

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Item Number 9.

3 **MR. BUYS:** Good morning, Commissioners.

4 I'm Dale Buys with Commission staff. Item 9 is
5 staff's revised recommendation regarding Lake
6 Utility Systems Inc.'s application for a water and
7 wastewater rate increase in Lake County.

8 The utility is requesting a 38 percent
9 increase in its water rates and a 12 percent
10 increase in its wastewater rates. Staff is
11 recommending a 25 percent increase in the water
12 rates and a 6 percent decrease in the wastewater
13 rates. Representatives from the Office of Public
14 Counsel and the utility, in addition to staff, are
15 here to address the Commission on this matter and
16 answer any questions you may have.

17 **CHAIRMAN GRAHAM:** Public Counsel.

18 **MR. REILLY:** Chairman Graham and
19 Commissioners, OPC would like to address the
20 Commission concerning three issues on this
21 recommendation. It's Issue 4, pro forma plant
22 additions; Issue 18, rate case expense; and Issue
23 30, proof of adjustments to the company's books in
24 accordance with the Commission's order. I intend to
25 present OPC's recommendation for Issue 4, and Ms.

1 Merchant here will make our recommendations
2 concerning Issues 18 and 30.

3 The discussion of Issue 4 can be found on
4 Pages 15 through 17 of the recommendation. There
5 are approximately \$1.2 million of pro forma water
6 and wastewater plant additions included in this
7 case. OPC is not questioning the pro forma plant
8 additions that have been completed or are soon to be
9 completed and fully documented. We do, however,
10 question and recommend against approving the pro
11 forma plant addition for Oranges to Vistas raw water
12 main installation. This proposed \$250,000 pro forma
13 plant addition, which is only based on a January 14,
14 '11 letter from the engineering company which
15 expresses an opinion of probable construction cost
16 for the raw water main project. Unlike the other
17 pro forma projects, there is no construction
18 specifications, no bids have been sought or
19 received. There is no assurance other than the
20 utility's estimate of when the project will be
21 completed and placed into service. We believe this
22 project is too speculative both as to cost and
23 completion date to be included in the pro forma
24 plant additions at this time.

25 In your recent 2011 final order in the

1 Water Management Services rate case, you disallowed
2 \$2.2 million of pro forma plant additions based
3 solely on engineering estimates of costs provided by
4 the engineering firm without construction
5 specifications and with no bids having been sought
6 or received for the project. The Water Management
7 Services order states that it is the Commission's
8 practice to require at least three bids prior to any
9 approval of pro forma additions.

10 This same Water Management Services order
11 references two other orders, a January 30, 2007,
12 order in the Gold Coast case, and interesting,
13 another Utilities Inc. case, Utilities Inc. of
14 Pembroke, which was issued on June 18th, 2010.

15 This pro forma addition should be
16 disallowed not only because of insufficient cost
17 support, but because of an uncertain completion
18 date. The company estimates that it can complete
19 this project by June 30th, 2012. However, in Lake
20 Utility Services' last rate case, the customers paid
21 for a \$1.35 million reuse transmission main to
22 connect Lake Groves wastewater treatment plants to
23 six subdivisions. Also, the wastewater treatment
24 plant was upgraded to enable it to provide reuse to
25 those subdivisions.

1 In the prior case, the utility assured the
2 Commission that the wastewater treatment plant
3 upgrade would be completed by the end of the
4 projected test year, which was June 30, 2009. The
5 customers in those six subdivisions expected to be
6 able to receive reuse service on or before June 30,
7 2009. Now, more than two years later, as of
8 October 2011, no customer has received the first
9 drop of reuse water. This is of particular concern
10 to OPC and the customers because there is currently
11 about \$5.4 million in rate base classified as
12 reclaimed water treatment and distribution plant,
13 and yet the customers thus far have received no
14 benefit, no reuse service.

15 OPC strongly recommends that the estimated
16 \$250,000 Oranges to Vistas raw water main pro forma
17 plant be disallowed at this time. If and when the
18 project is completed and placed into service
19 providing a benefit to customers, then and only then
20 should the company seek recovery. Perhaps in the
21 next rate case, perhaps in a limited proceeding.

22 That concludes our recommendation on that
23 one pro forma plant improvement. I would yield to
24 Ms. Merchant for the other two issues.

25 **CHAIRMAN GRAHAM:** Ms. Merchant.

1 **MS. MERCHANT:** Good morning,
2 Commissioners. Tricia Merchant with the Office of
3 Public Counsel.

4 I would like to address LUSI's treatment
5 of Commission ordered adjustments, and how this
6 accounting process results in excessive costs being
7 incurred in this case. LUSI's first rate case was
8 in 1996. That rate case lasted three years,
9 primarily because of the poor condition of the
10 utility's books and records. In that case, staff
11 had to recalculate 100 percent of all the plant and
12 accumulated depreciation for all of the 18 water
13 systems that were in LUSI at that time. In the
14 first PAA order issued in that case in 1997, the
15 Commission stated that the magnitude and
16 pervasiveness of the problems that existed with
17 LUSI's books and records could warrant a show cause.

18 Since it was LUSI's first case, the
19 utility was given the opportunity to bring its books
20 into compliance. The order also stated that
21 noncompliance with the NARUC Uniform System of
22 Accounts continued to be a problem for many of
23 Utilities Inc.'s subsidiaries. The case was
24 ultimately settled in 1999 and the company agreed to
25 accept the staff determined rate base balances.

1 Three years later, the Commission opened
2 an overearnings investigation of LUSI. The staff
3 auditors stated that the company never recorded the
4 adjustments from the prior settlement. In addition,
5 there were numerous exceptions found for accounting
6 errors, but no action was taken on the recommended
7 audit adjustments as further analysis from staff and
8 the Commission reflected that the company was not
9 overearning and the docket was closed.
10 Additionally, between 1998 and 2003, the Commission
11 ordered five other Utilities Inc. subsidiaries to
12 bring its books into conformance with the NARUC
13 Uniform System of Accounts.

14 In the 2000 Wedgefield case, the company
15 was ordered to show cause why it should not be fined
16 for violation of Commission accounting requirements.
17 The Commission accepted a settlement to suspend the
18 fine and for Utilities Inc. to work with staff to
19 resolve the remaining discrepancies by January 2001.
20 The Commission also ordered Wedgefield and Utilities
21 Inc. in all future proceedings to file MFRs which
22 begin with utility book balances and to show all
23 adjustments to book balances after the, quote, per
24 book, end quote, column in the MFRs.

25 Then in 2003 in the Cypress Lakes rate

1 case, the Commission found that the company was not
2 in compliance with the NARUC accounting requirements
3 or the previous settlement approved in the
4 Wedgefield case. The Commission ordered that
5 Cypress Lakes should show cause why it should not be
6 fined for failure to maintain its books with NARUC
7 and to file a plan to come into compliance. Again,
8 in lieu of a hearing on the show cause, the
9 Commission accepted Utilities Inc.'s offer to
10 address the accounting deficiencies and solutions
11 for all of its subsidiaries in a new docket.

12 In Docket Number 040316, the staff and
13 Utilities Inc. worked for over nine months to
14 outline eleven items that could resolve all of
15 Utilities Inc.'s accounting deficiencies and
16 presented these as a settlement to the Commission.
17 The Commission approved the settlement in 2004 in
18 which Utilities Inc. agreed to perform at a minimum
19 the following: To begin its annual report and MFR
20 balances with the balance per books; to make timely
21 adjustments to rate base; to record retirements
22 consistently; and to correct accounting for CIAC and
23 amortization rates. All of the agreed-upon actions
24 were to be completed by December 2004.

25 LUSI filed its next rate case in 2007. In

1 its MFRs, LUSI made 29 rate base and depreciation
2 expense adjustments to correct, reclassify, or roll
3 forward what it labeled previous 2005 entries
4 booking Commission ordered adjustments. In the
5 staff audit, the auditors stated that there were so
6 many errors in the utility's MFRs to correct the
7 Commission-ordered adjustments that the auditors
8 started from their previous rate case audited
9 balances and made adjustments from those amounts
10 forward to 2007.

11 As a standard issue in PAA rate cases, the
12 Commission orders companies to provide proof that
13 the adjustments to all applicable NARUC uniform
14 system of account primary accounts have been made.
15 In August of 2009, LUSI filed its response to this
16 requirement for its 2007 rate case to verify that
17 the Commission ordered adjustments had been made on
18 its books, and they attached a spreadsheet showing
19 297 adjustments for prior Commission ordered
20 adjustments.

21 OPC has several concerns with LUSI's post
22 rate case filing. First, this schedule does not
23 represent proof that any adjustments had been made.
24 This is simply a worksheet that detailed adjustments
25 that should have been made. To me, proof that

1 adjustments have been made would be a copy of
2 adjusting journal entries, not a spreadsheet list.
3 The company even changed the order's language to
4 agree with its policy of accounting for the
5 Commission adjustments off of its balance sheet.
6 Had the company adjusted its books as required by
7 the Commission's order, there would be no need to
8 make roll-forward adjustments and correcting
9 adjustments to the MFRs.

10 In the current rate case, LUSI has filed a
11 43 page report to reconcile its general ledger to
12 the MFRs and annual report balances. In addition,
13 LUSI has made more than 220 adjustments to its MFRs
14 to correct general ledger balances for prior
15 Commission adjustments and to roll-forward
16 depreciation. Almost every primary account balance
17 related to depreciation and CIAC was adjusted.

18 Also, on Page 39 of staff's
19 recommendation, staff states that Utilities Inc. has
20 chosen not to keep its books in compliance with the
21 NARUC uniform system of accounts and that the
22 company keeps a separate spreadsheet to account for
23 Commission adjustments. The company stated that if
24 it didn't make these adjustments its MFRs would not
25 be accurate. OPC argues that because these

1 spreadsheet adjustments are made only for rate
2 cases, that the company's general ledger and annual
3 report balances are inaccurate as well.

4 By rule, compliance with the NARUC Uniform
5 System of Accounts is not optional. Utilities
6 Inc.'s noncompliance is a violation of the
7 Commission rule as well as numerous Commission
8 orders as evidenced by the adjustments required to
9 fix the problems and the rate case expense involved.
10 The manner of accounting that this company has
11 chosen to provide is inefficient and costly. In
12 this case, LUSI has requested annual rate case
13 expense of more than \$448,000, and staff has
14 recommended \$330,000.

15 The accounting consultants spent more than
16 650 hours, or \$98,000 to assist with this rate
17 filing. The utility's legal fees were originally
18 estimated at 66,000, and they were then revised to
19 90,000, and staff has decreased that to a level of
20 86,000. OPC believes that this amount of rate case
21 expense is unacceptable. Had the company corrected
22 its books in 1999, 2002, and 2009 after its prior
23 rate case proceedings, the cost to process this case
24 would have been greatly reduced.

25 In Issue 3, Page 11, staff states that the

1 purpose of the Phoenix Project is to improve
2 accounting, customer service, customer billing, and
3 financial and regulatory reporting functions of
4 Utilities Inc. and its subsidiaries. Given that the
5 ratepayers are being asked to pay for the almost
6 \$1 million in allocated cost for LUSI, OPC questions
7 what accounting and regulatory reporting functions
8 have been improved. Not only are the internal rate
9 case costs higher for LUSI, the amount of time and
10 cost incurred by Commission staff are increased to
11 be able to audit and analyze the magnitude of the
12 adjustments. Efficiencies should always be sought
13 after in private and public arenas, and this is
14 surely an example of where inefficiencies have run
15 amuck. Ratepayers should not have to shoulder the
16 extra burden for Utilities Inc. to correct its
17 records each and every rate case when it already was
18 required to do so many years ago and on several
19 occasions.

20 So what action does OPC wish for the
21 Commission to take? First and foremost, we would
22 like to have a show cause proceeding opened as to
23 why the company should not be fined for its
24 continual violation of the Commission's rules and
25 orders. Second, we would like the Commission to

1 require the company to show proof that all prior
2 Commission adjustments have been made to its general
3 ledger, not what adjustments will be made in its
4 next rate case. Third, we believe that rate case
5 expense in this case should be substantially
6 reduced. Given that the wastewater system is
7 overearning, OPC believes that no wastewater rate
8 case expense should be allowed.

9 Moreover, the rate case expense for water
10 should be reduced by half. We believe that allowing
11 the total rate case expense of 124,000 for the water
12 system is reasonable for a company that filed a rate
13 case less than two years after the prior case was
14 concluded. Further, this will send a signal to the
15 company that disregarding the Commission's
16 requirements and inefficient accounting systems will
17 not be tolerated any longer.

18 In conclusion, Commissioners, I wish to
19 point out that this accounting and ratemaking
20 methodology is employed in all of Utilities Inc.'s
21 systems. OPC believes that all of these systems
22 should likewise be required to be brought into
23 compliance through a generic Utilities Inc. docket.
24 And this concluded my comments and I'm available for
25 any questions. Thank you.

1 **CHAIRMAN GRAHAM:** Thank you, Ms. Merchant.
2 Mr. Friedman, a question for you. Do you
3 have any -- before we address Public Counsel's
4 issues, do you have any issues of the staff
5 recommendation as written?

6 **MR. FRIEDMAN:** I do.

7 **CHAIRMAN GRAHAM:** Okay. Let's start with
8 Public Counsel's issues, which are 4, 18, and 30,
9 and then we'll come back to yours after that.

10 **MR. FRIEDMAN:** Okay. My name is Martin
11 Friedman with the law firm of Rose, Sundstrom &
12 Bentley. We represent Lake Utilities Services.
13 With me is Patrick Flynn, who runs the Florida
14 operations for all of the Utilities Inc.
15 subsidiaries, including Lake Utility Services.

16 And I'm going to let him address the
17 Vistas raw water installation issue raised by the
18 OPC. On the Commission ordered adjustments and what
19 should or should not happen, it's not an issue that
20 I'm really prepared to address. It's something that
21 the staff didn't raise, and so we did not do any
22 investigation to see whether what Ms. Merchant said
23 is accurate or not and what should be done. I can
24 point out that a reduction in rate case expense
25 is -- just an arbitrary reduction is not

1 appropriate. There is no way that she can just
2 arbitrarily say we don't think you did a good job on
3 your bookkeeping, therefore, this is the amount of
4 money that it cost. I think there needs to be some
5 more careful analysis of any additional accounting,
6 and I don't know where she puts in legal, because I
7 don't think the accounting system has anything to do
8 with our legal rate case expense.

9 But, you know, unless somebody does an
10 analysis to say the fact that the books were not the
11 way that they should have been, and I'm not
12 admitting they are, but even assuming that they are,
13 the question is, you know, what, if any, additional
14 time and energy and effort did the accounting people
15 have to incur to resolve that. And I don't think
16 there's anything before you today that is going to
17 be give you any idea as to whether that is one
18 dollar, or whether that is \$100, or whether it is
19 half the rate case expense. It would just be -- to
20 make the decision on what the OPC is asking you to
21 do, you would just have to arbitrarily pull
22 something out of the air. And I don't think that is
23 the way that utility regulation ought to be
24 governed.

25 Patrick, did you want to address the

1 Oranges?

2 MR. FLYNN: Yes. Thank you,
3 Commissioners.

4 The Oranges to Vistas raw water main is an
5 element in our capital plan, and reflects a need to
6 maintain compliance with DEP regulations regarding
7 water supply. It's designed to increase our water
8 supply capacity, if you will, coincident with a need
9 for it. It was in our plans for sometime to
10 accomplish that at the most opportune time, so that
11 we could make sure our customers are adequately
12 served without having to overspend for that service.

13 As a consequence of discussion with DEP
14 regarding the challenges that we have to make sure
15 we have adequate water pumped out of the ground,
16 treated, and delivered to our customers and not
17 exceed the existing capacity of those current
18 facilities, we intend to install this raw water main
19 to assist us in increasing our facility capacity.

20 The timing of it is to be done by end of
21 next June, which is a reasonable expectation. The
22 cost associated with doing that work is described by
23 our engineers, who are very familiar with our
24 systems' facilities. They have assisted us in
25 numerous projects over the last 15 years

1 approximately. They know our system, they know the
2 cost associated with installing a raw water main to
3 match our facilities' existing requirements. I
4 believe it is a good engineering estimate that
5 reflects accurately, and it can be done very quickly
6 once we initiate the project. It's not a complex or
7 difficult project to complete.

8 **MR. FRIEDMAN:** And I would point out that
9 under Chapter 367, any capital improvements mandated
10 by a government agency to be completed within two
11 years of the test year are legitimate items to
12 include in rate base. There is statutory authority
13 for that.

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

15 Staff, if I can get you to address Public
16 Counsel's Issues 4, 18, and 30.

17 **MR. FLETCHER:** Bart Fletcher, Commission
18 staff.

19 On Item 4, or Issue 4, with regards to
20 Oranges to Vistas, we did receive information
21 provided in staff's data request asking for the
22 support for all their pro forma. In this one we did
23 realize it was in order to meet a regulatory
24 requirement. We did receive that engineering
25 estimate, and we noted that typically we treated

1 this differently than what we do in SARCs, and we
2 usually have a two-phased process in SARCs. In the
3 second phase, the rates would not go up until it is
4 completed.

5 However, in Class A utilities, what we
6 usually find is due to the amount of the rate base
7 and the range of return that is set by the
8 Commission, usually projects of this size would fall
9 within that range as far as if they didn't complete
10 it on their estimated time frame that they provided.
11 And what we do is we monitor that, and if they don't
12 complete it by the estimated completion date, then
13 at that time we could bring the recommendation back
14 to the Commission with regard to that.

15 But, basically, given the level of their
16 rate base and the size of it, it would be -- if they
17 failed to complete it on June 30th of next year, it
18 would still be within the range if the Commission
19 votes to approve the ROE range and the overall cost
20 of capital in our cost of capital issues.

21 As far as Issue 18, and basically they are
22 coupled with Issue 30 with proof of adjustments,
23 there has been a long history as far as the NARUC
24 Uniform System of Compliance with Utilities Inc.
25 subsidiaries. Their old system was -- it was in

1 place for about 21 years. It was a legacy system.
2 And there were multiple orders and recommendations
3 that were brought to the Commission regarding
4 compliance with that. They basically didn't have
5 the same chart of account that aligns itself with
6 the NARUC Uniform System of Accounts, and that was
7 one of the areas that we saw time and time again in
8 numerous other sister companies before the
9 Commission.

10 It finally came a head, and, again, as Ms.
11 Merchant mentioned, in the Cypress Lakes case. It
12 was all rolled together in that one with the
13 recommendations to have the company come into
14 compliance. Well, I would say that it has been a
15 long drawn-out process to finally get the new system
16 in place, the Phoenix Project. It is made up of two
17 systems, the JD Financial System and the customer
18 Oracle Care (phonetic). And, basically, it has been
19 in each and every case proof of adjustments. They
20 are supposed to file that. But they have been
21 providing, in the last case that was mentioned for
22 LUSI, is journal entries. And they were quite
23 extensive. At that time that it was filed back in
24 2009, staff was unaware that those weren't made to
25 the general ledger. We felt that given the level of

1 detail of the journal entries as far as they were
2 matching to what was required in the order, we felt
3 that that was proof. However, in this case the MFRs
4 were filed December of last year, and we see, as has
5 been discussed by OPC, there are a lot of
6 roll-forward adjustments that you see regarding
7 getting the prior Commission ordered adjustments
8 made through the test year in this case.

9 There was a lot of manhours put into that,
10 and WSC employees, there were service corporation
11 employees, the sister company, that provides all the
12 billing and accounting functions for not only LUSI,
13 but its other subsidiaries, and we have addressed
14 that in the rate case expense. There are numerous
15 hours that we isolated based on the detail of the
16 WSC's employees time related to the roll-forward
17 adjustments, and we believe that we have made the
18 recommended reductions associated with that because
19 they should have already been made.

20 As far as initially when we were
21 addressing the proof of adjustments and finding out
22 once they made their MFR -- filing of their MFRs and
23 not meeting that requirement of the proof of
24 adjustments, again, that was in December of 2010, we
25 did have a global meeting with -- I call it a global

1 meeting, it was a meeting to discuss the global
2 issues regarding compliance with Commission orders,
3 and then also to address the proof of adjustments
4 with Utilities Inc. OPC was invited to that. It
5 was about the March or April time frame, and we did
6 discuss these things regarding their Phoenix
7 Project, regarding how they have their books set up
8 and the need to have the proof of adjustments made.

9 Now, basically, the reason why you don't
10 see a show cause issue in here is because the
11 Phoenix Project was initiated at the end of 2007.
12 So, basically, January of 2008 forward. The global
13 settlement, if you will, regarding their compliance
14 with books and records, that happened before then.
15 So there was some time frame from when that order or
16 settlement until they actually got their Phoenix
17 Project initiated.

18 I still see that there is some concerns
19 there regarding the roll-forward adjustments, and we
20 have made the appropriate adjustments in the rate
21 case expense to take those costs out as far as the
22 utility time of not complying with the prior
23 Commission-ordered adjustments and sort of removed
24 that cost. But I think it's basically the company
25 is put on notice that in this order that the proof

1 of adjustments and with the global meeting that we
2 have addressing our concerns, that such compliance
3 if we see that they are not been made, basically,
4 whenever we get the proof of adjustments we need to
5 see the journal entries. The ledger entries, not
6 proposed adjustments. We need to actually see proof
7 that it has been made to the general ledger.

8 Again, I thought it was probably an
9 oversight on my part when they came in, seeing that
10 level detail and the number of journal entries that
11 were provided, I thought that they had made it.
12 That was a poor assumption on my part when they came
13 in, and we will definitely be more attuned to that
14 and monitoring of that in the future.

15 **CHAIRMAN GRAHAM:** So addressing Ms.
16 Merchant's concerns, you are saying that the rate
17 case expense you have here has reflected that extra
18 accounting that they had to do that probably
19 shouldn't be part of this, correct?

20 **MR. FLETCHER:** Yes. We have accounted for
21 that in our recommended adjustments to remove that
22 time spent for the roll forwards.

23 **CHAIRMAN GRAHAM:** Now, is there any sort
24 of punitive damage that goes against for them not
25 being into using the current -- for them not using

1 the current system that they were mandated to use
2 before?

3 **MR. FLETCHER:** My understanding is in Rule
4 25-30.110, it's with the annual reports, if anything
5 is contrary to what you have in your annual report
6 that you provide a reconciliation. They have done
7 that. They have done better as far as getting their
8 chart of accounts, where before they didn't have it
9 by NARUC primary system of accounts, my
10 understanding is that that has happened. The part
11 that is not happening is making the prior Commission
12 ordered adjustments and the need for having to spend
13 that extra time in rolling that forward.

14 **CHAIRMAN GRAHAM:** Okay. My board is all
15 lit up here.

16 Commissioner Balbis, you were first on the
17 line.

18 **COMMISSIONER BALBIS:** Thank you, Mr.
19 Chairman. I have a couple of questions for Mr.
20 Fletcher concerning the pro forma plant additions
21 associated with the raw water main. You mentioned
22 that it was a regulatory requirement. Could you
23 explain that a little further, please?

24 **MR. FLETCHER:** This is just based -- and
25 Mr. Buys can correct me if I'm wrong -- it is based

1 on their data requests regarding to meet the need
2 for the current customers. Not only the future, but
3 the current customer as far as a provision to
4 provide water service. The capacity to deliver that
5 water to the current customers, as well, during the
6 peak times. And Mr. Flynn could probably elaborate
7 a little bit further on that.

8 **COMMISSIONER BALBIS:** Yes. And more
9 specifically, Mr. Flynn, for the Vistas water
10 treatment plant, what is the permitted capacity of
11 that plant?

12 **MR. FLYNN:** Well, I don't have it in front
13 of me, Commissioner. I couldn't tell you
14 specifically. LUSI consists of two pieces, if you
15 will, the distribution system and production. LUSI
16 South is primarily a Lake Groves water plant. LUSI
17 North, where the Vistas and Oranges are located are
18 two of nine other production facilities that are
19 combined. They are all combined into one, but they
20 are permitted a little bit differently. I'll try
21 not to be too complicated, but it is a little bit
22 complicated system.

23 The capacity of our collective LUSI North
24 facilities is limited by DEP on how many gallons per
25 day can be pumped out of the ground and treated and

1 then delivered to the customers in compliance with
2 their rules and regulations. The critical issue is
3 primarily peak day demands on certain days of the
4 month. Primarily springtime when the spring rains
5 haven't arrived yet, the growing season is strong,
6 the water demand rises rather abruptly. And in
7 those time periods it is a challenge to get water
8 from our facilities through the disinfection
9 process, into storage, and then delivered in
10 compliance with all the regulations. And this
11 Oranges to Vistas raw water main is an incremental
12 increase in those facilities and capability to
13 accomplish what is needed to be in compliance with
14 the regs.

15 **COMMISSIONER BALBIS:** Well, I guess one of
16 the things that I'm struggling with is that in your
17 MFRs and in a lot of the documentation as the
18 reasoning for this rate case is you have seen -- I
19 think it is mentioned the 35 percent reduction in
20 demand, and you mentioned that this raw water main
21 is to meet, you know, existing and future demand.
22 So, you know, if you are seeing a demand reduction,
23 why are you moving forward with a project that would
24 allow you to deliver more water?

25 And if you do have peak demand issues,

1 have you assessed whether providing additional
2 storage versus this raw water main, and if you can
3 explain that a little bit. I'm struggling with it
4 at this point.

5 **MR. FLYNN:** That's an excellent question.
6 Before we got to the point where we wanted to move
7 forward with the Oranges to Vistas water main, DEP
8 identified to us in a warning letter that we were
9 out of compliance on certain days at certain
10 locations with their regs. And their concern
11 primarily is the disinfection process, the
12 disinfection system being adequately within their
13 guidelines.

14 We responded by identifying that we were
15 just implementing through a previous rate case a
16 multi-tiered rate structure that would certainly
17 have an expected repression factor on usage that
18 might be helpful in reducing demand sufficiently to
19 get us in full compliance. We also had worked to
20 redistribute the use of our facilities in such a way
21 that we are utilizing all of them, or nearly all of
22 them in a way that keeps us in compliance and also
23 meet the customer demand. We want to make sure that
24 those things were attended to first before building
25 the well water main.

1 So our efforts have been only partly
2 successful. The critical issue in spite of a
3 reduction in overall average demand is that peak
4 demand still can spike, and it does and has. In
5 fact, in 2011 we had actually a very dry spring.
6 Customers, current customers, even though there are
7 fewer of them because of vacancies and foreclosures
8 and those kinds of things, the ones who were
9 utilizing water, especially for irrigation purposes,
10 ramped up their usage substantially and certainly
11 put a load on our facilities. That to us triggers a
12 need to invest in the raw water main to
13 incrementally increase our capacity to meet that
14 peak demand generated by our current customer base,
15 and certainly potentially our future customers.

16 **COMMISSIONER BALBIS:** In your efforts that
17 you went through prior to moving forward with this
18 project, did you do any outreach to the customers to
19 let them know that unless they change their
20 behavior, whether it is go to different scheduled
21 watering days or whatever it may be, that you are
22 going to have to put in a \$250,000 raw water main,
23 or is it something that regardless of any behavior
24 changes, you are going to have to deal with these
25 peak demand issues?

1 **MR. FLYNN:** Well, in fact, in the last
2 rate case we were allowed to support a position of
3 water conservation coordinator. It was mandated by
4 the St. Johns Water Management District in
5 coordination with our consumptive use permitting.
6 That water conservation coordinator position has
7 been filled and utilized to accomplish that very
8 thing to communicate, to our high demand customers
9 their usage pattern, to offer mechanisms and
10 educational information to tamp down their demand in
11 such a way that we could avoid or defer or delay
12 capital investment whenever possible.

13 **COMMISSIONER BALBIS:** Okay. And maybe a
14 question for OPC or staff. You had mentioned that
15 one of the ways we could handle this is with a
16 limited proceeding, and I guess the focus is on
17 staff. What would be the limited proceeding and
18 what would that process be if we were to address
19 this project?

20 **MR. FLETCHER:** It could be like for a
21 limited proceeding because it is limited in scope,
22 if the Orange or Vista water main project was
23 deferred and not approved by the Commission, they
24 could come back in. It happens with the sister
25 companies of Utilities Inc., Alafaya. They came

1 back in for a limited proceeding for a ground
2 storage tank that was not going to be hit within the
3 24 months of the statutory time frame from the test
4 year, historical test year. So it would be,
5 basically, just filing the fee, a limited scope
6 application for recovery of that item.

7 **COMMISSIONER BALBIS:** Okay. Sorry, Mr.
8 Chairman, one more question for the utility.

9 **CHAIRMAN GRAHAM:** I think Marshall has got
10 an answer for that last question.

11 **MR. WILLIS:** Commissioner Balbis, could I
12 just add something to that? A limited scope
13 proceeding is going to cost money, obviously, to
14 file. Personally, I would much rather see a step
15 increase in this just like we are doing for SARCs.
16 If the Commission decides that they would rather
17 defer an increase related to that addition, I would
18 much rather see that step increase where it would be
19 an automatic increase upon proof that it has gone
20 into commercial service. That way you avoid the
21 extra rate case expense of filing that limited
22 proceeding, which also saves the customers money in
23 that end.

24 **COMMISSIONER BALBIS:** Thank you. And
25 thank you for providing that information. I think

1 that might be an option.

2 And one last question concerning this
3 project. If you are anticipating it being on-line
4 in June of 2012, in what stage are you with the
5 project? Are plans completed, have you started the
6 process, because it seems that the time frame is
7 kind of tight at this point.

8 **MR. FLYNN:** In actuality it's not. We
9 would initiate it probably within the next 30 to
10 60 days, the permitting process. The engineering
11 design is not complicated and will not take long,
12 nor will the permitting process. Probably 30 days
13 for the permitting process. Construction will not
14 take long at all. We certainly have comfort in
15 saying we could complete the project by the end of
16 the second quarter.

17 **COMMISSIONER BALBIS:** Okay. Thank you.

18 **CHAIRMAN GRAHAM:** Commissioner Brisé.

19 **COMMISSIONER BRISÉ:** Thank you, Mr.
20 Chairman.

21 My question goes back to the accounting
22 aspect of this. Part of the benefit of the whole
23 Phoenix Project accounting system that Utilities
24 Inc. went into was to sort of reduce the potential,
25 I suppose, over time of rate case expense because

1 they wouldn't have to do all these duplicate
2 journals and all of that. Is that a correct
3 understanding on my part, or am I misunderstanding
4 that?

5 **MR. FLETCHER:** That is correct. Because
6 before under their old legacy system, they had to
7 basically convert it based on their own chart of
8 accounts and put it into the format of NARUC. And
9 that was the whole purpose of -- one of the purposes
10 of the Phoenix Project was to correct that and avoid
11 that time and expense.

12 **COMMISSIONER BRISÉ:** And they have had
13 that system since when?

14 **MR. FLETCHER:** Basically, 2008.

15 **COMMISSIONER BRISÉ:** 2008. Okay. How
16 long -- in your experience, how long does it
17 normally take a utility to get a full handle on
18 using a system properly like that?

19 **MR. FLETCHER:** It depends on some of the
20 smaller companies, because of the sophistication of
21 the software package or their accounting system.
22 This one was actually tailor made for them. It was
23 designed for them, so it varies on a case-by-case
24 basis. I do know that they have had incorporated on
25 the intermediate parent level some expenses to

1 provide for tweaks as needed. As they see areas
2 that arise, problems with interfacing with the
3 customer care system, but I would have expected to
4 see all the kinks worked out by now, given the
5 magnitude, the dollar amount and because of the
6 design phase. And who prepared the design phase for
7 this system was Deloitte & Touche. In meeting their
8 financial and meeting the interface issues with
9 their other system, I would expect the tweaks would
10 have occurred by now necessary in order to reduce
11 that cost.

12 **COMMISSIONER BRISÉ:** Okay. And the final
13 question down this line. So based upon staff's
14 understanding of the capability of the system, that
15 it has the capacity to have everything lined up the
16 way we would like it based upon NARUC's
17 requirements?

18 **MR. FLETCHER:** That is correct. Any
19 reconciliation that needs to be -- it should have
20 been taken care of by now, and they need to
21 definitely focus on any remaining. And, you know,
22 going forward it needs to be in full compliance with
23 NARUC.

24 **COMMISSIONER BRISÉ:** So, therefore, it is
25 reasonable to assume that anything that goes beyond

1 what the system should be able to do by now is
2 excessive in terms of an expense?

3 **MR. FLETCHER:** I believe that the system
4 that is in place, any additional work that is needed
5 in preparing their filing should be excessive and
6 not allowed. And we believe that in our
7 recommendation in the rate case expense issue that
8 we have isolated the hours associated with that
9 additional incremental work with regard to the roll
10 forward adjustments and recommended removal of those
11 expenses.

12 **COMMISSIONER BRISÉ:** Thank you.

13 **CHAIRMAN GRAHAM:** Commissioner Brown.

14 **COMMISSIONER BROWN:** Thank you, Mr.
15 Chairman.

16 I just have a question procedurally. Are
17 we limiting our discussion at this point to just the
18 issues that were raised by OPC?

19 **CHAIRMAN GRAHAM:** Yes.

20 **COMMISSIONER BROWN:** Okay. Then with
21 regard to Issue 4, I have a question for staff.

22 OPC raised a case, Water Management
23 Services, Inc., and they referenced that it has been
24 the Commission practice that we require at least
25 three bids prior to approval. That does not seem to

1 be the case with regard to the Oranges to Vista
2 installation, correct?

3 **MR. FLETCHER:** I definitely consulted with
4 Mr. Buys, and I believe that is the case is that
5 this was the original engineer that the company has
6 used in other projects, and the information provided
7 did not contain bids.

8 **COMMISSIONER BROWN:** And then I guess a
9 question for the utility. Would the company seek to
10 get bids prior to initiating engineering?

11 **MR. FLYNN:** Yes, Commissioner, we would.
12 Any product of this size triggers our obligation to
13 meet our company policy of obtaining at least three
14 bids to accomplish the work.

15 **COMMISSIONER BROWN:** It seems like a very,
16 very tight frame from the projected June 2012
17 estimate completion date. What is the utility's
18 policy for a time frame for receiving bids?

19 **MR. FLYNN:** Well, the bidding process
20 would be initiated once the design is completed by
21 the engineer, and we have made application for the
22 construction permit from DEP. In actuality,
23 contractors in the market are very hungry for work.
24 It would not take long at all for that process to be
25 completed. Typically 30 days for opening bids to

1 determine who is low bid.

2 **COMMISSIONER BROWN:** Now that I have you,
3 I have a question regarding the lack of reuse
4 service. Can you please explain the lack of reuse
5 by the customers? Is it a customer issue or is it a
6 company issue?

7 **MR. FLYNN:** Yes, I will describe the
8 rationale for that. The reuse facilities were
9 essentially completed sometime ago. However, at
10 that time when we were placing them in service, the
11 filters that are a component of the reuse treatment
12 process and an obligation by us to have filtered
13 water occur before we can deliver reuse, those two
14 filters were not reliable. They were not performing
15 adequately. We were obviously in communication with
16 our contractor and supplier to figure out what the
17 solution was and make repairs to determine whether
18 we had a reliable piece of equipment.

19 That process took quite awhile.
20 Ultimately, the manufacturer of the filters offered
21 under their warranty -- under our warranty their
22 cost to replace the two filters in entirety, and
23 that was accomplished in June of this year. So we
24 postponed any rollout of reclaimed water service
25 until we had assurance that those filters could be

1 reliably performing for us, and that was
2 accomplished. And, in fact, this week we are going
3 to be initiating the subscription process to those
4 select neighborhoods to offer reuse service to them.
5 We expect to have some customers, reuse customers in
6 service within the next probably 30 to 60 days.

7 **COMMISSIONER BROWN:** Okay. And there is
8 no additional costs associated in this rate and pro
9 forma additions associated with the reuse project?

10 **MR. FLYNN:** That is correct.

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

12 With regard to the lack of compliance with
13 the NARUC Uniform System of Accounting, why has the
14 company been negligent, I guess, in complying with
15 the previous Commission decree to comply with those
16 practices?

17 **MR. FLYNN:** I'm not really prepared to
18 answer that in any specific way, Commissioner. I'd
19 have to defer that.

20 **MR. FRIEDMAN:** Let me just comment on that
21 for a second, because it is something that I
22 recollect in one of our -- and I don't even know if
23 it relates to this company or another company, but
24 conversations in conference calls with the company.
25 You know, unfortunately, you can have the best

1 computer system in the world, but if you don't put
2 the data in, it's not going to do you any good. And
3 my understanding is that the Commission-ordered
4 adjustments started in one office, they are written
5 up, and they are sent to another office to put them
6 in. And my understanding is, and I don't know
7 whether it is this particular one or not, but at
8 least one instance or so that is not getting done.

9 Somebody is putting that on their desk and
10 doing something else that they think is more
11 important, and it's not getting done. It's not a
12 fault of the computer system, it's an operator
13 error. I mean, that is not an excuse, it's just the
14 fact. And hopefully -- and I think that my
15 understanding with the company is that they have
16 corrected that operator error.

17 **COMMISSIONER BROWN:** Okay. And, Mr.
18 Friedman, are you going to speak about the Phoenix
19 Project under Issue 3?

20 **MR. FRIEDMAN:** Yes.

21 **COMMISSIONER BROWN:** Okay. I will reserve
22 comment. Thanks.

23 **CHAIRMAN GRAHAM:** Mr. Friedman, are you
24 saying you need for this board to raise the
25 importance level of that? (Laughter.)

1 **MR. FRIEDMAN:** I'm sorry, it went right
2 over my head. I'm sorry.

3 **CHAIRMAN GRAHAM:** You said that evidently
4 some of this stuff was sitting on somebody's desk
5 and it wasn't important enough to get it done, my
6 question is do you need for us to raise the
7 importance level of that for you?

8 **MR. FRIEDMAN:** I think that was done in a
9 conference call with the staff, but I will reiterate
10 your interest in that also, Mr. Chairman. But the
11 staff has done a good job of that, and I think that
12 the company candidly admitted, and I think Bart or
13 somebody on staff was on that call. And I think
14 they just candidly admitted that it went from one
15 desk to another. And, you know, we've got a great
16 computer system, but if you don't put it in, it's
17 not going to come out.

18 **CHAIRMAN GRAHAM:** Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr.
20 Chairman.

21 And I'm going to attempt to hopefully
22 close out Issue 4. And, Mr. Willis, I don't know if
23 you could step up to the microphone, but the concern
24 I have is that, you know, normally we require three
25 bids. And I have no question that will take place.

1 Is there a way that we can handle through that step
2 process that you mentioned assurance that it will
3 not -- that step increase will not take place until,
4 again, all of the boxes are checked on the three
5 bids, the project is completed, et cetera, and, of
6 course, further assurance that the project is
7 needed?

8 **MR. WILLIS:** We certainly can. We can put
9 provisions in the order that it must be bid at least
10 three bids. If there is -- I would say if there is
11 a difference in price between what has been
12 engineered versus what the bid price is more
13 materially than five percent, then we could bring
14 that back to the Commission to adjust the amount to
15 go into effect at the point in time it goes in
16 commercial service.

17 **COMMISSIONER BALBIS:** Okay. And I think
18 if we go through that process I will feel more
19 comfortable. And from the need standpoint, the fact
20 that you have been issued a warning letter from DEP,
21 you know, gives me comfort that you are addressing
22 those needs, and this is one of the ways to do it.
23 I don't know if we are ready. Do you want to move
24 on each individual issue? But I'm ready to move --

25 **CHAIRMAN GRAHAM:** Let's go ahead and clear

1 this one up.

2 **COMMISSIONER BALBIS:** Okay. I move
3 staff's recommendation with the change of taking out
4 the Oranges to Vistas raw water main installation
5 pro forma addition and including that with a step
6 process as described by Mr. Willis.

7 **CHAIRMAN GRAHAM:** A question for you, Mr.
8 Willis. The approval of the step will be a staff
9 function, assuming that it is within the five
10 percent that you are talking about.

11 **MR. WILLIS:** Assuming it is within the
12 five percent and it is needed, you know, it meets
13 all three requirements.

14 **CHAIRMAN GRAHAM:** Okay. Commissioner
15 Brown.

16 **COMMISSIONER BROWN:** I have a question for
17 Mr. Willis, as well.

18 Under Commissioner Balbis's recommendation
19 you actually point out that pro forma addition.
20 Would we keep it in, and then just do a phase-in
21 with the step increase?

22 **MR. WILLIS:** For purposes of the step
23 increase, you would actually take it out of the
24 rates right now, and we would develop a percentage
25 increase for that when it goes into commercial

1 service. That will be applied. So you would be
2 approving -- by your action today, you would be
3 approving basically two increases. One would be
4 right now without the addition of that one plant
5 item, and then the additional increment that you
6 need to have put in place to put that incremental
7 piece in when it goes in commercial service.

8 **COMMISSIONER BROWN:** But the technical
9 aspect of it is that you have removed that portion
10 from the staff recommendation, the approval of the
11 staff recommendation.

12 **MR. WILLIS:** That's correct for the
13 current rates to go into effect pursuant to this
14 proceeding today.

15 **COMMISSIONER BROWN:** Okay. And I'm
16 assuming OPC is comfortable with that, based on
17 their earlier comments.

18 **MR. REILLY:** That is correct, especially
19 with the clarification when it goes into commercial
20 service.

21 **COMMISSIONER BROWN:** Uh-huh.

22 **CHAIRMAN GRAHAM:** Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Thank you.

24 And Mr. Willis did answer part of this,
25 but I would like you to go through, again, briefly

1 what the process would be and what the time frame
2 estimated would be. And -- well, I'll start there,
3 and then I will have another question.

4 **MR. WILLIS:** Okay. The process would be
5 the order would require three things. It would
6 require that the utility at least accept three bids.
7 The project would have to be bid out, DEP would have
8 to require the project, there would have to be a
9 showing that it definitely is required by DEP, and
10 it would have to be in commercial service. If all
11 of those -- and, of course, it would have to meet
12 the five percent threshold as far as meeting the
13 engineering cost when you look at the differential
14 between the actual bid and the engineered cost of
15 it. If it's within that five percent parameter and
16 it meets all the other requirements, staff would, by
17 your order, approve an administrative increase
18 pursuant to this order for the additional amount to
19 go in at the date it goes in commercial service.

20 Now, as far as the timing of that,
21 Commissioner Edgar, that would really hinge upon the
22 company. If they never put the project in, they
23 never get the increase. It's really hinging upon
24 them going into commercial service.

25 **COMMISSIONER EDGAR:** Thank you.

1 And let me pose that then to the company.
2 And I realize we are dealing with estimates and
3 projections, but with that recognition, what is the
4 time frame that you think you and we are looking at?

5 **MR. FLYNN:** Well, we have the same time
6 frame in mind, if there is a need for it as
7 determined by DEP. If there is an opportunity by
8 virtue of discussion with DEP to postpone it for
9 some time period, then we would postpone the
10 investment because it would not be pertinent or
11 prudent.

12 **COMMISSIONER EDGAR:** Okay.

13 **MR. FLYNN:** Right now it is scheduled for
14 June of '12, and we would be able to accomplish
15 that, and if the DEP is of a mind that they would
16 like to get it done to have us be in compliance,
17 then we would accomplish that.

18 **COMMISSIONER EDGAR:** And, again,
19 recognizing that we have talked about having a
20 bidding process and three bids, but also that there
21 is an estimate that has been made, any -- and I'm
22 not sure whether to put this to the company or to
23 staff, but can you give me an estimate of what the
24 rate impact potentially would be expected to be,
25 approximately?

1 **MR. FLETCHER:** Sorry.

2 **COMMISSIONER EDGAR:** That's okay.

3 (Pause.)

4 **MR. FLYNN:** Commissioner, while he's doing
5 that, I would say that given the scale of our rate
6 base and the scale of this project size, a very
7 small incremental impact on a base facility charge
8 or a consumption rate charge.

9 **COMMISSIONER EDGAR:** That is my
10 estimation, or that is my expectation. But if there
11 is an estimation that could be made, that would be
12 useful.

13 **MR. FLETCHER:** Commissioner Edgar, the
14 revenue requirement associated with that would be
15 approximately \$30,000, and the revenue requirement
16 that staff has recommended for the water side is
17 almost 5.4 million. So it would have minimal impact
18 to the rates. And what I would envision is that
19 once that would have happened, it would be kind of
20 like an across-the-board increase for the water if
21 we were to phase it out. And that was one of the
22 initial, I guess, reasons why we didn't go, like, in
23 the SARC process, we didn't want to go to the phased
24 rates is because of the minimal impact on rates
25 associated with this one project.

1 **COMMISSIONER EDGAR:** So recognizing, as
2 has been stated by both the company and our staff, a
3 minimal -- if even reaching the threshold of minimal
4 impact on rates, is there any way to quantify what
5 the implementation costs, and legal costs, et
6 cetera, would be for the proposed step increase
7 process?

8 **MR. FLETCHER:** As far as processing for
9 Phase II, it wouldn't be that much more incremental
10 cost to do that. There is limited permitting, as
11 Mr. Flynn had just mentioned. But as far as the
12 regulatory, how we would process that, there will be
13 additional notice that would go out that they would
14 have to send to the customers, provide the
15 documentation in -- as far as the completion and
16 certified by DEP that it is in service. It would be
17 limited incremental to go to the Phase II there.
18 Basically, the mailing costs would be for the notice
19 would be the primary additional regulatory cost.

20 **COMMISSIONER EDGAR:** Any comment from the
21 company?

22 **MR. FRIEDMAN:** If you're just talking
23 about putting it as a phased rate, not as separate
24 limited proceeding?

25 **COMMISSIONER EDGAR:** The step increase

1 process that has been described.

2 MR. FRIEDMAN: I think that Mr. Fletcher
3 articulated the additional expenses involved.

4 COMMISSIONER EDGAR: Okay. Yes, ma'am.

5 MS. MERCHANT: Well, it could also be
6 combined with an index or a pass-through so the
7 notice requirements, if the time was right, you
8 know, so that would be -- they have to notice for
9 that, too, and they do that every year.

10 MR. FLETCHER: If I could add, I believe
11 there should be a time period if the Commission is
12 going to a phased approach for this project, that it
13 be completed within 18 months of basically the final
14 order in this case.

15 CHAIRMAN GRAHAM: I've got a question.
16 Why?

17 MR. FLETCHER: Pardon me, Chairman?

18 CHAIRMAN GRAHAM: Why? I mean, it doesn't
19 matter to us. If DEP let's them push it back 36
20 months, why does that matter to us?

21 MR. FLETCHER: Well, one thing is in the
22 provision of the statutes there is a 24-month time
23 frame from the historical test year that you have to
24 keep in mind. As far as that goes there has got to
25 be some good reason why you would go beyond that

1 two-year period. That is the only provision that I
2 can see that is holding it up and trying to limit it
3 to the 18 months.

4 **CHAIRMAN GRAHAM:** I'm still not
5 understanding. I mean, I guess my understanding is
6 right now the water management group is telling them
7 that they need to get this done because of the high
8 water usage, and they are looking to get this done,
9 but if for some reason they can get it pushed back,
10 why does that matter to us? Because I think Public
11 Counsel, their only concern is to make sure that it
12 happens. And when it happens, they can get that
13 into rate base. I don't understand.

14 **MR. WILLIS:** I fully agree. The only
15 problem I'm looking at here, and I just threw this
16 at Bart a minute ago, I would hate to leave
17 something open-ended out there. If you don't put a
18 time frame on when this actual increase could be
19 implemented, I mean, they could wait three, four, or
20 five years down the road, and then all of a sudden
21 come back in and say remember that order back there,
22 we want to now implement that increase because we
23 just put the line in.

24 **CHAIRMAN GRAHAM:** Well, on this one, I
25 guess I'm just looking specifically on this case,

1 that is not necessarily a bad thing, number one,
2 because the increase is going to be minimal, as we
3 talked about, and then putting this, you know, reuse
4 line in there, you know, it doesn't matter if it's,
5 you know, a year from now or five years from now,
6 it's still a good thing. I mean, I understand what
7 you are saying, don't leave anything out there just
8 kind of hanging.

9 **MR. WILLIS:** Chairman, there is no
10 requirement you have to put a time frame on it. I
11 just thought it might be a good idea if you didn't
12 want this docket to be open-ended.

13 **CHAIRMAN GRAHAM:** I have Commissioner
14 Brown and Commissioner Edgar. Commissioner Brown.

15 **COMMISSIONER BROWN:** Thank you. I wanted
16 to get a reading of the statute from Ms. Helton to
17 see if there is somewhat of a requirement for that
18 24-month period, please.

19 **MS. HELTON:** I am looking at 367.081,
20 Subsection 2(a)(2). The statute does suggest a
21 24-month time period, however, it also states that
22 you do have discretion to approve a longer period.

23 **COMMISSIONER BROWN:** Okay. That being
24 said, Mr. Fletcher originally recommended 18 months.
25 I do feel that having a time frame on there so it is

1 not an open-ended approval gives me some comfort and
2 is in conformance with the statute. So I would veer
3 on the side of complying with that, with the
4 24-month period rather than the 18 months suggested
5 by Mr. Fletcher.

6 **CHAIRMAN GRAHAM:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you.

8 I certainly agree with the balance that I
9 think that we are trying to get to, which is, in my
10 words, to not ask the customers to pay for something
11 before they are getting a benefit from it. But I do
12 still have a little bit of pause in that, and I'd
13 like to hear the staff and the company speak to this
14 a little bit more to give me some additional
15 comfort, if possible. In that as an agency, and as
16 state government, and also our sister agencies and
17 local governments are all working very, very hard to
18 try to reduce regulatory burden and to streamline
19 processes. And, you know, reviewing all -- spending
20 hours and hours and weeks and months and hiring
21 staff to review rules to try to reduce regulatory
22 burden, we are hearing that this is something that
23 will probably be a DEP requirement that has, if not
24 minimal, close to zero rate impact. And I would
25 just like to have a little more comfort that we are

1 not overly procedurally processing, dragging out,
2 burdening the processes that we have and that need
3 to take place in order to provide confidence to the
4 customers that they are paying what they should be
5 paying.

6 **CHAIRMAN GRAHAM:** I can address that.

7 **COMMISSIONER EDGAR:** Okay.

8 **CHAIRMAN GRAHAM:** My understanding of this
9 step process is when the three bids go out, that's
10 documented; when the estimates come back, that's
11 documented; and that's just simply mailed into or
12 faxed into, or however it gets here to the agency.
13 And somebody from staff checks the box and says,
14 okay, this is fine. And then they send out the
15 notice when it's actually on-line providing the
16 service that that is the case, and they send that to
17 the agency, and somebody checks the box again.

18 I mean, I think it is pretty minimum as
19 far as any staff time and any legal time on both
20 sides. I think everybody, for the most part, is
21 nodding their head that they are fine with this and
22 that it is not going have any kind of an impact. I
23 mean, I get the fact that we could go forward the
24 way staff recommendation currently is and it's still
25 not going to have any kind of an impact, but I don't

1 think that this was a bad ask from Public Counsel.

2 **COMMISSIONER EDGAR:** I don't recall saying
3 that it was, but --

4 **CHAIRMAN GRAHAM:** I was just talking --

5 **COMMISSIONER EDGAR:** But I still would
6 like to hear from the staff and from the utility
7 just on that point of additional process. And as I
8 asked, and I think it is a reasonable request, that
9 I would like to hear that one more time to get
10 additional comfort.

11 **MR. FLYNN:** Speaking for the company, I
12 don't have any issues with the proposed approach. I
13 think 24 months is a reasonable cap on the time
14 frame. I was also thinking of the workshop I
15 attended last week with staff regarding process and
16 procedures, among other topics. At some point it
17 might be worthwhile to promote the development of a
18 process where a DEP-regulated or DEP-mandated
19 activity be processed through with a pass-through
20 mechanism or some other mechanism that meets your
21 standards of scrutiny, but is done with less
22 overhead.

23 **CHAIRMAN GRAHAM:** Commissioner Balbis.
24 I'm sorry, you wanted to hear from staff, too.

25 **COMMISSIONER EDGAR:** I did.

1 **MR. FLETCHER:** I don't think there is
2 going to be any great incremental cost as far as
3 processing it for Phase II. I did want to follow up
4 with your comment about the minimal impact. I did
5 calculate the impact of about approximately 30,000
6 associated with this one project. That represents a
7 half percent of the total revenue requirement that
8 we have recommended in this case. And initially the
9 first reason for considering it as one phase is
10 because of that minimal impact. The bottom of the
11 range of the recommended overall cost of capital
12 represents about \$82,000 in revenue requirements.
13 So I just wanted to throw that out there for
14 informational purposes.

15 **COMMISSIONER EDGAR:** Thank you.

16 **CHAIRMAN GRAHAM:** Commissioner Balbis.

17 **COMMISSIONER BALBIS:** Thank you, Mr.
18 Chairman.

19 And thank you, Commissioner Edgar. I
20 agree with you completely on any way we can reduce
21 the bureaucracy, if you will. And I look at this as
22 our attempt to do that, in that if the normal
23 process is to require a certain amount of
24 information in order for a pro forma addition to be
25 included, that this project did not -- did not have

1 that backup information. So the option that maybe
2 we should take is to take it out, which would
3 require them to move forward with a limited
4 proceeding or another much more comprehensive and
5 expensive process for them to get it into the rate
6 base. So I look at this as our attempt to allow
7 them to move forward with the project without
8 requiring the additional process. So I agree with
9 you completely, and I think with us moving forward
10 with this as moved we can accomplish that.

11 **CHAIRMAN GRAHAM:** Commissioner Edgar.

12 **COMMISSIONER EDGAR:** Well, I asked to get
13 some additional comfort, and now I have it. So I
14 appreciate the opportunity to discuss that a little
15 further.

16 **CHAIRMAN GRAHAM:** All right. We have the
17 Balbis amendment on Issue 4 before us. It has been
18 moved and seconded. Is there any further
19 discussion?

20 Seeing none, all in favor say aye.

21 (Vote taken.)

22 **CHAIRMAN GRAHAM:** Any opposed? By your
23 action you have approved the Balbis amendment on
24 Issue 4. I think we need to hold off on Issue 18
25 and 30 until after Mr. Friedman pleads his case.

1 Mr. Friedman.

2 **MR. FRIEDMAN:** Thank you, Mr. Chairman and
3 Commissioners. Again, my name is Martin Friedman of
4 the law firm of Rose, Sundstrom & Bentley, and we
5 represent Lake Utility Services. And there are
6 several issues that I would like to discuss, and I
7 will start with Issue 3, which is the Project
8 Phoenix costs.

9 The company typically allocates the
10 Project Phoenix costs pro rata among all of its
11 customers. What the staff has done is the staff has
12 not allowed that by taking out of that calculation
13 customers associated with companies that were sold.
14 Now, even though the Project Phoenix system was not
15 included in any of the sales of these utility
16 systems, the staff is recommending that the portion
17 attributable to the divested companies be removed
18 from rate case.

19 Now, the support the staff uses in this
20 recommendation for that is to say we did it before.
21 We did it in other cases, so we are doing it here.
22 They don't give any real support other than to say
23 we did it before. Now, keep that in mind, because
24 I'm going to show you in another issue coming up
25 that the staff is doing just the opposite. They are

1 doing something just the opposite of what they did
2 before. But in this case they are saying we did it
3 before, so we ought to do it now. And they are
4 trying to -- they made a mistake, this Commission
5 has made a mistake, and it's time to correct it.

6 And it is clear that pursuant to 367.0813,
7 any gain or any loss on the sale of a utility system
8 is borne by the shareholder. What the staff is
9 doing is trying to circumvent that. They are trying
10 to take that gain from that company, to the extent
11 that it covered some of the Project Phoenix people
12 that were allocated to back then. And take that
13 gain, that portion of the gain away from the
14 shareholders, contrary to the statute.

15 Now, my question is if the sale of these
16 companies would have resulted in a loss, do you
17 think that the staff would be making that same
18 adjustment? In other words, would the staff be
19 allowing the current customers to make up the loss
20 from those other customers? I suggest they would
21 never say that, and that's the problem I have. And
22 I've preached that, I have been doing this for 32
23 years, and I have been preaching this for 32 years.
24 If you are going to make an adjustment, you have got
25 to be ready to make it on the other side if the

1 facts are different. And that is just not the case
2 here.

3 They are making this adjustment only
4 because there is a gain on sale, not because there's
5 a loss on sale. And I don't think that the staff
6 can look you in the eye and say if there were a
7 loss, we would make existing customers pay for that
8 loss that the utility shareholders should bear under
9 the statute. And if they can't honestly say that,
10 then you can't take the gain away from them. It has
11 got to be equal. What's good for the goose is good
12 for the gander.

13 And the staff is only taking this position
14 because it results in a reduction in rates. From a
15 regulatory standpoint, from a utility ratemaking
16 principle standpoint, you will never find this
17 quoted anywhere. This is something, a figment of
18 the staff coming up with several years ago and
19 trying to reduce rates, and it has just gained
20 momentum. And now it has got so much momentum that
21 the staff doesn't even try to support it with logic,
22 they only support it by saying we did it before so
23 let's do it now. And that's not sound regulatory
24 principle. It's time to correct that mistake.

25 The second issue I want to address is

1 Issue 6. Particularly, the part on Page 21 dealing
2 with a used and useful adjustment made to CIAC. The
3 utility made a used and useful adjustment to CIAC,
4 which is the same adjustment that was done in the
5 2007 case and was accepted by the staff and the
6 Commission in 2007. They filed this used and useful
7 adjustment on CIAC exactly as they had in the prior
8 rate case.

9 Now, in this case, the staff is saying
10 just because we did it in the prior case doesn't
11 mean that we ought to do it now. How do we relate
12 this back to that last issue where they said we did
13 it before, now we are going to do it? In this issue
14 they are saying we don't care if you did it before.
15 We don't care if you did it in 2007, you know, you
16 shouldn't do it in this case, and they made that
17 adjustment.

18 And that issue has got two adjustments.
19 One is the gross adjustment to CIAC. And as I said,
20 consistent with what the Commission did last in the
21 2007 case, they filed it the same way. The second
22 issue of that is that -- and I think the staff even
23 recognizes that, that they do believe that it is not
24 proper to make that adjustment to prepaid CIAC. In
25 other words, the CIAC that has been prepaid but

1 there is no customer on line, and there is a
2 substantial amount of prepaid CIAC.

3 Now, when the staff addresses that, the
4 staff said in the staff rec that the utility did not
5 provide any supporting documentation for the
6 prepaid, implying that there they understand that if
7 the prepaid CIAC, that the adjustment is
8 appropriate. Well, we sent an e-mail to staff on
9 September 1st that had a schedule that includes the
10 prepaid CIAC. So the staff has got -- if they
11 wanted to make that adjustment, they could well have
12 made that adjustment, but they chose to ignore the
13 documentation we provided to them? Why? I don't
14 know. It happens to result in lower rates, which
15 seems to be the mantra of many of these decisions
16 that the staff has made. But the staff has the
17 information. They admit that it's proper to make
18 that adjustment to unpaid CIAC. They got the
19 documentation, and they chose to ignore it. It's
20 just not right.

21 The next issue is Issue 15, which deals
22 with salaries. And there is two aspects to the
23 staff's recommendation with which we take exception.
24 The first is that the utility filed the minimum
25 filing requirements and salary requirements based

1 upon the annualized salaries of the people necessary
2 to run the utility system. Now, that is done
3 because you are recognizing that you need these
4 employees to be there 12 months out of the year, and
5 it's reasonable to have the customers to incur the
6 expense of those.

7 Now, if you add an employee in November,
8 say, if you have a calendar year test year and you
9 add an employee in November, first, he is going to
10 show up as only two months worth of salary. So the
11 other ten months of his salary, which is reasonable,
12 never gets recovered unless the utility files
13 another rate case. So by refusing to annualize
14 salaries, what you are doing is you are just
15 requiring utilities to have to file rate cases more
16 frequently than you would like, the company would
17 like, and I'm sure OPC would like.

18 The other aspect of the annualization is a
19 pro forma increase. The utility, consistent with
20 the way it had filed rate cases for other
21 subsidiaries, asked for a 3.5 percent increase.
22 Now, this is not -- the company doesn't just give
23 everybody 3.5 percent across-the-board
24 everybody-gets-it increase, whether you earn it or
25 not or deserve it or not. This is just -- it

1 happens to be 3.5 percent of the salaries. It's
2 just a pot of money. And that amount of money is
3 given out to employees based upon merit and
4 depending upon their salary range. Each job
5 description has a salary range, and if somebody
6 maybe got hired at the low end of that salary range
7 and they deserve a merit raise, they move up higher
8 into the salary range. Whereas, obviously if
9 somebody is at the top of the salary range, they
10 can't get an increase.

11 So they do have this money, and the
12 Commission in the past has approved it for these
13 companies. The staff's justification for
14 recommending a denial in this case, this is
15 interesting, the justification is that you denied it
16 to Aqua when they filed -- in your PAA order in the
17 Aqua rate case you denied them a pro forma salary
18 increase, therefore you should deny this company
19 one.

20 My understanding is that PAA rate, that
21 PAA order has been protested, which means that PAA
22 order isn't worth the paper it's written on. That's
23 one of the issues that y'all are going to decide, if
24 you issue a final order. Legally, the PAA order as
25 to that issue is meaningless, and to have somebody

1 rely on a meaningless order is just wrong.

2 In contrast to that, on September 13th, in
3 a rate case for Trade Winds Utilities in an order
4 entered September 13, 2001, that company had asked
5 for an increase in its salary increase of
6 8.6 percent for the water side of the employees and
7 4.3 for wastewater. The Commission said we find in
8 light of the economic climate in Florida and
9 throughout the U.S., a 3 percent increase in
10 salaries is more reasonable. Two weeks later --
11 well, I'm sorry, two weeks earlier on August 31st
12 you issued an order in the CFAT rate case, and there
13 they had asked for a 21 percent increase in
14 salaries. The staff citing exactly the same
15 language recommended a 3 percent, which you all have
16 accepted.

17 So in these two cases that were issued a
18 couple of months ago, you have recommended a
19 3 percent. And I guess maybe we should have asked
20 for 15 percent, and then you would be more
21 reasonable to say, oh, they want 15, well, we are
22 only going to give them 3. I mean, you know, we
23 don't want to play that game. We filed this as we
24 filed all of our other rate cases for 3 percent.
25 It's consistent with what the Commission has done.

1 It's consistent with orders that you have entered
2 within the last month or so, and the only
3 justification that staff used for denying it is a
4 PAA order that doesn't exist. So I would suggest to
5 you that it would be appropriate to deny the staff
6 rec on that issue and to implement the 3.5 percent
7 increase.

8 I'm trying to take these in order, but I
9 think I got them out of order. This is a small
10 issue, but it deals with the amortization of the
11 consumptive use permit. I think everybody agrees
12 that you start amortizing a consumptive use permit
13 when you get the permit. In fact, in the last rate
14 case this company had -- because the consumptive use
15 permit renewal was ongoing during the last rate
16 case, the Commission in that order said it was not
17 appropriate to include any of this expense yet
18 because they had not received the permit. In other
19 words, all of the expense, even though it is in
20 prior years, kind of sits and waits until the permit
21 is granted. And so it wasn't approved in the last
22 rate case, and then in this rate case the staff did
23 approve it, but what the staff did was they
24 arbitrarily chose a five-year amortization.

25 Now, the permit is going to be in

1 existence for 30 months. You should amortize the
2 cost of that permit over the life of the permit. It
3 doesn't seem like rocket science to me, but the
4 staff thought that that wasn't -- that was too short
5 of a period of time. And, you know, consumptive use
6 permitting is a real bear. Maybe it will change
7 with more of a streamline in government that we are
8 looking for, but I will tell you, back when they did
9 this one, I mean, to spend three or four years, five
10 years in a permitting for a consumptive use permit
11 in central Florida is not unusual. And it's
12 expensive. And in this case the permit is, you
13 know, only going to be good for 30 months. But it
14 ought to be -- the cost of that should be amortized
15 over the life of the permit, not some arbitrary
16 number of years selected by the staff.

17 And I'm going to raise this next issue
18 just because I want you to think about it because
19 it's going to come up probably -- maybe four or five
20 years from now, and that is this bad debt expense.
21 What the staff traditionally does and has for as
22 long as I can remember, for bad debt expense they
23 traditionally recommended a three-year average.
24 Now, the economy, you know, it has tanked. So
25 obviously this company, along with all of other our

1 clients, and probably a lot of other utilities that
2 you will see, have had over the last year or so
3 substantially greater bad debt expense than they did
4 in prior years.

5 And, unfortunately, that looks like it's
6 going to continue in the foreseeable future. And so
7 I think that the annualization doesn't take into
8 consideration -- annualizing works great in the
9 general just normal growth economy. Annualization
10 doesn't work in an economy such as this where you
11 have just such a drastic downturn and so much more
12 bad debt than in prior cases. So I think it would
13 be appropriate, although different than what y'all
14 have been doing, to include the actual bad debt
15 expense. Now, my guess is you are going to say,
16 Friedman, I don't think so.

17 So I wanted to put this in your ear that
18 remember this when the economy turns around and the
19 bad debt expense is going way down, and we are going
20 to average three years. And I don't want somebody,
21 the staff going, well, you know, rates are set
22 prospectively, bad debt expense is down, it's not
23 right to do a three-year average. We ought to look
24 at what it is now, and it's going to stay this way,
25 and let's use it for the future.

1 If you are going to keep this three-year
2 average, I just implore you in four or five years
3 from now, if I'm arguing this, I want you to keep
4 doing it when the economy changes. In other words,
5 just because it's good for the customers to do it
6 this way, when the economy changes it's going to be
7 better for the company to do it this way, and I
8 don't want you to change your mind.

9 The last issue is the company sold a five
10 acre piece of property and made some money on it.
11 Rare in this economy, but they did. The staff has
12 recommended that the gain on this sale be amortized
13 over five years. Now, what the staff doesn't tell
14 you, though, is that that five acres of land has
15 never been in rate base. In response to the
16 original audit that the staff did in this case, we
17 responded to the original audit, when they mentioned
18 the sale of land, we pointed out to the Commission
19 staff that the property was never in rate base. If
20 it had been in rate base, I wouldn't be arguing this
21 issue.

22 But why should the customers get the
23 benefit of the sale of land that they have never
24 paid a penny for. I don't think -- I think that is
25 contrary to sound regulatory principle. And I don't

1 see any -- even from a pure, gee, equitable
2 standpoint, what sounds right and what sounds wrong,
3 I don't see anybody that can with a straight face
4 say, yes, they didn't pay for that land, but we sure
5 ought to give them the benefit of the profit when
6 they sell it. I don't think -- again, here we are.
7 I don't think, if they would have lost money on that
8 sale, I don't think the staff would be saying, you
9 know, we ought to amortize that loss over five
10 years. That's tough luck. We ought to amortize
11 that over five years and make the customers pay for
12 it. I don't think you'd be saying that.

13 And, again, that's one of those you have
14 got to look at both sides. In ratemaking you have
15 got to say is it fair for both parties. And if it's
16 fair for the customers in this situation, then you
17 have got to look at the converse and say is it fair
18 for the company. And I don't think it's fair,
19 reasonable, and certainly there is no reasonable
20 regulatory principle that would allow a profit from
21 the sale of land that has never been in rate base to
22 be to the benefit of customers.

23 Thank you.

24 **CHAIRMAN GRAHAM:** Thank you, Mr. Friedman.

25 We are kind of at a bewitching hour right

1 here, and I think what I would like to do is
2 continue moving forward and try to get done with
3 this issue before we take a break, before we go to
4 the hedging workshop. The hedging workshop is
5 scheduled at 3:00, so we definitely won't be taking
6 that up before 3:00. Depending on how this goes, it
7 may be after 3:00, but it is definitely not going to
8 be before 3:00.

9 I want to take a ten-minute break, and
10 then I will be calling on OPC and then staff to
11 address those issues that Mr. Friedman brought up,
12 which I have down as Issue 3, Issue 6, Issue 15. I
13 do not have an issue for the consumptive use permit.

14 **MR. FRIEDMAN:** That was 14.

15 **CHAIRMAN GRAHAM:** 14. And then we have
16 Issues 17 and 19. Okay. So, let's get back here
17 at -- by that clock back there, by a quarter after
18 12:00.

19 (Recess.)

20 **CHAIRMAN GRAHAM:** Okay. Let's get started
21 here. Now, I saw as Mr. Friedman was going through
22 his list, I saw quite a bit of the Commissioners
23 back here jumping around when one of the issues came
24 up, and so I am assuming that this is what
25 Commissioner Brown wants to talk about. So we will

1 let her address this issue. So, therefore, the rest
2 of you don't have to address it.

3 Commissioner Brown.

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

6 I do have a couple of other questions, but
7 I wanted to get right to Issue 15 that Mr. Friedman
8 raised regarding salaries. Mr. Friedman, you
9 referenced two different cases, the Tradewinds rate
10 case in September, and then the CFAT rate case. And
11 I just wanted to point out that those are
12 distinguishable than this instant case where the
13 rates were set in effect in 2009 for this case. In
14 those cases -- and please, staff, correct me if I'm
15 wrong -- it was over a period -- we had a lot of
16 discussion on it, and the reason why -- an analysis
17 by staff for supporting those salary increases were
18 a result of a lack of a rate case over a 20-year
19 period. And if you could correct me on that, I
20 would greatly appreciate it.

21 **MR. MAUREY:** No, you are absolutely
22 correct. The cases that counsel for the company
23 referenced were not analogous to the cases that you
24 have before you today. In the Aqua case and in the
25 LUSI case, each company had had a rate case within

1 the last two years. The Tradewinds case, the CFAT
2 case, they had gone for several years without a rate
3 case. In fact, I believe Tradewinds, that was their
4 first rate case ever. So the salary issue was not
5 analogous.

6 **COMMISSIONER BROWN:** And, thank you.
7 There was a lot of discussion during those two
8 cases, though, on the issue, and they were
9 definitely distinguishable from the instant case,
10 and I just wanted to point that out. But I do have
11 some questions, unless any other Commissioner wants
12 to talk about the issue.

13 **CHAIRMAN GRAHAM:** Well, is it going to be
14 about one of the other issues, or just Issue 15?

15 **COMMISSIONER BROWN:** One of the other
16 issues.

17 **CHAIRMAN GRAHAM:** Well, let's just wait to
18 hear from Public Counsel and from staff, and then we
19 will come back to these other issues.

20 **COMMISSIONER BROWN:** Thank you.

21 **CHAIRMAN GRAHAM:** I figured this way if
22 you would speak on that issue, then the rest of
23 them, they would have to address Issue 15.

24 **MS. MERCHANT:** I've got them in order that
25 he talked, not in the order of the issues. So on

1 Issue 3 for Phoenix, Mr. Friedman was comparing that
2 to a gain on sale issue. And I don't really look at
3 it that way, and we support staff's recommendation
4 on this, but the issue to us is that because they
5 sell systems, the infrastructure that they have, the
6 affiliate charges should not then automatically
7 become more expensive to the remaining customers
8 just because they sell some other systems. And it's
9 more of a fairness to the existing customers. Or if
10 you could liken it to a non-used and useful
11 adjustment, because they have capacity for future
12 systems. So that was the issue on Issue 3, and we
13 fully support staff's recommendation.

14 On Issue -- I wrote down 6, but it's the
15 used and useful adjustment to CIAC. This is an
16 issue that OPC raised in discovery in this case, but
17 the issue that we are -- we are not talking about
18 lines, which most often are contributed property.
19 What we are talking about is there is no non-used
20 and useful adjustment to lines for wastewater
21 treatment in this case. I mean, for wastewater
22 lines. What we are talking about is a non-used and
23 useful adjustment for a wastewater treatment plant.
24 It is not normal that they make a non-used and
25 useful -- excuse me, that they add contributed plant

1 for a treatment plant.

2 Developers don't add a component to the
3 treatment plant. That is invested by the utility.
4 And the way that staff makes its adjustment is based
5 on the formula per the rule. But the CIAC that's
6 collected for treatment plant is based on a plant
7 capacity charge. It's a cash charge to each
8 customer, and it is not -- if you look at the
9 utility's books and records, they have all this
10 treatment plant, structures and improvement, CIAC,
11 it is listed as components of treatment plant CIAC.
12 But in reality what they have is plant capacity
13 charges that you can't look on their CIAC books and
14 records and find a line item for plant capacity
15 charges. They have allocated them in some means
16 that it makes it very difficult to see.

17 So I started looking at this, and you
18 just -- if there's a plant capacity charge, unless
19 it's prepaid, it's a used and useful plant capacity
20 charge, and it is really inappropriate to make a
21 non-used and useful adjustment to it. And in this
22 case, also the company transferred in their
23 Commission-ordered adjustments, or whatever --
24 roll-forward adjustments, they transferred CIAC that
25 was related to the reuse facility that they got from

1 the water management district. They transferred
2 that into structures and improvements, and they did
3 not make that adjustment in their MFRs to remove
4 that contributed CIAC for the reuse, and reuse is
5 100 percent by rule, or by statute, excuse me.

6 So the burden is on the company to come in
7 and show that any of this treatment plant capacity
8 charge, any of those amounts are related to prepaid
9 CIAC. And staff's recommendation in this revised
10 recommendation says that they didn't meet their
11 burden, and that's what we -- we support staff in
12 that, in that regard.

13 Also, we would like for the company to go
14 back and fix their books and records so you could
15 actually go in and see how much money is collected
16 for plant capacity charges, as opposed to them
17 allocating it all between these different plant
18 accounts.

19 On Issue 15, we fully support staff.
20 Okay. On the CUP renewal, we support staff. Bad
21 debt expense, we support staff. On the gain on sale
22 issue, we support staff. And thank you very much.

23 **CHAIRMAN GRAHAM:** Ms. Merchant, I'm sorry.
24 When I waived my hand that was just for you to move
25 along past 15. But if you want to add anything for

1 14, 17, and 19, please.

2 MS. MERCHANT: No, we agree with staff's
3 recommendation.

4 CHAIRMAN GRAHAM: Okay.

5 MS. MERCHANT: Thank you very much.

6 CHAIRMAN GRAHAM: Staff.

7 MR. FLETCHER: With regard to Issue 3 for
8 the Project Phoenix, we did cite orders in our
9 recommendation on Page 12 that basically referred to
10 recent Commission decisions. And in those decisions
11 made by the Commission was the fact that you have
12 the same software package, but now the surviving
13 customers are being asked to bear a greater burden
14 because of the utility's decision to sell or divest
15 its systems. We thought that under fair, just, and
16 reasonable that that was not appropriate in
17 accordance with the statute to lay that extra burden
18 with no added benefit.

19 You can take things to extreme to see it a
20 little bit more clearly. If LUSI was the only
21 remaining system and the utility had divested all,
22 the Commission would find it definitely
23 inappropriate to recover from the LUSI customers
24 about a \$21.6 million adjustment. There has to be
25 some kind of mechanism to take that into account of

1 these divested systems and that greater burden on
2 surviving customers without any added benefit.

3 This company, their historic corporate
4 strategy has been to acquire, develop, or own
5 utilities, and it has been expanding. That has been
6 not the case the last couple of years. Starting in
7 2009 and 2010 is when they started divesting their
8 systems. And that's why we believe, we stand by our
9 recommendation that the basis for accounting for
10 removing the extra burden is that there has been no
11 added benefit, and we believe that in doing so it
12 would be in line with the statute in setting fair,
13 just, and reasonable rates.

14 With regard to Issue 6, that is on page --
15 it starts on Page 20. Our percentage starts with
16 the 53 percent of used and usefulness of the plant.
17 Some 47 percent is non-used and useful. It starts
18 on Page 21 related to the CIAC. Initially, just to
19 take a step back, in the last case it had a
20 projected test year going through June of 2009. And
21 in that order, final order for that case, the
22 Commission made a non-used and useful adjustment of
23 almost \$1.4 million, I believe, in the non-used and
24 useful component. I can tell you, I went back and
25 looked at that case and there was not an adjustment

1 for non-used and useful on any CIAC amount that I
2 could see.

3 And related to the information provided
4 that Mr. Friedman had mentioned earlier, that we
5 saw -- the prepaid CIAC that we could see was beyond
6 the test year. It started in July of 2010 of the
7 detailed accounting of prepaid CIAC. Well, that is
8 beyond the test year, so we didn't consider, if it
9 is beyond the test year, there was no pro forma
10 amounts related to CIAC that they had in their
11 filing. It was beyond it, so we didn't consider
12 that. There was no prepaid CIAC that was within the
13 MFRs for the test year that we could see based on
14 that information provided. So we stand by our
15 recommendation that in this case in the test year
16 there should be no application of a non-used and
17 useful adjustment to any CIAC amount.

18 I think Mr. Maurey had spoken to Issue 17
19 regarding distinguishing the Tradewinds and CFAT
20 cases that they had not had a rate case in some
21 time, and that was a distinction there from LUSI.

22 **CHAIRMAN GRAHAM:** I have a question. They
23 also brought up the idea or the concept of analyzing
24 the salaries if you brought somebody on in the last
25 two months of the rate case. Can you speak to that?

1 **MR. FLETCHER:** In that one, the
2 information that we had provided, I didn't see which
3 one that would take place. In the MFRs we have
4 3 percent that incapsulates the increase and the
5 annualized. Maybe Mr. Buys can speak to that, but
6 in the information that I received I didn't see the
7 distinction of the amount that was included in the
8 MFRs for that adjustment related to annualization.

9 **MR. BUYS:** There were two adjustments that
10 were made. The first was related to the salary
11 increase, and the second adjustment related to the
12 annualization that was made in the MFRs. We removed
13 both of those adjustments to come up with our total
14 adjustment.

15 **CHAIRMAN GRAHAM:** One more time. So you
16 said that you removed the annualization to come up
17 with your recommendation. What was the reason
18 behind the annualization?

19 **MR. BUYS:** Because it also related to some
20 increase in the salaries, when they annualized the
21 salaries.

22 **CHAIRMAN GRAHAM:** Okay. Unless you have
23 an answer, we will get to that in a minute.

24 **MR. BUYS:** I'm sorry, repeat that.

25 **CHAIRMAN GRAHAM:** Well, I think we will

1 dig down into that in a little bit.

2 **MR. BUYS:** Yes.

3 **CHAIRMAN GRAHAM:** All right. Let's go to
4 Issue -- I guess it's 14.

5 **MR. FLETCHER:** Issue 14 relates to the
6 consumptive use permit. Part of staff's reasoning
7 for recommending a five-year amortization period is
8 because of the time that the utility started
9 incurring expenses associated with its WUP renewal,
10 or CUP renewal. They began in November of 2006, and
11 the permit was finally issued in May of this year.
12 So we felt it best to match the time period that
13 they incurred the cost in this particular instance.

14 And as we mentioned on Page 31, cost of
15 permits are usually not in the six figures to renew.
16 This was definitely an exhaustive process with about
17 nine data requests that was put forth to the company
18 by the St. Johns Water Management District. It
19 required basically a hydrogeological study that was
20 required in one of the data requests. It was pretty
21 extensive in this process, so we felt that the
22 30 months was not appropriate considering the time
23 period that it took for the utility to incur the
24 cost associated with that permit renewal.

25 **MR. FLETCHER:** That's the comments on

1 Issue 14. Issue 17 relates to bad debt expense. It
2 is Commission practice to go with a three-year
3 average. One of the decisions that we felt
4 comfortable with keeping with Commission practice
5 there is looking at the utility's annual reports for
6 '08 to '09. In the filing we have a test year of
7 June 30th of 2010. Now, looking back at the annual
8 reports and doing a three-year average, we came up
9 with \$47,000 for the water and about 15,000 for the
10 wastewater.

11 In their MFRs they had 83,000 for the
12 water and about 27,000. That necessitated the
13 staff's recommended adjustments. One reason why we
14 felt comfortable with sticking to the Commission
15 average is noticing that the year end 2010, six
16 months beyond what they had in the test year, the
17 bad debt expense had significantly dropped. And in
18 this case, the 2010 year end happened to be less
19 than the three-year average. So we felt the
20 approach was somewhat -- there was no reason to
21 deviate from that, given the six months prior to --
22 subsequent to the test year, it looks like it had
23 fell. It actually dropped. So we stand by our
24 recommendation there.

25 In Issue 19, during the break I had

1 actually reached out to the auditors that performed
2 the audit in this case in trying to determine
3 whether that land is in rate base or ever was in
4 rate base. I was still looking at it. I am hoping
5 that --

6 **MR. MAUREY:** The auditor did call back.
7 The company reduced regulated land by an amount that
8 was the basis for this adjustment. However, right
9 now it cannot be determined if the property
10 description is the same piece of property. It would
11 take further research.

12 If Mr. Friedman is correct, if the land
13 were never in any rate base any gain on that would
14 accrue to the company. However, based on our
15 preliminary review, if the land was in rate base,
16 then the rules have the gain going to the customers.
17 So we will need to further research this and get
18 back with you.

19 **CHAIRMAN GRAHAM:** Okay.

20 **MR. FLETCHER:** I believe that was the last
21 issue, was Issue 19.

22 **CHAIRMAN GRAHAM:** Okay. Thank you very
23 much.

24 Commissioner Brown.

25 **COMMISSIONER BROWN:** Thank you, Mr.

1 Chairman.

2 I'm going to try to go swiftly in order of
3 the issues that were just presented. So getting
4 back to Issue 3, the Phoenix Project, and this is a
5 question for Mr. Fletcher probably. The company did
6 not make the adjustments of the divestitures from
7 the last rate case. What effect has that had
8 monetarily on the ratepayers?

9 **MR. FLETCHER:** I guess as far as the
10 effect that it has on ratepayers, during the time
11 period from the filing of this case and the last
12 case, as far as earning surveillance, whenever they
13 filed their annual reports that definitely -- if
14 they didn't make it to their books, it wouldn't show
15 up on the annual reports, as well. So as far as
16 evaluating their earnings level, that would have
17 some impact, I would assume, as far as whether they
18 are earning within their range potentially.

19 **COMMISSIONER BROWN:** Why hasn't staff
20 issued, or suggested, or recommended a show cause
21 action, or any other type of action for not
22 complying with the previous rate case?

23 **MR. FLETCHER:** In that last case, the
24 order, final order came out in 2009, and we did
25 receive information regarding the proof of

1 adjustments. It was a pretty lengthy list of
2 journal entries. When we saw that information, we
3 felt at the time that that was the adjustments that
4 they made to their books and records. It wasn't
5 until December of 2010 is when they filed their MFRs
6 where they actually -- we could actually see that
7 they made the adjustments down to their books and
8 records. So a show cause is in order to gain
9 compliance. As it relates to the last order, the
10 adjustments, it looks like they have been made.

11 **COMMISSIONER BROWN:** Okay. So it has been
12 ameliorated. Staff is going to move forward and be
13 diligent in making sure from this point on that
14 everything is in compliance from this rate case, as
15 well.

16 **MR. FLETCHER:** That is correct.

17 **COMMISSIONER BROWN:** Okay. Moving on to
18 Issue 14, the amortization of the CUP. One could
19 certainly -- and this is a question for staff,
20 again. One could certainly argue that it makes
21 sense to amortize the costs over the life of the
22 permit, which would be 30 months, as the utility has
23 suggested. But one could also argue that we could
24 reduce the atypically high costs of seeking the CUP.
25 Why didn't staff consider this in its

1 recommendation?

2 **MR. FLETCHER:** There was nothing from the
3 invoices that we received and the data requests that
4 were sent to the utility by the Water Management
5 District that would necessitate any kind of similar
6 adjustment like duplicative in nature. It was
7 responding to another governmental agency with
8 regard to the pretty extensive work, the
9 hydrogeological study that they had requested and
10 other tasks and requests for information that did
11 take considerable time, and actually have engaging
12 consultants to get those studies done, in order to
13 prepare that.

14 There is nothing that we saw in the data
15 or information that we saw that was duplicative in
16 nature, so it was to respond to an agency. It just
17 happens in this case for this specific utility that
18 it was atypical.

19 **COMMISSIONER BROWN:** And how long were the
20 delays? Someone suggested, I think, a 30-month
21 period, or over 30 months. How long were the
22 delays?

23 **MR. FLETCHER:** Mr. Buys can address that.

24 **MR. BUYS:** According to some of the
25 information provided, the correspondence provided

1 with the Water Management District, there were
2 several extensions that the company requested to
3 complete responding to the data requests from the
4 Water Management District. They were 60-day
5 extensions requested, 90-day extensions requested.
6 Essentially when the Water Management District would
7 request for additional information, the company
8 would then request for an extension to provide that
9 data. So it kind of resulted in actually nine
10 requests for additional information during that time
11 period that the company was seeking the consumptive
12 use permit.

13 **COMMISSIONER BROWN:** But the delays were
14 on the utility's part, not the --

15 **MR. BUYS:** Yes.

16 **COMMISSIONER BROWN:** Okay.

17 **MR. BUYS:** They did not provide all the
18 information requested in the initial data requests.

19 **COMMISSIONER BROWN:** And this is a
20 question either for staff or the utility company
21 with regard to its previous permit and how much the
22 costs were for obtaining the previous permit for
23 this utility. If either staff knows that answer or
24 you --

25 **MR. FLYNN:** Commissioner, I don't have

1 specific knowledge of that, but I think it is also
2 important to understand the scale of the LUSI CUP.
3 It serves about 8,000 customers in an area that has
4 extremely high customer usage on a per monthly
5 basis. The scale of the permit request was part of
6 it. We also were combining two permits into one in
7 order to minimize monitoring costs and some other
8 benefits. Thirdly, LUSI is located in a critical
9 consumption area as described by St. Johns, and it
10 was mandatory that we be responsive to the fact that
11 they had numerous new special conditions they wanted
12 to impose upon us that were onerous and needed, you
13 know, full fleshing out.

14 Lots of reporting requirements are in our
15 current CUP that weren't there before. What
16 occurred in the last permit cycle really isn't
17 germane in describing what we went through to get
18 our current CUP. We also requested a longer life of
19 the permit and that was denied. We wanted to make
20 this a longer amortization period as a function of
21 that, but that was not offered to us and was denied.
22 We went to great lengths to be responsive to the
23 district's staff. The staff had lots of requests of
24 us, and that was quite a bit of work to get it done
25 in whatever time period they provided to us.

1 **MR. FRIEDMAN:** And I would suggest that
2 any implication that asking for extensions of time
3 to respond to data requests is dilatory is just
4 speculation. I mean, the company wants the
5 consumptive use permit as bad as anybody does, and
6 they to want to spend as little money as they can on
7 it. So any implication that because of these
8 requested extensions of time in data requests, you
9 know, were some tactic by the utility or some lack
10 of diligence on the utility is unsupported by
11 anything.

12 **COMMISSIONER BROWN:** And I know OPC did
13 not raise this as one of the issues and supported
14 the staff recommendation, but I wanted to extend an
15 opportunity to speak on it if they so choose.

16 **MS. MERCHANT:** I think that any time that
17 you have an unusual expense level, nonrecurring
18 expense level in the test year, the appropriate
19 thing is to amortize it. The Commission rule says
20 to amortize on five years for non-recurring expenses
21 or non-normal expenses unless you have a shorter or
22 longer period of time. And I think that the
23 Commission has a lot of practice in the past of
24 looking at the time frame from when the cost started
25 to when the cost ended, and that is five years, and

1 I think that that is a reasonable time to allocate a
2 cost.

3 Certainly the company comes in for rate
4 cases quite often. If they have another need in the
5 future, they can certainly consider that. But it's
6 a normalization adjustment, and five years is normal
7 for all different types of nonrecurring expenses.
8 Or recurring, but not recurring in that level in the
9 test year.

10 **MR. FRIEDMAN:** And my only comment would
11 be that if they had received a ten-year permit, do
12 you think the staff would still be suggesting a
13 five-year amortization? Just some food for thought.

14 **COMMISSIONER BROWN:** And that is all for
15 the issues raised.

16 **CHAIRMAN GRAHAM:** Thank you.

17 Commissioner Balbis.

18 **COMMISSIONER BALBIS:** Thank you, Mr.

19 Chairman.

20 I'll start with Issue 3. I agree with how
21 staff has handled this. You know, the fact that if
22 you had a \$21 million expense, it may have been
23 prudent for a certain sized system, maybe it is
24 imprudent for the system as it gets smaller. And
25 then to transfer those costs to the other remaining

1 utilities, I think, is inappropriate. So I support
2 staff's position on that issue.

3 But moving on to Issue 14 on the
4 consumption use permit, my question for the utility,
5 if you have this permit expiring in 2013, and the
6 length of time it has taken to get this permit, what
7 steps have you taken in order to extend the permit?
8 Have you started the permitting process again?

9 **MR. FLYNN:** No, Commissioner, we have not.

10 **COMMISSIONER BALBIS:** But if it took you
11 three years to get this permit, and you have this
12 permit expiring in 30 months, why wouldn't you be
13 going through the same steps now?

14 **MR. FLYNN:** Commissioner, we applied for
15 our current permit in 2006 under the premise that it
16 would take us the time period when that previous
17 permit was to expire. It's appropriate to make
18 application on or just before the current permit
19 expires. We do some preparation for that ahead of
20 that, but we are not going to spend two years doing
21 that. It took us five years to get the current one,
22 we hope not to have a five-year period for the next
23 one.

24 **COMMISSIONER BALBIS:** And, unfortunately,
25 I do have experience with trying to obtain

1 consumptive use permits, and I'm not surprised at
2 the amount of effort required --

3 **CHAIRMAN GRAHAM:** It's a fun process.

4 **COMMISSIONER BALBIS:** -- to obtain a
5 consumptive use permit. So I appreciate the
6 utility's position on that, and I know that is
7 something that I believe the water management
8 districts are working towards making that process
9 more expeditious.

10 The only other comment I had was the issue
11 on the land sale. You know, obviously if that was
12 never in rate base, you know, it is inappropriate to
13 have that go back to the ratepayers. So I'm glad
14 that staff is looking into that. That's all I have.

15 **CHAIRMAN GRAHAM:** I guess I don't have to
16 push my button. Let's go back to the salary and the
17 annualization. Mr. Friedman, you had said -- and I
18 don't know if you gave a for instance example, or if
19 you have a specific that we need to talk about.

20 **MR. FRIEDMAN:** That was just a for
21 instance.

22 **CHAIRMAN GRAHAM:** Is there a specific?

23 **MR. FRIEDMAN:** I don't have a specific.
24 We annualize the salaries as part the MFR filing,
25 and the staff unannualized it. So I don't have a

1 specific. You know, we hired Joe Smith, and he
2 started in -- I don't have any specifics.
3 Theoretically, you know, think about what a utility
4 is entitled to is the reasonable amount of money to
5 run the utility on an annual basis, and so we think
6 annualization of salaries is reasonable.

7 **CHAIRMAN GRAHAM:** Staff.

8 **MR. BUYS:** Commissioner, we believe most
9 of the annualization adjustments made related
10 incorporated the salary increases that they were
11 also requesting, so to be consistent we wanted to
12 levelize out the salaries, so we removed the
13 annualization adjustment, as well.

14 **CHAIRMAN GRAHAM:** So you thought the
15 annualization was kind of a back doorway of getting
16 the salary increases?

17 **MR. BUYS:** Correct.

18 **MR. FLETCHER:** And in discussions with
19 Mr. Buys is that it wasn't a clear delineation
20 whenever he was reviewing the material that it
21 related to an increase versus what was being
22 annualized. The amount that -- the lump sum was in
23 the MFRs as both, annualization plus the increase,
24 and ciphering through the information, the granular
25 detail, it wasn't clear to him what amount

1 associated with annualization versus which amounts
2 associated with the increase. So in order to be
3 consistent and put them at the same level that was
4 recently approved in their last rate case, since we
5 are only one year removed from that projected test
6 year in this case, recommended the entire adjustment
7 be removed.

8 **CHAIRMAN GRAHAM:** Okay. I've got a better
9 understanding of what happened now. Going through
10 these issues, I don't have a problem with staff
11 recommendation on most of these except Issue 14, I
12 agree with Commissioner Balbis and the utilities,
13 and Issue 19. I don't know if we can move forward.
14 I guess the question is when it is documented that
15 this land was or was not in rate base, that you can
16 make it a staff function on how that moves forward,
17 or do you have the answer?

18 **MR. FLETCHER:** What we have is from the
19 auditors that there are no land accounts that were
20 in rate base. In addition, the company's response
21 does not say that the land was not in rate base.
22 This is the auditor's questions to the utility, so
23 there was nothing that said one way or another
24 whether it was in or out at this point. Because it
25 is the utility's burden, and they were providing

1 that response to the auditors in their inquiry
2 related to the land, we don't believe that they met
3 their burden, and we stand by our recommendation
4 that the gain on sales should be flowed to the
5 shareholders. Excuse me, the ratepayers.

6 **CHAIRMAN GRAHAM:** And I can only speak for
7 myself, I'm not looking to put the burden on the
8 ratepayers or put the burden on the utility. I
9 would like to find point out what the answer is, and
10 I don't necessarily need for it to come back here,
11 but can we move this to the point where the staff
12 can find the answer to that and move forward as a
13 staff function?

14 **MR. WILLIS:** Chairman, the problem is once
15 we find that answer out, where do we go from there?
16 If we find out truly that it was not in rate base
17 and has never been in rate base, then Mr. Friedman
18 is perfectly correct, the gain should not go to the
19 ratepayers. If that is true, then the rates would
20 have to be adjusted down. Or actually they would
21 have to be adjusted up to take that into account,
22 because this is a reduction to rates. On the other
23 end, if the auditors are correct and it actually is
24 in rate base, and they have no proof that it was
25 not, our recommendation is correct.

1 My point is I don't know where we go from
2 there. If you all vote out the recommendation and
3 we find out that that issue is wrong, it would
4 require a rate adjustment up at this point. I'm not
5 sure how we would move forward without knowing that,
6 unless we bring that issue back. The only way to do
7 that that I know of is to defer this item to another
8 agenda, which we don't have the ability to do,
9 because we are at the five-month time frame at this
10 point.

11 **CHAIRMAN GRAHAM:** Can you pass the entire
12 issue forward? I'm sorry, the entire item forward
13 and just hold off on Issue Number 9? Is that
14 possible? 19, rather.

15 **MR. WILLIS:** The utility wouldn't be able
16 to implement rates at that point. They wouldn't
17 have a rate to implement if we just passed that one
18 issue.

19 **CHAIRMAN GRAHAM:** Well, I guess what I'm
20 trying to understand is if we are able to do the
21 step increase like you suggested before for -- if
22 they put in the water main, why can't we handle this
23 the same way?

24 **MS. HELTON:** I'm not a numbers person, but
25 it seems to me that that is something we should able

1 to do. Perhaps if we went with the higher level,
2 and then if we were then able to verify by the time
3 the order is issued what is the correct approach,
4 then if you were to delegate to staff to make an
5 adjustment, if that's appropriate, then we could
6 reduce the rates accordingly.

7 **CHAIRMAN GRAHAM:** Does that work?

8 **MR. WILLIS:** That works. And we should be
9 able to verify it by then.

10 **MR. KISER:** Mr. Chairman, I would put the
11 burden on Mr. Friedman to produce that information
12 within a time frame, and if he does, then make that
13 reduction as Ms. Helton has expressed. But since
14 that burden is on them to do that, if he produces it
15 in whatever the timeframe you think is appropriate,
16 then the order should reflect that reduction.

17 **CHAIRMAN GRAHAM:** Okay.

18 **MR. WILLIS:** Actually it would be an
19 increase from our recommendation.

20 **CHAIRMAN GRAHAM:** Well, we will start with
21 the higher number, and if he brings forth the
22 documentation --

23 **MR. WILLIS:** I think it's the opposite. I
24 think what you would do is you would probably want
25 to stay with staff's recommendation, and if Mr.

1 Friedman brings forth the information to prove that
2 before the order is issued, we would do the
3 appropriate adjustment up in the rates to remove
4 that negative amortization.

5 **CHAIRMAN GRAHAM:** Yes. The problem you
6 run into is moving from a low number and moving up
7 tends to be problematic. I would much rather start
8 with the high number, and just give them 30 days to
9 come back with the documentation. And it
10 automatically goes down to the lower number if the
11 documentation is not back to staff in 30 days.

12 **MR. WILLIS:** Then at this point you would
13 want to remove the negative amortization and remove
14 staff's adjustment.

15 **CHAIRMAN GRAHAM:** Yes. And then give him
16 30 days to come forth with the documentation. If
17 it's not here in the documentation, then we go back
18 with staff recommendation.

19 **MR. WILLIS:** Okay. That works.

20 **MR. REILLY:** But the order is issued in 21
21 days, or do you want to make the time period
22 consistent with that?

23 **CHAIRMAN GRAHAM:** You guys tell me.

24 **MR. WILLIS:** I believe it would have to be
25 quicker than that. We probably ought to -- I mean,

1 this should be a simple thing for the company to
2 prove up with our auditors. They ought to be able
3 to prove that up fairly quickly. I would say
4 probably in no more than 10 days, so we can get the
5 order out within 21.

6 **MR. YOUNG:** And, Mr. Chairman, Keino
7 Young. And the reason for that is the order has to
8 be issued within 20 days from the Commission vote.
9 So staff will need time to verify that the
10 information is correct that Mr. Friedman will
11 provide. So we ask that a shortened time frame be
12 put in, no more than 10 days.

13 **CHAIRMAN GRAHAM:** Mr. Friedman or
14 Mr. Flynn, somebody, how long would it take you guys
15 to bring the documentation forward?

16 **MR. FLYNN:** It's possible we might have it
17 to you before we get back to Orlando. I'm not quite
18 sure. It's a legal description describing the
19 property we sold, and comparing it to the property
20 that contains the water and wastewater plant at Lake
21 Groves. This is a piece of the total Lake Groves
22 parcel, the 90-acre parcel. We sold about five
23 acres of it outside of our fence line, outside of
24 our facilities. It's quite evident, I think, even
25 in private rate cases what was identified as being

1 in rate base as far as the wastewater and water
2 plant. I don't think it would take long at all.

3 **CHAIRMAN GRAHAM:** All right. So if we
4 said 10 days, then it gets back to staff in plenty
5 of time and there is no second adjustment of rates.
6 It's just whatever comes out in the order. Does
7 that give staff enough time?

8 **MR. WILLIS:** Yes, it does.

9 **CHAIRMAN GRAHAM:** Okay.

10 Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Thank you, Mr.
12 Chairman.

13 And you asked the first question I was
14 going to ask, which was how long and how difficult
15 would it be to get the information that staff would
16 require. And now I just want to make sure I
17 understand which way we're talking about. Am I
18 understanding correctly, Mr. Chairman, that what you
19 are suggesting is to change what the staff has
20 recommended on that as the beginning point, and
21 then -- to what Mr. Friedman has proposed, and then
22 if they are not able to sufficiently prove up that
23 the property was not in rate base, then the rates
24 would be adjusted accordingly?

25 **CHAIRMAN GRAHAM:** I think that we're going

1 to move forward with staff recommendation, and if
2 Mr. Friedman or Mr. Flynn come back with the
3 documentation in the ten days, then we will make
4 that change. And that is all before the order is
5 issued on the 21st, or 21 days from today.

6 **COMMISSIONER EDGAR:** All right. And
7 that's the direction that I was thinking. I was
8 just a little unclear as we went through the
9 discussion. Thank you.

10 **CHAIRMAN GRAHAM:** Does that work for
11 everybody? Okay. All right, that one is clear.

12 All right. So I need a motion on Issues
13 3, 6, 15, 14, 17, and 19. I can't make a motion,
14 but my recommendation is staff recommendations on 3,
15 6, 15, and 17. In 19, we talked about what the
16 solution should be for that one. In 14, I go along
17 with the utility on their suggestion.

18 Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Mr. Chairman, I will
20 give it a try. I move that we approve the staff
21 recommendation on all items that we have not yet
22 voted on except for 14 and 19. And that on 14 we
23 approve the utility's position, and that on 19 we
24 approve the staff recommendation with the
25 modification that the company is provided ten days

1 to produce sufficient documentation. And if they
2 do, that the staff technically makes the adjustment
3 to rates accordingly.

4 **CHAIRMAN GRAHAM:** That has been moved and
5 seconded. The question I have, have we completely
6 addressed Issue 4 and 18 that was brought up by
7 Public Counsel? I'm sorry, 18 and 30.

8 **COMMISSIONER EDGAR:** Mr. Chairman, if
9 there is further discussion to be had on those
10 items, I would remove those two items from my
11 motion.

12 **CHAIRMAN GRAHAM:** Okay. So your motion is
13 to move staff recommendation on everything except
14 for 14, 19, 18, and 30.

15 **COMMISSIONER BROWN:** Mr. Chairman.

16 **CHAIRMAN GRAHAM:** Yes.

17 **COMMISSIONER BROWN:** If I may, I'd also
18 like to take 16 off the list.

19 **CHAIRMAN GRAHAM:** Troublemaker. And 16.

20 All right. So everything except for --
21 let's put these in order. Everything except for 14,
22 16, 18, 19, and 30.

23 **COMMISSIONER EDGAR:** With the
24 modifications that I made to 14 and 19, I think we
25 can go ahead and consider voting on those two, as

1 well.

2 **CHAIRMAN GRAHAM:** So we will add that back
3 on. Okay. So that's the motion with the friendly
4 amendment, and it has been seconded.

5 Commissioner Balbis.

6 **COMMISSIONER BALBIS:** Thank you, Mr.
7 Chairman. I just want to clarify the utility's
8 position on 14 is amortizing for the remaining
9 length of the permit, and that all of the expenses
10 incurred are prudent and should be passed along.

11 **CHAIRMAN GRAHAM:** That's correct.

12 **COMMISSIONER BALBIS:** Okay.

13 **CHAIRMAN GRAHAM:** Is that correct,
14 Commissioner?

15 **COMMISSIONER EDGAR:** That is exactly what
16 I was proposing.

17 **CHAIRMAN GRAHAM:** Commissioner Brown, did
18 you want to speak again?

19 **COMMISSIONER BROWN:** No.

20 **CHAIRMAN GRAHAM:** Okay. So that's the
21 motion on the floor. Staff, do you know where we
22 are currently? Okay.

23 All in favor say aye.

24 (Vote taken.)

25 **CHAIRMAN GRAHAM:** Any opposed?

1 By your action you have approved the Edgar
2 motion as stated. Okay. So we have got 16, 18, and
3 30 left.

4 Commissioner Brown, 16.

5 **COMMISSIONER BROWN:** Thank you. And this
6 is a question for staff on Issue 16. This is the
7 directors/officer liability insurance. In this
8 issue staff is recommending recovery of the DOL
9 based on two electrical cases, the TECO case and the
10 Progress case.

11 Staff, to your knowledge, has the
12 Commission disallowed DOL in water rate cases?

13 **MR. FLETCHER:** Yes, Commissioner, they
14 have. It has routinely been disallowed in water and
15 wastewater cases. It wasn't until those two
16 electric cases that we began recommending that they be
17 allowed half and half, a split between the
18 shareholders.

19 **COMMISSIONER BROWN:** Thank you.

20 And, Commissioners, I know this is not a
21 great amount in the scheme of all of the rate case
22 expenses, et cetera, and pro forma additions, but I
23 did happen to review four water cases where the
24 Commission disallowed the DOL insurance for the
25 primary reason that there is no benefit whatsoever

1 to the ratepayers, and the DOL insurance purpose was
2 to act as a safety net for the shareholders and the
3 shareholders alone. The Commission found that it
4 was a decision by the management of the utility in
5 these water cases that these costs should be borne
6 by the shareholders, not the ratepayers. And for
7 purposes of consistency with water rate cases, I
8 would suggest that we disallow this as an
9 unnecessary expense that should be borne by the
10 ratepayers.

11 **CHAIRMAN GRAHAM:** Public Counsel.

12 **MR. REILLY:** We would agree with that
13 suggestion.

14 **CHAIRMAN GRAHAM:** Mr. Friedman.

15 **MR. FRIEDMAN:** I don't know if it's
16 limited to water and wastewater cases because you
17 routinely grant it for other -- I don't know. I
18 don't see how you can, in good conscience, treat D&O
19 insurance for water and sewer utilities differently
20 than you do for electric, gases -- I guess you
21 don't regulate telephone anymore, but for electric
22 and gases. I mean, the theory, the regulatory
23 principle is the same. How can you say it's good
24 for the electric utilities, but it's not reasonable
25 for water and sewer? I don't see where that floats.

1 **CHAIRMAN GRAHAM:** Commissioner Brown.

2 **COMMISSIONER BROWN:** If I may, I respect
3 your opinion; however, I respectfully disagree. I
4 think the cases that I have reviewed are clear.
5 There is a distinction. There is a fair, just, and
6 reasonable standard that is different in the water
7 utility cases. And I think that the finding by the
8 Commission in these four different cases was clearly
9 different than the findings in the two electrical
10 cases. So I respectfully disagree.

11 **MR. FRIEDMAN:** All right. And you won't
12 get me agreeing with you on that. I just don't see
13 how you can treat one industry different than
14 another for exactly the same expense. Just because
15 I'm a gas company or an electric company, I get to
16 say this D&O insurance is reasonable, but if I'm a
17 lowly water and sewer utility it's not. I just
18 don't see it.

19 **CHAIRMAN GRAHAM:** Commissioner Brown.

20 **COMMISSIONER BROWN:** I'd like to hear from
21 OPC, please.

22 **MR. REILLY:** I would just suggest it is
23 the level of the revenues and the different standard
24 applied in the water and wastewater cases that I
25 think you are relying on.

1 **COMMISSIONER BROWN:** Commission board, for
2 purposes of consistency with past water cases, every
3 case that I have found with regard to water rate
4 cases has disallowed it when requested, and that's
5 the reason that I'm pushing this issue. Although it
6 is a small number, it is consistent. It does set
7 the standard for other utilities who come in and
8 know that this is not going to be an expense that
9 should be borne by the ratepayers. But it is an
10 expense that -- it protects the shareholders, and it
11 should be borne by the shareholders.

12 **CHAIRMAN GRAHAM:** I guess a question I
13 have is if they don't have this insurance and they
14 run into liability problems, then is that borne by
15 the utility or is that borne by the ratepayers?

16 **COMMISSIONER BROWN:** I think it would
17 depend. And I'm just conjecturing, but I think it
18 would depend on whether it's a lawsuit, what type of
19 a loss or cost is associated with the lack of
20 maintaining that, and I would defer, again, to legal
21 counsel or staff on the issue.

22 **CHAIRMAN GRAHAM:** Well, I guess the
23 question I have is because an issue like this came
24 up before where if I remember correctly it was shame
25 on them for not having that insurance. And then,

1 therefore, they should pick up the cost. But now in
2 this case they are trying to get the insurance, and
3 you are saying you shouldn't be able to get that in
4 rate base.

5 **COMMISSIONER BROWN:** And if I may, that
6 was distinguished from director and officer
7 liability insurance. That was -- I think it was
8 just recently, commercial general liability
9 insurance, which a company typically has to maintain
10 to conduct business. This is an elective type of
11 insurance to protect the individual shareholders,
12 not the ratepayers. And please correct me if I'm
13 wrong from my understanding.

14 **MR. FLETCHER:** There was a recent -- I
15 think it was for Tradewinds where it was a general
16 liability insurance that they were seeking to add to
17 their provision and increase rates as a result of
18 that incremental amount. In this case, staff was
19 just trying to be consistent with the recent
20 electric decisions. That is why we had recommended
21 the split.

22 **CHAIRMAN GRAHAM:** So let me understand.
23 So this insurance is specifically to just protect
24 not the utility as a whole, but the owners of the
25 utility?

1 **COMMISSIONER BROWN:** Officers and
2 directors.

3 **CHAIRMAN GRAHAM:** Okay. Commissioner
4 Balbis and then Commissioner Brisé.

5 **COMMISSIONER BALBIS:** Thank you, Mr.
6 Chairman.

7 And I think my question has partly been
8 answered, but staff had mentioned that we routinely
9 disallowed the passing on of the insurance costs to
10 the ratepayers. Can you explain why it was
11 disallowed in the past?

12 **MR. FLETCHER:** Yes. There was testimony
13 in prior cases about there has been no -- there was
14 no benefit to the ratepayers in those prior water
15 cases. And, in fact, in the last rate case, the
16 2008 rate case for Aqua, we had actually followed
17 with that similar Commission practice with
18 disallowing all the directors and officers
19 insurance, liability insurance. It was a result of
20 the TECO and Progress and that we actually for the
21 first time that I'm aware of for a water case, it
22 was in the recent Aqua case where we had recommended
23 that there be a split, and it was based on the
24 testimony provided in TECO and Progress about the
25 benefits of this flowed to the ratepayers and

1 shareholders. But in the prior cases that we have
2 seen, strictly the water cases in the past, it was
3 just no benefit was stated to the ratepayers. And
4 we did deviate for the first time in that in the
5 Aqua case and it looks like LUSI is the second time.

6 **COMMISSIONER BALBIS:** Okay. And maybe if
7 the utility can elaborate on specifically what
8 benefit do the ratepayers get for having this
9 insurance coverage for the directors and officers.

10 **MR. FRIEDMAN:** I have never had to deal
11 with the issue. I mean, I would think that it is
12 the benefit of the ratepayers to make sure that
13 there is a viable utility company that is well run
14 and this is an insurance that, you know, covers that
15 type of liability. I mean, my bell theory behind it
16 is that I don't see how you can differentiate
17 between water utilities and other utilities and
18 allow it in some and not in others. I haven't had
19 to address the necessity and benefit of it
20 independently of that analysis.

21 **COMMISSIONER BALBIS:** I understand that
22 point, and I guess that argument would be then we
23 would never make a decision, we would just look at
24 what we did in the past. And I think what we are
25 charged with is looking at the specifics of these

1 costs that are looking to be passed on to the
2 ratepayers. So I want to focus on what does the
3 insurance do, what benefit, if any, to the
4 ratepayers that, therefore, we can determine if it
5 is prudent or not. And I assume that these types of
6 insurance policies are used to recruit or maintain
7 directors and officers that can have some sort of
8 assurance that in performing their duties in those
9 positions they are not going to have any personal
10 liability to that.

11 That is one argument that I know I have
12 been involved with decisions on whether or not to
13 obtain that coverage. But, again, I need someone to
14 tell me what benefit, if any, to the ratepayers is
15 provided.

16 **MR. FLETCHER:** And the staff relied on the
17 TECO and Progress orders on Page 34 of staff's
18 recommendation. In quoting that order, it was
19 saying we believe -- and the Commission stated that
20 we believe that the DOL liability insurance has
21 become a necessary part of conducting business for
22 any publicly owned company, and it would be
23 difficult for companies to attract and retain
24 competent directors and officers without it. And it
25 goes on to say that we also believe that the

1 ratepayers receive benefits from being part of a
2 large public company including, among other things,
3 easier access to capital because the D/O liability
4 insurance benefits both ratepayers and shareholders.

5 **MR. WILLIS:** And, Commissioners, if I
6 could just add to that. In the electric cases that
7 we referenced, Public Counsel did take the position
8 in those cases that no D&L insurance should be
9 included. And the Commission found in that case
10 exactly what Mr. Fletcher was talking about, that it
11 was a necessary item that should be shared.

12 **CHAIRMAN GRAHAM:** I guess the question I
13 have is this is basically just viewed as one of the
14 salary and benefits that goes to one of the
15 shareholders, or the return and benefits, or however
16 you want to say it. It's just a benefit of being
17 one of the owners. It's almost like getting free
18 dental insurance.

19 **MR. WILLIS:** If I could elaborate, some of
20 the testimony that came out in the electric cases is
21 the fact that because of Sarbanes-Oxley requirements
22 where a president of a company could be sued for
23 signing off on financial statements nowadays, that
24 may not have happened in the past, that was the
25 reasoning that you see the wording in the order that

1 we quoted. The Commission decided at that point
2 that it was becoming a point where to attract the
3 type of CEOs that you wanted to run a company, the
4 Commission decided in those electric cases that
5 there was a need for a sharing of the D&L insurance.
6 But it was mainly because of the new accounting
7 requirements, the Sarbanes-Oxley, the fact that
8 because of the Enron cases, a CEO could find
9 themselves being sued. A CFO could find themselves
10 being sued. So it was necessary to have that type
11 of insurance, and a sharing of that between the
12 stockholders and ratepayers was necessary.

13 **CHAIRMAN GRAHAM:** Commissioner Brisé.

14 **COMMISSIONER BRISÉ:** Thank you, Mr.

15 Chairman. And going back to the point of -- I don't
16 think Commissioner Balbis' question ever fully got
17 answered, so I'll ask it in this way. What scenario
18 can anyone -- can anyone think of a scenario where
19 the lack of this insurance will actually come back
20 and effect the ratepayer at the rate level?

21 **MR. FLETCHER:** I would say as far as
22 managing a company and regulatory compliance and
23 having to have a competent manager in place and with
24 the liability exposure that Mr. Willis just
25 mentioned, in order to attract that competent

1 manager, the benefit to the customers is that
2 continuing of service and the managerial skills to
3 operate in the, you know, the regulatory environment
4 that we have now as it exists today with the further
5 requirements of the Sarbanes-Oxley is to attract
6 that competent manager in the regulatory environment
7 as it exists today. That's the benefit to the
8 ratepayers.

9 **CHAIRMAN GRAHAM:** I think -- I mean, I
10 understand what you said. I think part of the
11 problem you run into is you are going to start
12 hamstringing some of the decisions that these guys
13 make, because they're afraid that somebody is going
14 to come back after them legally, and you allow for
15 them to be making the best decisions they think they
16 should be making without fear of what's going to
17 happen, the fear of lawsuits. You know how I feel
18 about lawyers. (Laughter.)

19 Commissioner Brown.

20 **COMMISSIONER BROWN:** I'm not saying that
21 this is an expense that is not typically found in a
22 publically traded company. I'm not saying that.
23 I'm saying it's not a necessary expense to conduct
24 business, and those expenses to be passed onto the
25 ratepayers. The utility is free to obtain that DOL

1 insurance for its officers and directors, but the
2 ratepayers are not benefiting from that personal
3 liability insurance that protects those employees.
4 And that's kind of the purpose. It's an elective
5 additional -- I used to be in the insurance
6 industry, and I'll tell you it's an elective
7 additional protective layer. It is not a mandatory
8 business expense.

9 **MR. KISER:** Mr. Chairman.

10 **CHAIRMAN GRAHAM:** Yes, sir, Mr. Kiser.

11 **MR. KISER:** I'm going to pose this
12 question, and I'm not sure what the answer is, but
13 maybe it evoke some responses that will help. In
14 the case we had an hour and a half or so ago where
15 the people were here with their counsel, and they
16 had to take over the utility because there was such
17 malfunction of the people who had previously served,
18 they had no books, they had no records, they had no
19 bank accounts, they had virtually nothing. They had
20 to start from nothing. In A situation like that, if
21 those people had had to have this coverage, isn't
22 that something that a claim could be made against
23 for their failure to properly do their job, and that
24 might have then offset the expense of having to go
25 back and collect that.

1 **CHAIRMAN GRAHAM:** Commissioner Brisé.

2 **COMMISSIONER BRISÉ:** Thank you, Mr.

3 Chairman.

4 I'm having a struggle with this issue from
5 this perspective. I think I understand the benefit
6 to the ratepayers. I think I get that. Even though
7 it's a far removed benefit, but I think overall it's
8 a general benefit to the ratepayer. And the other
9 issue that I'm struggling with is what Mr. Friedman
10 brought up. I mean, the whole issue of regulatory
11 principles. You know, if we are going to make it a
12 practice of not allowing D&O liability for anybody,
13 then I'm fine.

14 But if we are going to do it for one type
15 of industry that we regulate versus another, I think
16 that that needs convincing. I need convincing on
17 that. And I can understand the fact that you have a
18 smaller group of folk, a smaller body of people that
19 have to bear the cost versus a larger body of
20 people, so, therefore, the rate impact may be
21 different. But I need convincing on that segment.
22 Even though I still need a little bit of convincing
23 on the benefit to the ratepayer, I sort of see that
24 from the long view. So if someone can help me get
25 there, then we will see what happens.

1 **CHAIRMAN GRAHAM:** Mr. Reilly.

2 **MR. REILLY:** I would make one distinction
3 with the water and wastewater industry. So many of
4 these water and wastewater systems, you look at the
5 president and directors, it's not a question of
6 attracting someone to be your director. The people
7 that hold those positions in so many of these
8 utilities are the equity owners. They are the
9 mothers and fathers, they are the cousin. I mean,
10 so many of these systems, and it's just adding
11 another layer to that small level of customers that
12 are now going to bear this additional cost to
13 provide this additional benefit.

14 So really the people that own the system
15 are holding so many of these positions. If you look
16 at the number -- it's not true in all of them, but
17 it dominates a lot of the water and wastewater cases
18 that are going to come before us. And I just see
19 this as leading to just another layer of expense
20 that is now going to be an extra benefit to provide
21 to the equity owners. It makes our job of trying to
22 keep affordable rates to the people of Florida more
23 and more increasingly difficult.

24 **COMMISSIONER BRISÉ:** Mr. Chairman, to that
25 point, I could understand if we were talking about

1 some of the other companies that we have dealt with
2 in the past, but we are talking about Utilities Inc.
3 Is Utilities Inc. a company that reflects the
4 description that you provided to me just now?

5 **MR. REILLY:** It does not. I think the
6 only distinction, though, between Utilities Inc. and
7 Aqua is the difference between a publicly traded
8 company and one that is not closely held. You know,
9 so I think that would be the distinction I'd make
10 there.

11 **CHAIRMAN GRAHAM:** Commissioner Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr.
13 Chairman.

14 I agree with Commissioner Brisé in that we
15 don't want to look as if we were being arbitrary in
16 our decision and choosing one type of industry or
17 another. I'd like to focus, again, on this specific
18 case. Which, again, I think it's the onus on the
19 utility if they are asking to recover these costs to
20 clearly show how this is a benefit to the
21 ratepayers. And that's where I want to focus on.
22 Because we did make a recent decision with Aqua
23 Utilities, but that was a large publicly traded
24 company. It's a different animal, and I think each
25 case is unique. There are some similarities, and we

1 should take into account other decisions we have
2 made for consistency. But, again, I would like to
3 put the onus back on the utilities to demonstrate
4 why is this a cost that is a benefit, that results
5 in a benefit to the ratepayers. And then whatever
6 decision we make, I think that looking at the only
7 recent water case where we have allowed these costs
8 to be recovered was Aqua Utilities, which is
9 different from this case. So with that, another
10 opportunity --

11 **MR. FRIEDMAN:** I would just -- I would
12 interject that without a full evidentiary hearing, I
13 don't think you are going to get the level of
14 comfort that you are looking for. If we look at the
15 portions of the testimony in these cases that -- in
16 the electric cases or gas cases that were cited in
17 the staff's recommendation, that is equally
18 applicable to a large company like Utilities Inc.
19 In order to attract, as it says here, in order to
20 attract competent directors and officers, and that
21 certainly benefits the customers. And we're not
22 talking about mom and pops, like Mr. Reilly just
23 talked about, we're talking about a large
24 multi-state company that needs D&O insurance to
25 protect its directors and officers. And in order to

1 attract the quality of people that you want to be a
2 director and a officer of your large public company.

3 It's not like, you know, I'm Joe Blow and
4 I own my own system, and I'm going to get D&O
5 insurance. This is a large company that recruits
6 outside, that recruits everywhere to get the best
7 talent that it can get as a director and an officer.
8 And you have got to admit that having top quality
9 directors and officers is a benefit to the
10 customers.

11 **COMMISSIONER BALBIS:** Another question --
12 thank you, Mr. Friedman.

13 Another question for staff. You listed in
14 your staff analysis of the issue basically two
15 reasons for agreeing that these costs should be
16 passed along, and they are basically just two recent
17 decisions made by the Public Service Commission. So
18 the question is taking that out and looking at the
19 information that you have and you have reviewed in
20 this case, do you feel that there is a benefit to
21 the ratepayers, regardless of what was done in the
22 past, in this case is it a benefit to the ratepayers
23 for them to obtain this insurance and pass it along
24 to the ratepayers?

25 **MR. WILLIS:** Commissioners, let me answer

1 that one. And let me tell you why this is difficult
2 for staff. We recommended in the electric cases
3 against the inclusion of D&L insurance and the
4 Commission voted against staff's recommendation to
5 include 50 percent to the stockholders and
6 50 percent to the ratepayers.

7 Staff has taken the position in the past,
8 and they would in this case I'm sure, that we don't
9 believe there is a benefit to the ratepayers. That
10 is problematic to us, because we try and be very
11 consistent between industries. I think it's very
12 important that the Commission is consistent between
13 industries. I personally don't see any reason why
14 you would exclude D&L insurance for water and not do
15 it for the electricians.

16 All staff is trying to do with this
17 recommendation, and that's why we presented it this
18 way, is to be consistent with Commission practice on
19 how the Commission voted in those electric cases,
20 which did go to hearing, had testimony that
21 convinced the Commission body that DOL insurance
22 should be split. Even though we may disagree with
23 that, that is beyond the point. It doesn't matter.
24 It's what the Commission has voted to do, it's what
25 the Commission practice has been since that point in

1 time. And that's what staff is attempting to do
2 here, is to be very consistent between industries on
3 how we are presenting the issues.

4 **COMMISSIONER BALBIS:** Mr. Chairman, if I
5 may, to respond to that. I appreciate that, and I
6 think that is the type of information that I know I
7 personally would like to have in the recommendation,
8 that although staff may disagree that it provides a
9 benefit to the ratepayers, the Commission's
10 decisions in the past have been such. I mean, I
11 would like to take all that into account, because
12 that makes a difference to me personally what
13 professional staff has reviewed this and all the
14 other cases in the past, however many years, can
15 give that information to us to make the decision.
16 But, thank you for that.

17 **CHAIRMAN GRAHAM:** Commissioner Edgar.

18 **COMMISSIONER EDGAR:** Thank you.

19 And I, as well, appreciate the response
20 that Mr. Willis shared with us. I was just going to
21 say, thinking back a little bit, the two electric
22 cases that have been cited, I was going to point
23 out, although I think Mr. Willis just did that those
24 were after full evidentiary hearings.

25 And my recollection -- and I did

1 participate in both of those -- my recollection,
2 although I don't remember the specifics of all of
3 the evidence on cases that involved hundreds of
4 separate issues, but my recollection on that one was
5 that the Commission did hear sworn testimony on both
6 sides of that issue, and that the decision of the
7 majority at the time was that there was conflicting
8 testimony, and that the 50/50 split was a fair,
9 just, and reasonable approach both to the directors
10 and officers and shareholders and to the consumers
11 and customers. And that there were instances that
12 could be surmised, hypothetically, where if there
13 were lawsuits they could be very expensive even for
14 litigation costs and other costs that could, if they
15 went the wrong direction with the decisions, then
16 costs flow to the consumers.

17 Realizing that much of that is a
18 hypothetical discussion, but, again, the point being
19 those decisions were made after sworn testimony,
20 sworn conflicting testimony, and the decision by the
21 full Commission that in those instances it was fair,
22 just, and reasonable to do the 50/50 split.
23 Certainly other people could have made a different
24 decision, different testimony, et cetera, but I
25 think that is a fair characterization of the

1 discussion that the Commission had at the time, and
2 the situation that we were in at the time.

3 This clearly can be distinguished in
4 addition to the fact that it is a water case and not
5 an electric case, but certainly can be distinguished
6 by the very simple fact that we have not heard full
7 evidentiary testimony, as Mr. Friedman has pointed
8 out to us. So with just that little bit of
9 historical characterization, I still think that a
10 50/50 split was a fair, just, and reasonable
11 approach. And when lacking evidentiary testimony,
12 because we are in a different forum procedurally at
13 this point, a different procedural position, that
14 that is a fair, just, and reasonable approach,
15 candidly, unless I hear a reason that distinguishes
16 that. So that's kind of where I'm at right now.

17 **CHAIRMAN GRAHAM:** Commissioner Brown.

18 **COMMISSIONER BROWN:** Thank you.

19 And thank you, Commissioner Edgar, for
20 point that out with regard to the evidentiary
21 hearing. I would love to hear more about this
22 particular issue because it is not vetted, and I
23 haven't heard -- the burden is on the utility
24 company to justify its costs, and we look at them
25 very seriously and very carefully, and I am just not

1 convinced that there is a direct benefit to the
2 ratepayers. I can understand in certain
3 circumstances there could be hypotheticals, but I
4 do -- right now, where I'm at right now, based on
5 the recommendation and what we are hearing today at
6 this PAA, I can't get there.

7 I did also want to point out that the Aqua
8 case that we just recently found in favor of the DOL
9 is protested, and the most recent 2009 Aqua case
10 actually disallowed, which had a full evidentiary
11 hearing. So the most recent water case that we had
12 of a similarly sized utility, we disallowed those
13 expenses. So I wanted to point that out.

14 **CHAIRMAN GRAHAM:** Does someone want to
15 make a motion on 16, or are we going on to 18?

16 **COMMISSIONER BROWN:** I would move to deny
17 staff recommendation on Issue 16.

18 **CHAIRMAN GRAHAM:** Is there a second?

19 It dies for lack of a second.

20 **COMMISSIONER BALBIS:** Actually, before we
21 go to the second, I know it's not in accordance with
22 the rules of order, I just want staff to verify what
23 Commissioner Brown indicated, that in a 2009 Aqua
24 case that it was disallowed when it went to the full
25 evidentiary process.

1 **MR. FLETCHER:** It was in the 2008 case.
2 We recommended the Commission allow to deny any
3 sharing. It was in the recent 2010 that we relied
4 on the two orders that we have in this
5 recommendation to have the split. My understanding
6 is that that issue was a PAA, but it is deemed
7 stipulated because it was not part of a specific
8 protest by any party in the 2010 case.

9 **MR. YOUNG:** Mr. Chairman, because we have
10 not gone to hearing yet on the issue, although that
11 bill was a protest and the issue has not been
12 raised, I hesitate to say it is being stipulated at
13 this time.

14 **COMMISSIONER BALBIS:** And my question,
15 again, is not on the current Aqua case, it is more
16 on when we went through the full evidentiary process
17 in the past when this issue was addressed was it
18 disallowed.

19 **MR. FLETCHER:** The last time for a water
20 case, yes, it went to a post-hearing decision, and
21 it was found in that case -- in a water case, I
22 can't recall, but I'm thinking that it was Utilities
23 Inc. of Florida in their 2002 rate case, where for a
24 water case it went post-hearing decision by the
25 Commission and it was disallowed.

1 **COMMISSIONER BALBIS:** Okay. And I think
2 that is important for me personally, because I
3 always want to be consistent and provide consistent
4 regulatory practice. And if the last time that we
5 have gone through an evidentiary proceeding on a
6 water case that the Commission disallowed it, and
7 the fact that staff has indicated that they don't
8 feel there is a benefit to the ratepayers, you know,
9 we have a situation here where we are not in an
10 evidentiary proceeding, and we rely on the
11 information that is provided by the utilities and,
12 therefore, the onus is on them. And I haven't
13 heard, other than the brief discussion, any real
14 material reason why there is a benefit to the
15 ratepayers. So given that we are not in an
16 evidentiary proceeding, and the fact that the last
17 time we were we denied the inclusion, then I would
18 second the motion.

19 **CHAIRMAN GRAHAM:** Mr. Young.

20 **MR. YOUNG:** Mr. Chairman, I stand to be
21 corrected, but I feel like since the motion has been
22 seconded, I might want to step back.

23 **CHAIRMAN GRAHAM:** Sounds good.

24 The motion has been moved and seconded.
25 Any further -- Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Again, a spirited
2 discussion and not an issue that I necessarily
3 earlier on expected it. I do with some regret,
4 though, have to take some exception, Commissioner
5 Balbis, to some of the discussion that you have had
6 speaking just from my own perspective. Which is,
7 again, having participated in that Aqua evidentiary
8 hearing and vote and decision back in -- was it '09?
9 Not the most recent one, but the one prior. The
10 years are a blur.

11 **MR. FLETCHER:** I believe that was in '09.

12 **COMMISSIONER EDGAR:** I think so. But,
13 regardless, I will not speak to the decision that we
14 most recently made, recognizing that we are
15 currently in litigation, and those issues will be
16 coming before us again with evidentiary testimony
17 and documentation. However, speaking to the earlier
18 decision of the Commission on Aqua, I would just
19 have to say that there were many, many, many things
20 that distinguish that case and the performance of
21 the company, and findings that the Commission made
22 as to customer satisfaction, unsatisfactory
23 performance, unsatisfactory -- some characteristics
24 of water quality, et cetera, et cetera, et cetera.

25 And so from my own perspective, I have to

1 say I agree completely that I want to try to be
2 consistent in my regulatory approach and my votes,
3 but I also believe that sometimes a decision needs
4 to be looked at as a whole. And that when you parse
5 out individual very separate issues from a larger
6 case and a larger decision, some of the dynamics and
7 some of the subtleties may be lost.

8 So from my own perspective, using the Aqua
9 case as a -- that 2009 as a precedent setting as to
10 how we are going to address things regulatory in the
11 future is a little bit of a concern, because I
12 believe there are very, very, very, many individual,
13 hopefully unique factors that went into that
14 decision.

15 **CHAIRMAN GRAHAM:** We have a motion on the
16 floor that has been moved and seconded.

17 Any discussion on the Brown amendment, the
18 Brown motion?

19 Seeing none. All in favor say aye.

20 (Vote taken.)

21 **CHAIRMAN GRAHAM:** Those opposed?

22 (Vote taken.)

23 **CHAIRMAN GRAHAM:** And it fails. Can I get
24 somebody to make another motion?

25 Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Mr. Chairman, I would
2 move the staff recommendation on Issue 16 with the
3 recognition that the result of that would be the
4 50/50 split.

5 **CHAIRMAN GRAHAM:** It has been moved and
6 seconded, the staff recommendation on Issue 16. Any
7 further discussion? All in favor say aye.

8 (Vote taken.)

9 **CHAIRMAN GRAHAM:** Any opposed?

10 (Vote taken.)

11 **CHAIRMAN GRAHAM:** The issue passes. Okay.
12 We have Issue 18 and 30 left. Go ahead.

13 **MR. BUYS:** Commissioners, Issue 18
14 concerns the rate case expense. In this issue staff
15 is recommending the appropriate amount of rate case
16 expense of \$329,870 in annual rate case expense
17 should be reduced by \$22,338 for water and \$7,370
18 for wastewater.

19 **CHAIRMAN GRAHAM:** Commissioner Brown.

20 **COMMISSIONER BROWN:** Thank you.

21 And, Mr. Young, if you could speak to what
22 you just had passed out. This arose from a
23 discussion that we had during a briefing. As I
24 stated in the previous issue that we just
25 deliberated over, in water cases every cost matters.

1 In every case, electrical and water, but in water
2 the customer puts so much significantly smaller than
3 the big electrical cases that we hear that these
4 rates case expenses can be felt significantly more
5 so on a customer bill. That being said, I put a lot
6 of scrutiny into these rate case expenses and had a
7 lot of questions.

8 And in a recent water PAA case that we
9 just discussed, staff cited a 2009 August billing
10 rate survey for Florida law firms conducted by the
11 Florida Bar. Although I do believe it was a sample,
12 the average partner or law firm billing rate was
13 \$247 an hour, and that was in the previous staff
14 recommendation. I would just like to hear what the
15 results are for the most recent 2010 survey for the
16 benefit of the Commission.

17 **MR. YOUNG:** Commissioners, this was handed
18 to you as the Florida Bar -- we printed this off the
19 Florida Bar's website. It is the results from the
20 2010 Economic Law Office Management Survey, and was
21 dated February 2011. What was asked is to -- for
22 information purposes to try to track down the
23 average billing rate for 2010. And on Page 8, which
24 is an excerpt from the total report dealing
25 specifically with the hourly rate for lawyers, if

1 you look at the pie chart on 4A, a comparison
2 between 2008 and 2010 Economic and Law Office
3 Management Survey was the average or standard hourly
4 rate.

5 If you look at the pie chart, if you look
6 at the chart, the chart basically has 60 percent of
7 the lawyers in the State of Florida, based on a
8 response to the survey, who responded to the survey,
9 said that on the average 60 percent bills more than
10 \$250 an hour. Between 200 to \$300 an hour.

11 Now, in order to compute the average, what
12 staff did was basically for two columns we took 201,
13 251, and 301. Those are the hourly rates. Add them
14 together, divided them by three on one column, and
15 then on the other column we took -- on the high
16 range we took 251, 301, and 351 and divided it by
17 three, and we came up with an average between \$251
18 to \$301 on an hourly basis that the lawyers bill.
19 Again, this is just -- this is based on a survey
20 that the lawyers responded to. It's not all the
21 lawyers in the State of Florida who responded to the
22 survey.

23 **COMMISSIONER BROWN:** And the crux of this
24 was a result of what is deemed a reasonable amount
25 of -- or what is a reasonable fee for legal fees for

1 the ratepayers to incur. Not what is reasonable for
2 the attorneys, but what is reasonable in terms of
3 the ratepayers bearing the cost. And I notice that
4 in the rate case expenses, the legal fees seem to be
5 a high expense. And, therefore, I asked staff to go
6 ahead and provide a response about what the
7 percentage of the rate case expenses are the legal
8 fees.

9 **MR. FLETCHER:** Yes, Commissioner. On Page
10 44 of staff's recommendation you have a delineation
11 of the breakdown of all the components in staff's
12 recommended total rate case expense of \$329,870.
13 Now, for the legal it represents about 26 percent of
14 the total recommended rate case expense. If you
15 were to look at it in terms of what impact that has
16 as percentage of the total revenue requirement, it
17 is about 3/10ths of a percent of the total revenue
18 requirement for this company. And as you look to
19 what it is as far as the percentage of the total net
20 revenue increase, it's about 2.38 percent of the
21 total when you combine water and wastewater, the
22 increase for water and the decrease in wastewater,
23 it represents a little over 2 percent.

24 **COMMISSIONER BROWN:** And what is that
25 dollar impact on a typical customer bill?

1 **MR. FLETCHER:** It's kind of hard to break
2 that down as far as the rate structure goes because
3 of the split between BOC. I can tell you it would
4 not be material because the revenue requirement
5 portion is only 3/10ths. And I can tell you that
6 the base facility charge in this case, as far as the
7 rate structure that staff has recommended, is about
8 20 percent for that, so it's kind of hard to tell,
9 because of the three-tiered rate structure, but it
10 would be minimal.

11 **COMMISSIONER BROWN:** Thank you. And this
12 is more for just a discussion and to see what the
13 Commissioners feel about legal fees on rate case
14 expenses. My personal dealings, being from local
15 government, I know some of you also dealt with local
16 government, or worked for local government, was that
17 we used to have contracted rates that the city
18 council and county commission would approve. They
19 were discounted. They were less than the average
20 sample here. And we continued this, municipalities
21 and counties continue to do that. Any overage of
22 that discounted rate would have to go before the
23 city council or the county commission for approval,
24 or the law firm would have to eat those costs.

25 So when I first came to the Commission it

1 struck me as kind of funny that the utilities could
2 charge whatever they normally charge private
3 companies when ratepayers are actually paying for it
4 rather than the shareholders. So I just wanted it
5 for discussion purposes. I'm not making any
6 recommendation on disallowing the legal fees. I
7 just wanted to hear where everybody else was at on
8 the billable hourly rate, because we start to see
9 some billable hourly rates that can creep up to
10 \$400, \$500 an hour, and I wanted it for discussion
11 purposes.

12 **CHAIRMAN GRAHAM:** Okay. Commissioner
13 Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr.
15 Chairman.

16 I agree, I think this is important to look
17 at. I think any costs that are passed on to
18 ratepayers should be scrutinized. I also understand
19 that legal professional consulting services are not
20 inexpensive. So where that number is, I don't know.
21 I don't know based on the information provided. I
22 agree with Commissioner Brown, this is something
23 that we should be concerned about and be vigilant,
24 along with staff, to make sure that only costs that
25 are prudent should be passed on to the ratepayers.

1 So I'm glad you brought this up, and it's something
2 that I will continue to look at.

3 **CHAIRMAN GRAHAM:** Okay. Issue 18. Are we
4 making a motion on this or are we going to Issue 30?

5 Issue 30.

6 **COMMISSIONER BALBIS:** Mr. Chairman, I
7 would have made a motion on Issue 18.

8 **CHAIRMAN GRAHAM:** Sure.

9 **COMMISSIONER BALBIS:** I move staff's
10 recommendation on Issue 18.

11 **CHAIRMAN GRAHAM:** It has been moved and
12 seconded, staff recommendation on Issue 18.

13 Any further discussion on 18? Seeing
14 none, all in favor say aye.

15 (Vote taken.)

16 **CHAIRMAN GRAHAM:** Any opposed?

17 By your action, you have approved staff
18 recommendation on 18.

19 Issue 30.

20 **MR. BUYS:** Commissioners, Issue 30 is
21 staff's recommendation should the utility be
22 required to provide proof within 90 days of an
23 effective order finalizing this docket and proving
24 that it has adjusted its books for all applicable
25 NARUC Uniform System of Accounts associated with

1 Commission-approved adjustments. And staff is
2 recommending yes.

3 **CHAIRMAN GRAHAM:** Commissioner Brisé.

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

6 What is the penalty, or is there any
7 penalty if they don't comply within 90 days?
8 Because it seems like we have had this issue in the
9 past, and it is an ongoing issue. So I would like
10 to see what we can do to strengthen that so that
11 there would be a penalty in place in case there is
12 noncompliance in 90 days.

13 **MR. FLETCHER:** Upon the filing of a final
14 order in 90 days, staff can bring back a
15 recommendation to the Commission if the utility
16 fails to comply with that. And the proof that we
17 are looking for would be the actual general ledger
18 printouts that the books and records have been made,
19 the adjustments that the Commission have approved
20 have been made. So we can go with the monitoring
21 more closely as far as their burden of proof and
22 basically a general ledger.

23 Not just these are the journal entries
24 that we plan to make, an actual printout from the JD
25 financial system that has it up there. There's

1 printouts that you can make from these software
2 packages proving that it has been made to their
3 general ledger. And if not, then staff can make a
4 recommendation back to the Commission for failure to
5 comply, because they are put on notice with this
6 order.

7 **MR. WILLIS:** And, Commissioner Brisé, as
8 far as the fine goes, the recommendation that the
9 staff would bring back to you would be a violation
10 of this order, which would be a show cause order
11 recommending fines at that point for failure to
12 comply with the order.

13 **COMMISSIONER BRISÉ:** Okay. I think I
14 would be comfortable with that, providing that we
15 are closely looking and monitoring for the 90 days.
16 You know, and 90 days is 90 days.

17 **MR. WILLIS:** Yes. And I think it is
18 pretty clear what the company has to produce.

19 **COMMISSIONER BRISÉ:** Thank you.

20 **CHAIRMAN GRAHAM:** Was that a motion?

21 **COMMISSIONER BRISÉ:** With that I move
22 staff recommendation on Issue 30.

23 **CHAIRMAN GRAHAM:** It has been moved and
24 seconded, staff recommendation on Issue 30.

25 Any further discussion? Seeing none, all

1 in favor say aye.

2 (Vote taken.)

3 **CHAIRMAN GRAHAM:** Any opposed? By your
4 action you have approved staff recommendation on
5 Issue 30.

6 I believe that sums up all the issues.
7 That being said, we are adjourned. And we are going
8 to start the hedging workshop. We will start that
9 at a quarter after 3:00.

10 (The Commission Conference concluded at
11 1:53 p.m.)

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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
6 Services Section, FPSC Division of Commission Clerk, do
7 hereby certify that the foregoing proceeding was heard
8 at the time and place herein stated.

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

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

19 DATED THIS 7th day of October, 2011.
20

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24
25


JANE FAUROT, RPR
Official FPSC Hearings Reporter
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