL: No, we do not. We typically are
24 limited to two years out. As indicated, this was a novel
25 approach. We got all the parties together and proposed this

1 and conceptually the parties agreed, because I did not want
2 either my staff to spend a lot of time on a concept that the
3 other parties will not agree, as well as they didn't want the
4 utility to go out and spend money and spend a lot of time on
5 it.

6 Conceptually, the parties agreed that we would look
7 at something different. This is totally different than what we
8 normally do on a rate case. We are looking at setting rates
9 similar to an original cost study, because that's what's going
10 on, they are getting rid of their plant. They are, in essence,
11 building a new plant, although it's the interconnect. So it is
12 totally different.

13 This is not the last one that is going to come before
14 the Commission like this. We have several that we're working
15 on because of the unique circumstances. So, your answer is no,
16 but I think it's a very novel approach to address the
17 customers' concern, and we contend that the parties agreed to
18 this concept during the course of our conference calls.

19 COMMISSIONER ARGENZIANO: Madam Chair.

20 Well, couldn't things change over that long period of
21 time that would better be suited to give the county, who's
22 right there, the option of looking at those possible changes
23 before we make that decision so far ahead of time?

24 MR. RENDELL: It could. But the utility in original
25 rates, they bear the risk. When original rates are set up, the

1 utility loses money until they reach the 80 percent level. So
2 if the growth doesn't come about, the utility bears that risk.
3 They are losing the money. It does not shift to the customers.
4 At any time Charlotte County can do two things; they can either
5 bring them in for their own surveillance or their own rate case
6 and decide that what we did was inappropriate because of
7 changes, either the growth didn't occur or some other change,
8 or they could turn around and give jurisdiction back to the
9 Commission. They could decide the case on the territory that
10 Mr. Friedman alluded to, and then say we don't want to set
11 rates, we are going to give it back to the Commission.

12 So we don't know what the county may or may not do.
13 I believe we just have to vote on what's before us and what's
14 appropriate in this particular case.

15 MS. BROWN: If I may add a little bit of a legal
16 perspective to this. Section 367.1715 is the statute that
17 provides that we keep jurisdiction over any cases pending, and
18 it says when a utility becomes subject to regulation by a
19 county, all cases in which the utility is a party then pending
20 before the Commission, or in any court by appeal from any order
21 of the Commission shall remain within the jurisdiction of the
22 Commission or court until disposed of in accordance with the
23 law in effect on the day such case was filed.

24 Now, the reason I read that is I think this statute
25 contemplates a fairly long period of time where the Commission

1 would still have jurisdiction over a case if it was started
2 before the county took jurisdiction back. Appeals, you know,
3 can take two or three years to accomplish. We're talking about
4 a two-year projected test year. Out two years, a little over
5 two years, seems to be consistent with what the statute is
6 contemplating.

7 COMMISSIONER ARGENZIANO: Thank you.

8 CHAIRMAN EDGAR: Mr. Hoffman, you have been very
9 patient. Would you like to jump in?

10 MR. HOFFMAN: Thank you very much, Madam Chairman.

11 My name is Ken Hoffman, Commissioners. I'm here this
12 morning on behalf of Placida HG. Placida is a developer of a
13 418 unit residential development in Charlotte County.

14 Briefly, by way of background, Placida entered into a
15 developers agreement with Sandalhaven in September of last year
16 where Placida agreed to pay, and, in fact, paid the then
17 existing service availability charges of \$1,250 per residential
18 ERC. We paid a total of about \$522,000.

19 Thereafter in December of 2006, Sandalhaven filed an
20 amended application where they proposed to increase their
21 service availability charges approximately 125 percent and
22 requested that the new increased charges be approved on a
23 temporary basis. The Commission approved the increased charges
24 on a temporary basis over our objections in March making them
25 subject to refund, however, pending the final establishment of

1 new service availability charges.

2 So, the increase that we are talking about through
3 the staff recommendation is an increase from 1,250 to 2,628 per
4 residential connection. The increase is primarily for the cost
5 for the facilities necessary to transfer all of Sandalhaven's
6 wastewater treatment capacity and functions, if you will, to
7 the Inglewood water district. So, Inglewood's facilities will
8 be used by Sandalhaven for both their existing customer base
9 and their future customers.

10 From our standpoint, the relevant facts we think are
11 pretty straightforward and they are not in dispute. Using
12 the -- I think it's the 2005 test year figures that staff has
13 used, Sandalhaven has 916 existing customers, so a little over
14 900 existing customers. Sandalhaven projects 1,382 additional
15 customers to bring its service territory to build-out. So what
16 you have is you have approximately 2,300 total customers that
17 will be served by Inglewood's wastewater treatment and disposal
18 facilities.

19 As far as the costs go, you have approximately
20 2.8 million for survey and route selection for the cost for the
21 master lift station and for the cost for that force main that
22 has been discussed previously to bring the sewage for all of
23 Sandalhaven's customers, existing and future, to the Inglewood
24 water district. And so there is no dispute that Inglewood
25 water district will be the permanent wastewater treatment

1 provider for all of the utility's customers. As staff points
2 out in their recommendation, it's estimated that the wastewater
3 treatment for the existing customer base will be transferred
4 over to Inglewood in approximately two years.

5 As I understand what the staff has done in their
6 calculation in their recommendation, the staff is proposing to
7 treat all of this 2.8 million that I talked about in costs as
8 contributed property, and their recommendation is that all of
9 it should be recovered from future customers. Now, under that
10 assumption, when staff compares the amount of total net
11 contributed property to total net plant, this is under a
12 formula in your rules, that ratio is below the 75 percent
13 maximum CIAC ratio level under those rules. I think it's about
14 73 percent. And, therefore, staff is recommending because it
15 is under that 75 percent ratio, staff is recommending that all
16 of this 2.8 million is costs should be imposed on future
17 customers, and that's where we take issue with the staff's
18 approach.

19 Placida's position is based on a principle of law
20 that has been addressed by Florida's appellate courts when
21 those courts have reviewed attempts by utilities to impose the
22 costs of new facilities solely on new users or future
23 customers. In March, I discussed the City of Cooper City
24 decision. I brought that to your attention when you heard
25 argument on the temporary charge. And in that case, the Fourth

1 District Court of Appeal reversed the City of Cooper City's
2 proposed connection fees on the basis that the costs for the
3 new facilities were going to benefit the existing customers and
4 the future customers, but they were being imposed only on the
5 new customers.

6 Madam Chairman, if I may, with your permission I
7 would like to provide the Commissioners with a copy of a more
8 recent decision that sort of goes to the same proposition.
9 I've provided a copy earlier to Public Counsel and staff.

10 CHAIRMAN EDGAR: Yes, sir.

11 MR. HOFFMAN: Commissioners, what you have before you
12 is a copy of a May 31, 2000, decision of the Florida Supreme
13 Court in a case entitled, "Citizens Advocating Responsible
14 Environmental Solutions versus City of Marco Island." And as I
15 mentioned, I think what that case does is it echoes the same
16 proposition as the 1986 decision in the City of Cooper City
17 case.

18 Now in this case that you have before you, in the
19 Marco Island case the court upheld two bond issuances that were
20 proposed by the City of Marco Island to finance the expansion
21 of the city's wastewater collection and treatment system solely
22 for the purpose of providing wastewater collection and
23 treatment for the future customers. There the court, the
24 Florida Supreme Court found that the new facilities were, in
25 fact, to be used solely and exclusively for the new customers,

1 so the court upheld the city's bond issuances.

2 In determining whether the city had properly placed
3 all of the costs on the new users, the court cited to a
4 principle of law that had been articulated in that same court's
5 decision in a 1976 case entitled "Contractors and Builders
6 Association of Pinellas County versus the City of Dunedin."
7 That passage, that quote from this decision is on Page 208 of
8 the court's opinion, and I have highlighted it in yellow for
9 you and for the parties. And I would just like to read it,
10 Madam Chairman, into the record.

11 The court stated, "In principle, we see nothing wrong
12 with transferring to the new user of a municipally-owned water
13 or sewer system a fair share of the costs new use of the system
14 involved. The cost of new facilities should be borne by new
15 users to the extent new use requires new facilities, but only
16 to that extent. When new facilities must be built in any
17 event, looking only to new users for necessary capital gives
18 all users a windfall at the expense of new users."

19 We are relying on that principle in making our case
20 before you today, that principle that has been espoused by the
21 Florida Supreme Court. We do not take issue with the validity
22 of the Commission's service availability charge rules. We
23 understand that this case, as well as the City of Cooper City
24 case, involved a municipal utility and not a privately owned
25 utility regulated by the Commission. But, frankly, I see that

1 as a distinction without a difference. We have got 900 or so
2 existing customers, who like the future customers, are going to
3 receive a direct benefit from these 2.8 million in costs to
4 connect to Inglewood water district.

5 The fact of the matter is that without the Inglewood
6 water district there is not going to be any treatment capacity
7 for the existing users in about two years. Without an
8 adjustment and allocation of at least some of these costs of
9 the 2.8 million to current customers, our position is that
10 under the City of Marco Island case there would be an unlawful
11 windfall to the current customers at the expense of future
12 customers.

13 I want to point out to you that if the Commission
14 were to make such an adjustment to fairly allocate a portion of
15 the 2.8 million to the existing customers, your service
16 availability charge rule, which is the 75 percent max that I
17 talked about before, would not be violated, as I understand it,
18 because the level of CIAC would go down, so the utility would
19 still be under the 75 percent.

20 We think you have a very finite, sort of very
21 straightforward factual situation. We are talking about one
22 system here that is at build-out. This is not a utility with
23 10 or 20 systems, or 50 systems that is constantly adding plant
24 at various points in time and adjusting their service
25 availability charges. This is one wastewater system that

1 because of their -- as Mr. Rendell pointed out -- somewhat
2 unique facts and circumstances, they have incurred a set of
3 costs to provide wastewater treatment for all of their
4 customers, and our position is that those costs should be
5 allocated, and whether it is done on hydraulic share, or by
6 number of customers, or by ERCs, that is really not the main
7 point to us. The point is that there should be some reasonable
8 method of allocation of these costs between existing and future
9 customers.

10 Very briefly, Madam Chairman, in the staff
11 recommendation the staff points to some statements made by the
12 Commission in Florida Water's 1995 rate case. Actually it was
13 citing the testimony of Mr. Williams with respect to the notion
14 that there are going to be intergenerational inequities between
15 customers when it comes to service availability charges. But I
16 think that what that speaks to, what the Commission is speaking
17 to there is the fact that when you are talking about a
18 multisystem utility in particular, not sort of a finite
19 build-out situation, customers, a growing customer basis, there
20 are always going to be paying different service availability
21 charges because costs change. So, with an ongoing entity,
22 service availability charges for five years may be \$1,200 and
23 then for the next five years it may be 1,350. But those costs
24 change and they are not always going to be the same for the
25 future customers who connect to the system.

1 The staff also referenced the Mid-County Utility rate
2 case, and we believe that that case is different than this
3 case, because in the Mid-County case the developer essentially
4 was attempting to backbill his proposed calculation for a
5 service availability charge. He was trying to reduce it to
6 \$370, well below the utility's, and then backbill it to the
7 existing customers. Well, you can't do that. And the
8 Commission said, "No, you can't do that. That would violate
9 our rules." And that was appealed, and the court agreed with
10 the Commission, you can't backbill existing customers.

11 That is different than what I'm talking about. I'm
12 talking about taking a set of costs and doing a proper
13 allocation as I have said. And where would that leave you when
14 all is said and done? I think that would basically put -- if
15 you just look at the number of customers, about 60 percent of
16 these costs on future customers, and about 40 percent -- and
17 this is just general figures using the customer numbers I gave
18 you -- should at some point be placed on existing customers.

19 Now, it shouldn't be immediate because those costs
20 for those facilities are certainly not used and useful now for
21 the existing customers. They are using the existing wastewater
22 treatment facility and are projected to do so for another two
23 years or so. But our position is that at some point those
24 costs, roughly 40 percent or so, whatever it would turn out to
25 be, should factor themselves into the calculation of the

1 monthly rates for the existing customers to comport with the
2 principles in the court decision that I have talked about this
3 morning.

4 So that is our position, Madam Chairman. I
5 appreciate your time, and I'd be happy to answer any questions.

6 CHAIRMAN EDGAR: Thank you.

7 Commissioner McMurrrian.

8 COMMISSIONER McMURRIAN: This is for Mr. Hoffman.

9 What is the rate that you propose for the service
10 availability charge?

11 MR. HOFFMAN: We have not proposed one. We did that
12 when you were taking up the temporary service availability
13 charge. What I would suggest, Commissioner McMurrrian, just as
14 a fair way to do it, would be to take the 2.8 million in costs
15 which reflects all of the utility's costs for the
16 interconnection to Inglewood water district, and then apply to
17 that a ratio, and using the numbers from the staff
18 recommendation, for example, you have 1,300 -- I think it's
19 1,328 future customers over the total number of customer, so
20 that comes to about 60 percent or so, and apply that to the
21 2.8 million, calculate a per unit charge and then impose that
22 on the future customers as a service availability charge.

23 COMMISSIONER McMURRIAN: And I have one other
24 question for him.

25 You mentioned the rule. You said that your

1 methodology would still comply with the rule because it would
2 be under the maximum of 75 percent. Would it also be above the
3 minimum amount in Part 2 of the rule?

4 MR. HOFFMAN: I haven't calculated that, but I've got
5 believe that it would be well above the minimum. But I have
6 not calculated that.

7 COMMISSIONER McMURRIAN: Chairman, at some point I
8 would like to hear from staff on it, but I don't know if now is
9 the appropriate time or not.

10 CHAIRMAN EDGAR: Let's get Commissioner Skop's
11 question out there, and then we will look to our staff for a
12 response or additional information.

13 Commissioner Skop.

14 MR. FRIEDMAN: And I would like to comment, too, at
15 the appropriate time.

16 CHAIRMAN EDGAR: Yes, sir.

17 COMMISSIONER SKOP: Thank you, Madam Chair.

18 I just wanted to make sure from a procedural posture
19 I understand where we are at. And I think that we have the
20 issue before us in the staff recommendation, and I think Mr.
21 Hoffman is proposing some sort of an adjustment or a
22 modification to that.

23 In view of the case law that Mr. Hoffman recently
24 cited, I was wondering at the appropriate time if we might able
25 to take a few-minute break so I could look at the case in more

1 detail and see if there are any other cases in terms of
2 shephardizing that would apply to that.

3 CHAIRMAN EDGAR: Okay. Let's go ahead, and if I may,
4 hear from our -- Mr. Friedman, would you like to go first?

5 MR. FRIEDMAN: If I might.

6 CHAIRMAN EDGAR: Okay. Then give me just a moment.

7 We will give Mr. Friedman the opportunity to respond
8 and comment, look to our staff, Commissioners, see if there are
9 any other thoughts, comments, anything we want to go ahead and
10 get out, and then absolutely we will see about taking a break.
11 And depending on the time, see what time framework works best.

12 So, Mr. Friedman.

13 MR. FRIEDMAN: Thank you very much.

14 Again, Marty Friedman. The analysis and the
15 recommendation that the staff made on service availability is
16 consistent as it is pointed out in the recommendation with the
17 past practices of this Commission. Mr. Hoffman's distinction
18 that he glossed over not being a difference is, in fact, a
19 major difference. And if you will, I will just deal with the
20 one case that Mr. Hoffman brought to our attention, this Marco
21 Island case, it's a bond validation case. And if you look back
22 on Page 206 of that decision, it points out the standard that
23 the Supreme Court is using in analyzing this charge that they
24 want to impose to pay back these bonds.

25 And if you will look on the right-hand side, it's

1 indented, and if you look at Number 2, one of the requirements
2 of the bond validation is that the bond issuance meet the
3 following two-prong test. The second one of which is the
4 assessment for services must be properly apportioned among the
5 properties receiving the benefit. So that's the particular
6 standard that the court is applying in evaluating the bond
7 issuance in this case.

8 And also as was pointed out, all the other cases
9 relied upon by the developer are all cases involving
10 municipalities or other governmental entities. They've got a
11 different standard, as was pointed out in this Marco Island
12 case, they've got a different standard to review their actions
13 than this Commission does. I haven't seen any decision of any
14 court that articulates this standard that Mr. Hoffman has
15 espoused applicable to a governmentally regulated -- I mean, to
16 a PSC-regulated utility.

17 This language is found, the language that Mr. Hoffman
18 has highlighted, is found in decisions of service availability
19 charges or impact fees of government entities, not ones that
20 are private and regulated by this Commission. And I would
21 suggest to you that that is a major distinction with a major
22 difference, contrary to Mr. Hoffman's assertion. And since
23 there are different standards by which the local governments'
24 actions are evaluated than private utilities, I don't think you
25 can take one and apply it to the other. And so I would suggest

1 to you that the staff's recommendation is consistent with what
2 this Commission's authority is. Thank you.

3 CHAIRMAN EDGAR: Thank you. And I'll look to our
4 staff.

5 MR. FLETCHER: Commissioners, if I could, I would
6 like to start with Issue 5, the one that the utility initially
7 brought up. It was with the Phase I for the force main master
8 lift station.

9 The staff relied on assertions made during our
10 conference calls with the utility and the other parties. From
11 Mr. Patrick Flynn, the regional director of utilities in
12 Sandalhaven, he asserted at the two meetings that we had with
13 him that the master lift station, the capacity of it was
14 500,000 gallons per day, and also for the force main he
15 asserted that it would be one million gallons per day for the
16 force main.

17 In the same letter that Mr. Seidman was referring to
18 earlier there was an engineering firm, CHP Engineering, and
19 there was a letter by Steven Ramono (phonetic), Professional
20 Engineer. It did cite the 275 gallons per day that he
21 mentioned, but it also in that same letter -- that is based on
22 average flow. In the same paragraph it mentions that the peak
23 flow of that main is one million gallons per day, which equals
24 or matches what Mr. Flynn had asserted during our conference
25 calls.

1 So we stand by the capacity for the 500,000 gallons
2 per day for the master lift station and the one million gallons
3 per day for the force main to determine the used and useful
4 adjustments for then Phase I. And I think Mr. Rendell will
5 address Issue 26 of the utility's concerns on that issue.

6 MR. RENDELL: Commissioners, Issue 26 deals with a
7 rate structure issue. It has no bearing on the revenue
8 requirement, it's merely a how to distribute those costs
9 amongst the various customer classes. When staff initially
10 wrote the recommendation we did rely on the information in the
11 MFRs and the information submitted by the utility.

12 To be fair to the utility, they were not aware that
13 we would bring up this issue until they received the
14 recommendation. We met with them last week and they brought up
15 their concern. I indicated that they could supply this
16 information. We did receive the information yesterday. We
17 have looked at it and analyzed it, and if the facts presented
18 yesterday were taken as fact, there is a benefit, and I believe
19 that it is a reasonable way to charge multi-family residential
20 customers on a per unit basis. It does take into effect that
21 there is a significant change in the characteristics of the
22 customers. They are going from a single family residential to
23 multi-family units, condominiums. However, staff relied on the
24 information in the MFRs. The only apprehension I would have is
25 these were presented late in the filing. There is no way to

1 verify it.

2 There is no right or wrong answer in this issue, it's
3 just basically who do you recover the rates from. So, although
4 the information presents a reasonable methodology, you know,
5 there is some question of the validity of it. However, they
6 are projections. They are based on the utility's analysis of
7 developers. So, you know, there isn't a right or wrong answer.
8 If the Commission does decide to agree to the utility's
9 contention, then I do want to point out Issue 26 would be moot
10 and there would be no need to vote on it, and the rates would
11 be a fallout.

12 As far as the service availability, I do want to
13 touch on a couple of points. I actually was the staff member
14 who wrote the Florida Water case, as well as the Mid-County
15 case, I was on both of those, and I do want to touch base. On
16 the Mid-County case, we believe it is a case on point. That in
17 that case SunTech, the developer, they weren't contemplating
18 going back and charging the past -- they actually did the same
19 exact calculation that Mr. Hoffman's client is asserting that
20 you would go back and calculate as if each person would have
21 paid that.

22 And the Commission, after reviewing the evidence
23 presented during the hearing process, determined that you must
24 first apply the rules and set the charge based on the rules and
25 the guidelines in the rules for a residential customer. Then

1 at that point the second rule which is, I believe, 25-30.585,
2 comes into play where you determine the hydraulic share of that
3 charge for each developer. So, we believe that the court
4 did -- the First District Court of Appeal did uphold the
5 Commission's decision and we believe that is a case on point.

6 As far as the Florida Water case, Mr. Williams was a
7 staff witness who provided testimony on the rule itself and how
8 the rule came about, how it evolved, what the Commission at the
9 time the rule was promulgated had considered. And at that time
10 they did consider the intergenerational inequities that some
11 people would pay more and some people would pay less. It's a
12 moving target. The investment will change, the customer growth
13 will change. Some customers will pay significantly more, and
14 if the CIAC level is high, the Commission may eliminate those
15 charges. Staff did note several cases in its recommendation
16 where that has occurred.

17 The reverse is also true, where some customers will
18 pay significantly less, and then as investment comes about or
19 if growth does not come about as predicted, then future
20 customers will pay more. So we believe that -- I'm not going
21 to attempt to address the other court cases, I'll let the legal
22 staff, but from a technical standpoint we believe that the
23 Florida Water and the Mid-County cases, as well as the cases
24 cited in the recommendation, does contemplate it. And we do
25 stand beside our recommendation of the appropriate charges in

1 this case.

2 CHAIRMAN EDGAR: Ms. Brown.

3 MS. BROWN: Just quickly, Madam Chairman.

4 Mr. Friedman correctly, I believe, pointed out that
5 these cases that Mr. Hoffman has cited involve municipal
6 electric utilities, not private PSC-regulated utilities. The
7 PSC sets its service availability charges pursuant to statute
8 in 367.101. Municipal utilities are not subject to Chapter
9 367, and that statute is small, and I'll read it. "The
10 Commission shall set just and reasonable charges and conditions
11 for service availability. The Commission by rule may set
12 standards for and levels of service availability charges and
13 service availability conditions. Such charges and conditions
14 shall be just and reasonable. The Commission shall, upon
15 request or upon its own motion, investigate agreements or
16 proposals for charges and conditions."

17 The Commission has implemented service availability
18 charges, rules, to implement that statute, and Rule
19 25-30.580 states that a utility's service availability policy
20 shall be designed in accordance with the following guidelines,
21 and then it lays out the maximum and the minimum contributions
22 that Commissioner McMurrian talked about earlier.

23 My view of this is that the Commission is required to
24 comply with its statutory directive and with the rules that it
25 says shall be implemented to set service availability charges.

1 And as long as the proposal falls within the guidelines of the
2 rule, those charges would be considered fair, just, and
3 reasonable.

4 MR. FLETCHER: Commissioners, I would also like to
5 add that to address the customers' concern about the level of
6 the increase, within those guidelines that Ms. Brown mentioned,
7 we set it fairly high, below the maximum, but at 73.33 percent
8 in order to mitigate the level of the increase in this case.

9 MR. FRIEDMAN: Chairman Edgar, may I make one brief
10 comment in response to Issue 5?

11 CHAIRMAN EDGAR: Just a moment.

12 Mr. Rendell, did you have additional comments just to
13 close this out?

14 MR. RENDELL: I do want to point out Mr. Hoffman
15 mentioned that the 2.8 -- it is actually \$4.2 million. It's
16 double over what Mr. Hoffman said. So it's difficult to
17 address any proposed charges that he may be looking at, but it
18 is a significantly more increase than what Mr. Hoffman
19 indicated.

20 MR. FLETCHER: I think we didn't cover OPC's issue
21 regarding the Phase II used and useful.

22 CHAIRMAN EDGAR: Hang on just a moment. I'm trying
23 to keep it all together in my mind in some sort of orderly way.

24 Mr. Seidman, did you want to make a brief comment,
25 and then he will come back to our staff. And, Mr. Hoffman,

1 before we take a break we'll come back to you, as well.

2 MR. SEIDMAN: Okay. Just a brief comment on the used
3 and useful. Okay. I don't think we're in disagreement with
4 what the letter says. It does say 275,000 gallons per day
5 average daily flow and a million gallons per day peak flow with
6 the equipment that's in there. And it's my understanding that
7 the staff did the calculation using for flows the average flows
8 of the customers, so it should go against the 275 unless I
9 misunderstood how they did the calculation.

10 CHAIRMAN EDGAR: Mr. Fletcher.

11 MR. FLETCHER: I'm sorry, I used the max for the
12 master lift station, the peak flow.

13 MR. SEIDMAN: You used the lift station maximum peak
14 flow, is that what you said?

15 MR. FLETCHER: I used the max flows -- regarding the
16 numerator, I did use the max flows that they had designed,
17 190 gallons per day per ERC.

18 MR. SEIDMAN: The 190 gallons per day per ERC is an
19 average flow.

20 MR. FLETCHER: They indicated in the data request
21 that that was their max designed flow per ERC.

22 CHAIRMAN EDGAR: Okay. We will be taking a break
23 here shortly, and so if there is some additional confusion, or
24 maybe opportunity for additional clarity at the break, you can
25 have those conversations.

1 Mr. Fletcher, did you want to speak to one of the
2 other issues that has been raised?

3 MR. FLETCHER: Yes, OPC's used and useful for Phase
4 II.

5 Like Mr. Rendell said, for Phase II we kind of
6 treated it like an original certificate and set at 80 percent
7 build-out. And typically in those cases you will not find
8 nonused and useful adjustments to those because it's set at
9 80 percent build-out. And we believe that there is great merit
10 in the letter provided by the engineering firm that going with
11 a 12-inch main instead of a 10-inch main for the force main to
12 carry the wastewater effluent to the Inglewood water district,
13 that the incremental capital cost by going with the larger main
14 is offset by the less purchased power that you will realize
15 with the larger main because you will have less horsepower
16 pumps that you would have to place in there for the larger
17 main, and then that will equate to less purchased power
18 expense. That would offset that incremental capital cost.

19 CHAIRMAN EDGAR: OPC.

20 MS. MERCHANT: Real briefly. Trisha Merchant with
21 Public Counsel. The argument is still there. It is a million
22 gallon per force main they are using for just this next
23 increment phase of the 1,382 customers plus the existing
24 treatment plant. They will only be using 500 gallons per day.
25 And the argument about the original certificate methodology

1 doesn't make used and useful adjustments, I don't agree with
2 that particularly because the rule for the original certificate
3 filing asks for the size of all the components for each one of
4 the treatment plant, the lines and everything, and you wouldn't
5 want to set original rates if the components were all different
6 sizes. You would set rates using consistent sizes for what you
7 needed for that next phase.

8 So, if you built, you know, a plant that would fit
9 Phase I, and you are setting rates on Phase I, you wouldn't
10 include some plant that was built out to serve Phase II. So,
11 you would match the components so that when you are setting
12 original rates you're looking at Phase I type plants. So that
13 is the only other comment that I wanted to make on that.

14 CHAIRMAN EDGAR: Commissioners, we have jumped around
15 a bit amongst the issues that have been raised, amongst the
16 many issues that are in this item.

17 Commissioner McMurrian, I think, has a question.

18 Mr. Hoffman, I had said that we will give you the
19 opportunity to respond some of the things raised; then,
20 Commissioners, if there are comments or questions, let's go
21 ahead and get them out, and then we will take a break to absorb
22 some of the information that we've heard.

23 Commissioner McMurrian.

24 COMMISSIONER McMURRIAN: Thank you.

25 My question is for OPC with regards to Issue 26, that

1 the company has passed out this proposal for using a per unit
2 basis instead of the meter equivalent. And I realize that I'm
3 sort of putting you on the spot, and that usually OPC probably
4 doesn't get involved in rate structure issues so much, but it
5 seems like in this case there might be some benefits, perhaps,
6 to using the approach the utility has put out.

7 So, in case you want to think about it over the
8 break, perhaps I wanted to go ahead and bring it up now, but I
9 wondered if you all were prepared to take some position with
10 regard to Issue 26. Which I realize if we went with the
11 utility's proposal we wouldn't need to vote on at all, but I
12 guess I would be looking to see if you all had any input on
13 that and that might help us decide what to do about Issue 26.

14 MS. MERCHANT: I just saw this information right when
15 you saw it this morning, so I haven't had a chance to look at
16 it and see what kind of impact it would have on the rates. But
17 I would defer to staff, we don't get involved in rate structure
18 issues. If it had a major impact on how you calculated
19 revenues, test year revenues, then that might be the way that
20 we would get involved in that, but we can look at it and
21 discuss it over the break.

22 COMMISSIONER McMURRIAN: Okay. I was thinking that
23 perhaps it sounded as if staff had done some sort of initial
24 analysis. They did point out, I think Mr. Rendell pointed out
25 that there were some concerns about being able to validate all

1 the numbers because they got it so late. But it also sounded
2 like there perhaps might be some benefits to the residential
3 customers in this case if you took this approach.

4 So, in case you all can get together, if you do
5 agree, then that may be helpful to know. If you don't, I'm not
6 trying to force you into taking a position on something that
7 you don't usually take a position on.

8 MS. MERCHANT: We will look into it.

9 COMMISSIONER McMURRIAN: Thank you.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam Chairman.

12 It's just something that we could probably not have
13 to go into later, but I just wanted to go back to this issue on
14 jurisdiction. From what I understand staff is saying about
15 this Phase I and Phase II is that it is really not bifurcated,
16 it's a process. And if we go through this process and not
17 complete the entire process, what we will be handing the county
18 would be a case that's only partially completed and we would
19 not have fulfilled our statutory duty here. Am I reading that
20 right in the context of jurisdiction in the way that you have
21 streamlined the process for Phase I and Phase II? That's what
22 I understood you to say is that you put Phase I there so that
23 the increase would be less than it actually needs to be, and
24 Phase II is there so that when the population trend starts to
25 ramp up a little bit there would be more people to take

1 advantage of that. Is that correct?

2 MR. FLETCHER: That's correct, Commissioner.

3 COMMISSIONER CARTER: And the county can -- excuse
4 me, Madam Chairman, I'm just trying to -- you know, sometimes I
5 have my over-50 moments, so I want to get my train of thought
6 out there.

7 So that were we not to take this in toto and we just
8 send a portion of this process to the county, then the county
9 can say, well, whatever increase that they may have deemed
10 necessary has already been taken care of, but what you're
11 saying is that you can't have one without the other, is that
12 correct.

13 MR. FLETCHER: Yes, Commissioner.

14 Definitely the Phase I, the tremendous amounts of
15 monies in nonused and useful adjustments to 2.8 million in
16 nonused and useful, that's just half of the puzzle there. I
17 mean, you have to consider them in totality. And I think it
18 would -- you have to address both of them in totality in order
19 to address the utility's opportunity to earn the fair rate of
20 return on the investment, the substantial investment that they
21 have outlaid already.

22 COMMISSIONER CARTER: Madam Chairman, if I could
23 follow up with Legal. Now, jurisdictionally, if we were to
24 just take Phase I, then the county has no -- even if we did
25 Phase I and Phase II, the county is not really banned by this,

1 they could later on do a separate case altogether, is that
2 correct?

3 MS. BROWN: Yes, Commissioner, they could. They
4 could do it either way, I think. Even if we kept this whole
5 case together and saw it through to its bitter end, the next
6 day Charlotte County could -- if it had done everything it's
7 supposed to do, which it hasn't done yet, it hasn't --
8 according to Mr. Friedman it hasn't complied with all of the
9 367 requirements and hasn't issued ordinances that set that all
10 up, but if it had done that then it could initiate its own rate
11 proceeding regardless of what we had done.

12 So, you know, in terms of whether we have
13 jurisdiction to just do the one piece, I think you could
14 consider that we would have to do the whole piece because we
15 wouldn't be setting fair, just, and reasonable rates if we just
16 did the one. Because the way it's set up, it's all one big
17 process. But I guess reasonable minds could differ on that.
18 And I honestly am not sure jurisdictionally whether you would
19 be precluded from doing just the one, because I'm not sure you
20 would be.

21 COMMISSIONER CARTER: Madam Chair, just a comment.
22 The ratepayer is at the end of the rainbow, and those are the
23 people that are going to have to pay for this, so it would seem
24 if our statutory authority requires us to make a decision, we
25 need to go on and make the decision and not have the ratepayers

1 to say, well, the PSC didn't do their duty to find fair and
2 reasonable rates, so now the county has got to go through that.
3 And now in addition to having to pay the costs for the
4 proceedings with the PSC, now the ratepayers has to pay the
5 additional cost of proceedings before the county plus the
6 actual rate increase. So that's what gives me heartburn on
7 behalf of the ratepayers.

8 MS. BROWN: Well, I agree with you on that. And
9 also, as staff pointed out earlier, if you just do the Phase I
10 rates, as I understand it, the rates for existing customers
11 will increase. Is that correct?

12 MR. FLETCHER: Just to concentrate on the existing
13 customers, yes. If you just looked at the existing customers
14 and their share of the interconnection costs and the impact
15 fees that were paid, that the rates would substantially
16 increase. Just those served by the existing wastewater
17 treatment plant now, is that what you are -- they would
18 substantially increase.

19 CHAIRMAN EDGAR: Commissioners, other comments or
20 questions at this time?

21 Mr. Hoffman, I had promised the opportunity for you
22 to respond before we take a break.

23 MR. HOFFMAN: Thank you, Madam Chairman. I will be
24 pretty brief on this.

25 First, Mr. Rendell brought up the 2.8 million and

1 took issue with that, and all I can say is that when the
2 utility filed their amended application in December of 2006, on
3 Page 2 of that amended application they state, "The utility is
4 requesting a change in its service availability fees and
5 charges to enable it to pass through the costs of the
6 interconnection to the future customers who will be connected
7 after the interconnection is complete."

8 And on Page 18 of the staff recommendation, it says
9 that the utility reflects survey and route selection, master
10 lift station, and force main project costs of 98,000 -- I'm
11 just rounding off -- 547,000, and 2.1 million. When I add
12 those up, 2.8 million. That's that issue.

13 Next, Mr. Rendell brought up the Mid-County decision
14 that he participated in. And, here again, I can only go by
15 what the Commission stated in the order. In that particular
16 case the developer sponsored a witness by the name of Mike
17 Burton (phonetic). In the order the Commission stated, "Mr.
18 Burton's method suggests that the service availability charge
19 should be computed based on today's information carried back to
20 the utility's inception in 1969, or as if all current and
21 future customers paid a service availability charge of \$370.
22 The existing customers did not pay this \$370 service
23 availability charge. Instead, they paid the previously
24 approved service availability charge of \$136.60. The
25 Commission has no authority to require past customers to pay

1 this proposed charge of \$370." That's what I was referring to
2 whenever I made the argument to you that I think this case is
3 distinguishable.

4 Lastly, with respect to some of the statements made
5 by Mr. Friedman and Ms. Brown, you know, I did cover in my
6 presentation that these cases do involve municipalities and
7 that I do think that that is a distinction without a
8 difference. I recognize and respect the fact that the
9 Commission does have service availability charge statutes. I
10 don't think they are violated by applying this principle.

11 I do realize that the City of Marco Island was a bond
12 validation case, but, again, the quote that is highlighted in
13 yellow comes from a 1976 decision of the same court in the City
14 of Dunedin case, which did involve service availability
15 charges. It involved a city, the City of Dunedin's impact
16 fees.

17 So, again, I think this is a principle of law that
18 can be applied and should be applied so long as it doesn't do
19 violation to the Commission's rules, and I think in this case
20 it would not.

21 Thank you.

22 CHAIRMAN EDGAR: Thank you.

23 Okay. Commissioners, we have heard a lot of
24 information. And as I said earlier, to restate the obvious,
25 there are numerous issues that are included in this item. So I

1 appreciate the suggestion to maybe take a step back and allow
2 us to absorb, and also our staff to look at some of the points
3 that have been raised, as well.

4 Commissioners, what is your pleasure? We will take a
5 break. It is approximately 10 after 11:00, approximately.
6 Commissioner Skop, you had suggested a break, which I
7 appreciate. I want to make sure that we allow enough time.
8 And then we get into lunch, so I'm open to suggestions. What
9 is your pleasure, Commissioners?

10 Commissioner Skop.

11 COMMISSIONER SKOP: Madam Chair, at the discretion of
12 my colleagues, perhaps 20 or 30 minutes, and then come back
13 briefly and reconvene.

14 CHAIRMAN EDGAR: Commissioner Argenziano, did you
15 have a --

16 COMMISSIONER ARGENZIANO: I was going to say 30
17 minutes. I think 30 minutes would give everybody ample time.

18 CHAIRMAN EDGAR: Okay. Why don't we say, just
19 because we know how these things go, why don't we come back at
20 a quarter till, approximately a quarter till by one of the
21 clocks on the wall, and we will begin or continue our
22 discussion then.

23 Thank you all. We are on break.

24 (Recess.)

25 CHAIRMAN EDGAR: We will go back on the record and

1 continue with our discussions on Item 11. When we broke, we
2 had some comments from staff and from the participants. Is
3 there anything additional from staff, anything clarifying that
4 you would like to share with us as regards the discussion we
5 had before the break?

6 MR. FLETCHER: With regard to the 190 gallons per ERC
7 design flow, we still believe that that is a peak flow, and
8 that that represents the numerator, and the denominator is also
9 peak.

10 CHAIRMAN EDGAR: Thank you.

11 Commissioner Skop.

12 COMMISSIONER SKOP: Thank you, Madam Chair.

13 I do appreciate us taking a break, so I would have
14 the opportunity to read the case law surrounding the argument
15 that Mr. Hoffman raised. In view of reading that case law, I
16 do not feel that Mr. Hoffman's arguments are persuasive, and at
17 the appropriate time I would like to move the staff
18 recommendation.

19 CHAIRMAN EDGAR: Commissioners, comments, questions,
20 reflections? No.

21 COMMISSIONER CARTER: No reflection.

22 CHAIRMAN EDGAR: No reflections. Commissioner Skop
23 has made a motion in favor of the staff recommendation for
24 Issues 1 through 34 on Item 11.

25 COMMISSIONER CARTER: Second.

1 CHAIRMAN EDGAR: There is a second.

2 Is there further discussion? Hearing --

3 Commissioner McMurrian.

4 COMMISSIONER McMURRIAN: I just wondered if OPC did
5 have any further comment on Issue 26 that we talked about
6 before the break.

7 MS. MERCHANT: Yes, ma'am.

8 We looked at it, and spoke with Mr. Rendell, and we
9 are supporting staff's recommendation, the position as stated
10 in the staff recommendation.

11 CHAIRMAN EDGAR: Okay. Again, we have a motion, we
12 have a second. There has been the opportunity for discussion.
13 All in favor of the motion say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN EDGAR: Opposed?

16 Show it adopted.

17 Thank you all. And that concludes our business for
18 today. This agenda conference is adjourned.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
6 Section, FPSC Division of Commission Clerk, do hereby certify
7 that the foregoing proceeding was heard at the time and place
8 herein stated.

7

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
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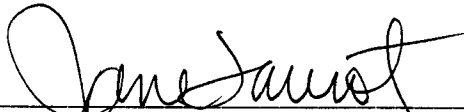
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11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel of any of the parties, nor am I a relative
13 or employee of any of the parties' attorney or counsel
14 connected with the action, nor am I financially interested in
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DATED THIS 16th day of October, 2007.

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JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

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