

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100127-WS

In the Matter of:

APPLICATION FOR INCREASE IN
WATER AND WASTEWATER RATES IN
MARION COUNTY BY TRADEWINDS
UTILITIES, INC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 23, 2011

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

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

DOCUMENT NUMBER-DATE
06160 AUG 28 =
FPSC-COMMISSION CLERK

P R O C E E D I N G S

* * * * *

1
2
3 **CHAIRMAN GRAHAM:** Item Number 7.

4 **MR. DAVIS:** Good morning, Commissioners. I'm
5 Connie Davis with Commission Staff.

6 Item 7 is the Staff recommendation to approve
7 rate increases for Tradewinds Utilities, Inc., in Marion
8 County. Mr. Charles deMenzes is here on behalf of the
9 utility and is available for questions. And in
10 addition, Mr. Sayler is here from the Office of Public
11 Counsel. Staff is available to answer any questions you
12 may have.

13 **CHAIRMAN GRAHAM:** Thank you, Ms. Davis.

14 I'll let you go first.

15 **MR. SAYLER:** All right. Thank you, Mr.
16 Chairman, Commissioners. I'm Erik Sayler appearing on
17 behalf of the Office of Public Counsel and the customers
18 of Tradewinds Utility.

19 I'm here today to ask you to disallow between
20 100 and 122 hours of unsupported rate case expense being
21 charged to the customers of Tradewinds by the salaried
22 owner/manager of the utility for tasks which come
23 naturally within the course and scope of his management
24 for his utility.

25 I still have concerns regarding the consultant

1 MFR contract. According to the docket file, it's
2 actually just a proposal, not the actual executed
3 contract, but I'm not going to belabor those points or
4 raise them, or reraise concerns that I raised last time.

5 Qualified rep status for Mr. deMenzes was an
6 unnecessary legal expense. Mr. deMenzes is the
7 owner/manager of this utility. As such, he did not need
8 to incur needless legal expenses to be declared a
9 qualified representative before the Public Service
10 Commission. As the owner of this utility, it is a
11 well-established principle, legal principle that a
12 person can represent themselves pro se in any court of
13 law or before any agency action. And as the
14 owner/manager of this and three other regulated
15 utilities that this Commission regulates, Mr. deMenzes
16 could have represented himself without this unnecessary
17 and costly step to become a qualified representative.

18 I looked at the qualified rep petition. It is
19 four pages, a cover page and a few other things, but yet
20 he was charged over \$800 for this qualified rep
21 petition. Perhaps those legal fees of \$800 was a little
22 bit high. The legal fees being assessed to this
23 particular utility is around 436.

24 The criteria for governing qualified reps is
25 Rule 28-106.106, *Florida Administrative Code*. It is

1 designed for instances when a person wishes to hire
2 someone other, other than representing themselves, and I
3 will read it. "(1), Any party who appears in any agency
4 proceeding has the right, at his or her own expense, to
5 be represented by counsel or qualified representative."
6 Counsel means a member of the Florida Bar.

7 Because Mr. deMenzes is the owner of this
8 utility and also C.F.A.T., which you ruled upon two
9 weeks ago, there was no need for him to become a
10 qualified representative to run these two rate cases.
11 As the owner, there was no danger of UPL, or unlicensed
12 practice of law, because it is his constitutional right
13 to represent his, his interests before this Commission.
14 I don't know why he sought qualified representative
15 status or who advised him he needed it, but it was
16 costly and unnecessary advice that the customers of
17 Tradewinds should not be forced to pay those legal fees,
18 and we would ask that the Commission disallow the
19 associated legal fees with that.

20 Second, as the owner/manager of this
21 particular utility, he also receives a salary of about
22 \$83,000 to manage this and his other utilities. Thus,
23 he did not need to hire himself to run his own rate
24 case. Tradewinds Utility already pays him management
25 fees for his management of -- managerial services. And

1 as an officer of a company that manages a utility,
2 participating in rate cases is naturally part of the job
3 description. In other rate cases you see various
4 officers participating in those rate cases, and that
5 falls within the course and scope of their duties and
6 their salary, and they do not earn extra rate case
7 expense for that. At times when the Commission has
8 tried to allow -- or been requested to allow it, they
9 have disallowed it.

10 In our opinion -- or in my opinion, you know,
11 allowing this double-dipping would set a bad precedent
12 for other utility owners to hire themselves to represent
13 themselves before this Commission and get paid twice: A
14 salary and legal fees.

15 In 1994, the St. George Island Company came
16 before this Commission for a rate case. The owner of
17 that utility, an attorney, tried to, tried to have this
18 Commission approve legal services fees that he would
19 provide to the utility. The Commission wisely
20 disallowed that in that particular case.

21 Now with regard to the qualified
22 representative hours that are in the recommendation,
23 there are 122 of the, of his requested 180, and those
24 122 hours are unsupported. Legally it's problematic
25 because it's a burden of proof issue. The utility that

1 is requesting rate case expense always has the burden to
2 prove that rate case expense is reasonable. And if it
3 fails to prove that the rate case expense is reasonable,
4 then the Commission disallows most, if not all, of the
5 requests as being unsupported by the record. The rate
6 case expense statute and case law are clear on this
7 issue; the Commission must allow reasonable rate case
8 expense and disallow unreasonable rate case expense.
9 Ironically, the Commission cannot, cannot review rate
10 case expense for reasonableness if a utility does not
11 provide to the Commission any information with which to
12 base a finding of reasonableness.

13 For the following reasons, the burden of proof
14 was not satisfied as it relates to the 122 hours. If
15 you'll turn to page 20 of Staff's recommendation, second
16 paragraph, it states that the utility's filing did not
17 include any amount for Mr. deMenzes to process this rate
18 case as a qualified representative. When Staff
19 requested that he submit sufficient support to justify
20 the request, Mr. deMenzes failed to do so. Instead of
21 providing Staff a breakdown of his time and tasks, as
22 they requested, he filed a one-page document just
23 requesting \$40 an hour for 180 hours of work, or \$7,200.
24 By failing to provide the Staff a breakdown for each
25 task performed and the associated hours for those tasks,

1 there's nothing in the record upon which this Commission
2 can base a finding of reasonableness.

3 Usually, in my experience with the Public
4 Service Commission, when a utility fails to carry its
5 burden of proof to support a requested rate case
6 expense, Staff routinely recommends disallowance of that
7 rate case, recommended rate case expense as being
8 unsupported by the record.

9 In this instance, because Staff was unable to
10 verify whether the 180 hours was a reasonable number of
11 hours for a qualified representative, Staff compared Mr.
12 deMenzes' recommended -- or requested 180 hours with the
13 122-hour average charged by Rose, Sundstrom & Bentley
14 attorneys in four recent Utilities Inc. rate cases.
15 Comparing this simple, straightforward rate case with
16 more complicated Utilities Inc. rate cases is not
17 appropriate because it is not an apples-to-apples
18 comparison of the time and effort spent by those
19 attorneys in those rate cases and the time spent by, in
20 my opinion, what Mr. deMenzes spent on this rate case.

21 Further, if the Commission starts comparing or
22 equating hours charged by an attorney with that of a
23 qualified representative, that could raise UPL issues
24 with the Florida Bar. The UPL issue may arise by, by
25 the use of hours charged by an attorney as a proxy for

1 hours being charged by a qualified representative
2 spending on a rate case. Qualified representatives,
3 like attorneys, must account for all the hours that they
4 spend, providing the Staff something upon which to
5 review.

6 Creating hours for a qualified representative
7 or for an attorney in any rate case is a fundamental --
8 is contrary to the fundamental principles of ratemaking
9 and that, that a utility must prove its rate case
10 expense. In my opinion, there's no UPL issues for
11 Mr. deMenzes because he does own this utility.

12 I do note that of the 180 hours that he
13 requested, Staff is recommending only 122, so, thus, a
14 disallowance of 58 hours. However, the remaining 124
15 hours is still unsupported by the record. Moreover,
16 there's nothing in the record that says what he did for
17 this utility was outside the course and scope of his
18 normal utility managerial duties.

19 The recommendation notes that Mr. deMenzes
20 spent time assisting Staff auditors, responding to data
21 requests, attending interim rates Commission conference,
22 and attending the customer meeting. However, in my
23 opinion, it doesn't seem like these tasks would require
24 122 hours to perform, and none of these tasks seem
25 unusual or outside the scope of an owner/utility

1 manager's duties or work hours. In other words, I don't
2 think he was using overtime to come to these things,
3 with the exception of possibly the customer meeting.

4 In conclusion, for all these reasons I would
5 recommend that the Commission disallow the unnecessary
6 legal fees associated with the qualified representative,
7 and I would also recommend disallowing all the
8 unsupported qualified representative legal fees charged
9 by Mr. deMenzes.

10 Now if the Commission is unwilling to disallow
11 all the qualified representative fees, I can provide you
12 a breakdown. I think that there may be 22 hours which I
13 think are justified by the time that he would normally
14 spend processing a rate case that would potentially be
15 outside the normal duties of his hours, and I can go
16 into those, if you would like.

17 But, Commissioners, in my opinion, and I
18 believe case law supports it, allowing unsupported
19 utility rate case without adequately satisfying the
20 burden of proof is reversible error on appeal because
21 there's nothing in the record upon which this Commission
22 can base its finding. While OPC agrees that rate case
23 expense being recommended in this rate case, rate case
24 is relatively expensive, it is a bargain compared to
25 many of the other water rate cases that come before you

1 on a regular basis. However, simply having a small
2 amount of rate case expense should never become a
3 substitute for the required burden of proof which the
4 case, which case law requires. Thank you for your time
5 and your consideration, and I'm available for any
6 questions.

7 **CHAIRMAN GRAHAM:** Mr. deMenzes, three years,
8 no customer complaints. We like to hear that. Welcome.

9 **MR. deMENZES:** Well, I just got a complaint
10 here.

11 **CHAIRMAN GRAHAM:** He's not a customer.

12 **MR. deMENZES:** My only question is, you know,
13 I was quoted by Rose, Sundstrom and -- you know, those
14 guys, \$40,000 to represent me. And I figured I think, I
15 think I could do it a little cheaper than that. And as
16 counsel here says, if he thinks I did it in 22 hours,
17 then, you know, I should be walking on water. Because
18 it's going to take me a year to get through this whole
19 rate case, and there's no way I could have done it in
20 22 hours. And I spent a lot more than 180. But that's
21 beside the point. I was trying to keep the figure as
22 low as possible. The fact that whether I'll ever
23 receive it, that's a whole nother matter.

24 But other than that, yes, I have not received
25 any complaints. We try to take care of our customers.

1 Our staff does their job, and most of our customers love
2 our staff. So what can I tell you?

3 **CHAIRMAN GRAHAM:** Thank you, sir.

4 Commissioners. Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

6 I have a question for Staff on Issue 10.

7 Has -- this is probably a question for legal. Has the
8 Commission ever allowed or disallowed legal costs
9 associated with a lawsuit for a single ratepayer?

10 **MR. JAEGER:** I think it's gone both ways,
11 Commissioner. Most of the time you have these two
12 tensions. You don't want to make the customers pay for
13 a utility's wrongdoing, so we don't allow fines or
14 penalties or, like, late fees, if they incur late fees.
15 But then the other tension is the due process.
16 Everybody has a right to their day in court, to be
17 represented by an attorney. So the general practice of
18 the Commission is to allow them to have that attorney
19 and reasonable and prudent expenses of representation.
20 And we've had -- I think Bart and I, we spent probably
21 60 hours between us reading hundreds of orders, and
22 there has been an occasion where, when it was really
23 egregious or like one utility went ten years just sort
24 of flaunting their, the DEP requirement and they didn't
25 allow it, and then in Harbor Utilities they didn't allow

1 it. But as a general rule, we allow their reasonable
2 and prudent litigation costs, but no fines, penalties,
3 or anything incurred after that as a general rule.

4 **COMMISSIONER BROWN:** And in our briefing,
5 there was a distinction of the Commission allowing for
6 DEP fines and things of that nature. But I did think
7 that -- I think there's a distinction between DEP fines
8 and a single ratepayer lawsuit. DEP fines are for the
9 purpose of taking corrective action so that the utility
10 can be kept up and put back together, put back in place
11 for the benefit of all the customers; whereas, a single
12 lawsuit for, against a customer doesn't really impact
13 all of the ratepayers.

14 **MR. JAEGER:** We also -- well, I think
15 basically some of it was in their provision of their
16 service, they were sued by a customer for a wrongdoing.
17 So while it's not a DEP, it still occurred in the
18 provision of service. And, again, we had cases where it
19 was litigation from outside sources other than DEP or
20 Water Management District or county health, and the
21 litigation costs were allowed as a one-time expense and
22 amortized over four or five years, whatever it is.

23 So we think, while it's not DEP, it's still
24 the same principle that they may have incurred a less
25 penalty or they got a settlement. They did do a

1 settlement in this, in this case. And by defending it,
2 then maybe the settlement was less than it would have
3 been. But we think it was still the provision of water
4 or wastewater service, in this case it was a backup and
5 caused damage to the customer's home, and so that was in
6 the provision of their service and in their job as a
7 utility.

8 **MS. BROWN:** If the appropriate insurance was
9 in place for this utility, then we wouldn't even have to
10 be addressing these, these legal fees associated with
11 that single ratepayer lawsuit.

12 **MR. JAEGER:** That's probably correct. If
13 their insurance had handled it, then we would not have
14 had -- well, again, maybe they would have wanted to
15 defend it, hire an attorney, and then see, you know, get
16 it to where they can figure out what the, you know, the
17 damages were to get it down to \$62,000. It may have
18 been that they may have started out at \$100,000 or more
19 that the plaintiff was asking for. So the settlement
20 may have been -- by, you know, defending it, they may
21 have reduced the amount of the settlement. But, yes, if
22 they'd had insurance, and they may have gone through the
23 same litigation before they got to the settlement, but
24 either way, the \$62,000 has been taken out that they
25 paid in the settlement.

1 **COMMISSIONER BROWN:** That's right. But the
2 legal fees are still in, and I think that we may be
3 establishing a precedent that, that the ratepayer, that
4 entire group of ratepayers are paying for a lawsuit for
5 a single customer. And I'm concerned, and I have
6 concerns about that. And you acknowledged that there
7 have been cases that the Commission has ruled, that have
8 disallowed those particular costs; correct?

9 **MR. JAEGER:** That's correct. There's been
10 instances.

11 **COMMISSIONER BROWN:** Okay. I have another
12 question on Issue 14, if --

13 **CHAIRMAN GRAHAM:** Sure.

14 **COMMISSIONER BROWN:** Regarding the appropriate
15 weight -- rate structure. Ms. Lingo --

16 **MS. LINGO:** Good morning, Commissioner.

17 **COMMISSIONER BROWN:** -- good morning. Why is
18 Staff recommending the rates, the recommended rate
19 structure and not Alternative 1?

20 **MS. LINGO:** Commissioners, good morning, Jenny
21 Lingo with Staff.

22 Commissioner, in this particular instance,
23 when we were looking at the utility's customer base,
24 although it's not what we would consider a truly
25 seasonal customer, it's a borderline seasonal customer

1 base. When we encounter instance likes that, we want to
2 make sure that all customers, regardless of their
3 consumption level, pays some sort of increase. This is
4 going to be really response -- really important for the
5 utility in terms of their financial stability and
6 revenue stability when the residents are not in season.

7 Under our recommended rate structure, we put
8 all, almost all of the recommended revenue increase into
9 the gallonage charge. The base facility charge goes up
10 about 2 cents. Unfortunately, if we're looking at
11 Alternative 1, we see about 64 percent of the bills that
12 pay some lesser form of an increase. In fact,
13 Commissioner, there are some customers who pay a
14 substantial decrease, almost 20 percent. We're very
15 concerned, again, about revenue stability for the
16 utility, and that's why we recommended the recommended
17 rate structure on page 26.

18 **COMMISSIONER BROWN:** Okay. Thank you.

19 **MS. LINGO:** Thank you, ma'am.

20 **CHAIRMAN GRAHAM:** Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

22 And I want to go back to Issue 10, and, and I
23 agree with Commissioner Brown. And in response to
24 Staff's comment in that they incurred a legal expense to
25 possibly avoid a higher settlement, but I don't see

1 where that's a benefit to the customers. That's only a
2 benefit to the owner because we disallowed the
3 settlement amount. So if it would have been \$100,000,
4 we would have disallowed it as well. So I don't see
5 where there's, there's a benefit to the ratepayers for
6 them incurring those legal expenses. If anything, it
7 would be a benefit to the owner.

8 But I also have a -- going back to Issue 9,
9 under pro forma salary increase, Staff made the
10 statement that the Commission has determined a 3 percent
11 increase is reasonable, and I -- and you cite the
12 previous decision that we made recently. And I just
13 want to point out and remind the Commissioners, I'm sure
14 we remember, that the reason why we found that 3 percent
15 in that previous case was because of the large time
16 frame between their last rate case. And in this case,
17 the last time rate bases were established were in 1994.
18 So I just want to be clear for the record it isn't that
19 we feel a blanket 3 percent rate increase is
20 appropriate, it is the time frame in between the rate
21 cases.

22 **MR. FLETCHER:** That is -- Bart Fletcher,
23 Commission Staff.

24 That is correct, Commissioner. In this case,
25 it was similar to the one that the Commission previously

1 approved the 3 percent for Tradewinds. This is their
2 first rate case. The 1994 established rate base, but
3 this, like its sister company that the Commission voted
4 on in the August 9th agenda on C.F.A.T., this was bought
5 out of bankruptcy by Resolution Trust Corporation, so
6 this is the very first time that Tradewinds has come in.
7 So it's over 20 years, akin to the 3 percent that was
8 granted in that other case cited.

9 **COMMISSIONER BALBIS:** Okay. Again, I just
10 wanted to be clear that it's due to the time frame and
11 not 3 percent is okay. So I don't have any further
12 comments.

13 **CHAIRMAN GRAHAM:** Commissioner Brown.

14 **COMMISSIONER BROWN:** Thank you. Just a
15 follow-up.

16 I did have a question on Issue 11 for legal
17 regarding the rate case expenses. And how does Staff
18 feel about the qualified representative fee in light of
19 the case cited by Mr. Sayler here, since the owner is
20 also receiving a salary?

21 **MR. JAEGER:** I'm sorry. The qualified rep,
22 there was 400 and something dollars that they incurred
23 to have the law firm help them. And Mr. Sayler is
24 correct that as the owner, he could represent the
25 utility. And so maybe it was -- I mean, it was

1 overkill, and that was four hundred and thirty something
2 dollars. Was there another question that you --

3 **MR. FLETCHER:** If I may. As regards to the
4 concern about double-dipping, Mr. Saylor mentioned about
5 the management fee, that there's, he is charged with --

6 **COMMISSIONER BROWN:** That's what I meant.
7 Thank you.

8 **MR. FLETCHER:** He was charged with managing
9 this company. But within the scope, that's the normal
10 course of business, that's the accounting. That's not
11 going to a rate case. And basically the costs that you
12 normally incur, if you would have had a consultant,
13 which is to respond to the auditors as they do their
14 field audit, Staff's data request, there has been
15 numerous ones, a data request in this case and
16 follow-up, supplemental information provided by the
17 company. And realizing that and working with the
18 utility in that, we felt even though the one-page sheet
19 that was submitted, about 180 hours, we felt that there
20 was time spent in this case, and we could actually see,
21 working with Mr. deMenzes in processing this case, that
22 using an average of the most four recent rate cases
23 would be appropriate as far as to reimburse for that
24 non-reoccurring, outside of the normal course of
25 managing the management fee that he was being

1 compensated for.

2 **COMMISSIONER BROWN:** Thank you, Mr. Fletcher.

3 Mr. Chairman, if there are no questions or
4 comments, I'd like to make a motion.

5 **CHAIRMAN GRAHAM:** You have the floor.

6 **COMMISSIONER BROWN:** Okay. I would like to
7 move Staff recommendation on Issues 1 through 9, and
8 Issues 11 through 20 -- is it 20, 21 -- 22. And I took
9 out Issue 10 for a little bit more discussion, in case
10 any other Commissioners want to discuss that, that item.

11 **CHAIRMAN GRAHAM:** The motion is Staff
12 recommendation, Issue 1 through 9 and 11 through 22.
13 It's been moved and seconded. Any further discussion?
14 Seeing none, all in favor, say aye.

15 (Ayes unanimous.)

16 Any opposed?

17 (No response.)

18 Okay. Commissioner Brown.

19 **COMMISSIONER BROWN:** Thank you. On Issue 10 I
20 would like to iterate my concerns that we are
21 establishing a precedent whereby the general body of
22 ratepayers will have to foot a bill for litigation
23 expenses associated with a single ratepayer. It doesn't
24 seem fair that the utility can pass on these costs to
25 all of the customers. These costs should be the

1 responsibility and be borne by the utility as a matter
2 of doing business. So I would move to disallow the
3 legal fees and miscellaneous expenses associated with
4 the litigation of the customer, and approve the rest of
5 the Staff recommendation on Issue 10.

6 **CHAIRMAN GRAHAM:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Mr. Chairman, I would
8 second the motion, also with the understanding that if
9 it passes, it may require some adjustments to some of
10 the numbers in the other issues that we have approved,
11 and further direct our Staff to make those adjustments.

12 **CHAIRMAN GRAHAM:** It's been moved and seconded
13 to disallow the legal fees on Issue Number 10.

14 **COMMISSIONER BROWN:** And miscellaneous
15 expenses.

16 **CHAIRMAN GRAHAM:** And miscellaneous expenses.
17 So that is the \$5,500 and the \$1,200.

18 Commissioner Brisé.

19 **COMMISSIONER BRISÉ:** A question for Staff.
20 When, when a company has to defend itself and go out and
21 pay an attorney and so forth, do we traditionally pass
22 those costs on to the ratepayers?

23 **MR. JAEGER:** I found a few litigation expense
24 items. I'm not sure if Mary Anne wants to jump in. But
25 there was an antitrust litigation and there's litigation

1 expense in Order Number 5044. It was a 1971 case for
2 Southern Gulf. And those litigation expenses were
3 allowed, but I'm not sure if it was one individual
4 customer.

5 MS. HELTON: I really don't know. Mr. Jaeger
6 has done the research and I, I would hesitate to venture
7 an opinion here.

8 CHAIRMAN GRAHAM: Mr. Willis.

9 MR. WILLIS: Thank you, Chairman. I'd just
10 like to jump in here and let you all know that normally
11 a utility has a right to defend itself, and that is a
12 normal cost of doing business.

13 FPL has it built in. I can guarantee it, they
14 get lawsuits all the time from their customers, not a
15 lot, but they get some, and they're entitled to defend
16 themselves and it is a normal course of doing business.
17 Any private company out there will find themselves being
18 sued at times also, and it's a normal course of their
19 doing business.

20 The only way I could distinguish this case, if
21 you tried to distinguish this, this is a lawsuit over a
22 customer where they did not have the right, adequate
23 insurance to cover that. And I would, I would suggest
24 that if you're going to disallow the legal expense, that
25 you do it based on the fact that it was over a customer

1 who had a backup where they did not have the correct
2 insurance to cover that cost. Because I would hate to
3 say that we weren't going to allow companies to defend
4 themselves against legitimate expenses or lawsuits.

5 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

6 And that was sort of the clarification that I
7 was looking for because I think that companies should be
8 entitled to, to defend themselves, and if the defense is
9 appropriate, that the costs should be passed on as
10 prescribed. But in this case I think it's a little bit
11 different. So with that in mind, I'm able to support
12 the, the motion.

13 **CHAIRMAN GRAHAM:** I hate to say this, I may be
14 the lone dissenter here. I just -- I think this is
15 something that happened in the act of running his
16 utility and, you know, you go to court to fight those
17 things. You know, it's okay for, for us to disagree,
18 but that's where I am at this point.

19 Commissioner Brown.

20 **COMMISSIONER BROWN:** I just -- and thank you,
21 Mr. Willis, for pointing that out. And we had that
22 discussion during our briefings. But I did want to
23 point out that the utility specifically did not have the
24 appropriate insurance and should have had the insurance
25 in place and that would have avoided all of this. And

1 ultimately the, the entire ratepayers are going to bear
2 the burden if we approve these lawsuit and miscellaneous
3 expenses, and that's where -- that was the genesis of my
4 original motion and my, my questioning to Staff earlier.

5 **CHAIRMAN GRAHAM:** I guess my question would be
6 what would the cost of insurance be for those 17 years?
7 Would it have been the \$7,000 we're trying to disallow?

8 **COMMISSIONER BROWN:** Are you asking me a
9 question? I don't know that answer.

10 **MR. JAEGER:** Chairman, Commissioners, if I
11 may, we're talking -- we're creating or treating this as
12 a one-time expense, and it's 5,000 in legal fees for the
13 litigation and 1,000 in miscellaneous, and then we're
14 going to amortize that over five years. So the expense
15 that we're talking about is actually a \$1,357 figure. I
16 mean, I don't want to minimize that, but I just wanted
17 to make sure that's what -- and we don't know what the
18 insurance premiums would have been. But so we are
19 amortizing it over five years because it's not recurring
20 or not a regular type expense.

21 **MR. FLETCHER:** And just if I may add about the
22 insurance premium, that's also in the third paragraph of
23 Staff's analysis on page 18. The incremental amount for
24 Tradewinds is, approximately \$200 would be the premiums.

25 **CHAIRMAN GRAHAM:** Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

2 I just wanted to make the clarification that
3 the issue that we're discussing right now is not, in my
4 mind is not the right of this utility or any other
5 utility, whether it be water, wastewater, electric, or
6 other, to defend itself. It's where the costs of those
7 legal expenses will reside. And I absolutely think that
8 every case is case specific, and I don't believe that
9 should the motion pass, that we are establishing
10 precedent. I do think that we are looking at the unique
11 circumstances and costs for the instance that is before
12 us.

13 And I also would say that I think it is easily
14 an issue that there could be strong arguments on both
15 sides and is not -- is in that gray, is in that gray
16 area. But with the facts before us, I'm comfortable
17 supporting the motion.

18 **CHAIRMAN GRAHAM:** Any further discussion?
19 Okay? The motion is to disallow, for Issue Number 10 to
20 disallow legal fees and miscellaneous fees associated
21 with that. All in favor, say aye.

22 **COMMISSIONER EDGAR:** Aye.

23 **COMMISSIONER BALBIS:** Aye.

24 **COMMISSIONER BROWN:** Aye.

25 **COMMISSIONER BRISÉ:** Aye.

1 **CHAIRMAN GRAHAM:** Any opposed?

2 Aye.

3 So the ayes have it. Motion goes forward.

4 And is that it?

5 I think Issue 7, I'm sorry, Item 7 was the
6 last one. So all that being said, we are adjourned.

7 And we will reconvene for Internal Affairs at 11:15.

8 I've got 11:00 right now, so at 11:15. We're adjourned.

9 (Agenda Conference adjourned at 11:00 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 26th day of August, 2011.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734