

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 110264-WS

APPLICATION FOR INCREASE IN WATER
AND WASTEWATER RATES IN PASCO
COUNTY BY LABRADOR UTILITIES, INC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 9

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

DATE: Tuesday, March 27, 2012

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

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

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P R O C E E D I N G S

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2 **CHAIRMAN BRISÉ:** Good afternoon. We are
3 reconvening this afternoon, and we're going to begin
4 with Issue 9, Docket Number 110264-WS. And if I
5 understand properly, we have participation from some
6 individuals in the public, but we will let staff
7 provide some direction.

8 **MR. SPRINGER:** Good afternoon, Commissioners.
9 I'm Michael Springer with Commission staff.

10 Item 9 is staff's recommendation regarding
11 the application for increase in water and wastewater
12 rates in Pasco County by Labrador Utilities,
13 Incorporated. Staff has an oral modification which has
14 been previously provided to the Commissioners and all
15 parties.

16 The Office of Public Counsel, the utility,
17 Forest Lake's Co-op, as well as the customers are here
18 to address the Commission. Staff is prepared to answer
19 any questions the Commission may have.

20 **CHAIRMAN BRISÉ:** Thank you very much.

21 **MR. HILL:** And, Mr. Chairman, if I may. Mr.
22 Rehwinkel on behalf of the Public Counsel has a list of
23 the customers that wish to speak.

24 **CHAIRMAN BRISÉ:** Thank you.

25 All right. At this time I think it would be

1 appropriate to hear from the public first, and we are
2 going to do that. Here are the instructions. We are
3 going to allot three minutes per individual, and when
4 you are up speaking, please be sure to state your name
5 so that we have that information.

6 The lights, the green light means you are in
7 good condition to keep on talking. When the yellow
8 light comes on, then it's time for you to probably
9 begin to wrap it up. When the red light comes on you
10 should stop speaking. If it's blinking, the podium is
11 probably going to start shaking and moving, so it's
12 time for you to leave that area. But in all
13 seriousness, when the light starts blinking you should
14 have stopped.

15 I'll give you a second. Mr. Rehwinkel is
16 going to call you up to provide -- I mean, actually
17 call you up to speak, and we trust that you will adhere
18 to the order that he calls you up in. And we trust
19 that you will avoid making noises, and booing, or any
20 type of thing of that nature.

21 We see that you have signs. You are
22 definitely welcome to raise your signs to express
23 whatever is on your mind, and that is perfectly
24 reasonable with us. However, we trust that you will
25 respect the proceeding by not making audible noises.

1 Okay. Yes.

2 **MR. REILLY:** One small request. These people
3 have come a long way, and I did tell them of the
4 Chairman's willingness to have them speak and
5 accommodate them and we do thank you for that. We had
6 thought there were about 50 people showing up, but we
7 did say whether three minutes or five minutes would be
8 allowed would be kind of depending on how many people
9 actually wanted to get up and speak.

10 So they kind of elected to tone down the
11 number of people speaking with the hope that we would
12 try to achieve more towards the five minutes. They
13 have only -- they've picked just seven people to speak,
14 so I was just going to make a request that you might
15 give consideration to broadening it to the five minute
16 leeway instead of the three, since they have kind of
17 agreed to limit the number of people speaking.

18 **CHAIRMAN BRISÉ:** Okay. I will meet you
19 halfway, so we will do four minutes, okay? So with
20 that we will do four minutes per individual. Four
21 times seven is, what, 28, so that will be 28 minutes of
22 public testimony.

23 So at this time I think we are prepared to
24 move into the public testimony or public participation.
25 I don't know if any of the other parties have something

1 that they have to say at this time.

2 If not, then, Mr. Rehwinkel.

3 **MR. REHWINKEL:** Thank you, Mr. Chairman.

4 Charles Rehwinkel, Deputy Public Counsel. And I
5 appreciate your leeway.

6 If I could add one more thing to what
7 Mr. Reilly said. The first witness that we will call
8 is Beverley Culliford, and I believe she is somewhat
9 designated as more of a spokesperson for the group,
10 although all the witnesses you will hear will be
11 testifying. So perhaps if she had remarks that went
12 closer to five minutes, others might have less to say,
13 so I would beg your indulgence for some leeway there.

14 And with that, Mr. Chairman, the Citizens
15 call Beverley Culliford to testify.

16 **CHAIRMAN BRISE:** The only thing I would like
17 to add as you come up is that if something has been
18 said already, then please refrain from saying the same
19 exact thing again.

20 **BEVERLEY CULLIFORD**

21 appeared as a witness and, swearing to tell the truth,
22 testified as follows:

23 **DIRECT STATEMENT**

24 **MS. CULLIFORD:** I'm Beverley Culliford and I
25 am President of the Forest Lake Estates Cooperative.

1 First, I'd like to thank you for giving us
2 the opportunity to express our views on the proposed
3 rate increase by Labrador Utilities for the water and
4 wastewater services provided to our community. It
5 should have become clear over the course of reading and
6 listening to the tapes from the meeting held at our
7 clubhouse on January 18th that the residents are
8 totally dissatisfied with the quality of service that
9 has been delivered by this utility over many years.

10 Every two years this utility presents you
11 with a request for an increase of rates without having
12 proven that they have complied with or provided the
13 improvements upon which the last increase was based.
14 The increase executed in November of 2009 was settled
15 at 62.8 percent for water and 26.9 percent for
16 wastewater. Our objections to this new increase remain
17 the same as previously argued. The quality of water
18 product and wastewater service is unsatisfactory. Over
19 the years the residents have made numerous complaints
20 regarding the quality of the water being provided.
21 Residents have to purchase either expensive water
22 filter systems or bottled water to have a drinkable
23 supply.

24 The operational condition of the wastewater
25 treatment plant facilities are unsatisfactory. This is

1 the worst offender. The noxious odors which emanate
2 from the plant make the area almost around it
3 unpleasant. In the last three weeks the stench has
4 been so nauseating that residents within three blocks
5 of the plant could not sit outside and enjoy the great
6 weather. Walking in that area was not possible as the
7 odor made people ill.

8 It took ten days for an action to be taken.
9 It appears a feed line to the vioxide (phonetic)
10 malfunctioned. If there is a person there every day,
11 why did it take so long to repair? In the memorandum,
12 Labrador states that a swampy area at the back of the
13 community and chicken farms caused the odor. The
14 chicken farm was closed eight years ago, and the
15 residents on Vele (phonetic) who back upon the wildlife
16 preserve do not experience odor from it. This is
17 another deflection on their part to own up to their
18 responsibility to maintain a well-run facility. Our
19 realty company has reported loss of sales because the
20 odors the perspective buyers smell. They just say no
21 way we're buying in here.

22 The utility's efforts to address customer
23 concerns are unsatisfactory. After over ten years of
24 complaints being made and seeing no discernable change,
25 residents have become frustrated at the lack of

1 improvement or believing that the utility will make an
2 effort to correct the odors. The Cooperative has
3 initiated a lawsuit against Labrador Utilities over the
4 failure to properly maintain the system, and this
5 remains within the courts at this time.

6 The overall service provided by the utility
7 to its customers is unsatisfactory. We are a captive
8 consumer group. Even though we are experiencing poor
9 and unsatisfactory service and can see no improvement
10 in the future, we cannot just go out and look for a new
11 facility as would be possible if this were happening in
12 any other area of business.

13 In an undated letter to customers from
14 Patrick Flynn, it states that the rate increase is so
15 that they, quote, may continue to make the investments
16 that affect the quality of our water and wastewater
17 service, unquote. Since the last increase there has
18 been no noticeable improvement, even though that was
19 the purpose of that increase.

20 Three areas of increased costs were quoted,
21 but no substantiating background was given to support
22 the statements. One mentions the renewal of the water
23 use permit. When calculated out over the 20-year term
24 of the permit, it is a cost of 1/1000th of a cent per
25 month per customer. Figures given in the letter are

1 understated for the cost of water at \$28 and for
2 wastewater at 47 as the actual request is for \$42 and
3 \$65 respectively.

4 Florida Statutes allow for a fair return on
5 investment. In this economy a 10 percent return is not
6 realistic. Social Security had no increase for two
7 years and in the last year only three percent. So how
8 do seniors manage if the utilities increase by over
9 25 percent?

10 A business should be held accountable for the
11 service they provide to their customers. A business
12 should not be rewarded for poor and unacceptable
13 service. Labrador Utilities is a business and should
14 be required to provide the services for which they are
15 being paid, not receive an unearned increase. As one
16 of our signs says, "Service first, then profit." Thank
17 you.

18 **CHAIRMAN BRISÉ:** Thank you very much. As you
19 noted -- yes, this would be the time. Please come
20 back.

21 **COMMISSIONER EDGAR:** I'm so sorry. I was a
22 little slow on the uptake there, Ms. Culliford. I did
23 want to ask you one or two questions if that's okay.
24 And thank you for coming today and to those that have
25 joined you to speak to us.

1 In your comments that you have given us, in
2 the written version you opened up with some comments
3 about an odor from a plant, and then you go on to say
4 that the customers are experiencing poor and
5 unsatisfactory service. Could you elaborate a little
6 bit more on what about the service you or others that
7 you are helping to represent as a customer consider to
8 be unsatisfactory?

9 **MS. CULLIFORD:** Well, when you can't sit
10 outside in Florida, you can't use your lanai because
11 the odor is so strong, and people don't want to walk
12 because the odor is so strong. I know we have a
13 speaker after me who will be addressing that issue
14 because he lives in that surrounding area, but there
15 does seem to be or has been -- I have been there 22
16 years, and I know they haven't owned it for 22 years,
17 but since they have owned it we have had complaints and
18 we have complained.

19 And, you know, it gets frustrating. Who do
20 you go to? If they don't listen, we move up to the
21 next step. We have taken what we feel is a very
22 serious step right now as we have issued the lawsuit,
23 because that seems to be the only way that we feel we
24 are going to get attention.

25 **COMMISSIONER EDGAR:** So if I may, to make

1 sure that I'm clear, the unsatisfactory service
2 primarily -- in your terms primarily is regarding a
3 very strong odor that is clearly unpleasant and
4 constant.

5 **MS. CULLIFORD:** Yes.

6 **COMMISSIONER EDGAR:** Okay.

7 **MS. CULLIFORD:** And we have a speaker after
8 who will suggest a solution to it.

9 **COMMISSIONER EDGAR:** Thank you.

10 **CHAIRMAN BRISÉ:** Ms. Culliford, don't go yet.
11 I just want to make sure that -- if any of the
12 Commissioners have any questions for you.

13 All right. Thank you very much for speaking
14 with us this afternoon.

15 **MS. CULLIFORD:** Thank you.

16 **CHAIRMAN BRISÉ:** Before you move forward, Mr.
17 Rehwinkel, what's going to occur, and we provided a
18 little bit more time for Ms. Culliford, as was
19 requested by Mr. Rehwinkel, but as you come up to
20 speak, when your red light comes on as you saw there,
21 your mike will come off. So please understand that
22 four minutes is four minutes, okay? Thank you.

23 **MR. REHWINKEL:** Thank you, Mr. Chairman. The
24 Citizens call Paul Hannon.

25 **PAUL HANNON**

1 appeared as a witness and, swearing to tell the truth,
2 testified as follows:

3 **DIRECT STATEMENT**

4 **MR. HANNON:** Good afternoon. My name is Paul
5 Hannon. I reside at 5842 Naples Drive in Forest Lake
6 Estates in Zephyrhills. Thank you for allowing me to
7 speak this afternoon in regard to Labrador's rate
8 increase request.

9 As vice-president of the Forest Lake Estates
10 Non-Shareholders Association, I'm speaking on their
11 behalf. Our association, locally referred to as FLENS,
12 which is an acronym for our organization, represents
13 547 land tenants in Forest Lake Estates.

14 Our association is vehemently opposed to the
15 rate increase request by Labrador Utilities for both
16 the water and the wastewater treatment services. As
17 you are well aware, the Commission is charged with
18 setting rates that are just, reasonable, compensatory,
19 and not unfairly discriminatory. Labrador by its own
20 definition is obliged to deliver clean reliable water
21 and wastewater services at the lowest possible cost.

22 First, let's address the just and
23 reasonableness of the requested rates. In 2009,
24 Labrador requested and was granted a substantial
25 increase. They claimed they needed the increase so

1 that they could update their plant. Now the utility is
2 back again and seeking an unbelievable 30-plus percent
3 increase in the overall adjustments. This increase
4 percentage to us sounds neither fair nor reasonable.
5 Using the reasonable person common law principle, which
6 I'm sure you're all familiar, is reasonable 30 percent?
7 We think not.

8 The reasonable person recognizes that
9 supplies, equipment, and manpower are not static costs
10 and they are subject to change. However, who among us
11 have experienced 30 percent increases in income, or
12 cost of living adjustments, or what have you? None of
13 is in our 55-plus community have seen increases in
14 Social Security benefits in 2010 or 2011 and just a
15 modest percentage this year.

16 The utility would have us believe that
17 operating the plant is at a loss. We find that
18 unbelievable. For years Labrador has provided water
19 that can only be described as a cut above common gray
20 water. It's dishonest for them to call it drinking
21 water. Our community keeps the Pasco County economy
22 going with its purchase of bottled water, water
23 filtering systems, and other alternatives.

24 Our association and many of our individual
25 members have filed numerous complaints about the

1 services provided by Labrador. As to wastewater,
2 Labrador has failed miserably. I walk every morning,
3 and I can tell you when I hit the street where the
4 sewage plant is located it changes from a walk to a
5 run.

6 We understand that the park management at the
7 co-op has instituted a lawsuit, and this lawsuit has
8 been pending for some time. Perhaps Labrador could
9 spend their time and money and other resources fixing
10 the problem rather than litigating it.

11 In summary, we recognize that costs cannot
12 remain stagnant. We feel, however, that we should only
13 be responsible for the true cost and not for creative
14 accounting tricks, operational and management
15 inefficiencies, and corporate greed. We also believe
16 that Labrador has not lived up to their obligation to
17 provide good service. Until Labrador delivers on what
18 a reasonable person could call drinkable water, the
19 Commission should deny their request. Thank you for
20 the opportunity to speak.

21 **CHAIRMAN BRISÉ:** Thank you, Mr. Hannon.

22 I don't know if any Commissioners have
23 questions for you.

24 Okay. Seeing none, thank you very much.

25 **MR. REHWINKEL:** Mr. Chairman, the Citizens

1 call Joseph McDonald.

2 **JOSEPH McDONALD**

3 appeared as a witness and, swearing to tell the truth,
4 testified as follows:

5 **DIRECT STATEMENT**

6 **MR. McDONALD:** Thank you for allowing me to
7 speak to you today. My name is Joe McDonald. I'm a
8 resident of Forest Lake Estates and have been since
9 2007. I live at 6047 Utopia Drive. That's the street
10 adjacent to the Labrador sewer plant, and I'm here to
11 ask the Public Service Commission to deny the proposed
12 rate increase. In particular, I'd like to speak on the
13 odor emanating from the Labrador sewer treatment plant.

14 The odors released by this process are a
15 daily issue. Some days are better than others, though
16 I believe the days -- the better days are due more to
17 the wind currents than the treatment efficiencies or
18 process control. On the worse days the odor is
19 suffocating. From my home relief only comes from
20 leaving. Closing the house just does not keep the
21 odors out and actually makes us prisoners of the
22 problem.

23 There are days when the odor travels much
24 farther than my street. In fact, several nights last
25 week the suffocating odor covered an area several

1 hundred homes wide reaching all the way to the lake
2 five streets over. Calls for help went unanswered for
3 three days as Labrador had no personnel on weekend
4 duty. Their 800 number was actually out of service for
5 a week.

6 This problem is persistent. It has been
7 going on for so long that homeowners are leaving.
8 Please consider this: On Utopia Drive in the area
9 adjacent to the plant there are 23 building lots. On
10 those lots are 20 homes. Of those, seven homes are or
11 were for sale representing 35 percent of the homes in
12 that area. Adding in the three undeveloped lots, that
13 represents 43 percent of the lots in that area on which
14 people don't want to build or want to sell and move
15 out.

16 By way of comparison, the entire Forest Lake
17 community has 894 lots of which 83 are for sale
18 representing only 9.8 percent homes for sale, compared
19 with 43 percent in the area of the sewer treatment
20 plant. And keep in mind that of all these lots there
21 are only four undeveloped lots. Three of those are
22 right on Utopia adjacent to the sewer treatment plant.

23 People won't buy here; people won't build
24 here, and a significant number of those there want to
25 sell and leave. And it's all because of this terrible

1 odor coming from this treatment process. As you
2 deliberate this rate increase, please consider that
3 approving a rate increase will be, in effect, approving
4 the status quo as acceptable when it simply is not.
5 Our community has been patient. We've requested
6 meetings and filed complaints. We have even filed a
7 suit to force Labrador to provide adequate services for
8 the rates already in effect, yet over all these years
9 we have made no progress in getting Labrador to address
10 the issue.

11 With all due respect, please send Labrador
12 packing. They can fix the system if they choose to;
13 they can come back to the Commission for rate
14 adjustments once the problem is solved. But I think
15 it's just not right, it's not fair, and it's not
16 appropriate to award a significant rate increase for
17 this system that is not working. Please join us in our
18 efforts to insist on quality sewage treatment for the
19 residents of Forest Lake who are entirely at your
20 mercy. Our only real avenue for forcing Labrador to
21 address this problem is your denial of these requested
22 rate increases.

23 Thank you very much.

24 **CHAIRMAN BRISÉ:** Thank you, Mr. McDonald.

25 I don't know if Commissioners have any

1 questions for Mr. McDonald?

2 Thank you very much, Mr. McDonald.

3 **MR. REHWINKEL:** Mr. Chairman, the Citizens
4 next call Eva Rush.

5 **EVA RUSH**

6 appeared as a witness and, swearing to tell the truth,
7 testified as follows:

8 **DIRECT STATEMENT**

9 **MS. RUSH:** I've Eva Rush, Forest Lake
10 Estates, where I have lived almost 20 years. First, I
11 want to say thank you for giving of your time to listen
12 to us.

13 In the last ten years with the utilities
14 being sold to private concerns, I have watched prices
15 go from \$15 to \$92.04 interim rates for 3,000 gallons
16 of water. In that time, water to drink has gotten
17 worse and the sewer, at times the smell is horrendous.
18 I show to you just as a small amount of work done
19 during these years and to date to try to appeal to
20 somebody that will help us. This is what Paul -- this
21 is very minor. I have boxes and boxes at home of
22 letters and everything trying to reach somebody that
23 would help us.

24 We realize Labrador needs a profit. We are
25 all business people here, but if my husband and I

1 treated our customers in the way that we have been
2 treated, we would not be living in Florida today. I
3 come to you today not asking, but begging you to give
4 us a fair shake and stop this steamrolling of prices
5 that is killing our park. Labrador or Utilities
6 Incorporated have gotten their large raises every three
7 to four years, but then by law, which I am well aware
8 of, they take their small raises every year. Small,
9 yes, but add them up because they never go off our
10 bills.

11 We have friends and neighbors that are
12 struggling just to live. For those people that is why
13 this long trip has been made. We are a very caring
14 people. Again, I say to you, to all of you for giving
15 this group, I thank you, the opportunity to serve, but
16 I hope you will search deep inside for answers. Thank
17 you again, and God bless you.

18 **CHAIRMAN BRISÉ:** Ms. Rush.

19 **COMMISSIONER EDGAR:** Thank you.

20 Ms. Rush, could I ask you a question before
21 you go back to your seat? I'm right here.

22 **MS. RUSH:** Okay.

23 **COMMISSIONER EDGAR:** Thank you your comments
24 and thank you for coming, but I do have a question.

25 **MS. RUSH:** All right.

1 **COMMISSIONER EDGAR:** When you were speaking
2 to us a moment ago you said that you and your husband
3 have been treated poorly by Labrador. Can you give me
4 a little more information about what type of treatment
5 or what the issue was or is?

6 **MS. RUSH:** Well, I'm talking about the fact
7 of the amount of money that it takes to buy water to
8 drink. I mean, that water is just terrible. There is
9 no way that it's fit to drink. I don't care how they
10 register it, it's not fit to drink. So, therefore, we
11 are constantly having to buy water, which is a
12 tremendous expense. It is costing us probably an extra
13 \$100 a month, it shouldn't be, and it is just -- now, I
14 will say this, I have called Mike Wilson many, many
15 times, night, day, or anytime, 9:00, 10:00 o'clock at
16 night, who is kind of a manager over our district, and
17 he has gotten right on the phone. But I call him and I
18 say, "Mike, we cannot stand it." The smell is
19 horrible. And they take care of it.

20 But why, why should we have to be doing this?
21 We have gone to other parks where they have the same
22 systems. They don't have this, but we do and it's
23 continually getting worse. The last few weeks has just
24 been horrible all over the park.

25 **COMMISSIONER EDGAR:** And when you say the

1 last few weeks it is getting worse, do you mean the
2 odor or taste of the water, or an odor in the air
3 coming perhaps from the plant?

4 **MS. RUSH:** I think I have someone that is
5 getting up to speak on that very -- I left that for
6 him. I mean, I was the one that was called, but he is
7 the one that has been in that type of work all his life
8 and its the chemicals, and he knows more how to explain
9 it to you if you are willing to wait for him.

10 **COMMISSIONER EDGAR:** Of course. All right.
11 Thank you.

12 **MS. RUSH:** Thank you.

13 **CHAIRMAN BRISÉ:** Thank you, Ms. Rush. If you
14 could stay for a while longer. Commissioner Brown has
15 a few questions for you.

16 **MS. RUSH:** Oh, okay.

17 **COMMISSIONER BROWN:** Thank you. Thank you,
18 Mrs. Rush, for coming out and speaking to us. You
19 stated that you have been in this community for
20 20 years, you have lived --

21 **MS. RUSH:** I can't understand what she's
22 saying. Twenty years.

23 **COMMISSIONER BROWN:** Twenty years. With
24 regard to the wastewater treatment plant facilities, in
25 your time in this community have you noticed an

1 escalating problem with the odor or has it been
2 constant throughout your time?

3 **MS. RUSH:** As I said, it was when it was
4 taken over by a private concern that we noticed. See,
5 it used to be owned when I moved there and for about --
6 I'm going to say ten years now or close -- well, for 13
7 years now the private concerns, I would say, have owned
8 it. But up until then, no, it wasn't -- I mean, once
9 in awhile you may, but when they took over it has just
10 gone downhill, that's all there is to it. I don't know
11 how else to tell you.

12 And I think a lot of it is the way it's taken
13 care of. And I'm saying that -- when Ed Harrop gets up
14 I think that he will explain what I'm trying to say to
15 you now. That it's the chemicals. They're not using
16 enough chemicals. There for awhile they weren't using
17 chemicals at all. And, yes, it has just gotten -- in
18 fact, it has gotten horrible within the last few weeks.

19 **COMMISSIONER BROWN:** Thank you.

20 **MS. RUSH:** Am I through?

21 **CHAIRMAN BRISÉ:** All right. Thank you,
22 Mrs. Rush, for your participation here today.

23 **MR. REHWINKEL:** Mr. Chairman, the Citizens
24 call Edwin Harrop.

25 **EDWIN HARROP**

1 appeared as a witness and, swearing to tell the truth,
2 testified as follows:

3 **DIRECT STATEMENT**

4 **MR. HARROP:** Thank you and good afternoon,
5 and thank you for this opportunity to be able to speak
6 before the board. My name is Edwin H. Harrop. I live
7 at 6306 Forest Lake Drive in Forest Lake Estates. I
8 have been there now for the past six years. I come
9 from a community up in Massachusetts where I was in
10 public service. I was a firefighter for 37 years, but
11 during that time I also served on the board of -- the
12 planning board. I was chairman for 11 years on that
13 board, and I was also a water and sewer commissioner,
14 and I was chairman of that board for nine years. So I
15 understand the ins and outs of the water systems and
16 the treatment plants.

17 And as Mrs. Rush said earlier, and I can tell
18 you, as of 5:00 o'clock this morning when I walked by
19 the plant, I had to do the same thing as many other
20 people have said, you had to run by it because the
21 smell was so bad.

22 Now, if there is an operator there every day
23 of the week, and I understand it's only part-time maybe
24 on Sundays, as soon as he drives in to that plant and
25 gets out of that vehicle he has to know that there is

1 something wrong. They aren't doing something right.
2 They are not either feeding the proper chemicals or the
3 proper amount to eliminate that smell in that plant.
4 And to me his first job would be to go in and find out
5 exactly what's wrong and correct that problem.

6 Roughly, and I'm going to say I believe it
7 happened around March 9th, as other speakers said,
8 there was a piece of machinery from what I understand
9 that fed the main feeder line going into the sewage,
10 the chemicals, and that piece of machinery was down for
11 nine days. So everybody in that area, including my
12 street, and I'm one that lives the fifth street over,
13 had to put up with the smell of that facility. That's
14 unreasonable.

15 And the answer that we got is, oh, that is
16 subcontracted out to another company, and they will be
17 taking care of it. That operator should have called
18 that gentleman that day and made sure that somebody was
19 out to take care of that problem that day so the
20 residents didn't have to smell that odor for ten days.

21 And here's another thing that's very
22 unreasonable, I believe. There is one other thing that
23 I do have jotted down here, and I was reading your hard
24 copy of your memo, and in there it says that the water
25 quality is satisfactory by DEP with some deficiencies.

1 And I couldn't believe it when I looked at the date.
2 March 9th of 2010. That was two years ago. Was that
3 the last time that DEP actually made an inspection of
4 that facility? Where I came from they would walk in at
5 any time and make an inspection, and you had to show
6 them the paperwork that you had and everything in
7 regards to the operation of the plant, the chemicals,
8 and your daily readings and everything.

9 I can't believe that according to this report
10 that you feel or people that report to you feel that,
11 yes, they should get a rate increase when it's only
12 satisfactory with defects. That's not acceptable. And
13 I thank you for your time.

14 **CHAIRMAN BRISÉ:** If you would wait for a few
15 minutes. I don't know if any Commissioners have
16 questions. Okay. Seeing none, thank you very much --

17 **MR. HARROP:** Thank you.

18 **CHAIRMAN BRISÉ:** -- for your participation
19 today.

20 **MR. REHWINKEL:** Mr. Chairman, the Citizens
21 now call Donald Meader.

22 **DONALD MEADER**

23 appeared as a witness and, swearing to tell the truth,
24 testified as follows:

25 **DIRECT STATEMENT**

1 **MR. MEADER:** I'm watching for the light.
2 You've got plenty of testimony. I keep -- I have done
3 this before at a hearing we had in Zephyrhills at our
4 park, and it just seems repetitious. I keep thinking
5 what can I say that is different than what anybody else
6 is saying. So I will just read this very brief -- the
7 comments that I have.

8 I am not here to dazzle you with numbers, but
9 there are a few pertinent to the dilemma we face in
10 Forest Lake Estates relative to the rate hike sought by
11 Labrador Utilities. In the last four consecutive
12 years, the same month each year, the water base has
13 actually decreased 1.5 percent. The water metered rate
14 has increased 50 percent. The wastewater base has
15 increased 84.3 percent, while the metered rate has gone
16 up 6 percent.

17 On top of that, as others have addressed, the
18 service from Labrador is abysmal. The lack of quality
19 water coming into our homes forces most of us to have
20 some sort of filtering system, and we still purchase
21 bottled water for consumption. The treatment facility
22 for wastewater is a joke. The notorious odor from the
23 plant is stifling. It just isn't fair. And their
24 request for increased rates is not for an increase in
25 service or to improve anything, it's just to maintain

1 what already exists. Something is terribly wrong with
2 this scenario.

3 Most of the residents in our development are
4 on fixed incomes. Some haven't seen a cost of living
5 increase in a couple of years. Any that have been
6 realized is meager at best and nowhere near the 40 to
7 50 percent Labrador is seeking. We have come here
8 today to ask -- no, beg the Commission to not only deny
9 the rate hike, but to rescind the amount of the interim
10 rate already allowed. It is the right thing to do.

11 Thank you.

12 **CHAIRMAN BRISÉ:** Mr. Meader, if you would
13 standby. I don't know if there are any questions from
14 fellow Commissioners.

15 All right. Seeing none, thank you very much
16 for your participation today.

17 **MR. REHWINKEL:** Mr. Chairman, the final
18 witness that we have listed is Doug Sage.

19 **DOUG SAGE**

20 appeared as a witness and, swearing to tell the truth,
21 testified as follows:

22 **DIRECT STATEMENT**

23 **MR. SAGE:** Good afternoon, Commissioners. My
24 name is Douglas Sage. I live at 5724 Viau Way in
25 Forest Lake Estates.

1 I have a degree in biology, post-degree work
2 in environmental sciences. I have a 40-year work
3 history in drinking water and wastewater disposal. The
4 Department of Environmental Public Services or whatever
5 they call it -- the Environmental Protection Rule
6 Number 62-302.500-2 prohibits producing conditions so
7 as to create a nuisance. Odor is a nuisance. That is
8 a definite fact.

9 The odor coming from the treatment plant is
10 coming out of the extended aeration treatment
11 compartment. That's where aerobic bacteria break down
12 the sewage. The important part of sewage is the
13 quality of the sewage, the volume of the sewage, the
14 amount of air that is blown into the chamber, and the
15 amount of sludge in that chamber, and the health of the
16 sewage.

17 The treatment process in an aeration
18 treatment compartment is done by aerobic bacteria.
19 There's bacteria in the sewage naturally occurring.
20 This bacteria is used to treat the sewage by adding
21 oxygen into that aeration compartment. The bacteria
22 will increase and the quality of the treatment will
23 improve. Any condition that harms or destroys the
24 bacteria reduces the quality of the treatment process
25 resulting in a poor quality effluent and an odor.

1 Conditions that harm bacteria are toxic
2 chemicals discharged from sanitary sewer, very unlikely
3 in a senior citizen community like ours; a sharp
4 increase or decrease in the sewage, such as snowbirds
5 coming and going regularly, which happens every spring
6 and fall; too little or too much air being pumped into
7 the chamber, which the operator should know and know
8 how to adjust; too much sludge in the chamber, which
9 the operator can see the build up during routine daily
10 inspections and arrange to have it removed.

11 It's the job of the operators of the plant to
12 determine the cause of the problem and make the
13 necessary corrections. The most important thing to do
14 is to get that bacteria in the aeration chamber healthy
15 again. Many operators use a product called liquid live
16 microorganisms, better known as LLMO. It is metered in
17 small amounts for a set period of time. If it is done
18 correctly, which most operators master that art, there
19 will be very little odor for a very short time.

20 The wastewater treatment plant and the
21 drinking water treatment plant are inspected and
22 monitored by governmental agencies. Those reports
23 along with the laboratory reports could be used to
24 provide information and is the operator doing a correct
25 job and are the inspectors of the inspecting agencies

1 doing a correct job.

2 Thank you very much for your time. Are there
3 any questions?

4 **CHAIRMAN BRISÉ:** Mr. Sage, I don't think
5 there are any questions for you at this time. Thank
6 you very much for your testimony.

7 **MR. SAGE:** Thank you very much.

8 **MR. REHWINKEL:** Mr. Chairman, those are all
9 the witnesses that have signed up at this time.

10 **CHAIRMAN BRISÉ:** Thank you very much. At
11 this time we are going to see if any of the parties
12 have anything that they would like to add, and then we
13 will have discussion and questions for you.

14 So, Mr. Friedman.

15 **MR. FRIEDMAN:** Thank you, Mr. Chairman.

16 Commissioners, my name is Marty Friedman of
17 the law firm of Sundstrom, Friedman, and Fumero. We
18 represent Labrador Utilities. Also with me is
19 Mr. Patrick Flynn, who is the regional manager of the
20 utility. And Mr. Flynn will address some of the
21 comments made by the customers regarding the quality of
22 the service, and I just want to address one or two
23 other issues. And some of these issues I have
24 discussed previously and fell flat on my face, and so I
25 won't spend a whole lot of time other than just to

1 raise them again for the purposes of that. And that
2 would be -- the first one would be Issue 4, the Project
3 Phoenix adjustments that the staff is recommending for
4 divested systems. And as I have argued in the past, we
5 believe that is contrary to 367.141(a) and would ask
6 that you follow the statute and not make that arbitrary
7 adjustment.

8 (Cell phone ring-tone playing.)

9 **CHAIRMAN BRISÉ:** Mr. Friedman, if you would
10 stop for one second.

11 **MR. FRIEDMAN:** I was about to dance. I heard
12 some music.

13 **CHAIRMAN BRISÉ:** If you have a cell phone,
14 please put it on vibrate or silence or turn it off. We
15 would certainly appreciate that.

16 Thank you, Mr. Friedman. You may continue.

17 **MR. FRIEDMAN:** Thank you. The other issue
18 that I would like to address is Issue 14, which is rate
19 case expense. Two aspects of rate case expense, one is
20 that the staff is recommending that the company be
21 allowed no rate case expense for its in-house
22 employees. And as I have argued in the past, we think
23 that is also an arbitrary adjustment that does not
24 provide full recovery to the utility. In the past
25 y'all have ignored that argument, and so I'm not going

1 to spend a whole lot of time going over that again.

2 The last aspect of rate case expense is one
3 that is dear to my heart, and that's the legal rate
4 case expense. And that deals with the arbitrary
5 recommendation that you reduce the legal rate case
6 expense back to what my hourly rate was in 2008.
7 Several problems with that recommendation, not the
8 least of which is that my hourly rate since 2011 has
9 been unchanged. This Commission has at least six,
10 eight, maybe more than that cases have reviewed my
11 hourly rate and found that that hourly rate is
12 reasonable, and I believe that to make that change and
13 go back and penalize the company in this case when it
14 has found that rate to be reasonable, I don't think
15 that is sound regulatory policy.

16 The second issue. In 2008, if you treated
17 the legal expense just like you do any other expense of
18 the company and allow them to index that amount, I went
19 back and I indexed my hourly rate from 2008 forward,
20 and if you indexed the rate, which is the same
21 amount -- I mean, you have got to admit that the
22 company should be able to at least index the amount.
23 So if you agree that the 2008 amount is reasonable and
24 you index that to today's numbers based upon the
25 indexes, the hourly rate is 336.57 an hour, and our

1 rate to this company and our utility clients is \$340 an
2 hour. So it's virtually -- if you go back and say 2008
3 ought to be the number, if you indexed it forward you
4 come out with virtually the same hourly rate that we
5 are charging. And it is our position that reducing it
6 back to our 2008 rate is an arbitrary adjustment that
7 has no support in any regulatory policy, and we would
8 recommend that the Commission not accept that portion
9 of the staff's recommendation on legal rate case
10 expense.

11 And now I'm going to ask Mr. Flynn to address
12 the quality of service issues, and I would like to
13 obviously have an opportunity to respond. I know the
14 Co-op has somebody here, and I know that Public Counsel
15 did a handout, so they must be going to say something
16 that I would like an opportunity to respond to. Thank
17 you very much.

18 **CHAIRMAN BRISÉ:** Sure, you will be afforded
19 that opportunity.

20 Mr. Flynn.

21 **MR. FLYNN:** Thank you, Commissioners. I just
22 have a few comments to make known.

23 One is that I would want to say that we are
24 responsive to customers. Ms. Rush mentioned the fact
25 that Mike Wilson, my regional manager, has spent many

1 hours, many conversations with her on the phone and
2 with other customers who have called with issues. He
3 has worked diligently, as the rest of my staff has, to
4 identify the sources of odors. We have a monthly
5 contractor who manages the chemical we use for
6 pretreatment of the wastewater. He monitors the
7 presence of hydrogen sulfide at the perimeter of the
8 wastewater plant on a programmed way to make sure that
9 we have independent evaluation of any odors.

10 Hydrogen sulfide gas is actually a measurable
11 thing, so it is a factual opportunity to quantify what
12 might be present or not. We typically don't have any
13 values of hydrogen sulfide measured at the fence line.
14 We have employees there every day during the week. A
15 full-time operator, licensed certified operator who is
16 at the plant running the plant on a daily basis. We
17 have weekend checks, as well, so we are monitoring our
18 equipment. We have monitoring equipment that tells us
19 if there is a power outage. If there is an issue with
20 our equipment to some extent we are notified remotely
21 and can respond promptly.

22 When our DEP inspections occur, they are
23 typically identifying no problems with the plant's
24 performance. The plant is working as it should. The
25 sampling that occurs, the results of the sampling

1 indicate the plant is performing properly. The plant
2 is designed properly according to DEP requirements. We
3 have had visits by DEP inspectors as well as the staff
4 engineer for the PSC was on-site, and to my
5 understanding was not able to say anything was out of
6 norm from what he's aware of.

7 So from that perspective, the plant is
8 working as it's designed to work. If there are
9 problems, as evidently there are with odors generated
10 from the plant, I don't believe it's necessarily the
11 case that the plant is the source of those odors
12 solely. There is nothing to factually identify it is
13 the source off-site other than anecdotal information.

14 We certainly take interest in customer
15 complaints and are responsive to them. We want to make
16 sure we make diligent efforts to identify what the
17 causes might be and to fix them, and we have made
18 efforts over the years to improve our odor control
19 facilities to minimize odor carry off the plant site.

20 We maintain those facilities and we maintain
21 our equipment. We do know that we had a breakdown of a
22 piece of equipment at a lift station on March 9th, as
23 was mentioned by the customers, and that's a piece of
24 equipment that is actually owned by the vendor and it
25 was obviously necessary for the vendor to be responsive

1 to replace that piece of equipment that was not
2 working, a pump. It's certainly not acceptable that it
3 would take nine days to get fixed. I'll certainly
4 follow-up after this meeting and find out what the
5 rationale was for that and take corrective action.

6 But it is interesting that the absence of
7 that chemical pump functioning correlates with odors
8 being generated. In other words, when the chemical
9 pump was working, which it has for a number of years
10 now in a routine way, it was very effective in odors
11 not being generated at the headworks. The breakdown of
12 the equipment correlates with odors being generated at
13 the headworks in this month, so there is a correlation
14 there. Otherwise I just want to make the point that we
15 certainly take into consideration all the customers'
16 concerns and we want to make every effort to identify
17 what sources there might be and to fix them as rapidly
18 as possible.

19 **MR. FRIEDMAN:** And I would point out in
20 conclusion that as the staff has identified in the
21 staff recommendation, Labrador is currently in
22 compliance with all required chemical analysis and met
23 all standards for both its water and wastewater
24 systems. And, further, that there are no outstanding
25 consent orders or warning letters from DEP with regard

1 to this plant. So in spite of the complaints that may
2 be outstanding that these folks may have made or not to
3 the DEP, DEP has not seen fit to take any necessary
4 enforcement action against the utility.

5 **CHAIRMAN BRISÉ:** Thank you very much.

6 I don't know if the Commissioners have any
7 questions for Mr. Friedman and Mr. Flynn at this time.
8 If not, we are going to move on to Mr. Bernstein and
9 Mr. McBride from Forest Lake Co-op.

10 **MR. BERNSTEIN:** Thank you, Mr. Chairman and
11 Commissioners. I appreciate the opportunity to speak
12 here today.

13 And I would like to say to Mr. Flynn and
14 counsel clearly there is a disconnect here. There is a
15 huge problem in packing 858 customers, rate-paying
16 customers at Forest Lakes community, and that problem
17 has been addressed repeatedly with Mr. Flynn's company,
18 with attorneys other than Mr. Friedman who are
19 representing this company in a civil action, and by a
20 court order that required an inspection to take place
21 in order to have an independent engineer review this
22 plant, which did take place, and which Mr. Friedman
23 attached to his January 17th submission, his
24 January 17th, 2012 submission to the PSC.

25 I am going to draw your attention to that in

1 a minute, but before I do, I want to respond first to
2 some comments that we just heard from the utility, from
3 Mr. Friedman and also from Mr. Flynn. Specifically
4 with regard to Mr. Flynn and the issue of
5 responsiveness, yes, there is a person who has been
6 appointed to speak to customers who complain, and as
7 noted by one of the speakers today, there has been some
8 response to complaints when she made them. However,
9 there have been many that we are aware of, and I'm here
10 representing 850-some-odd customers who have had their
11 complaints and their comments and concerns fall on deaf
12 ears. And the proof is in the pudding in that the
13 odors continue and the water quality continues to be
14 below grade.

15 I appreciate him saying that they wish to be
16 responsive and make every effort to fix the problems as
17 they arise. Those are his words. But then he goes on
18 in an earlier remark and says any information that they
19 receive as far as odor is anecdotal. It's not
20 anecdotal when a customer calls or anecdotal when a
21 customer testifies at a hearing like this to the Public
22 Service Commission. He has just sat and listened to
23 comments from people who have told you that this system
24 doesn't work. People with degrees, people who come to
25 you based on personal knowledge under oath swearing to

1 what they tell you. For this gentleman to stand here
2 or sit here today and say it is anecdotal is part of
3 the problem we face. He is delusional. He honestly
4 believes it's anecdotal, all right? It's not
5 anecdotal, it's real. And the fact is that it's
6 getting tiresome.

7 If you had to live with odors that you could
8 not open your windows and enjoy the Florida air and
9 sunshine because of, you would be here testifying, as
10 well. And yet the rate increase that is being
11 requested presumably is because of operational expenses
12 and, in part, improvements that have been made to this
13 plant as evidenced in the letter from Mr. Friedman on
14 January 17th. But that's, again, erroneous and
15 disingenuous because when you look at -- when you look
16 at the letter, which we'll get to the exhibit attached
17 to in a moment, the letter in a nutshell, which I urge
18 you each to reread, again, evidences that actually
19 there is less labor involved than there was when they
20 took over the plant. There have been no material
21 improvements made to the plant. There has been nominal
22 amounts of dollars spent on the plant, if any. And
23 actually there has been every attempt to lower the
24 expense of operation, which is completely juxtaposed to
25 requesting a rate increase because they don't wish to

1 spend the money to correct the problems.

2 To suggest, again, that it is anecdotal flies
3 in the face of an exhibit that is attached to the
4 letter which was done by a licensed engineering firm,
5 one of the most preeminent firms available as a result
6 of the civil litigation between the parties, and as
7 part of the record you can read it, but I'm going to
8 summarize for brevity simply the conclusion that was
9 reached.

10 This particular inspection of the plant took
11 place with the utility present, the utility and counsel
12 present. And in the conclusion the engineering firm
13 states that based on our review there is overwhelming
14 evidence that the operations of the wastewater
15 collection treatment and disposal facility to serve
16 Forest Lake Estates have the potential to generate
17 significant malodorous conditions in the community and
18 that a comprehensive odor control evaluation and
19 improvement program is needed to mitigate the odor
20 issues with the LUI facilities.

21 In other words, they concluded correctly in
22 2011, September 27, 2011, that a comprehensive odor
23 control improvement program is needed to mitigate the
24 odor issues. Within weeks of this coming out, and it
25 being in counsels' hands and the utility company's

1 hands, the utility seeks a rate increase of
2 30-something percent. Nowhere in the request does it
3 speak of undertaking the evaluation and the improvement
4 program that is necessary to fix this problem. It's
5 simply for profit. It has nothing to do with fixing
6 the problem. And this is a system that serves one
7 community. It doesn't serve many other communities.
8 We are not dealing with rate bands and issues that
9 cloud the picture here. We are dealing with a very
10 straightforward situation. One system, one utility,
11 one community of 850-plus users, and one very
12 significant ongoing systematic failure of this system
13 which is fixed very easily apparently, not
14 inexpensively, but easily fixed and has simply been
15 ignored.

16 Comments like anecdotal information in the
17 face of having professional evaluations court ordered
18 from engineers, hearing their own customers in front of
19 the Public Service Commission, being hit with pleadings
20 and motions which directly support the position that
21 there is a problem here flies in the face of being
22 genuine. It is very disingenuous and the Commission
23 should not be swayed or misled by it.

24 If there is, as Mr. Flynn says, a genuine
25 concern to use every effort to fix the problem, I ask

1 the Public Service Commission to hold them to it. Make
2 them fix it. And part of -- you know, when you are
3 looking -- if you are going to look at a rate increase,
4 he needs to consider what he needs to do with the funds
5 to take care of it. You should be investigating why
6 this hasn't been done before you would consider a rate
7 increase here, because it has been going on for two
8 years.

9 We had to file a civil suit in order to get
10 this engineering report done. Within weeks of it there
11 was a rate increase request made of the court order to
12 go forward on this. Now following that, we find out
13 that they haven't even paid their lease payments under
14 the lease which gives rise to the right to use this
15 system. There is a long-term lease on this property
16 which is what gives the PSC Commission jurisdiction
17 over this utility. As you know, there has to be an
18 interest in land, minimum of a 99-year lease, or
19 easement, or long-term agreement, or ownership in order
20 for the certificate to be issued under the Florida
21 Administrative Code and for them to have jurisdiction.

22 Well, you know, it's interesting. You would
23 think that they would make the lease payments without
24 any issues and know that those lease payments are made
25 in order to come before the Commission for a rate

1 increase. Since June of 2011, there were issues
2 regarding the lease payments. In August a demand
3 letter was sent that was ignored. In January, a second
4 demand was made and a subsequent complaint was filed, a
5 civil suit was filed in February, February 29th,
6 regarding the failure of honoring the lease, which, in
7 turn, gave rise under Florida law to a termination of
8 that lease, and the community has taken steps to
9 terminate that lease.

10 In response to the nonpayment, Mr. Flynn's
11 company quickly tried to cure the defaults and make the
12 payments, albeit late, and it's not insignificant to
13 note that it required a legal process before that
14 occurred, and then sought an injunction against the
15 community for pursuing their legal rights and that
16 injunction was denied. The court essentially saying,
17 and the PSC should note, that the claim they were
18 making to enjoin enforcement of the lease did not have
19 merit. They could not have an injunction against us to
20 prohibit us from terminating the lease. And so we are
21 in the court over the issue of whether there is even a
22 valid lease now.

23 The reason I point this out to you is because
24 there is a pending motion before you as to whether you
25 have even jurisdiction over this today, and whether you

1 consider that or not at this time it needs to be
2 considered. All right. So I leave you with that. I
3 appreciate your wish to move on, and I hope that you
4 will look back at the letters that were filed by Mr.
5 Friedman, the engineering report, and the conclusion
6 that was reached that contradict the statements made
7 here by Mr. Friedman and his client that there is no
8 problem at this plant.

9 Thank you for your time.

10 **CHAIRMAN BRISÉ:** Thank you.

11 Commissioner Edgar.

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

13 Perhaps legal counsel who was just addressing
14 us may have been reading my mind just there for a
15 moment. A number of points have been raised that I
16 know I will have some questions about. I'm sure most
17 of us will. I did wonder if perhaps we were getting a
18 little far afield from those issues that are before us
19 today, and perhaps even within our jurisdiction, and
20 that's the point I was going to raise for
21 consideration.

22 Mr. Chairman, just a suggestion. If you are
23 amenable, I would like to hear some general comments
24 from OPC, as we have, and then before we get into some
25 of the meat of the issues and discussion, if you would

1 indulge -- I would like to ask for maybe five or ten
2 minutes to go over my notes and get my questions in
3 order a little bit, and that would maybe help me be a
4 little more concise.

5 **CHAIRMAN BRISÉ:** Okay. Now we will hear from
6 the Office of Public Counsel.

7 Mr. Reilly.

8 **MR. REILLY:** Thank you very much, Chairman
9 Brisé and Commissioners. Steve Reilly with the Office
10 of Public Counsel. Also appearing today is Tricia
11 Merchant.

12 I would offer just a brief comment on the
13 quality of service issue. We, of course, share the
14 grave concern of the customers on the quality of
15 service issue. We don't have an answer for this
16 disconnect between what the company has been doing and
17 the fact that the product is still very deficient from
18 the customers' standpoint, both in terms of water and
19 wastewater. Obviously, if the PAA order that is
20 produced today is protested by either side, that is
21 something certainly the Public Counsel would be
22 exploring very thoroughly to try to understand the
23 problem a little better and maybe, perhaps, make
24 recommendations to this Commission concerning how we
25 might be able to go forward in a better way on that

1 issue.

2 I would add that Public Counsel today would
3 like to offer some comments on just four issues that we
4 take exception to of staff's recommendation. They are
5 Issue 6 relating to the used and useful of the
6 wastewater treatment plant; Issue 11, the O&M expense
7 related to the tank maintenance and repair; Issue 13,
8 adjustments to O&M expenses; and Issue 14, a few
9 comments on rate case expense. I was going to handle
10 briefly the used and useful issue, and Ms. Merchant is
11 prepared to make some comments on those other three
12 issues.

13 Concerning the used and useful issue, we do
14 disagree with the recommendation that the wastewater
15 treatment plant -- that is the only component that we
16 have a problem with -- is that the wastewater treatment
17 plant should be considered 100 percent used and useful.
18 When you apply the Commission's used and useful rule to
19 calculate the plant's percentage, it produces a
20 37 percent used and useful. All of the parties, the
21 utility, staff, and OPC all agree that under the rule's
22 normal comparison of the plant capacity to the plant
23 flows results in a used and useful percentage of 37
24 percent. Nevertheless, the utility requested that the
25 plant be, quote, unquote, considered or deemed

1 100 percent used and useful for three reasons, and
2 those three reasons can be found on Schedule F6, Page 1
3 of 2.

4 Their first reason is that a plant
5 constructed to serve full occupancy of the mobile home
6 park alone at design flows of 280 gallons per ERC would
7 require a plant of 250,000 gallons per day. However,
8 in that same F Schedule they admit that the actual
9 flows are closer to 69 gallons per day, but they
10 basically make the argument that notwithstanding this
11 difference in flows that the plant was properly sized
12 to serve build-out.

13 And I would argue that if the original design
14 assessment of 280 gallons per day flow per ERC was the
15 assumed design, then that assumption is seriously
16 flawed. I said if because although they make this
17 little statement in there that it should be 280 gallons
18 per day flow, there is no document, there is no
19 original design criteria that was produced by the
20 company to staff to indicate that that was, in fact,
21 the assumption made for the building of this plant.

22 But even if it was, we argue that such an
23 assumption is seriously flawed because we're talking
24 about a plant that was originally designed from the
25 very beginning to serve small lots for mobile homes for

1 relatively low income, people with fixed income, senior
2 citizens, meaning very little density, one to two
3 persons per connection with a consistent low usage.
4 And that the -- talk about a disconnect, the disconnect
5 between an assumption of 280 gallons versus 69 gallons
6 is a factor of four. So this is a seriously flawed
7 assumption, and it should not be a basis for deeming
8 anything to be 100 percent used and useful.

9 The second reason they gave, they made a
10 statement, just a naked statement, the area served by
11 the existing plant is, quote, unquote, built out. We
12 would strongly argue that that is not true. There is
13 known and measurable growth within the existing service
14 territory of 94 ERCs. You have the 90 lots planned for
15 in the 11.6-acre RV park and four lots that are within
16 the existing Forest Lake subdivision. That right there
17 is obvious growth potential that needs to be considered
18 by this Commission. Further, you also have vacant
19 land, contiguous and nearby land where the existing
20 service territory could be expanded to service future
21 developments that could use this excess capacity.

22 Their third argument for saying it should be
23 100 percent used and useful is somewhat of a novel
24 argument. They also said, and I quote, in addition,
25 the wastewater treatment plant is 100 percent used and

1 useful in accordance with the water used and useful
2 rule, 25-30.4325(4). And my only assumption why they
3 made reference to the water used and useful rule was to
4 provide this Commission with guidance on this issue of
5 what it means when the wastewater rule used -- to give
6 the Commission flexibility, the wastewater use is to
7 the extent to which the area served by the plant is
8 built out the Commission can consider increase. It
9 doesn't say 100 percent, but can consider the extent to
10 which the area, quote, unquote.

11 And all I can assume by looking at the water
12 rule is that the water rule's terminology is that a
13 plant, a water plant can be considered 100 percent used
14 and useful if the service territory the system is
15 designed to serve is built out and there is no apparent
16 potential for expansion of the service territory. So
17 that standard or guidance, as you will, for what might
18 constitute the area to be considered is very important
19 in this case, as well, because there is vacant land
20 absolutely adjacent to this plant, and there is other
21 vacant land even closer to this plant that could be the
22 subject of future development.

23 Now, in response to these three arguments
24 staff basically agrees. We are going to make this
25 100 percent used and useful. The argument -- and it is

1 found, by the way, on Page 20 of the recommendation --
2 staff's reasoning is the plant is appropriately sized
3 to meet projected needs of the community that it's
4 intended to serve, including the 90-unit RV park that
5 is proposed for the vacant property in the service
6 territory. We just strongly disagree with that. It is
7 not properly sized. It is hugely by a factor of four
8 inappropriate.

9 The second reason they say there appears to
10 be no timetable for construction of the proposed RV
11 park addition, and so staff says further development is
12 dependent on the economy. We would only argue that all
13 development is dependent on the economy. That would be
14 hardly a standard by which we would need to go to.
15 What the future development is not?

16 Staff says given the speculative nature of
17 the additional development, staff recommends that the
18 area be considered built out and that the wastewater
19 treatment plant should be considered 100 percent used
20 and useful. This recommendation is contrary to the
21 very statute that this Commission order is designed to
22 implement, because it's that same Statute 367.081(2)
23 that states that the customers should only bear the
24 cost of plant -- the cost of investment in plant that
25 is used and useful in serving them. And so we would

1 argue that this is just too big of an issue to sweep
2 under the rug or to just deem 100 percent used and
3 useful.

4 The potential maximum dollar value of this
5 issue is approximately \$100,000, which is greater than
6 the entire proposed increase that Labrador has. So I
7 would also point out that the prior order in this case,
8 the last Labrador order, which was the subject of a
9 settlement agreement, expressly did not have any
10 finding on the used and usefulness of that wastewater
11 treatment plant. Basically, the parties just agreed to
12 disagree in the last case, and we came to an agreement
13 on the revenue requirement and the rates. So that has
14 obviously no precedent value.

15 We were really basically kicking the can down
16 the road to basically take evidence and to fight this
17 out at some future date. Unfortunately, that date may
18 be approaching, so we would take strong exception to
19 the 100 percent used and useful of the wastewater
20 treatment plant. I yield quickly on the three other
21 issues.

22 I have left you very little time, Tricia, I'm
23 sorry.

24 **MS. MERCHANT:** Good afternoon, Commissioners.

25 The first issue that I would like to talk

1 about is deferred maintenance for the tanks. It's
2 Issue 11 on Page 25 of the staff recommendation.

3 In the 2010 test year, Labrador included
4 expenses for three deferred maintenance projects that
5 totaled \$11,234. Included in this was one wastewater
6 permit that was addressed by staff in Issue Number 3,
7 and I'm not going to take issue with that. I agree
8 with staff's adjustment.

9 The remaining two projects had to do with the
10 water tank deferred maintenance project, which is the
11 largest amount, which is addressed in Issue 11, and
12 there was a smaller amount for wastewater tank
13 maintenance that was not addressed by staff in its
14 recommendation, but it was included in the company's
15 expenses.

16 The water tank maintenance is a cost that was
17 incurred in 2004. The company deferred it for five
18 years, and that is how it is included in the test year.
19 They have a schedule in their MFRs, and that schedule
20 shows deferred maintenance projects before and after
21 the test year that are material in nature, and the
22 company put the same dollar amount, the 46,204, as a
23 project that would be upcoming.

24 Staff made an adjustment to that. The
25 company has said that they had an engineering

1 inspection that took place in January of 2010, and that
2 inspection -- it was not a tank painting, but the
3 inspection said you need to sandblast the tank and make
4 some minor repairs to the tank. Well, the company did
5 not do that. They made no repairs to the water tank.
6 It's now 2012; they now say they are going to do it
7 sometime in the middle of 2012. And the amount that
8 was originally deferred from 2006 is fully amortized.
9 So our position is, yes, they probably need to do this
10 maintenance, but they haven't spent the money. And
11 similarly to what the Commission did in the recent Lake
12 Utilities Services case, they held up that component of
13 the rate increase until the company came in and
14 supported that they had performed that project.

15 So we would recommend that the Commission do
16 that for this adjustment also. Remove the whole
17 deferred maintenance, because it wasn't spent in 2010,
18 it wasn't spent in 2011, and it hasn't been spent to
19 date. But if they can come in and show that they have
20 spent the amount, and we would recommend that that
21 deadline be set at the end of this year, 2012, that
22 they could get consideration of that amount. But we
23 would also ask that instead of a five-year amortization
24 period for that tank painting that it would be eight
25 years, because of the time it has been since they last

1 painted the tank. So I think that they would have to
2 come in and support that amount with actual invoices,
3 and then we would recommend that an eight-year
4 amortization period be used instead of the five years.
5 That is my first adjustment.

6 Additionally, I had mentioned earlier there
7 was a wastewater tank maintenance project, and that was
8 deferred in 2005, and that is fully amortized. There
9 is no information in the case as to what it is. It was
10 included in the materials and supplies expense account.
11 It wasn't listed as a pro forma adjustment that they
12 are going to make, so we would recommend that that
13 amount be removed, and that is \$1,018 from wastewater
14 expenses.

15 The next issue that I would like to address
16 is Issue Number 13, and I actually have two subtopics
17 in that issue. There's actually two that staff
18 addresses and I have one that I would like to bring up
19 in addition to that. And this deals with computer
20 maintenance and transportation expenses, and I handed
21 you a spreadsheet that has computer maintenance on the
22 first page and then transportation on the second page.

23 In Issue 13, staff makes an adjustment to
24 miscellaneous expenses for computer maintenance and
25 they showed a comparison of the five years of computer

1 maintenance costs, this is computer maintenance at the
2 WSC level, the parent company, the service company, and
3 they show lower amounts in the first two years, and
4 then the middle two, or the third and fourth year they
5 are substantially higher, and then in 2007 they are a
6 lot lower. And when I looked at 2011, I thought, my
7 goodness, that was such a high amount. I mean, it
8 dropped from the two prior years higher amounts.

9 So I started looking into that, and I looked
10 at some information that the company provided in
11 discovery background for computer maintenance, and
12 there was a vendor that they outlined -- they have the
13 dollar amount by vendor by year. I didn't give this to
14 you, because it is just so many numbers. But there is
15 one vendor that has charges in 2009 and 2010 of almost
16 a half million dollars. Those charges go away in 2011.
17 And I think that that is -- and that is a very material
18 amount for the total.

19 And instead of using a three-year average for
20 the computer maintenance, as staff has done, I would
21 recommend that you use a five-year average. Not to
22 disallow the costs that were incurred for that one
23 vendor in 2009 and 2010, but to kind of annualize it.
24 And if you take that five-year average, that average
25 that I calculated, and I show that on the top line

1 there, it's in the column five-year average. The
2 five-year average is actually higher than the 2011
3 cost. And so that would be my recommendation to the
4 Commission. Instead of -- recognizing there is a known
5 and measurable change in their computer maintenance,
6 and also the fact that in 2008 they implemented their
7 new Phoenix system, so you would have some start-up
8 costs that were in there that might make those two
9 years higher expenses than the prior years or even
10 2011. So maybe they have kind of figured it out and
11 normalized their costs in 2011. So that would be the
12 first adjustment I would recommend for computer
13 maintenance costs to actually use the five-year instead
14 of the three-year average.

15 The second component that I would like to
16 talk about on computer expenses has to do with an
17 adjustment consistent with what is done with the
18 Phoenix project. A lot of the Phoenix computer system
19 is web-based, and there are a large number of computer
20 services that they have to implement that web-based
21 program. So if the Commission is making the adjustment
22 to the plant cost of Phoenix, I think it's also
23 consistent to make the same type of an adjustment to
24 the computer maintenance costs. That if you sell
25 10 percent of your customers, you shouldn't reallocate

1 all of your costs to the remaining systems and make
2 them, just by the mere fact that those other systems
3 are gone, make them pay more money in administrative
4 costs. So that was the second tier of my adjustment
5 that I am recommending. I have got the numbers shown
6 on this schedule, and if you're interested I can say
7 them, but I will go on to my next topic.

8 The next issue that I have is transportation
9 expenses, and transportation expenses is not addressed
10 by staff in the recommendation, but the company has
11 seen an -- or they requested an increase in their
12 transportation expenses from 2007, which was the last
13 rate case, to 2010 of 138 percent, which I think is --
14 you know, for this very small system to have
15 138 percent increase in transportation expenses just
16 doesn't seem reasonable. They don't have any new -- it
17 appears that they have a new operator, but, you know,
18 they wouldn't be paying for that operator's
19 transportation. I mean, a consulting vendor. But it
20 just doesn't seem reasonable to go ahead and in three
21 years time increase your transportation expenses
22 138 percent.

23 The company argues in their case that the
24 cost of gasoline has increased dramatically and the
25 vehicles are getting older and, therefore, that's why

1 their transportation expenses have gone up so much.
2 But I did some research and I found out that the cost
3 of gasoline between 2007 and 2010 had actually went
4 down, and that was from a U.S. government agency that
5 reports on gasoline prices.

6 But in 2011 gas prices did go up, so I did a
7 comparison of 2011 to 2007 and the increase is only 26
8 percent. The inflation for that same time frame was
9 only about 8 percent, so I believe instead of allowing
10 the 138 percent increase in their transportation
11 expenses, I think it's a reasonable alternative to come
12 in and increase their last test year approved amount,
13 which is also the amount that they requested, and
14 increase that by 26 percent, which is higher than the
15 inflation, but it's the 2011 increase in gasoline
16 costs.

17 Okay. The last issue that I have comments on
18 deals with rate case expense, and we do agree with a
19 lot of the issues that staff has taken in rate case
20 expense, but I wanted to address one area, and that was
21 the accounting consulting fees. And in the last case,
22 the last Labrador rate case, the same accounting
23 consultant performed a lot of work on the case and did
24 not provide any detailed support of the hours that
25 they -- the type of work that they did. It was all we

1 worked on the rate case, we performed analysis on the
2 rate case, prepared the MFRs.

3 So the Commission in the last Labrador case
4 denied the accounting rate case expenses, and instead
5 they allowed an amount for the WSC allocated cost. And
6 in this case, the staff has recommended that no WSC
7 costs be allocated, but they have recommended that all
8 of the accounting fees be allowed because somebody had
9 to do the work for the MFRs, and they answered the
10 audit responses, and they did some discovery and things
11 like that. So I will agree that there was work done,
12 the MFRs were put together. But to allow recovery of
13 expenses when they don't come in and they don't say,
14 like their attorney does and like their engineer does,
15 this is what I worked on, this is the amount of time I
16 spent preparing rate base, this is the amount of time I
17 spent analyzing expenses.

18 And if you recall from all the prior cases
19 that we have had for Utilities, Inc., they do a lot in
20 their MFRs on fixing plant accounts. You can go
21 through and look -- and I don't know if you have look
22 at the MFRs, but there is probably 25 adjustments to
23 plant. They shift between primary accounts -- this is
24 just three-year past the last rate case, and they did
25 this in the last rate case, too. They made a lot of

1 adjustments. They are correcting, they are
2 reallocating, they are shifting between accounts. They
3 do this for water plant and wastewater plant. They do
4 it for accumulated depreciation, depreciation expense,
5 transportation, equipment. It's just an astronomical
6 amount of work that they go through in every single
7 case to reshift the cost.

8 If they actually came in and adjusted their
9 general ledger to match the numbers that they put, say,
10 in this set of MFRs or whatever it is that the
11 Commission approves in this case, they wouldn't have to
12 go through that in every single rate case. They
13 wouldn't have to spend the amount of rate case expense
14 that they go through in every single case.

15 So in lieu of not submitting any support
16 behind what type of work they did, we believe that it's
17 a reasonable amount for accounting fees, recognizing
18 they did some work, to give them about \$25,000 in
19 accounting MFR preparation, which is a really -- it's a
20 little bit more than what they got in the last rate
21 case for preparing the MFRs. And I just think that
22 that sends a signal to the company and to their
23 consultants that you have to justify. You have to
24 show. It's not just that they spent the money, that
25 you can show that the amounts are reasonable and

1 supported.

2 And that concludes my remarks. Thank you
3 very much.

4 **CHAIRMAN BRISÉ:** All right. Thank you very
5 much.

6 **MR. REILLY:** That concludes OPC.

7 **CHAIRMAN BRISÉ:** Thank you very much.

8 Commissioner Edgar had requested that we take
9 a short break. I think it make sense for us to do so,
10 so we will reconvene at about 2:40.

11 (Recess.)

12 **CHAIRMAN BRISÉ:** That was a much-needed
13 break, and so now we are reconvening. We -- before I
14 come to the Commission board, I'm sure Mr. Friedman
15 probably has some comments that you would like to make,
16 and then you had asked for an opportunity to address
17 some of the points that were brought up.

18 **MR. FRIEDMAN:** Yes, Mr. Chairman. Thank you
19 very much.

20 Commissioners, I will try to be brief, and
21 I'm going to let Mr., Mr. Flynn address one thing.
22 But -- and I won't, I won't go into this in great
23 detail, but I noticed counsel said there was an
24 independent, independent engineer evaluation. Well, it
25 wasn't independent. It was the expert he hired in a

1 rate case in the civil litigation. So it's not an
2 independent engineer. It was an engineer, not
3 independent. And like counsel, I ask you to read, make
4 sure you read what that engineering report said. "Had
5 the potential to cause odor problems."

6 I'd implore you, I think every sewer plant
7 has the potential to cause sewer problems. But I
8 would, I would ask you to read that report very
9 carefully yourself, as, as counsel asked you to
10 himself. I'm not going to address this lease payment
11 issue. We've got a lawsuit over that. I disagree.
12 And, and when counsel says why the injunction was not
13 granted, I disagree with that. I think if you read my
14 response in the motion to dismiss, you'll see that
15 counsel makes it sound like they didn't pay the rent.

16 You know, they didn't pay the amount that
17 escalated after six years. The rents were all the
18 same for six years, then they escalated, and all
19 that wasn't paid was the escalated amount. And then
20 when they, in January when that was pointed out,
21 they paid most of it -- they misread the letter.
22 And if you look at the letter, as I point out,
23 you'll see why, why that mistake was made. And it
24 was clearly a mistake and they're trying to make a
25 big deal out of it.

1 Mr. Flynn will address the used and
2 useful, but let me just touch on some of these
3 things. I'm not sure I fully followed everything
4 that Ms. Merchant said, but, you know, and I think
5 the staff did the correct analysis on those O&M
6 issues.

7 On the accounting fees rate case expense
8 issue, you know, if, if you, if you try to put
9 yourself -- she wants you to do -- OPC wants you to
10 do the type of detailed rate case expense
11 explanations that we, as a lawyer, do. And, and if
12 you look at the type of function that somebody does
13 in preparing the MFRs, it doesn't lend itself to
14 that type of specificity. I mean, you're looking
15 at, at maybe 30 or 40 different schedules, and so
16 the, the identification of what that person putting
17 the schedules together go, we're working on rate
18 base schedules -- I mean, you know, and that may
19 take hours -- or working on O&M expense schedules.
20 That's, that's as much detail as you can get when
21 you're putting together MFRs. It's not -- the type
22 of work that an accountant does in putting together
23 MFRs is not susceptible to the type of detail that
24 I, as a lawyer, am able to put together and provide
25 in my rate case expense exhibit. And so I think

1 that the staff's analysis of, of the outside
2 accountant rate case expense is correct. And I'm
3 going to ask Mr. Flynn to, to briefly talk about
4 this used and, used and useful issue.

5 **MR. FLYNN:** Thank you, Mr. -- thank you,
6 Commissioners.

7 I just want to mention the fact that the
8 plant that was designed many years ago prior to our
9 ownership, and it was designed according to DEP design
10 standards for the development that was built in
11 multiple phases over time by the developer who was the
12 previous utility owner. In fact, he was the owner when
13 it wasn't a PSC-regulated entity. It was -- part of
14 the fees for providing service to the park was water
15 and sewer service as a lump sum amount per month.

16 But the plant has, the wastewater plant's
17 capacity is a function of the design that was evident
18 to the design engineer at the original point in time
19 when that plant was first thought of by the developer
20 and through subsequent phases. So its current capacity
21 of 216,000 gallons per day reflects that fact, and the
22 computation by the staff I think is right on the money.

23 Secondly, the 90-unit RV park that was
24 proposed or referenced in the staff rec reflects a
25 piece of property that currently is an RV storage and

1 boat storage area used by the customers. There's been
2 some talk about what it might be utilized for in the
3 future. There was some discussion by a design engineer
4 they hired at some point to discuss with the utility
5 what might be available there in terms of providing
6 water and sewer service to that portion, and that's as
7 far as it's gone. It's never gone a bit further from
8 what I understand. No effort to develop a set of plans
9 or go get county approvals or anything like that. So
10 basically there's four empty lots in the whole
11 community that we don't have customer homes on.

12 And the last thing is that the plant has
13 been, the plant is occupied by customers who are often
14 vacant for lengthy time periods where they have other
15 homes in other parts of the country perhaps or other
16 countries, and so the annual peak month flow varies
17 from year to year. So if it's in a test year at one
18 point, it might be much higher or much lower or about
19 the same in other years. But the reality is the plant
20 functions as designed and it functions at a capacity
21 that's permitted by DEP and designed according to DEP
22 standards.

23 Thank you, ma'am. Thank you, Commissioners.

24 **CHAIRMAN BRISÉ:** Thank you. At this time
25 we're coming to the Commissioners, and I want to see

1 who wants to go first in beginning to ask questions or
2 going to discussion as to some of the issues that are
3 before us.

4 Commissioner Edgar.

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

6 As I'm thinking through everything that we've
7 heard and all the material that we've had to review
8 prior to today, it seems like what, in my mind what is
9 before us falls into maybe three general categories.
10 One category would be the more technical accounting
11 treatment type issues.

12 The second, certainly, certainly equally
13 important, are the, a little softer perhaps but very
14 important, customer service issues which generally deal
15 with how the utility interacts with its customers and
16 the quality of water, billing, and that type.

17 And then the third would either be
18 other/maybe legal issues. We've had some information
19 shared with us or points of view shared with us
20 regarding, you know, lease payments and maybe some
21 other things that would fall more in that legal realm.

22 And one question I have in that is this other
23 area of the odor from, odor from the lift station that
24 has been described to us by some of the customers to be
25 onerous.

1 So, so that's just kind of how, how I'm
2 approaching it. And, Mr. Chair, if you want to go in
3 any particular order within that, I'm glad to do so at
4 whatever is the best time here in the little bit of
5 time that we have more together. I would like to ask
6 staff to respond briefly to some of the more technical
7 accounting issues is the way I would refer to them in
8 my mind, which are the issue about used and useful
9 treatment, the O&M expense, the couple of areas in
10 those from Issue 11 and Issue 13, and then very briefly
11 on the issue within the rate case expense, the
12 accounting piece treatment that was raised by
13 Ms. Merchant, and some of the concerns that were raised
14 by Mr. Friedman as to the hourly rate 2008 versus 2010,
15 et cetera. So I'd like to ask y'all to respond to
16 those in whatever way, and not overly in depth, since I
17 am not an accountant.

18 Then a separate category as to -- I have a
19 couple of questions about the DEP information that we
20 have and the odor, and I'm not even sure who to pose it
21 for, so I'm just going to put it out there and please,
22 whomever can, respond. The information that we have
23 written before us, and it was also pointed out by one
24 of the customers, that the DEP inspection reports were
25 from 2010. And I recognize that the test year is 2010;

1 however, we are in PAA, and so I am wondering if we
2 have information available to us from any DEP
3 inspection reports or similar subsequent to the 2010
4 time period.

5 **MR. McROY:** Commissioner, James McRoy for
6 staff. That is the current inspection for DEP. That
7 is the sanitary sewer, sanitary inspection. They
8 typically do that two to five years. They do not
9 normally do those annually. DEP is allowed to do any
10 type of inspection of the facility in an informal way.
11 If they get a call or concern, they have access to any
12 facility that, that they're regulating in that area.
13 But they formally do those sanitary sewer surveys on a
14 time-specific basis.

15 **COMMISSIONER EDGAR:** Okay. Thank you.

16 And then I assume, but I always hesitate to
17 assume, so I'm going to go ahead and ask what is
18 probably an obvious question, are we aware of, did we
19 ask the question, any additional information along the
20 same lines that would either be from the State
21 Department of Health or the local county public health
22 unit?

23 **MR. McROY:** Currently the utility is in
24 compliance with, with the DEP. In certain counties
25 they grant that authority to the different health

1 departments.

2 **COMMISSIONER EDGAR:** Uh-huh.

3 **MR. McROY:** In this particular county, they
4 have it themselves. So they are the, they're the
5 primary, primacy agency for that, for that quality.

6 **COMMISSIONER EDGAR:** Okay. And then on a
7 separate but perhaps related issue, and it's discussed
8 primarily on page 9, there is a reference to a
9 Commission-approved settlement agreement between
10 Labrador and OPC from about, I believe, three to four
11 years ago, and it's described in here as the Commission
12 approving a settlement agreement for OPC and Labrador
13 to work with customers on the odor problem. And then
14 at the very end of that discussion it says that the --
15 those two entity -- well, not OPC -- that the utility
16 and FLEC are in litigation regarding odor.

17 So my question is can you refresh my memory a
18 little bit about that settlement agreement: If that
19 was something that this Commission approved, what it
20 entailed; what, if any, bearing it has on the, this
21 odor issue as it has been described to us today; and
22 what -- anything else around there that might be
23 useful?

24 **CHAIRMAN BRISÉ:** All right.

25 **MS. DANIEL:** Commissioners, Patti Daniel for

1 staff. I know James doesn't have a copy of that order
2 right in front of him, so if I may, there was a final
3 order approving the settlement agreement in October of
4 2009.

5 What happened in, in this settlement was that
6 the Commission, having approved the settlement, did not
7 agree to the used and useful calculations, for example,
8 for the wastewater treatment plant. The company and
9 the customers came together and filed a settlement,
10 which the Commission did approve. And some of the
11 terms of that were that the company was to work with
12 the customers to consider the odor. I was trying to
13 figure out -- what page is that? 205? Has agreed to
14 work with customer representatives to study the problem
15 and, if necessary, propose cost-effective measures to
16 address the wastewater plant odor problem. And we did
17 follow up with the company during the current rate case
18 with regard to that to ask them what they had done
19 along those lines, and they gave us a letter outlining
20 the points that you see in the staff recommendation
21 that describe the ways in which the company has
22 attempted to work with the customers to address the
23 odors at the wastewater treatment plant.

24 **COMMISSIONER EDGAR:** So what I am
25 understanding you to say is that this was a, a piece of

1 a much more comprehensive settlement agreement. Do we
2 have any, do we have any authority over odor issues?

3 **MS. DANIEL:** Let me refer you to Mr. McRoy.

4 **MR. McROY:** Commissioner, DEP is the agency
5 of primacy of that. What we typically do is evaluate
6 their reports in regards to all operational issues for,
7 for a plant. So as far as this Commission is
8 concerned, if the DEP finds that the plant is operating
9 in a professional manner, then we typically review
10 those findings, go to the plant, review their
11 operations. And if upon that find no issues with the
12 plant, then we'll go along with the primary agency's
13 evaluation.

14 **COMMISSIONER EDGAR:** And to your knowledge
15 there are -- to our knowledge there are no local
16 ordinances that would apply more specifically to odor
17 separate from a public health standard?

18 **MR. McROY:** None, Commissioner. It's
19 typically the operational issue with the DEP, and I'm
20 sure that in their evaluations that's one of their
21 determinations of whether the operational issues with
22 the plant is correct.

23 **COMMISSIONER EDGAR:** Then, Mr. Chairman, I
24 would at the appropriate time like to ask our staff to
25 comment on those more technical issues.

1 **CHAIRMAN BRISÉ:** Sure.

2 **COMMISSIONER EDGAR:** But I will yield in case
3 there are other questions along this subject.

4 **CHAIRMAN BRISÉ:** Sure. I want to jump in on
5 this odor issue, and then, and then Commissioner Balbis
6 has a few questions.

7 But on the odor issue, what improvements have
8 been done to the plant to address, what specific
9 improvements, if any, have been done to the plant to
10 address the odor issues?

11 **MR. McROY:** Commissioner, the utility
12 installed covers over the digesters, and which they
13 capture the, the odors, which is the sulfides, off the
14 plant, and pump that out through systems of pumps and
15 filter it through coal, which DEP commented on it that
16 that was an excellent way of disposing of those, that
17 issue.

18 So the -- in my 20 years of watching,
19 observing plants and testing, that's the first time
20 anybody had come up with that as a way to deal with the
21 sulfides off of a plant. So I think the utility did a
22 very reasonable attempt to try to control that odor
23 issue that way.

24 **CHAIRMAN BRISÉ:** I want to ask a follow-up
25 question to that. And I guess this is a question that

1 probably is pretty obvious and as the issue of
2 assumption. Can the odor issue be resolved?

3 **MR. McROY:** The chemical processes of a plant
4 gives off odors. The proximity of the community around
5 the plant I think in this case causes a lot of issues.
6 The total elimination of odors, I don't think that's
7 capable. You can control them through some procedures,
8 operational procedures. The operator typically adjusts
9 certain aspects of his plant depending on what's coming
10 in, on how he treats it, the removal of things off the
11 site so it don't accumulate issues, that seem to be
12 doing -- they're doing that. So the total elimination
13 of the odors, I would have that -- to say that you
14 could, you could not totally ever eliminate all the
15 odors off that plant.

16 **CHAIRMAN BRISÉ:** But if they were to do some
17 other things to attempt to mitigate the odor even
18 further, would there be a dollar amount attached to
19 that?

20 **MR. McROY:** Yes, Commissioner. Currently,
21 since they're operating in, within compliance, if we
22 asked them to do additional study or, or improvements,
23 then that will be a cost that will have to be borne by
24 the, the, the customers.

25 **CHAIRMAN BRISÉ:** Okay. And we don't have a

1 sense of potentially a ball park as to, for a system of
2 that size, you know, what, what those numbers would
3 look like if, if that were to be contemplated?

4 **MR. McROY:** We would have, not have a way to
5 determine that without having some serious evaluation
6 done first to come up with the, what it is that we
7 would want to be done and then apply a cost analysis to
8 that.

9 **CHAIRMAN BRISÉ:** Okay. I don't know if the
10 company may have an answer to, to that question. If
11 they've entertained addressing, further addressing some
12 of the odor issues as they've already attempted to
13 address some, but if they were to move forward in that,
14 if they looked at it and sort of loosely estimated what
15 that potential cost could be and what that cost would
16 be passed on to, to the customers.

17 **MR. FLYNN:** It's really hard to quantify with
18 any accuracy obviously without some kind of analysis by
19 an engineer to identify what, what the issues are and
20 what the technology might be applied to address them,
21 and then obviously the cost would fall out from that.

22 It's a plant that has about 13 different
23 tanks on it, which makes it cumbersome and costly to
24 address on a tank-by-tank basis. The two headworks
25 tanks are covered. The screen that's at the headworks

1 is, is covered. The splitter boxes are covered. The
2 dumpster is covered. There are open aeration tanks
3 which are a function of the aerobic process we talked
4 about, the discussion earlier. I would say it would be
5 at least six digits in cost to address it. It could be
6 a million dollars. I really don't know with any
7 accuracy.

8 **CHAIRMAN BRISÉ:** Okay. Thank you very much.
9 Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr.
11 Chairman. And I believe when we recently went through
12 this process, we kind of went down the list of issues
13 and tried to block them together for efficiency. So I
14 would recommend that if there's a way we could do that,
15 at least from my mind, it's better rather than, than
16 jumping around. But I do have questions on -- I mean,
17 obviously Issue 1 is important, but the first technical
18 question I have is on Issue 2, which is quality of
19 service, which ties into the odor issues.

20 And, and I have a question for the utility.
21 There was this engineering study which I read, I read
22 it thoroughly, and it was, it seemed to me like a very
23 general inspection of the facilities. But what I did
24 note is the recommendations that a more comprehensive
25 evaluation be done so that the utility can come up with

1 the numbers or recommendations whether you need a
2 control on the lift stations or what needs to happen,
3 and then present it to the, to the community that, you
4 know, these are the costs associated with a certain
5 level of odor control.

6 And I've been involved in those processes and
7 it is, it is very expensive and, you know, and there's
8 a tradeoff. And I believe that public involvement with
9 the community that -- you know, to achieve this level
10 of control, it's going to cost X amount. But the first
11 step is to have this comprehensive evaluation.

12 So my question is why haven't you moved
13 forward with that where it was very clearly a
14 recommendation in this engineering report?

15 **MR. FLYNN:** Commissioner, I would say that it
16 wasn't an independent engineer. It was the
17 consultant's -- or the counsel's engineer was hired to
18 provide that document. I take that document with a
19 grain of salt. It was a very generalized write-up
20 about what causes odors, what might be odor sources,
21 what steps might be taken. To me it sounded more like
22 the engineer was trying to drum up business.

23 I think it would certainly be worthwhile to,
24 to consider an analysis, but I wouldn't base it solely
25 on what the report identified. I was present when the

1 fellow was there. He didn't take any measurements,
2 didn't take any, any samples or any kind of a factual
3 gathering of information other than his professional
4 training as to what he was looking at and walking
5 around the plant asking questions.

6 **COMMISSIONER BALBIS:** Well, I agree with you
7 that it was a very general report and I think that was,
8 appears to be the purpose. My point is the first step
9 would be a more comprehensive, detailed report with the
10 sampling that's required or whatever that needs to be
11 done in order for you to come up with alternatives to
12 deal with and address the complaints that you're
13 receiving and that we're receiving here.

14 So I've recognized it's general. Why haven't
15 you moved forward with a more comprehensive, detailed
16 one rather than just discounting it? Because it
17 appears to me that we both agree it's a general report,
18 but you haven't moved forward with the detailed report
19 or study.

20 **MR. FLYNN:** Well, I put in context with the
21 information provided by DEP from their inspections, and
22 for our own knowledge and familiarity with the facility
23 and how it's operating. I've been there myself. My
24 staff has been there; not just the operator, but
25 managers. It's, it's rare that it's generating odors

1 that correlate with the customers' complaints, although
2 I know we're not staffing at 7:00 in the morning.
3 We're there 8:00, 8:30, in that time range, and
4 throughout the rest, rest of the day.

5 So, to me, we could do that. But I would say
6 that it would probably be best to sit down and talk
7 with, with representatives of the customers to identify
8 what specifically they want to get out of the report,
9 how extensive the report needs to be so there's some
10 kind of a framework for what is generated from this
11 effort and what methodology is used to identify the
12 report, to generate the report.

13 **COMMISSIONER BALBIS:** And have you
14 coordinated -- and, Mr. Chairman, I appreciate the
15 leeway here.

16 **CHAIRMAN BRISÉ:** Sure. That's fine.

17 **COMMISSIONER BALBIS:** Have you moved forward
18 with setting up that meeting, that process?

19 **MR. FLYNN:** No. Right now we're in
20 litigation with Forest Lake Estates, which kind of puts
21 a damper on discussions.

22 **COMMISSIONER BALBIS:** Okay. That's a very
23 good answer.

24 **MR. BERNSTEIN:** Not to interrupt you,
25 Commissioner, I appreciate your line of inquiry and the

1 time constraints here, but I would like the opportunity
2 to be recognized, if I might, just to respond to this
3 to clarify one thing for the Commission. I think it's
4 important.

5 **CHAIRMAN BRISÉ:** You'll be recognized if, if
6 the Commissioner seeks to have input. Other than that,
7 at this point in the case --

8 **COMMISSIONER BALBIS:** Yeah, and I appreciate
9 that. I don't, I don't have a specific question for
10 you on this. I guess my position on, on, on this issue
11 is that, you know, it appears that the company has
12 moved forward with at least the initial steps. And how
13 litigation plays into it, I'm not sure. We haven't
14 really been privy to that. However, you know, once
15 again, we're in a situation where I don't think time
16 has passed enough to have these measures determine
17 their effectiveness or not. And so that's kind of
18 where we are at this point as far as quality of
19 service. I think the utility is starting to recognize
20 there may be a problem starting initial steps. I don't
21 know if they're being hindered by the litigation or
22 not, but at this time I'm not sure if we have enough
23 information or time to see if the measures they've put
24 in place have been effective. So with that, I don't
25 have any other questions on Issue 2.

1 **CHAIRMAN BRISÉ:** Okay. Commissioner Brown.

2 **COMMISSIONER BROWN:** Thank you. And I was
3 going to ask a question on Issue 2, unless you have
4 another preference.

5 **CHAIRMAN BRISÉ:** I was going to put us in a
6 posture of beginning to go through the issues.

7 **COMMISSIONER BROWN:** I would like that.

8 **CHAIRMAN BRISÉ:** Okay. So I'm going to go to
9 Issue 1, and we're going to address Issue 1 and then
10 move right on to Issue 2.

11 All right. Issue 1. And Ms. Brown.

12 **MS. BROWN:** Mr. Chairman, do you want a
13 presentation from me, or shall I just say Issue 1 is
14 staff's recommendation to deny Forest Lake's motion to
15 dismiss? It's premature. The substantive issue of
16 whether there is, is ownership of the land could be
17 addressed if there is a protest to the PAA.

18 **CHAIRMAN BRISÉ:** Thank you.

19 Commissioner Graham.

20 **COMMISSIONER GRAHAM:** Move staff
21 recommendation on Issue 1.

22 **COMMISSIONER BROWN:** Second.

23 **CHAIRMAN BRISÉ:** All right. It's been moved
24 and seconded. All in favor, say aye.

25 (Vote taken.)

1 All right. It's carried.

2 Moving on to Issue 2. Okay. Mr. McRoy.

3 **MR. McROY:** Commissioners, Issue 2 is staff's
4 recommendation on the overall quality of service for
5 Labrador Utilities. Staff recommends the Commission
6 find the utility in satisfactory condition.

7 **CHAIRMAN BRISE:** Thank you very much.
8 Commissioner Brown.

9 **COMMISSIONER BROWN:** Thank you. And,
10 Mr. McRoy, can you go through how staff found that the
11 quality of the product was deemed satisfactory per your
12 recommendation?

13 **MR. McROY:** Are you referring to the
14 wastewater or water?

15 **COMMISSIONER BROWN:** All.

16 **MR. McROY:** Oh, all? Beginning with the
17 wastewater treatment plant, again, staff reviewed the
18 DEP's findings on the wastewater treatment plant. That
19 included their less current inspection report. We also
20 checked with them in regards to the odor complaints.
21 Per DEP, they had received only two complaints in 2010.
22 They, according to DEP, they received none for 2011 and
23 none for 2012.

24 After reviewing that, staff made a site visit
25 to the plant where we requested all the operational

1 paperwork from the utility. We reviewed that,
2 correlated it with the filings that the utility
3 provided for us, reviewed it with DEP's last inspection
4 report.

5 We also that day traversed the community
6 with -- to find out if there was any odors present.
7 And that day there were not until you got to the
8 headworks of the utility where you expect it to be seen
9 (phonetic), since that's where all the beginning of the
10 treatment process took place. Upon reviewing all of
11 that information, we concluded that the utility was
12 operating in a satisfactory condition.

13 For the water plant, we, during the same
14 period, reviewed all their paperwork, reviewed the last
15 sanitary survey that DEP had for the utility, sampled
16 the product at the customer meeting, and, after
17 reviewing that information, determined that the product
18 was satisfactory.

19 **COMMISSIONER BROWN:** As a follow-up, in the
20 staff recommendation, it -- you suggest that many of
21 the customers have to drink bottled water. There are
22 some certain aesthetic concerns that the customers have
23 expressed during the customer hearing. We didn't hear
24 a lot of that today, but I know that you attended the
25 customer meeting and you heard that discussion.

1 Can you elaborate a little bit more on why
2 the actual quality of the product, of the water is
3 deemed satisfactory in your opinion?

4 **MR. McROY:** When you review the DEP's
5 sanitary survey report, they are in compliance. The
6 utility had an issue with iron in the water. In their
7 determination with DEP, a sequestrate was added, a
8 sequestrate that, that is a typical solution to that
9 issue.

10 Taste is a very, it's a secondary standard
11 for DEP, and the reason is because there's no health
12 hazards to it. It's hard to sometimes get a product to
13 everyone's preference, so we use the DEP's, which is a
14 primary sister utility agency, as our guide, and
15 currently they are meeting all their requirements. So
16 based on that and our simple sample, we determined that
17 it was in compliance and satisfactory.

18 **COMMISSIONER BROWN:** Thank you. And just a
19 question for Labrador at this time regarding the
20 aesthetic quality concerns that customers have
21 expressed. Has the utility contemplated having
22 discussions to address those concerns that customers
23 have expressed even since the last rate case?

24 **MR. FLYNN:** Commissioner, I think the answer
25 is that we have a -- well, we made an effort to

1 identify a better sequestrant that would be more
2 successful in having -- keeping the iron in solution.
3 If it comes out of the solution, it tends to generate
4 both taste and staining problems. And in that context,
5 we did change to a different sequestrant and we also
6 instituted a monthly flushing problem so that the
7 retention time in the water mains would not be lengthy
8 and in that way minimize the impact of iron in the
9 water.

10 **COMMISSIONER BROWN:** I appreciate that
11 answer, but have you had any discussions with customers
12 or representatives from Forest Lake regarding
13 addressing further aesthetic concerns?

14 **MR. FLYNN:** No, we have not.

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

16 **CHAIRMAN BRISÉ:** Commissioner Graham.

17 **COMMISSIONER GRAHAM:** Thank you, Mr.

18 Chairman.

19 I guess my first question would be to
20 Mr. Flynn. Have you guys determined that the iron
21 problem is coming from problems in the main?

22 **MR. FLYNN:** It's from the source water. The
23 aquifer contains iron, so we add the sequestrant at the
24 water plant at the wells, and it's in solution
25 throughout the distribution system thereafter.

1 **COMMISSIONER GRAHAM:** Is that new sequestrant
2 working?

3 **MR. FLYNN:** It is. There's less iron present
4 in the, in the water. A visual indication is that it's
5 working quite well.

6 **COMMISSIONER GRAHAM:** Have you seen a change
7 in complaints or have complaints subsided, I mean,
8 since you've changed project -- since you've changed
9 product?

10 **MR. FLYNN:** I believe we have. We had
11 certainly frequent complaints with the older
12 sequestrant. It was the one that was utilized when we
13 first bought the system. We've been using this
14 sequestrant for a couple of years and it seems to be
15 more consistent in how it works.

16 **COMMISSIONER GRAHAM:** How about --

17 **MR. FLYNN:** We've had a reduction in customer
18 complaints from what I understand.

19 **COMMISSIONER GRAHAM:** Have you guys tried
20 changing the flow to the sequestrant to see if more is
21 working better or more is working less?

22 **MR. FLYNN:** It's, it's, it's fed at a rate
23 that is guided by the engineering analysis of what
24 would be appropriate for that level of concentration of
25 iron.

1 **COMMISSIONER GRAHAM:** Is that the same
2 engineering analysis that Mr. Balbis was talking about?

3 **MR. FLYNN:** No, sir.

4 **COMMISSIONER GRAHAM:** I didn't think so.

5 All right. Staff, I heard earlier one of the
6 customers was talking about the DEP report. The most
7 recent one we have is the March 2010. Unless I'm
8 mistaken, I thought he said that there were some
9 deficiencies, but I see here that we have no
10 deficiencies. Which is it? Is it no deficiencies?

11 **MR. McROY:** There was no deficiencies in the
12 report. There were noted deficiencies in the
13 inspection for the wastewater treatment plant, which
14 they noted that they should keep their drain fields
15 mowed. So that was that note on there.

16 **COMMISSIONER GRAHAM:** One more time. There
17 was a deficiency that said what?

18 **MR. McROY:** It was not a deficiency. It was
19 just a note saying when you do a DEP inspection, they
20 inspect the entire facility. And if, if the grass is
21 not at an appropriate level in your drain fields or
22 retaining ponds, they note it. And they noted that
23 specific issue.

24 **COMMISSIONER GRAHAM:** They noted, they noted
25 the grass was too long.

1 **MR. McROY:** Yes.

2 **COMMISSIONER GRAHAM:** Okay. So -- because I
3 know we just came off of a water and wastewater case
4 where even though they're fine with DEP, some of the
5 secondary standards, they didn't meet those. In this
6 case was there any secondary standards that weren't
7 met?

8 **MR. McROY:** No, sir, there was none.

9 **COMMISSIONER GRAHAM:** Okay. That's it.
10 Thank you.

11 **CHAIRMAN BRISÉ:** Commissioner Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr.
13 Chairman. As far as the quality of service issue, and
14 staff in their analysis I think correctly pointed out
15 the different components of -- that we evaluate in
16 order to determine quality of service. And one of the
17 concerns that I have is the last part of the sentence
18 that's listed that part of the components for quality
19 of service is the utility's attempt to address customer
20 satisfaction. And then something that I have a concern
21 with, we have complaints, odor complaints, whether
22 they're formal or whether they're here or calls that go
23 to the utility that I'm not sure if the company is, is
24 adequately attempting to address those complaints. The
25 conversations about aesthetic improvements to water,

1 those haven't taken place. I think everyone at least
2 here understands, hopefully in the audience understands
3 that any of these improvements will cost money, but at
4 least an engagement of the customers for them to
5 determine if the cost benefit of those improvements,
6 they need to be engaged. And I'm not sure that the
7 utility has provided any evidence that they're
8 attempting to adequately address customer satisfaction.

9 From the water side, you know, I think we
10 still have the same issue with groundwater supply and
11 aesthetic issues associated with that, and I think
12 that's a problem throughout Florida. And I'm not sure
13 there's too much to do about that other than, again,
14 engaging the customers and having them determine if
15 it's appropriate to spend those dollars.

16 And I am confused. Mr. Sage did make some
17 comments and he provided some written comments, so I do
18 appreciate that. And part of his comments says, "If
19 the quality of water is pristine in part of the
20 community, and it is, then it should be good in the
21 entire community." And I find that, I find that odd.
22 I just wanted to point that out.

23 But from the wastewater side I think we, we
24 may have, we have a pretty clear disconnect. And I
25 don't know if it's appropriate to establish a different

1 quality of service for the water and the wastewater,
2 but I think it may be appropriate in this case because
3 I think on the wastewater side there seems to be a
4 little bit more to do to at least identify any
5 potential problems and engage the customers. So at
6 whatever time is appropriate, I would be in a position
7 to make a motion.

8 **CHAIRMAN BRISÉ:** Okay. Are there any further
9 comments on, or discussion on Issue 2?

10 All right. Seeing none, I think now would
11 be an appropriate time for us to entertain a motion.

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

14 Concerning the quality of service, I want, I
15 want to strongly encourage the utility to engage the
16 customers on both the water and wastewater side, do a
17 more detailed investigation to at least come up with
18 some costs for odors or establish that there aren't
19 odor issues, but at least engage the customer. But I
20 would move that we find that the quality of service for
21 the water system to be satisfactory and for the
22 wastewater system to be marginal.

23 **CHAIRMAN BRISÉ:** All right. We have a
24 motion. Is there a second?

25 **COMMISSIONER BROWN:** Second.

1 **CHAIRMAN BRISÉ:** All right. It's been moved
2 and seconded. Any discussion?

3 Commissioner Edgar.

4 **COMMISSIONER EDGAR:** I would pose to our
5 staff the question, if the motion were to carry a
6 finding of marginal quality of service for the
7 wastewater portion of the docket, does that have any
8 legal effect or requirement?

9 **MS. BROWN:** I don't know that it does.
10 Section 367.111(2) talks about each utility providing
11 reasonable service and provides the Commission the
12 opportunity to take action if it finds that the service
13 to the, to the customers does not meet the standards
14 promulgated by DEP or the water and wastewater
15 management districts. And I, I think the evidence is
16 that it does meet the standards. So I, I'm not -- I
17 don't know how that honestly affects going forward.

18 We have in the past limited salaries for, for
19 management mismanagement. If you find that, perhaps
20 some proposal to require the utility to do some more
21 studies might fit with the determination that the water
22 treatment plant was marginal.

23 **COMMISSIONER EDGAR:** So to --

24 **MS. BROWN:** Wastewater.

25 **COMMISSIONER EDGAR:** So, if I may, to

1 rephrase, excuse me, back to you, am I hearing
2 correctly that it would be within our discretion if we
3 wanted to take further action based upon a finding of
4 marginal quality of service for wastewater, but that
5 further action on that basis would not be required by
6 either a statute or rule or appellate decision?

7 **MS. BROWN:** To my knowledge, that's correct.

8 **COMMISSIONER EDGAR:** And then if I may as a
9 follow-up.

10 Commissioner Balbis, would it be accurate to
11 say that your suggestion of a finding of marginal
12 quality of service for wastewater is based upon the
13 concerns that we have heard by customers today about
14 odor, or are there other things that contribute to that
15 suggestion?

16 **COMMISSIONER BALBIS:** I think that
17 specifically odor is one of the main issues, but I
18 think that is a type of complaint. I'm concerned with,
19 again, the utility's attempt to address customer
20 satisfaction, the, the lack of, apparent lack of
21 engagement. And a good example of that is the odor
22 issues where there's been complaints, they have a
23 document produced by an engineer that states that has
24 the potential to produce odors and that a more
25 comprehensive study should move forward, and they

1 haven't moved forward with that. So I don't know if
2 that answers your question, but I think odors are a
3 very good example of the types of issues.

4 **CHAIRMAN BRISÉ:** Thank you, Commissioners.
5 Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Thank you, Mr.
7 Chairman.

8 I guess I have a question for staff. I know
9 the most recent water and wastewater case we had, we
10 found quality of service marginal, and I think we
11 dinked them a couple of basis points in ROE. What's
12 the functionality of, of dinking them a couple of basis
13 points on the wastewater side and not on the water
14 side? How does, how does that play out? How does that
15 work?

16 **MR. FLETCHER:** You could do that with the
17 wastewater side, isolate whatever the Commission
18 chooses, be it a 25-basis point or whatever basis point
19 reduction that might be. And of course just staff
20 would be given administrative authority to have that
21 fall out in the revenue requirement for the wastewater
22 system only.

23 **COMMISSIONER GRAHAM:** So we'd have to make
24 sure that there's a hard line between what are water
25 expenses and what are wastewater expenses.

1 **MR. FLETCHER:** Again, we can isolate it. If
2 the, if the Commission's decision is marginal for
3 wastewater, then we can isolate that.

4 **MR. WILLIS:** Commissioner, Marshall Willis
5 for Economic Regulation.

6 When you apply the basis point reduction,
7 it's only on the return on equity. So if you look at
8 the schedules attached to the recommendation, you're
9 going to see we do a calculation for both water and
10 wastewater separately. It's easily calculated to keep
11 the two separate. It's just that the two will have
12 different returns on equity applied to them for future
13 proceedings until the next one comes along. So it's a
14 simple application just to, just to adjust that simple
15 return on equity. Like if it's 25 basis points for
16 marginal, that's all it would require. It just means a
17 slight reduction in the revenue requirement for the
18 wastewater system.

19 **COMMISSIONER GRAHAM:** Mr. Willis, while
20 you're there, is there a mechanism? I appreciate where
21 Commissioner Balbis is coming from and I can't say I
22 disagree with him. I'm going down this path myself
23 because I, I think my understanding of what this board
24 is doing is trying to make sure that customer service
25 is important and that it's something that people should

1 be paying attention to. And I understand, I appreciate
2 where he's coming from using this as a mechanism of,
3 for lack of a better term, getting somebody's
4 attention.

5 Is there a way of, short of coming back to
6 another rate case, that we understand that they
7 achieve -- they heard the message and you can
8 basically, if we, if we decrease it 25 basis points, a
9 year from now they come back and then those 25 basis
10 points go away because we're satisfied that they're
11 doing what it is that this board is looking for them to
12 do? Is there a mechanism for that to happen?

13 **MR. WILLIS:** You could set a time for the
14 company to come back to you with what they've tried to
15 do to resolve the situation. It would require staff
16 bringing you, keeping this docket open and staff
17 writing a recommendation. Based on that and the
18 Commission deciding whether or not the parameters or
19 the reasoning that you applied the 25 basis point
20 reduction have now been met, and that would be
21 released. That would mean the rates would then go up
22 by the 25 basis points at that point.

23 I've seen cases where the Commission can do
24 it over a period of time. I know cases in the past
25 where the Commission applied a return and just said

1 it's going to be for a two-year period. And after
2 that, at that point the rates would automatically be
3 adjusted up by 25 basis points. I believe you have the
4 authority to do any of that.

5 **COMMISSIONER GRAHAM:** I guess back to the
6 board, I, I agree with Commissioner Balbis that this is
7 something we probably should do or this is the path we
8 should go down. I, I think we should -- there should
9 be some sort of mechanism in there, once again short of
10 coming back for another rate hearing, for if they've
11 met with the, if they've met with the clients and
12 they've done things that, you know, done what they can
13 to address the problem, at least we feel like they've
14 done what they can to address the problem even though
15 they may not be able to fix the problem. Especially,
16 as the Chairman said earlier, it may not be
17 cost-effective to fix the problem, but, you know, at
18 least they've, they've come up with some solutions.
19 And I guess in that case we could decide if we're
20 satisfied or not satisfied that they are reaching out
21 and listening to the customers. Maybe that's something
22 we should talk about. I mean, that, that would get me
23 fully engaged on this, this amendment that's on the
24 floor or the motion on the floor. Thank you.

25 **CHAIRMAN BRISÉ:** Thank you.

1 Commissioner Brown.

2 **COMMISSIONER BROWN:** Thank you. And I --
3 Commissioner Graham asked all of the questions, the
4 line of thinking that I was going down too.

5 And to elaborate on my support for this
6 motion, I wanted to, to further clarify what it is I'm
7 actually looking for here. It is engaging the
8 customers, it is attempting to do additional studying
9 towards the aesthetic measures that the company can do.
10 It is looking at a comprehensive odor treatment
11 program. So those are kind of the things that -- and I
12 don't know if by doing that, necessarily reporting back
13 to the Commission within two years or quarterly or
14 annually, what it is -- what would be the most
15 appropriate means. And I'm looking to staff really to
16 help provide some guidance whether we have quarterly
17 reports of what they're doing.

18 **MS. BROWN:** Well, Commissioner, if I might
19 answer that. In the staff recommendation on Issue 2,
20 as you know, there are two parts to the quality of
21 service. One is the, is the status of the plants. The
22 other is the utility's attempt to address customer
23 satisfaction. It seems to me that you might be able
24 here to determine that the utility has not made
25 sufficient attempt to address customer satisfaction and

1 then direct them -- and you'd have to ask the engineers
2 about what the timing for reports would be, but that
3 appears to me within the context of this recommendation
4 to be what you're trying to get at, that they haven't
5 made the attempts to address customer satisfaction.

6 **COMMISSIONER BROWN:** I would defer to the
7 maker of the motion.

8 **CHAIRMAN BRISÉ:** Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Thank you, Mr.
10 Chairman. And maybe I can offer a solution or an
11 attempt at a solution. I think that, at least for me
12 personally, having the water quality meetings, although
13 we, my motion is to find that satisfactory, I mean,
14 it's still important, having that meeting, performing a
15 comprehensive odor control study with cost estimates or
16 options, and meeting with the customers and
17 determining, you know, the costs associated with it, I
18 think that process should take, being conservative, 18
19 months or so. So I would recommend that we put maybe
20 an 18-month or two-year window where the ROE would
21 trigger back up to the appropriate amount, unless those
22 activities have not been performed.

23 And maybe, I guess, a question to staff.
24 Would you have the ability to, if the study hasn't been
25 performed, they haven't met with the customers, to put

1 the brakes on it and bring something before us where we
2 could review it, or would it be easier to not have a
3 time frame? Because I think, I think maybe having a
4 two-year time frame, unless it's brought to us that
5 they're not complying with our order or recommendation.

6 **MR. McROY:** Commissioner, if what we're --
7 you're trying to get them to move on further reporting,
8 having them report to us quarterly on what progress
9 they've made in efforts to answer what you're asking of
10 them would be appropriate, I think. I think most
11 utilities would probably want to do that as
12 expeditiously as they can since the ROE is tied up in
13 it. So I think that that would trigger them to move
14 quickly forward.

15 **COMMISSIONER BALBIS:** And just so I'm clear,
16 and I think other Commissioners have the same concern,
17 we don't want to have the utility have to come before
18 us in a rate case in order to reestablish it. I want
19 to avoid that and make it as administratively efficient
20 as possible. If they meet those concerns and if they
21 start addressing customer satisfaction, they're no
22 longer penalized.

23 **MR. FLETCHER:** Commissioner, you could do
24 that and institute like a penalty for 18 months to two
25 years. And then, as Mr. McRoy said, have them provide

1 those quarterly reports. And if it looks like they are
2 addressing, meeting with the customers, addressing
3 their concerns and we have that in writing, we can have
4 a provision where that mechanism can fall off if that's
5 the Commission's intent. If we have documentation that
6 they have strived forward to meet with the customers
7 and to address those secondary water quality standards,
8 then that could fall out. I guess I'll defer.

9 **CHAIRMAN BRISÉ:** Sure.

10 **MR. WILLIS:** If I could just add here.

11 Personally I'm not sure quarterly reports are really
12 important if you're getting to the end objective. And
13 if you think about it, if you put a 25-basis point
14 penalty out there we can call it on the ROE for
15 wastewater, the onus is on the company to do something
16 about it. You could put a two-year time frame and say,
17 look, we expect something to happen within two years.
18 If it does within that two-year period, you can file
19 information to show what you've done.

20 I would feel uncomfortable with staff making
21 that decision. I would, I would want to bring that
22 back to the Commission and let the Commission make that
23 decision on whether they have met your requirements or
24 not.

25 But I think if you want to make it less

1 administratively burdensome here, that you would not
2 have any quarterly reports. You would just basically
3 say, you know, we expect you to have a two-year period
4 to demonstrate that you're trying to do something with
5 these customers. If you've done something, you've met
6 with those customers, they're now satisfied that either
7 they don't want to incur more, a higher bill to pay for
8 improvements, fine. But you've met with them and
9 you've done whatever you needed to do to get that
10 satisfaction.

11 **COMMISSIONER BALBIS:** So then, just to
12 clarify, Mr. Chairman, just one question, so it would
13 be easier not to have a time frame and just have the
14 utility provide evidence that they've increased their
15 attempt to meet customer satisfaction, and you would be
16 able to, or the Commission would be able to remove the
17 penalty. And, again, to encourage good behavior, you
18 would have the ability to do that without going through
19 this whole process.

20 **MR. WILLIS:** I think, I think that's true. I
21 would, I would think you'd want to keep a time frame on
22 there. Because if they don't, they don't incur any
23 improvement within a two-year period, it would just
24 stay in place after that. We would close the docket
25 after two years, and it would be up to the company at

1 that point to come back at some next filing. Because
2 at that point truly if the company is going to make
3 improvements, they're going to want recovery of those
4 improvements, and they'll be back here with a rate case
5 to do that.

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

8 And maybe it would be easier to vote on the
9 motion at hand and then continue the discussion on what
10 we're going to do now if the motion passes.

11 **CHAIRMAN BRISÉ:** Commissioner Graham.

12 **COMMISSIONER GRAHAM:** I guess the question to
13 staff is if they're going to come back before us or
14 just come back as some sort of limited proceeding and
15 basically just remove the, the decrease -- the
16 decretion (phonetic) of -- the decreased basis points?

17 **MR. FLETCHER:** Commissioner, you could keep
18 the docket open I think is what I heard Mr. Willis say.

19 Mary Anne.

20 **MS. HELTON:** This is what I envision, and
21 this is just me speaking as a, as a lawyer. What I
22 envisioned sounds like what you're leaning towards at
23 this point in time is conditionally reducing their ROE
24 by 25 basis points. And upon a showing by the company
25 within a two-year time period that they have

1 proactively done the things that you think are
2 necessary to, to remedy the odor issues that the
3 customers are experiencing, then as long as they come
4 back and they show that they have done those things
5 that you -- we have set out in the order, then we would
6 bring that back to you. It would be -- I don't even --
7 it would probably be a procedural vote showing whether
8 you have, whether they have done that or not. And upon
9 your vote, if you agree with the company, then the 25
10 points that were reduced conditionally would bring it
11 back up to where they should be in the range.

12 **COMMISSIONER GRAHAM:** Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Yes, Commissioner Graham.

14 **COMMISSIONER GRAHAM:** Yeah. That's pretty
15 much what I was asking. It seems I remember we did
16 this before for another utility, not necessarily reduce
17 the basis points, but encouraged them to go back and
18 meet with the residents. And basically we were going
19 to have them sit down and give the residents a laundry
20 list where, you know, if you want this to happen, it's
21 probably going to cost you this much money. If you
22 want this to happen, it's probably going to cost this
23 much money. And for some reason I don't remember that
24 ever coming back.

25 But I guess, if I may, Mr. Chairman,

1 Mr. Friedman or Mr. Flynn, I'd like to hear some words
2 from you before we continue down this path.

3 **MR. FRIEDMAN:** Yeah. Well, this is Marty
4 Friedman. Briefly on the, on the legal aspect, I
5 don't -- I know where you're going with this 25 basis
6 points, but I don't think that if you find a system
7 that's marginal, then it's marginal. And I think that
8 sends the clear indication to the utility that it needs
9 to do something before it comes back for another rate
10 case or you're going to have a problem. I don't think
11 with a marginal utility you should, you should, you
12 should set the precedence of reducing ROE in that case.
13 I mean, it sends the message by calling it marginal,
14 even though in all other aspects the system is, is
15 satisfactory. And I'll let Mr., Mr. Flynn address that
16 other part of the question.

17 **MR. FLYNN:** I agree with Mr. Friedman. What
18 are the questions you had, Mr. Commissioner?

19 **COMMISSIONER GRAHAM:** Well, one of the
20 questions I guess I have is a time frame. We're
21 talking about two years. How long do you think it
22 would be before you can come back and, you know, maybe
23 put systems in place where you're meeting with them
24 quarterly, every six months dealing with their
25 questions?

1 The reason why I say that is because
2 Commissioner Balbis asked you a couple of questions,
3 did you do this for the customers, did you do this,
4 have you thought about that? And the answer to most of
5 those have been no. Now I understand that there's a
6 pending, there's a pending court case out there. But I
7 guess what I'm looking for is I'm looking for a time
8 frame. You know, I'm sure you guys don't want to wait
9 two years before you can justify getting back those 25
10 basis points, you know. Can you do it in a year, you
11 know? How long do you think it's going to -- how long
12 do you think it would be before you address some of
13 these issues so you can answer some of Commissioner
14 Balbis's questions as "yes" rather than "I don't know"?

15 **MR. FLYNN:** Well, given the constraint that
16 the litigation is ongoing, which makes dialogue more
17 difficult, it's hard to answer. I would say at least
18 six months, a year's time would be probably a
19 reasonable expectation for evaluating, for bringing in
20 some kind of a consultant to help us identify options
21 and costs for those options, and then report back and
22 make that step happen in a prompt fashion.

23 **COMMISSIONER GRAHAM:** Okay. Thank you.

24 **CHAIRMAN BRISÉ:** Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you. I think we,

1 you know, had started down one direction and we've kind
2 of come back around full circle. I know Commissioner
3 Balbis had made the request that we go in chronological
4 order or groupings, and so I would point out that we
5 aren't at the ROE issue quite yet.

6 I would have some concerns administratively
7 delegating a finding of customer satisfaction as a
8 change from a finding of this Commission as marginal,
9 not because I have a lack of confidence in our staff,
10 but candidly I think that's our job. And partially
11 because a finding that uses the term "satisfaction" is
12 by its nature more often of a qualitative than a
13 completely quantitative basis.

14 And so, again, no lack of confidence in our
15 staff, but back when I was in a staff position, that's
16 something I would have felt more comfortable if it was
17 candidly handled by those who have been appointed to
18 make some of those decisions.

19 So I think that if, when we get to the ROE
20 discussion, which is just a few items away, that one
21 question I will have is do we, realizing every other
22 issue will impact, but if the recommendation were to
23 carry forward, can you at that point in time when we
24 come to ROE give me an approximation of what 25 basis
25 points -- sorry, you knew that's where I was going --

1 would be? I think that's good information if we are
2 using terms like "penalty."

3 And, secondly, I would be interested as a, as
4 a lawyer, a non-engineer, if we have estimates of what
5 reasonably meeting some of these -- we talked about
6 time, which is important, but also cost estimates. How
7 much is an odor study, how -- I've got some questions
8 along those lines when we come to ROE.

9 So with that, I would ask, Mr. Chairman, if
10 it is appropriate, perhaps to go ahead and dispense
11 with the motion and issue that is before us and then to
12 move into the others.

13 **CHAIRMAN BRISÉ:** All right. I do believe
14 that as the motion was set, part of the discussion of
15 the ROE led into the conversation. So there's one or
16 two ways that we can handle this. There's obviously a
17 motion that's been seconded. I would like to make sure
18 that the motion is restated so we're clear on what the
19 motion is and we're clear on what we're voting on, and
20 then we could move forward.

21 Okay. So if Commissioner Balbis would
22 restate the motion.

23 **COMMISSIONER BALBIS:** Thank you, Mr.
24 Chairman, and hopefully I restate it accurately. But I
25 move to find that the utility's quality of service for

1 the water system be deemed satisfactory, and for the
2 wastewater system be deemed marginal.

3 **CHAIRMAN BRISÉ:** All right. That is the
4 motion, and it was seconded by Commissioner Brown.
5 Based upon the hearing of the motion, your second still
6 stands?

7 **COMMISSIONER BROWN:** That is correct.

8 **CHAIRMAN BRISÉ:** That is correct. All right.
9 Seeing that, all in favor, say aye.

10 (Vote taken.)

11 All right. It carries.

12 Now we're moving on to Issue 3.

13 **MR. FLETCHER:** Commissioners, Issue 3 is
14 staff's recommendation to approve audit adjustments to
15 which the utility agrees with.

16 **CHAIRMAN BRISÉ:** All right. Is there any
17 question or comments on this or -- all right.
18 Commissioner Graham.

19 **COMMISSIONER GRAHAM:** Move staff
20 recommendation on Issue 3.

21 **CHAIRMAN BRISÉ:** All right. It's been moved
22 and seconded. All in favor, say aye.

23 (Vote taken.)

24 All right. Item 3 carried.

25 Issue No. 4.

1 **MR. FLETCHER:** Commissioners, Item 4
2 addresses staff's recommendation to make adjustments to
3 the utility's Phoenix project related to divested
4 systems, and also to make an adjustment to extend
5 the -- or use a ten-year life for the Phoenix project
6 rather than six years proposed by the utility.

7 **CHAIRMAN BRISÉ:** Commissioner Graham.

8 **COMMISSIONER GRAHAM:** Move staff
9 recommendation on Item 4.

10 **CHAIRMAN BRISÉ:** All right. Is there a
11 second?

12 **COMMISSIONER BROWN:** Second.

13 **CHAIRMAN BRISÉ:** Okay. There's a second.
14 All right. Discussion? Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you. I was just
16 going to ask staff, the treatment that is recommended
17 is the same treatment that we have used for this issue
18 for other systems?

19 **MR. FLETCHER:** Yes, Commissioner. Several
20 sister companies, the Commission has made that, this
21 consistent decision.

22 **COMMISSIONER EDGAR:** Thank you.

23 **CHAIRMAN BRISÉ:** Thank you, Commissioner
24 Edgar.

25 Commissioner Balbis.

1 **COMMISSIONER BALBIS:** Thank you, Mr.
2 Chairman. And I support the motion. I just wanted to
3 share with the other Commissioners a discussion that I
4 had with staff during the briefing.

5 This Phoenix project, you know, as
6 Commissioner Edgar mentioned, was in another docket,
7 and it's something that we'll probably continue to
8 discuss.

9 One of the discussions I had with staff was
10 the concern that I have is, is that we have a software
11 system that I believe costs upwards of \$21 million that
12 I'm not sure the effect of the purchasing of that
13 system, were there billing problems before, are there
14 billing problems after, and the overall effectiveness
15 of a \$21 million investment. It was something that I
16 discussed with staff at length. I don't think this is
17 the proper forum to discuss it, but it was something
18 that was brought up because it's something that, that
19 definitely caught my attention. And I'm glad to see
20 we're being consistent in our treatment of this project
21 at least so that the customers are not paying more
22 because the utility divested some of its utility
23 systems. So with that, I support the motion.

24 **CHAIRMAN BRISÉ:** All right. It's been moved
25 and properly seconded. Are there any other items of

1 discussion or issues for discussion on this particular
2 issue?

3 All right. Seeing none, all in favor, say
4 aye.

5 (Vote taken.)

6 All right. Moving on to Issue No. 5.

7 **MR. FLETCHER:** Commissioners, Issue 5
8 addresses staff's recommendation to remove certain
9 annualized adjustments to the utility's accumulated
10 depreciation and depreciation expense. We believe that
11 these should be removed because you need to stick to a
12 matching principle with the test year.

13 **CHAIRMAN BRISÉ:** All right. Any questions or
14 discussion on Issue No. 5 dealing with accumulated
15 depreciation? All right. Seeing none, is there a
16 motion?

17 **COMMISSIONER EDGAR:** Move staff.

18 **COMMISSIONER BALBIS:** Second.

19 **CHAIRMAN BRISÉ:** All right. Moved and
20 seconded.

21 All in favor, say aye.

22 (Vote taken.)

23 All right. Moving on to Issue 6.

24 **MR. McROY:** Commissioners, Issue 6 is the
25 used and useful for the utility. Staff recommends that

1 the used and useful both for the water treatment plant,
2 storage, wastewater treatment plant, and distribution
3 and collection systems be consider 100% used and
4 useful.

5 **CHAIRMAN BRISÉ:** All right. Thank you.

6 Commissioner Brown.

7 **COMMISSIONER BROWN:** Thank you. I think this
8 is a good opportunity for staff to respond to OPC's
9 argument earlier.

10 **MR. McROY:** Commissioners, when staff
11 reviewed the utility's application, basically the
12 utility area that they're -- that the plant was built
13 for is being served by that plant. There's only one
14 area that's currently undeveloped, which is that small
15 portion that OPC just talked about.

16 As for the design factor, that was set by DEP
17 when the facility was being built. That is not an
18 unusual number for ERCs. I've seen that before. So
19 when you look at it from that perspective, with the
20 utility serving the entire area that they're currently
21 permitted to serve, staff believes that the utility has
22 met the criteria of calling it 100% used and useful.

23 **COMMISSIONER BROWN:** So if we were to, if the
24 Commission were to use the rule, the Commission rule,
25 what would the percentage be then for the used and

1 useful for the wastewater?

2 **MR. McROY:** If you look at the flow data, it
3 would be 37%.

4 **COMMISSIONER BROWN:** And then that big
5 difference between 37% and what staff is recommending
6 for the 100% is based on the answer that you provided
7 earlier.

8 **MR. McROY:** That's correct. The flow data is
9 basically gathered based on the design criteria of the
10 plant. The plant was designed based on that
11 determination of DEP during that period of time that it
12 was going through design. That was set. And the plant
13 is appropriately sized for those numbers.

14 **COMMISSIONER BROWN:** I think this is a very
15 significant issue and I'm just not, I'm not clear
16 really on why staff is recommending the 100%. And,
17 again, it carries a significant cost. I just would be
18 curious to hear from the other Commissioners on, on it.

19 **CHAIRMAN BRISÉ:** Commissioner Balbis.

20 **COMMISSIONER BALBIS:** Thank you, Mr.
21 Chairman. And, again, in full disclosure, I would like
22 to share with the Commissioners the heated conversation
23 I had with staff on this issue, and it, and it's about
24 the 280 gallons per day.

25 I'm used to, in my former professional

1 career, using numbers closer to 200 gallons per day for
2 wastewater flow per ERC, and those are areas in Palm
3 Beach County, larger houses, et cetera. So I was
4 shocked to see a 280 gallons per day per ERC.

5 So the question for staff, you indicated that
6 the design criteria that was used was set by DEP. So
7 is there documentation in the record from DEP that
8 shows the 280 gallons per day, or is their original
9 design documentation that the utility provided in the
10 MFR that lists the 280 gallons per day, or was it
11 somehow back calculated out?

12 **MR. McROY:** There's no design data that was
13 submitted for the plant. I think the plant was built
14 prior to the current owners acquiring it.

15 Again, that, that design number is not an
16 unusual number. And what we're looking at now is
17 current flows versus the design flows. The utility
18 again is serving all the area that it's certificated
19 for. There's no additional piping to go anywhere other
20 than what they're currently serving, and those are the
21 reasons that we looked at it as being 100%.

22 **COMMISSIONER BALBIS:** But, again, back to the
23 280 number that you said that there was no evidence in
24 the record that shows a 280. And I'm not sure, and so
25 I'm -- I hesitate to ask a question that, that I don't

1 know, but I wasn't aware that DEP set standards. I
2 thought DEP followed ten state standards, which does
3 not specify the flow per ERC.

4 **MR. McROY:** That's correct. But they also do
5 the permitting. So whatever that permitting engineer
6 decides is appropriate for that plant at the time
7 during permitting is the number that the utility
8 typically uses as a design number for the plant.

9 **COMMISSIONER BALBIS:** Okay. And that, that
10 correlates with my recollection that it's the design
11 engineer that determines it, and then DEP either
12 approves it or not. But they rely on the professional
13 opinion and experience of the design engineer. So did
14 the utility provide any documentation from the design
15 engineer that showed it was designed for 280 gallons
16 per day?

17 **MR. McROY:** No. The utility did not provide
18 any design engineering documents, but that, again,
19 that's not unusual. We typically don't require that
20 when we're looking at the plants.

21 **COMMISSIONER BALBIS:** Okay. And then back to
22 the -- changing gears a little bit. On the statement
23 that the utility is providing service to all of their
24 area, but isn't there a parcel that is undeveloped? I
25 believe it was mentioned by one of the parties.

1 **MR. McROY:** That's correct. It's a parcel
2 that is undeveloped in the front of the development
3 that, based on the current flows, will probably be
4 around 5% increase in the flows.

5 **COMMISSIONER BALBIS:** Even though on the site
6 plan isn't it designated as commercial?

7 **MR. McROY:** It may be. I don't think that
8 they even got into permitting whether it was going to
9 be commercial or residential. But it is noted as a
10 commercial, which would probably make those numbers a
11 little less.

12 **COMMISSIONER BALBIS:** Okay. So -- but then
13 you estimated about 5% of the flow. So all of the area
14 has not been developed.

15 **MR. McROY:** That's correct. There is four,
16 four lots in that area that's, that's not developed.

17 **COMMISSIONER BALBIS:** So one way to look at
18 it is at the most, the highest percentage of used and
19 useful that one could argue is 95%, if 5% isn't even
20 developed.

21 **MR. McROY:** That's correct. If you look at
22 it from that perspective, at 95%. But typically the
23 Commission has granted 100% used and useful if the area
24 is at least 90 or greater.

25 **COMMISSIONER BALBIS:** Okay. So, again, I

1 think we have this big discrepancy from the rule and
2 looking at the flows, which is much lower used and
3 useful, and then the overall design capacity, which I'm
4 not sure if we have the backup information. Because I
5 couldn't, I couldn't find it in the record either to
6 justify the 95% or 100%, but I'd welcome other comments
7 from Commissioners on this issue.

8 **MS. DANIEL:** Commissioner, if I may. Patti
9 Daniel for staff. I just did want to clarify, the rule
10 does provide a calculation, which is the 35%. The rule
11 also contains other criteria that the Commission may
12 also consider in determining the used and useful
13 percentage, one of which is build out. I just wanted
14 to make sure you knew there was that.

15 **CHAIRMAN BRISÉ:** All right. It seems like
16 this issue is ripe for discussion. So if -- I don't
17 know who wants to go first.

18 Commissioner Balbis.

19 **COMMISSIONER BALBIS:** I have one last
20 question for staff that I forgot to ask. This utility
21 went through a recent rate case. Was used and useful
22 percentage for the wastewater plant, was that
23 determined in that proceeding?

24 **MS. BROWN:** Commissioner, I have limited
25 recall of that, but my understanding is that it was a

1 settlement, and the used and useful percentage wasn't
2 determined by the Commission in that settlement
3 proceeding.

4 **COMMISSIONER BALBIS:** So if we were to
5 approve a lower percentage, we wouldn't be going
6 against a precedence that was set for this utility; is
7 that correct?

8 **MS. BROWN:** I think so.

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

10 **CHAIRMAN BRISÉ:** Commissioner Graham.

11 **COMMISSIONER GRAHAM:** Thank you, Mr.

12 Chairman.

13 I am, I'm actually in favor of the staff
14 recommendation on this one. I don't necessarily see
15 penalizing the utility because four of, of all those
16 lots out there aren't developed. I mean, if the market
17 was different right now, if people were building houses
18 or people were, more people were moving to Florida like
19 they were five years ago, I'm sure those four lots
20 would be built out now. And you're talking just a
21 handful of lots. I mean, you build a system not for
22 the way things flow today but how you expect them to
23 flow ten years from now. And so I don't have a problem
24 with the staff recommendation, so I'll move staff
25 recommendation on this issue.

1 **CHAIRMAN BRISÉ:** All right. Is there a
2 second?

3 (No response.)

4 All right. Motion fails for a lack of a
5 second.

6 Commissioner Balbis.

7 **COMMISSIONER BALBIS:** Thank you, Mr.
8 Chairman. And if there was a second, I would have
9 discussed this at that time.

10 It's my understanding from staff in reviewing
11 the site plan, these are not lots that just have not
12 been developed. This is a parcel that's designated, I
13 believe, as commercial that is undeveloped; correct?

14 **MR. McROY:** One parcel, yes. But there's
15 four separate single lots.

16 **COMMISSIONER BALBIS:** Right. But the large
17 portion on the north side is an undeveloped parcel
18 designated as commercial, so it's not a case where
19 someone hasn't moved in. The parcel just has not been
20 developed.

21 **MR. McROY:** That's correct.

22 **COMMISSIONER BALBIS:** Okay. That's all I
23 had.

24 **CHAIRMAN BRISÉ:** All right. Any further
25 discussion or are we in posture for a motion?

1 Do we need a breather? Oh, I see
2 Commissioner Brown.

3 **COMMISSIONER BROWN:** Thank you. I don't have
4 a problem with the staff recommendation with regard to
5 the water treatment plant. It's the wastewater
6 treatment plant. And I don't know what the appropriate
7 percentage for used and useful would be. I don't
8 support the 100% build out, but I don't know -- if we
9 were to follow the Commission rule, it would be 37%. I
10 don't know if that's appropriate either. So that is
11 where I am at.

12 **CHAIRMAN BRISÉ:** Commissioner Balbis.

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

15 I, I think that -- and I agree with
16 Commissioner Brown. I think that if going to the
17 actual flows penalizes a utility for conservation
18 measures, which we're all trying to encourage, so
19 that's not a position that I think we should be in.

20 However, I think that given a lack of
21 supporting documentation, that I'm also hesitate to
22 move forward with the 100%. At the least we should do
23 is take into account the undeveloped parcels and adjust
24 the used and useful for water and wastewater because it
25 would affect both, and that way at least it's something

1 that's to me logical, doesn't penalize the utility for
2 conservation, and allows -- I mean, what's going to
3 happen when that parcel gets developed, additional
4 revenue is going to come to the utility.

5 So, so I would move to adjust used and useful
6 percentages. And if 5% is the number, so 95%, that's
7 for both water and wastewater, I would move that we
8 determine used and useful percentages for water and
9 wastewater to 95% if, again, that is staff's
10 recommendation on the flow differences. And I saw a
11 lot of nods, so that is my motion.

12 **CHAIRMAN BRISÉ:** That is your motion. All
13 right. Is there a second?

14 **COMMISSIONER BROWN:** I'll second it for
15 discussion purposes.

16 **CHAIRMAN BRISÉ:** All right. It's been
17 seconded.

18 All right. So the floor is open for
19 discussion. Commissioner Brown.

20 **COMMISSIONER BROWN:** I would just like some
21 feedback from staff on the motion and whether you think
22 that's appropriate based on the discussion.

23 **MR. McROY:** Commissioner --

24 **MS. DANIEL:** I'm sorry. I'll stay put for a
25 few minutes until we finish this issue. I won't bounce

1 around again.

2 One way that you could look at this,
3 Commissioner, is to assign a capacity that you might
4 expect to be utilized should that 11 acres of vacant
5 property, whether it's commercial or RV, whatever it's
6 going to be. The company has indicated that at some
7 point there was a discussion that it might be 90 RV
8 lots. Now an RV lot does not have as much demand, you
9 would expect, as the homes that are there.

10 In our calculation, we showed on page 20 that
11 the actual flows were about 69 gallons per day per ERC.
12 I don't know if you want to look at today's flows or a
13 design criteria or something in the middle, but let's
14 just say we've got 90 units and we wanted to give it
15 somewhere between 70 gallons per day and 100 gallons
16 per day. Let's call it 10,000 gallons. That's about a
17 5% adjustment, leaving that capacity available in the
18 used and useful calculation should that acreage
19 ultimately be developed. That's, that's one way to
20 look at it.

21 **COMMISSIONER BROWN:** I appreciate that.

22 **CHAIRMAN BRISÉ:** All right. Any further
23 discussion?

24 **MR. FLETCHER:** If I may, Commissioner, just
25 add a point.

1 **CHAIRMAN BRISÉ:** Sure, Mr. Fletcher.

2 **MR. FLETCHER:** Just to throw another option
3 out there, in the 2003 case, the Commission did decide
4 that case was PAA and it was consummated. The
5 wastewater treatment facility was found to be a 79.94%.
6 I know Commission practice is, is that you don't, once
7 used and useful is established, you usually don't go
8 below that. Although the 2008 case was subject to a
9 settlement and has no precedential value, you could go
10 back to the 2003 case and use the 79.49% for
11 wastewater. Just for discussion.

12 **CHAIRMAN BRISÉ:** Commissioner Balbis.

13 **COMMISSIONER BALBIS:** Thank you, Mr.
14 Chairman. And before I withdraw my motion, I just want
15 to make a comment to staff. And I understand the
16 difficulty you have in having to think on your feet and
17 respond to questions from wherever they come, but that
18 is why I asked if the Commission has established a used
19 and useful percentage so that we wouldn't go down this,
20 this route. But I appreciate you doing the backup
21 investigation because that's very important to us in
22 that the Commission has decided at some point this very
23 same issue and we can use that as a sounding board. So
24 with that, I withdraw my motion.

25 **CHAIRMAN BRISÉ:** All right. The maker of the

1 motion withdraws the motion. Is the second agreeable
2 to that?

3 **COMMISSIONER BROWN:** Yes.

4 **CHAIRMAN BRISÉ:** Okay.

5 **COMMISSIONER BROWN:** And I'm looking forward
6 to a new motion.

7 **CHAIRMAN BRISÉ:** Okay. All right. At this
8 time we're back to square one. And I don't know if we
9 want to have further discussion before a motion, or are
10 we in a posture for a motion?

11 Commissioner Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr.
13 Chairman. I would like to give staff five minutes to
14 have everyone get together and agree as to the 2003
15 finding, and it also would give me an opportunity to
16 take a break for five minutes. So with your
17 permission, I would recommend that I take a five-minute
18 break.

19 **CHAIRMAN BRISÉ:** You're making me feel like
20 I'm the principal here. So we have -- so we'll have
21 'til 4:15, and so we'll take a quick recess. Thank
22 you.

23 (Recess.)

24 **CHAIRMAN BRISÉ:** All right. We are ready to
25 reconvene. If my memory serves me right, Commissioner

1 Balbis is about ready for a motion?

2 **COMMISSIONER BALBIS:** Yes, Mr. Chairman, but
3 before I do that, I'd like confirmation from staff
4 about the previous rate case and the used and useful
5 percentages that the Commission determined.

6 **MS. DANIEL:** Commissioners, in the Company's
7 2003 rate case, the flows were based on a max month
8 instead of a three-month max month in that particular
9 case, but those flows were 166,065 gallons per day.
10 The capacity of the plant was the same as it is today,
11 216,000. There is discussion in the order at that
12 point in time that there was an 11.6-acre parcel --
13 this is back in 2003 -- and that there were a few
14 vacant lots in the mobile home park. Therefore, the
15 Commission added a small growth allowance of
16 6,615 gallons. So with the flows of 166,000 and the
17 \$6,600 (sic) growth allowance divided by the capacity
18 of 216,000, the calculation was 79.94 percent in that
19 2003 docket.

20 And just for comparison sake, today the flows
21 for -- there has actually been a small reduction in the
22 number of customers, but the flows have diminished
23 significantly. Today the flows are 79,000 as compared
24 to 166,000 in that 2003 case.

25 **COMMISSIONER BALBIS:** And that 79.94 percent,

1 is that for water or wastewater?

2 **MS. DANIEL:** Wastewater. Water was
3 100 percent, and wastewater was 79. I was just
4 speaking to wastewater at that point.

5 **COMMISSIONER BALBIS:** And that was 2003?

6 **MS. DANIEL:** Yes, sir, Docket 030443.

7 **COMMISSIONER BALBIS:** Okay. And I think that
8 there has certainly over the past nine years been a
9 large appropriate push for conservation. So, again, I
10 don't want to be in a position where we are
11 discouraging conservation by penalizing the utility and
12 backing that out of their used and useful percentage.
13 So, again, given the lack of documentation on design
14 criteria, and the fact that this Commission in 2003
15 determined 79.94 percent for the wastewater, I move
16 that we determine the wastewater system be 79.94
17 percent used and useful and the water system
18 100 percent.

19 **COMMISSIONER BROWN:** Second.

20 **CHAIRMAN BRISÉ:** Okay. It has been moved and
21 properly seconded.

22 Commissioner Graham.

23 **COMMISSIONER GRAHAM:** I just want
24 clarification. Was it 79.4 percent or 79.94 percent?

25 **MS. DANIEL:** .94.

1 **COMMISSIONER GRAHAM:** Okay. Thank you.

2 **CHAIRMAN BRISÉ:** All right. It has been
3 moved and properly seconded. Any further discussion on
4 the motion?

5 Commissioner Edgar.

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

7 And I appreciate the time that we have put
8 into this issue. I will support the motion. My only
9 comment is as we make decisions on used and useful in
10 the past, in the present, and certainly we will be
11 doing again for other systems in the future, it is
12 important to me that we have a methodology that we can
13 cite to as the reason for our decision. And I am
14 comfortable with the rationale that has been laid out
15 and I am appreciative of the further discussion that
16 helped us to get there. So I am supportive of the
17 motion. Thank you.

18 **CHAIRMAN BRISÉ:** All right. So we have a
19 motion that is ready for a vote. All in favor say aye.

20 (Vote taken.)

21 **CHAIRMAN BRISÉ:** Any opposed?

22 **COMMISSIONER GRAHAM:** Aye.

23 **CHAIRMAN BRISÉ:** All right. It carries.

24 Moving on to Issue Number 7.

25 **MR. FLETCHER:** Commissioners, Issues 7 and 8

1 are fallout issues. Staff would recommend, definitely
2 in particular with Issue 8, that we be given
3 administrative authority as a result of your decision
4 in Issue 6. And also, if applicable, administrative
5 authority for the working capital if there are any
6 subsequent decisions here today regarding expenses,
7 because we used the formula approach for working
8 capital.

9 **CHAIRMAN BRISÉ:** All right. Is there a
10 motion on Issue 7 and 8?

11 **COMMISSIONER EDGAR:** Move staff.

12 **CHAIRMAN BRISÉ:** All right. Moved. Is there
13 a second?

14 **COMMISSIONER GRAHAM:** Second.

15 **CHAIRMAN BRISÉ:** Moved and seconded. All in
16 favor say aye.

17 (Vote taken.)

18 **CHAIRMAN BRISÉ:** Okay. So those two items
19 carry.

20 Moving on to Issue Number 9.

21 **MR. FLETCHER:** Commissioners, Issue 9 is
22 staff's recommendation for the appropriate return on
23 equity. And at this time, Commissioner Edgar, to
24 answer your question, the 25 basis point reduction
25 would have basically approximately \$1700 adjustment

1 downward on the revenue requirement for the wastewater
2 system.

3 **CHAIRMAN BRISÉ:** All right. Any further
4 comments on Issue Number 9?

5 Okay. Commissioner Balbis.

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

8 In light of our decision to deem their
9 wastewater system marginal, I move that we reduce their
10 ROE by 25 basis points from the 10.51 percent that
11 staff recommends.

12 **CHAIRMAN BRISÉ:** Okay. That is the motion.

13 **MR. FLETCHER:** If I can clarify, that would
14 be 25 basis points for the wastewater only?

15 **COMMISSIONER BALBIS:** Yes, thank you. That
16 is correct.

17 **CHAIRMAN BRISÉ:** All right. All the lights
18 went off all of a sudden. So it has been moved. Do we
19 have a second?

20 **COMMISSIONER GRAHAM:** I would second.

21 **CHAIRMAN BRISÉ:** Okay. So we have a second.
22 Are there further comments that you would like to make?

23 Commissioner Graham.

24 **COMMISSIONER GRAHAM:** I just want to make --
25 well, I guess the question I have is as we talked

1 earlier about some sort of mechanism, we are going to
2 deduct 25 basis points and it stays that way until the
3 rate hearing, or is there something more to this
4 motion?

5 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis.

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

7 Chairman.

8 I am willing to amend the motion to add some
9 sort of mechanism as long as it avoids a lot of
10 administrative effort from the utility. So if there is
11 a process that could come to us to satisfy Commissioner
12 Edgar's concerns, which I do agree with her on that.
13 So, again, for staff, if there is a way that it can
14 come to us, an easy process for the utility so that we
15 are satisfied that customer service has been addressed.

16 **CHAIRMAN BRISÉ:** Okay. Before staff
17 addresses your concern, I don't know if Commissioner
18 Edgar would like to chime in.

19 **COMMISSIONER EDGAR:** Thank you.

20 And I do, again, think that we are close to
21 being all of one mind with the message that we are
22 trying to send and the best way to accomplish it. My
23 thoughts on it, and I also would like to hear from
24 staff if they think that this is workable, would be
25 that if we need to have any further discussion, we give

1 to the best of our ability clear direction to the
2 utility as to what our expectations are for a finding
3 of satisfactory customer service for wastewater in the
4 future, and that it would be then the responsibility of
5 the company to petition us for a change in ROE if and
6 when they determine that they have, in their belief,
7 met our expectations and that it is their desire to do
8 so. And I don't think we need to overly complicate it,
9 but if there is something that I'm missing, I would
10 certainly welcome to hear about it.

11 **MR. WILLIS:** Commissioner Edgar, I think you
12 are correct. I would prefer you don't overly
13 complicate it, because that does bring in the
14 administrative inefficiencies of the process. I think
15 you are correct, it would be an ideal situation to go
16 ahead and if you are going to reduce it, reduce it, and
17 leave it up to the company to come forward at the point
18 in time they believe they have met whatever criteria
19 you set out that you want them to do. That could be
20 one year or two years down the road. Whenever they
21 believe they have met that criteria, they could
22 petition the Commission very quickly to bring the ROE
23 back up. It's a simple adjustment at that point.

24 **COMMISSIONER EDGAR:** I guess my only addition
25 would be if my colleagues feel that putting a time

1 frame on it as perhaps an additional motivation, or
2 more appropriately an additional signal is something
3 that we would be interested in.

4 **CHAIRMAN BRISÉ:** Commissioner Graham.

5 **COMMISSIONER GRAHAM:** No, I'm fine. We don't
6 have to put a time frame on it. I just didn't want for
7 them to have to wait for another rate case to come
8 along. I like the way it is. The 25 basis points is
9 there, they just have to come justify it. And I guess
10 to Commissioner Balbis to start rattling off a list of
11 things he is looking for.

12 **CHAIRMAN BRISÉ:** Before Commissioner Balbis
13 goes we will have Commissioner Graham -- I mean
14 Commissioner Brown, sorry.

15 **COMMISSIONER BROWN:** Thank you. And just a
16 procedural question. Then do we leave the docket open
17 if we are just going to keep it open-ended?

18 **MR. WILLIS:** I would prefer you left the
19 docket open, because it relates to this docket, the
20 ROE.

21 **COMMISSIONER BROWN:** Okay.

22 **MS. BROWN:** And I would just point out that
23 we are in the PAA process, so there may be more coming
24 on this case.

25 **CHAIRMAN BRISÉ:** All right. Commissioner

1 Balbis.

2 **COMMISSIONER BALBIS:** Yes, I'll be more than
3 happy to rephrase at least what I'm looking for, and I
4 think what Commissioner Brown and others have
5 indicated. But before I do that, I believe the motion
6 that I made, and, staff, I want your input on this, I
7 wouldn't have to revise it in order to keep the docket
8 open, and they could come petition for the increase in
9 ROE at any time.

10 **MR. WILLIS:** That is correct, they could.

11 **COMMISSIONER BALBIS:** Okay. But, again, then
12 to summarize what I wanted to see, and I think I was
13 pretty clear with the utilities, but I think it's a
14 good time to reassess it. I think moving forward with
15 a comprehensive odor control study, I'm not
16 recommending that you spend \$100,000 getting teams of
17 engineers. I mean, in your experience you may be able
18 to determine, you know, odor control methodologies and
19 options, putting in more better sealed covers, for
20 example, different chemical, biological, or odor
21 control technologies, et cetera, and come up and meet
22 with the customers and discuss the different options,
23 the level of odor control, the odor reduction you would
24 achieve with each technology and the cost associated
25 with it and estimates on revenue impacts to at least

1 engage them on those issues.

2 At the very least it will show them that you
3 are taking their complaints seriously, which you may be
4 doing so, but I didn't see any indications in the
5 record that you were. So from the wastewater side, I
6 think that would alleviate my concerns. And then
7 obviously if they want to move forward with
8 implementing those, then you would come to us and move
9 forward with that process.

10 On the water side, I believe Commissioner
11 Brown indicated, again, engaging the customers on
12 different aesthetic water quality improvements,
13 ballpark estimates associated with that, and engaging
14 the customers on that. And I don't know if,
15 Commissioner Brown, you had any other requests?

16 **COMMISSIONER BROWN:** (Inaudible; microphone
17 off.)

18 **COMMISSIONER BALBIS:** I believe that
19 hopefully sums it up.

20 **CHAIRMAN BRISÉ:** Commissioner Graham.

21 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

22 I guess I have two questions now. One of
23 them is to, as Commissioner Balbis said, meet with the
24 customers and have an understanding from them on when
25 the odor is occurring. I mean, is it occurring at 7:00

1 o'clock in the morning when everybody is getting up and
2 taking a shower and getting ready to go to work in the
3 morning? Does it happen at dusk when everybody is
4 going to bed? So you can understand, and then it show
5 some indication that you had staff people -- you said
6 they start at 8:30, maybe for a week or so they have
7 got to show up at 7:00 o'clock to make sure that they
8 understand what's going on. I mean, none of this stuff
9 is rocket science. That's the first statement I had.

10 The second one, Commissioner Balbis was
11 talking about the water side of this. Now, is this
12 25 percent basis points just on the wastewater side, or
13 are we both looking for something coming out of the
14 water side and the wastewater side? Because you stated
15 the water side, and I guess my question is this is all
16 tied to the 25 percent basis points, which I thought
17 was just to the wastewater side.

18 **CHAIRMAN BRISE:** Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Yes. My motion is just
20 for the wastewater side, but I think that customers --
21 I see where you are going with this is that there is an
22 issue with the water side and it impacts the wastewater
23 side.

24 Again, I think that is something that the
25 utility probably has a clear message from us for them

1 to do. I don't anticipate them not doing it and just
2 doing the wastewater side, but we'll see how that plays
3 out. But the 25 basis points would be just on the
4 wastewater side, and when they petition us, and I would
5 assume they have heard us very clearly that included in
6 that petition is handling the water issues, as well.

7 **COMMISSIONER GRAHAM:** Thank you, Mr.

8 Chairman.

9 **CHAIRMAN BRISÉ:** All right. I think that
10 that provides some clarity. All right. Just for the
11 record, I want to make sure that we have the motion
12 clear and that it is 25 percent ROE on wastewater.

13 **COMMISSIONER BALBIS:** Yes, reducing --

14 **CHAIRMAN BRISÉ:** By 25.

15 **COMMISSIONER BALBIS:** -- by 25 basis points.

16 **CHAIRMAN BRISÉ:** Reducing it by 25 basis
17 points for wastewater. I always 25 percent, because
18 I'm thinking of the percentage in my mind. Is that
19 clear what the motion is? And it has been seconded.
20 All in favor say aye.

21 (Vote taken.)

22 **CHAIRMAN BRISÉ:** All right. Moving on to the
23 next issue, which would be Issue 10.

24 **MR. FLETCHER:** Commissioners, Issue 10 is a
25 fallout issue. Staff recommends that it be given

1 administrative approval based on the Commission's
2 decision in Issue 9.

3 **COMMISSIONER EDGAR:** Move staff.

4 **CHAIRMAN BRISÉ:** All right. Is there a
5 second?

6 **COMMISSIONER GRAHAM:** Second.

7 **CHAIRMAN BRISÉ:** All in favor say aye.

8 (Vote taken.)

9 **CHAIRMAN BRISÉ:** All right. I'm going to go
10 through a few items, and -- well, maybe not these next
11 few items. (Laughter.)

12 Issue Number 11.

13 **MR. FLETCHER:** Commissioners, Issue 11 is
14 staff's recommendation to reduce water operating
15 expense by 32/13. This relates to the water tank
16 maintenance. This was one of the issues that OPC had
17 addressed.

18 Initially, in staff's review of this, we
19 relied on something that was contained in the utility's
20 MFRs, it was a schedule. They have to provide
21 information regarding any kind of maintenance projects
22 that are two percent or greater than the revenues. We
23 picked up on that issue where it was a budgeted amount,
24 and as you can see on Page 25 of our recommendation,
25 staff had asked for some information regarding the

1 support of that because it had a budgeted amount. And
2 it turns out that the budget amount that they had for
3 their tank maintenance in the test year was related to
4 the amount that they incurred the last time they did
5 the tank maintenance and the repair.

6 So what we did is because we had that lack of
7 support documentation in their request, we started
8 building and looking at comparing the engineering
9 reports, and the 2004 was their last report that was in
10 April. The one came out recently was in January of
11 2010.

12 Now, looking at what the engineer -- and it's
13 required by DEP that they inspect their tanks every
14 five years, it's a DEP rule requirement. And looking
15 at the results or conclusion of the engineering reports
16 of the 2004 and the 2010, it didn't require as
17 extensive a repair as it was the last time, so we felt
18 that it was overstated, the amount that they included
19 in the test year for the current tank maintenance for
20 the water. Using the cost of the individual components
21 that they were going to have to do, going back to the
22 '04 numbers where we had cost justification, and the
23 cost of the tank inspection by the engineer, all those
24 costs staff recommended in accordance with our Rule
25 25-34.33, Provision 8, that it be amortized over five

1 years.

2 I will relay to the Commission that in that
3 rule it does say, and have a provision unless a longer
4 or shorter period is proven or supported, and that is
5 what Ms. Merchant brought up earlier at the agenda on
6 this item is that she had recommended an eight year.
7 And one of her bases was in response to the OPC's data
8 request, and I wanted to point out that we had access
9 or that was made available because of the timing when
10 the data request was sent out by OPC. It was basically
11 filed with the Commission Clerk about nine days prior
12 to the staff recommendation. So we really quickly
13 tried to review this information, given the internal
14 deadlines there, but what Ms. Merchant has brought out
15 is that according to their response it was in 2006 is
16 when they last -- that's when they completed the tank
17 maintenance. And, of course, if you carry that out
18 five years, which was done in the last case, it expired
19 on 2011.

20 Now, the report for the current tank
21 maintenance came out -- it was issued in January of
22 2010. Presently, the utility has not completed or
23 began, commenced that tank maintenance. So it is
24 within the Commission's discretion using that rule,
25 unless a greater or shorter period of five years. If

1 the Commission deems that it is necessary to go out
2 eight years, it's purely within your discretion to do
3 that. Given that it has been '06 since the last time
4 it was actually done, and we were here in 2012, you
5 could extend the amortization period in order to
6 address that concern.

7 And briefly to Ms. Merchant's other point, in
8 that same response to their discovery there was tank
9 maintenance for the sewer system of about 5,000 was the
10 total cost that the company completed in October of
11 2005. And, again, they amortized that over five years.

12 I just wanted to give the overview about the
13 evaluation that staff performs in rate cases very
14 briefly is that we do 100 percent audit of -- our
15 auditors do of the investment side. But the resources
16 in order to do 100 percent of all operating expenses,
17 it would require a greater amount of resources in order
18 to get that done. That's why our auditors use a
19 sampling, random sampling to come up with certain
20 expenses. So that wasn't covered in the audit. This
21 was covered and basically brought to attention today
22 that that was a concern. I can tell you that this is
23 also for the tanks for the sewer side, it's the similar
24 rule. It is the same for DEP. It requires not only an
25 inspection of the water side, but it also requires that

1 for the wastewater side.

2 We have no documentation for the wastewater
3 whether that 5,000 is going be on a prospective basis.
4 I couldn't tell you. I can tell you that the revenue
5 requirement impact of that, again, as Ms. Merchant
6 mentioned, it was 1,018. If you gross it up it's about
7 1,060. It represents 2.16 of the revenue requirement
8 that staff has.

9 Again, we just don't have the detail, I
10 guess, to comment to intelligently on the wastewater
11 side, but on the water side you can see -- I do think
12 that there is some room or discretion with the
13 Commission based on the rule as to whether you want to
14 expand that from five years amortization to eight
15 years. If you do expand it to eight years, it would be
16 an additional reduction of \$3,768 is what the effect
17 would be if you extend that.

18 **CHAIRMAN BRISÉ:** Okay. Thank you. I wasn't
19 clear, are you seeking to change your recommendation?

20 **MR. FLETCHER:** Not at this point, just that
21 it's at the Commission's discretion.

22 **CHAIRMAN BRISÉ:** Okay. Thank you.

23 **MR. FLETCHER:** I was just pointing out that
24 the rule has latitude if -- based on Ms. Merchant's
25 concerns.

1 **CHAIRMAN BRISÉ:** Thank you.

2 Commissioner Balbis.

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

4 Chairman.

5 I have a question for staff on this issue,
6 and I believe you covered it in your statements, but
7 DEP requires it every -- I believe it is every five
8 years, is that correct?

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

10 **COMMISSIONER BALBIS:** So I think it makes
11 sense to keep staff's recommendation on amortizing this
12 over five years, and now you are going to have an issue
13 of possibly compounding these repairs if every five
14 years you're going to have to do it again, which is
15 likely. So with that, I move staff's recommendation on
16 this issue.

17 **COMMISSIONER EDGAR:** Second.

18 **CHAIRMAN BRISÉ:** All right. It has been
19 moved and properly seconded. All in favor say aye.

20 (Vote taken.)

21 **CHAIRMAN BRISÉ:** All right. Moving on to
22 Issue Number 12.

23 **MR. FLETCHER:** Commissioners, Issue 12 is
24 staff's recommendation to decrease salary and wages for
25 water and wastewater for the utility's recommended pro

1 forma adjustment of a 3 percent salary increase.

2 **CHAIRMAN BRISÉ:** Commissioner Brown.

3 **COMMISSIONER BROWN:** Move staff.

4 **CHAIRMAN BRISÉ:** All right. Is there a
5 second?

6 **COMMISSIONER GRAHAM:** Second.

7 **CHAIRMAN BRISÉ:** Okay. Moved and properly
8 seconded. All in favor say aye.

9 (Vote taken.)

10 **CHAIRMAN BRISÉ:** All right. Moving on to
11 Issue Number 13.

12 **MR. FLETCHER:** Commissioners, Issue 13 is
13 staff's recommendation regarding further adjustments to
14 O&M expense. We have recommended adjustments for
15 miscellaneous expense regarding computer maintenance
16 and sludge removal.

17 I guess at this time I can address the
18 handout by OPC on the first page, and that relates to
19 staff's first adjustment, miscellaneous expenses. OPC
20 had recommended using a five-year average versus a
21 13 -- excuse me, versus a three-year average for
22 prospective ratemaking purposes for computer
23 maintenance is the top part. Staff still stands by its
24 recommendation regarding three years for two reasons.
25 One is you can look at the timing of when the Phoenix

1 project was implemented. It was implemented in late --
2 in December of 2008. So you are going to have an
3 incremental increase in the computer maintenance as a
4 result of bringing in a new pretty massive software
5 package on-line.

6 So we thought it best appropriate to use a
7 three-year average, given that fact, and I definitely
8 noted that she -- on the sheet that Ms. Merchant stated
9 there was an expense for AT&T. That was a huge
10 increase in 2009 and 2010. However, I see a few other
11 ones where it goes the other way. So it's just kind
12 of -- you never know when one is going to transition
13 from one vendor to another vendor. We don't have that
14 detail support there, so we stand by our recommendation
15 of the three-year average. The bottom part of the
16 first page, this is a recommendation by OPC basically
17 to try to make a consistent adjustment with Issue 4 for
18 the Phoenix project that dealt with plant. This one is
19 for the computer maintenance to try to carve out that
20 percentage of divested systems to make a reduction of
21 computer maintenance.

22 I believe this is overstated. You see the
23 10.82. I agree with the percentage, divested
24 percentage there, but the computer maintenance that is
25 done on the intermediate parent level or WSC, it

1 contains a lot of other computer maintenance vendors,
2 not just for customer Oracle care and the J.D. Power
3 systems. As you can see reflected on the 2008 level,
4 that was 1.2 million. That was before Phoenix came
5 on-line.

6 I did a review using the three-year average
7 from '09 to 2011 and it appears that there is only
8 \$450,000 related to -- total amount related to the
9 Phoenix project. So over a three-year average that is
10 only 150,000, and the result would be immaterial. It
11 would be basically a -- it would be a \$90 adjustment to
12 revenue requirement. If you were to just isolate just
13 the computer maintenance three-year average associated
14 with customer Oracle care and J.D. financial system.
15 So we stand by our -- we believe it is immaterial and
16 there should be no further adjustment made to Issue 13.

17 **CHAIRMAN BRISÉ:** Thank you, Mr. Fletcher.

18 Any questions or comments?

19 Commissioner Balbis.

20 **COMMISSIONER BALBIS:** Thank you.

21 And thank you, Mr. Fletcher, for that
22 explanation. I know you and I had discussions about
23 the Phoenix project and the IT maintenance costs. What
24 year did the Phoenix program come on-line?

25 **MR. FLETCHER:** It was December of 2008.

1 **COMMISSIONER BALBIS:** Okay. And then looking
2 at this handout, in '08 you had total costs of about
3 1.2 million for maintenance, IT maintenance and then it
4 increased up to 1.7, and then up to 1.9 in the test
5 year, and then it has dropped back down. And you
6 attribute a portion of that to the fact that there was
7 some new software put in, so there is a lot of work
8 associated with integrating?

9 **MR. FLETCHER:** Yes, Commissioner.

10 **COMMISSIONER BALBIS:** So wouldn't it be -- I
11 mean, wouldn't one option be to discount that spike in
12 costs and that it's not going to be a recurring cost
13 and, therefore, the more you spread it out the more
14 accurate it reflects on the true costs they are going
15 to have to incur? And, if not, you're just capturing
16 that spike of activity associated with the
17 implementation of a \$21 million computer program.

18 **MR. FLETCHER:** That's what staff was
19 attempting to do to kind of smooth that spike out with
20 the three-year average, but if the Commission -- I do
21 realize that it was a 1.9 million spike and 1.7, so it
22 raised pretty significantly since '08, it was at
23 700,000 and then it went back down. You could remove
24 the test year and come up with another average or use
25 the 2011. It's within the Commission's discretion with

1 the numbers provided here. You could go -- it's
2 reasonable to take that out and do another average, if
3 you wish, it's your desire, or you can go with the 2011
4 amount if you believe that is reasonable on a
5 prospective basis.

6 I was just trying to be consistent with the
7 three years, because we have used that quite commonly
8 with bad debt expense for prospective ratemaking
9 purposes, and then also with miscellaneous -- or,
10 excuse me, materials and supplies. We have used that
11 in the past, a three-year average, and that tries to
12 smooth out any spikes or anomalies is to use that
13 average. But I do see your point.

14 **COMMISSIONER BALBIS:** Well, I guess to the
15 Commission then, I think that recognizing the
16 additional work required to integrate that program, I
17 think any way we could smooth out those costs, again,
18 to be more accurate on what the recurring annual
19 maintenance costs will be would be better. And I think
20 looking at a five-year average would accomplish that.
21 And as far as separating out the IT maintenance charges
22 for the Phoenix project, I think it would be consistent
23 if it's possible to carve out those additional costs
24 and be consistent with what we are doing with the costs
25 per ERC for the project itself to do the same thing.

1 I understand staff's point that it's
2 immaterial, it's 80 or \$90, but we are dealing with
3 customers that are paying high rates and, you know,
4 these things add up. So I think the closer -- as close
5 as we can scrutinize this the better, and I would like
6 to be consistent on excluding the Phoenix charges for
7 the divested systems and going with the five-year
8 average.

9 **CHAIRMAN BRISÉ:** All right. Any further
10 discussion? All right.

11 Then in that case we are ready to entertain a
12 motion.

13 **MR. FLETCHER:** If I may, I'm sorry to
14 interject. Commissioner, would you like me to address
15 OPC's, I guess, presentation on the second page with
16 regard to transportation? I believe it was associated
17 with this issue.

18 It's on the second page. I apologize. I
19 didn't do that the first time. Staff has looked at
20 this for the first time today, and we do see merit in
21 the 26 percent, the difference change in fuel prices.
22 However, there is a little bit of reservation because
23 just to apply the 26 percent to the transportation
24 expenses, that would basically be, you know,
25 overstating the adjustments, because there's a lot of

1 other things in there rather than just fuel to make
2 that just a blanket 26 percent increase and then
3 whatever the difference is reduce that from the test
4 year amount of transportation expense.

5 You have stuff like preventative maintenance,
6 you have oil changes, other preventative maintenance
7 that are done to the vehicles. As Ms. Merchant
8 suggested in the company's response in their MFRs of
9 why the increase in transportation expense is because
10 there is an aging fleet of their vehicles. Well, the
11 aging fleet of your vehicles would cause more
12 preventative maintenance that would be required. And
13 without knowing that I am uncomfortable in recommending
14 any further adjustment to transportation expense at
15 this time. But I understand her thoughts, but without
16 having any more information, staff wouldn't recommend
17 any further adjustment.

18 **CHAIRMAN BRISÉ:** Thank you.

19 Commissioner Edgar before we go back to
20 Commissioner Balbis for a motion.

21 **COMMISSIONER EDGAR:** Thank you. And I did
22 have a question prior to that. So, thank you.

23 I appreciate you bringing up the
24 transportation issue, and I understand your response,
25 so thank you for that. Back to the issue that we were

1 just talking about previously, which is how to account
2 and spread the costs appropriately for aspects related
3 to the Phoenix project. You, I believe, suggested --
4 let me say alternate for lack of a better term --
5 suggested an accounting approach that would be slightly
6 different than what is in the staff recommendation.
7 That alternate approach, would that be different than
8 we have treated this issue for the allied systems that
9 have come to us in the recent past?

10 **MR. FLETCHER:** Yes. This would be related to
11 the computer maintenance. This is the first time the
12 Commission would address or make this adjustment
13 related to the computer maintenance associated with
14 what is allocated down from UI, yes.

15 **COMMISSIONER EDGAR:** It is -- and, again, I
16 recognize what the staff recommendation is and that you
17 have not changed from that, but have yet recognized
18 perhaps an alternate approach. Is there a factor that
19 distinguishes this system on this particular point from
20 the others, to your knowledge?

21 **MR. FLETCHER:** To my knowledge, no.

22 **COMMISSIONER EDGAR:** All right. Thank you.

23 **CHAIRMAN BRISÉ:** All right. I think we are
24 prepared to entertain a motion, if there isn't further
25 discussion.

1 Commissioner Balbis.

2 **COMMISSIONER BALBIS:** Thank you. And if I
3 can just clarify what staff just answered. So you
4 indicated that this would be the first time the
5 Commissioner has made the adjustment. Is this the
6 first time we have addressed this issue, or have we
7 addressed it before and have not adjusted the Phoenix
8 expenses?

9 **MR. FLETCHER:** This is the first time we have
10 addressed this issue. We have not dealt with this.
11 This is the very first time, and that is what makes it
12 different than the Commission's other previous
13 decisions related to Phoenix. I'm sorry if I didn't
14 appropriately --

15 **COMMISSIONER BALBIS:** Okay. With that, then
16 I move that we revise staff's recommendation and give
17 them the administrative authority to come up with the
18 proper numbers to do the five-year average for the
19 annual IT costs with the adjustment of removing the IT
20 maintenance for the Phoenix portion of it consistent
21 with what we are doing with the capital costs for that.
22 If that's clear.

23 **CHAIRMAN BRISÉ:** Okay. Commissioner Edgar.

24 **COMMISSIONER EDGAR:** I can second that if,
25 indeed, the motion does include or the other pieces of

1 the item would carry through on the staff
2 recommendation, with that understanding.

3 **CHAIRMAN BRISÉ:** All right. It has been
4 moved and seconded. Any further discussion on this
5 issue?

6 Okay. Seeing none, all in favor say aye.

7 (Vote taken.)

8 **CHAIRMAN BRISÉ:** All right. The motion
9 carries.

10 Moving on to Issue 14.

11 **MR. FLETCHER:** Commissioners, Issue 14 is
12 staff's recommendation regarding the appropriate amount
13 of rate case expense. I guess at this time if we could
14 broach the comments made by the utility. The first one
15 shows up on Page 30 of staff's recommendation. It is
16 the third paragraph starting right above the utility
17 consultant fees, that paragraph above that.

18 This was Mr. Friedman's concern on this.
19 Staff believes it should be consistent with the
20 Commission's decision in the Aqua case because of
21 similar circumstances. In the Aqua case, like in
22 Labrador, they have had a recent rate case. And like
23 in the Aqua case, the Commission made an adjustment to
24 go with the legal consultant hourly rate back down to
25 the previous rate case expense, or previous hourly rate

1 of the legal consultant in the last rate case. That
2 was your decision, and because there were similar fact
3 patterns here, staff wanted to be consistent with your
4 recent decision and reduce the hourly rate of the legal
5 consultant down to the 2008 level, and we stand by our
6 recommendation to be consistent.

7 The other one was that was raised by OPC
8 dealing on the same page beginning on Page 30. The
9 accounting consultant fees is discussed briefly. I
10 guess, if I could direct your attention to Page 31,
11 actually, the last paragraph.

12 The Commission did have great discussion at
13 that Commission conference in the last case where OPC
14 actually raised concern regarding -- they argued that
15 it was excessive rate case expense in light of the
16 recent in-service of the Phoenix project and what it
17 should be able to do, and the Commission basically
18 ultimately decided to make an adjustment to remove all
19 of the accounting consultant fees. They kept the WSC
20 in-house employees in the last case, but did remove
21 that component.

22 I will note that it could have been
23 elaborated a little bit more fully in that paragraph is
24 that the Commission's last decision that was also
25 subject to a settlement, and that has no precedential

1 value for the Commission. Just because you, the
2 Commission, removed all of the accounting consulting
3 fees the last time because it was in conjunction with
4 ultimately through a settlement, there is no
5 precedential value there. Basically, you can go back
6 to the drawing board and just look at this case. What
7 did it take to process this case? And to us we kind
8 of -- we were aware of that fact, and it came down to
9 the total amount of rate case expense.

10 With staff's oral modification, it brought
11 the total rate case expense up to about 88,000. Given
12 the level that was approved in the 2008 case of almost
13 70,000, we didn't feel that -- it would kind of be
14 arbitrary to make adjustment to the accounting
15 consultant fees if we were to do that. There's nothing
16 that we can just hang our hat on and say, well, we're
17 going to just put it equal to the amount. No, there
18 was work performed. And in this case, looking at the
19 overall total rate case expenses, we felt that it was
20 justified, so we stand by our recommendation.

21 **CHAIRMAN BRISE:** Thank you very much.

22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you.

24 And Mr. Friedman did raise an interesting
25 point regarding the legal fees. However, I think Mr.

1 Fletcher's response regarding the similar fact pattern
2 to our most recent decision is more appropriate.

3 Getting to the accounting consulting fees, is
4 the Phoenix project designed to address accounting
5 issues associated with rate cases?

6 **MR. FLETCHER:** Well, I guess I would answer
7 this way. The Phoenix project, it was initially
8 designed in order for you to take the numbers off of
9 their general ledger from the Phoenix, that is
10 generated by Phoenix, and to just input those into the
11 MFRs. So at that point you're dealing with data entry.
12 I hope that addresses your question.

13 **COMMISSIONER BROWN:** And I'm not arguing that
14 staff didn't come up with an appropriate number
15 recommending for the accounting consulting fees, I just
16 want to know if there are maybe duplicative efforts.

17 **MR. FLETCHER:** I understand now. I'm sorry.
18 Yes, there are, but they have been addressed with the
19 recommended removal of the WSC in-house employees.
20 There is numerous and time-consuming hours that go into
21 roll-forward adjustments, and that is the result of the
22 utility basically not booking to a certain ledger in
23 their Phoenix project the Commission-ordered
24 adjustments in the last rate case. So in this case, as
25 we saw in the MFRs, there was a massive amount of time

1 that it took to calculate those roll-forward
2 adjustments, and basically in order to get the numbers
3 that need to be inserted into the MFRs. But, again,
4 that is basically addressed with staff's recommendation
5 with the removal of the WSC in-house employees, that
6 additional expense.

7 **COMMISSIONER BROWN:** I appreciate you
8 bringing that up. And just a final question really for
9 Labrador about the incremental increase in those
10 numbers of WSC in-house employees and the hours spent
11 that you provided. Can you explain a little bit that
12 point of why there is such a great increase from the
13 last rate case?

14 **MR. FRIEDMAN:** This is Marty Friedman. No, I
15 can't. This issue hasn't arisen and so I haven't
16 discussed with the WSC folks up there why there would
17 be any -- you know, what the difference would be.
18 Honestly I don't know that answer.

19 **COMMISSIONER BROWN:** Okay. Thanks.

20 **CHAIRMAN BRISÉ:** All right. Any further
21 discussion on this item? Okay. We are ready to
22 entertain a motion.

23 Commissioner Brown.

24 **COMMISSIONER BROWN:** I move staff
25 recommendation.

1 **CHAIRMAN BRISÉ:** All right. Is there a
2 second?

3 Okay. It has been moved and properly
4 seconded. All in favor say aye.

5 (Vote taken.)

6 **CHAIRMAN BRISÉ:** The item is approved.

7 Moving on to Item 15. I don't know if it is
8 appropriate at this time to begin to look at certain
9 blocks of issues to see if we could expedite the
10 process a little bit. So, Commissioner Graham.

11 **COMMISSIONER GRAHAM:** I will move staff
12 recommendations on Item 15 through 20.

13 **CHAIRMAN BRISÉ:** Okay. Take a minute to take
14 a look at that, and if you find that that is
15 appropriate, then we will entertain a second and then a
16 vote.

17 **COMMISSIONER EDGAR:** Mr. Chairman, I can
18 second with the understanding that if there are
19 questions there is the opportunity for them to be
20 addressed.

21 **CHAIRMAN BRISÉ:** Sure. All right. So it has
22 been moved and properly seconded.

23 **MR. FLETCHER:** Chairman, if I could just
24 clarify the motion. And that would be giving, I
25 believe, staff administrative authority to adjust,

1 based on the Commission's decision on the previous
2 issues?

3 **CHAIRMAN BRISÉ:** Yes.

4 **MR. FLETCHER:** Thank you.

5 **COMMISSIONER GRAHAM:** That was my motion,
6 yes.

7 **CHAIRMAN BRISÉ:** All right. Thank you for
8 pushing us toward that clarification. Issues 15
9 through 20, to see if there is any further questions or
10 discussion on those issues.

11 Going once. Twice. Seeing none, all in
12 favor say aye.

13 (Vote taken.)

14 **CHAIRMAN BRISÉ:** All right. We have dealt
15 with Issues 15 through 20 in the affirmative.

16 Moving on to Issue 21.

17 **MS. BROWN:** Commissioners, I think we had an
18 earlier discussion about your wishing to keep this
19 docket open, and I think I mentioned that there may be
20 some further activity in the docket, but I don't know
21 why we can't keep it open, while you all couldn't
22 decide to keep it open and then we will see what
23 happens from there.

24 **CHAIRMAN BRISÉ:** All right.

25 Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Ms. Brown hit part of
2 the point that I was going to make. Recognizing that
3 this is a PAA, that there is an administrative time
4 period for the possibility for a petition to be filed
5 for hearing, and that as soon as the recommendation
6 is -- if no petition for hearing were to be filed, then
7 the docket would be administratively closed. However,
8 as part of our discussion regarding customer
9 satisfaction and ROE, my understanding is that per our
10 staff's comments that to leave the docket open for
11 further addressing that issue in the future, if
12 necessary, is more appropriate, and so consider that a
13 motion.

14 **CHAIRMAN BRISÉ:** All right. It has been
15 moved. Do we have second?

16 **COMMISSIONER BALBIS:** Second.

17 **CHAIRMAN BRISÉ:** All right. It has been
18 moved and seconded.

19 Commissioner Balbis, did you have some
20 comments that you need to make on this?

21 **COMMISSIONER BALBIS:** I just had to check to
22 make sure that I was not the prehearing officer. And
23 seeing that it is Commissioner Graham, I have no
24 problem keeping it open.

25 (Laughter.)

1 **CHAIRMAN BRISÉ:** All right. Understood.

2 Commission Graham.

3 **COMMISSIONER GRAHAM:** I guess a question to
4 staff. There is a fixed time frame for PAAs for
5 somebody to object to the Commission outcome. If we do
6 not close this docket does that change anything to the
7 time frames?

8 **MS. BROWN:** No, I don't think so. And I can
9 word the order to make that clear.

10 **COMMISSIONER GRAHAM:** You don't think so or
11 you're sure?

12 **MS. BROWN:** This time I'm sure.

13 **COMMISSIONER GRAHAM:** Okay. So let the
14 record show that you're sure.

15 **MS. BROWN:** I think so.

16 (Laughter.)

17 **CHAIRMAN BRISÉ:** I don't know if that
18 satisfies you.

19 **MS. BROWN:** Just kidding.

20 **CHAIRMAN BRISÉ:** All right. So we have a
21 motion that has been properly seconded. All in favor
22 say aye.

23 (Vote taken.)

24 **CHAIRMAN BRISÉ:** All right. Thank you very
25 much for your hard work on this docket.

1 **COMMISSIONER EDGAR:** Thank you to the
2 customers.

3 **CHAIRMAN BRISÉ:** We want to thank all the
4 customers for coming out and participating today. We
5 always appreciate the fact that all of you are
6 generally interested not only because it affects your
7 pocket and your service and all of that, but it just
8 helps in the whole process of decision-making. So we
9 certainly appreciate your willingness to travel up
10 here, and I know that that could be a strain or a
11 difficulty, particularly in these times. We hope that
12 you travel well and safely to your destination. And we
13 have to continue, so if you are to exit at this time,
14 if that was your desire, we will give you a minute or
15 two to do so.

16 We are going to take maybe a three or
17 four-minute informal recess as there is an exit at this
18 time.

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTERS

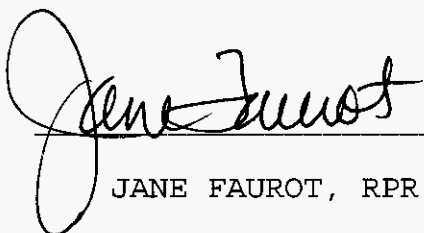
COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

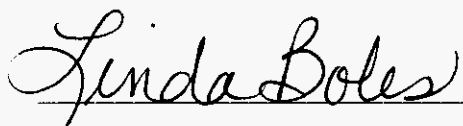
IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

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

DATED THIS 30th DAY OF MARCH, 2012.



JANE FAUROT, RPR



LINDA BOLES, CRR, RPR

FPSC Official Commission Reporters
850-413-6732/6734

Presentation to Florida Public Service Commission
On Behalf of Forest Lake Estates Non-Shareholders Association

Tuesday, March 27, 2012

Paul F. Hannon

Good afternoon.

My name is Paul F. Hannon. I reside at 5842 Naples Drive in Forest Lake Estates, Zephyrhills, Florida.

Thank you for allowing me to speak in regard to the application by Labrador Utilities to increase the water and wastewater charges for our community.

As Vice President of the Forest Lake Estates Non-Shareholders Association, I am speaking on their behalf. Our association, locally referred to as "FLENS" (the acronym for our association), represents the **547 land tenants** in Forest Lake Estates.

Our association is vehemently opposed to the rate increase requested By Labrador Utilities for both water and wastewater treatment services as outlined in the the Commission's Docket number # 110264-WS.

As you are well aware, the Commission is charged with setting rates that are **just, reasonable, compensatory and not unfairly discriminatory. Labrador, by its own definition, is obliged to deliver clean, reliable water and wastewater service at the lowest reasonable cost.**

First let's address the **just and reasonableness** of the requested rates. In 2009, Labrador requested and was granted a **substantial** increase in both water and wastewater rates. They claimed then that they needed that increase so that their plant could be updated to their so-called standards of excellence. Now the utility is back again seeking an unbelievable 30.03% overall adjustment. This increase percentage, to us, sounds neither fair nor reasonable. Using the "reasonable person" common law principle, with which I am sure you are all familiar, is **reasonable, 30%?**

We think not.

The "reasonable person" recognizes that supplies, equipment and manpower are not static costs and are subject to change. However, who among us have experienced 30% increases to our incomes? Who among us have seen any cost of living or other income increases at this rate given during the past 3 years in a strongly declining economy? None of us in this 55+ community saw any increases in our Social Security benefits in 2010 or 2011 and only a modest increase in 2012.

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The utility would have us believe that they are operating the plants at a loss. While we do not claim to be accounting wizards, we all know that good accounting techniques can make the numbers say whatever you want them to do. We believe that a request for amounts in excess of 42% for water and a request for wastewater increases in excess of 23% are an insult to our community of senior citizens. They are not only insulting but we believe that a case for age discrimination is lurking in the request.

Allow us now to address Labrador's commitment to deliver clean, reliable water and wastewater service at the lowest reasonable cost.

For years now, Labrador has provided water that can only be described as a cut above so called recycled "gray water". It would be dishonest for me to call it drinking water. Our community keeps the Pasco County economy going with its purchase of bottled water, water filtering systems, and other alternatives to the water that comes from our taps. Many loads of laundry have been stained or discolored from what the utility provides through its pipes. Our association and many of our individual members have filed numerous complaints with the park management, the utility and government agencies about the quality of our water.

As to wastewater treatment, **Labrador has failed miserably**. I personally walk every morning along a route that includes Utopia Drive which is located adjacent to the wastewater treatment facilities. That portion of my walk changes from a walk to as much of a run as this body can manage. The almost daily stench is unbearable. Again, complaints to all of the aforementioned authorities are fruitless. We understand that park management, the Co-Op, has had a law suit pending for several years regarding the odors emanating from the treatment plant. Perhaps Labrador could better spend their money and resources fixing the problem instead of litigating about it.

In summary, we recognize that costs cannot remain stagnant. We feel, however, that we should only be responsible for true cost increases and not for creative accounting tricks, operational and managerial inefficiencies, and corporate greed.

We also believe that the utility, Labrador and its corporate parent, Utilities, Inc. have not lived up to their obligation and previous commitments to provide an acceptable product and appropriate level of service. Until Labrador and its corporate partners deliver on what a "**reasonable person**" would call drinkable water and clean air, the Commission should deny their request. Perhaps, the Commission should mandate that Labrador first demonstrate their ability to function as a public service provider and then, and only then, can they request a reasonable adjustment.

Thank you for the opportunity to express our views.

Firstly, I would like to thank you for giving us the opportunity to express our views on the proposed rate increase by Labrador Utilities for the water and wastewater services provided to our community.

It should have become clear over the course of reading and listening to the tapes from the meeting held at our clubhouse on January 18th, that the residents are totally dissatisfied with the quality of service that has been delivered by this utility over many years.

Every two years, this Utility presents you with a request for an increase of rates without having proven they have complied with or provided the improvements upon which the last increase was based.

The last increase executed in November of 2009 was settled at 62.8% for water and 26.9% for wastewater.

Our objections to this new increase remain the same as previously argued:

The quality of water product and wastewater service is unsatisfactory.

Over the years the residents have made numerous complaints regarding the quality of the water being provided. Residents have to purchase expensive water filter systems or purchase bottled water to have a drinkable supply.

The operational condition of the wastewater treatment plant and facilities are unsatisfactory. This is the worst offender. The noxious odors which emanate from the plant make the area around it very unpleasant. In the last three weeks, the stench was so nauseating that residents within three blocks of the plant could not sit outside and enjoy the great weather. Walking in that area was not possible as the odor made people ill. It took ten days for any action to be taken. It appears a feed line to the biocide malfunctioned. If there is a person there every day why did it take so long to repair? In the memorandum, Labrador states that a swampy area at the back of the community and chicken farms cause the odor. The chicken

farm was closed at least eight years ago. The residents on Viau who back onto the Wildlife Preserve do not experience odor from it. This is another deflection on their part to not own up to their responsibilities to maintain a well run facility.

Our realty company has reported loss of sales because of the odor the prospective buyers are inundated with while looking at homes.

The Utility's efforts to address customer concerns are unsatisfactory.

After over ten years of complaints being made and seeing no discernable change, residents have become frustrated at the lack of improvement or believing that the Utility will make an effort to correct the odors.

The Co-operative has initiated a lawsuit against Labrador Utilities over the failure to properly maintain the system. This remains within the courts at this time.

The overall service provided by the Utility to its customers is unsatisfactory. We are a captive consumer group. Even though we are experiencing poor and unsatisfactory service and can see no improvement in the future, we can not just up and look for a new Utility as would be possible if this were happening in any other area of business.

In an undated letter to customers from Patrick Flynn, it states the rate increase is so they "may continue to make investments that affect the quality of our water and wastewater service". Since the last increase there has been no noticeable improvement even though that was the purpose of this increase.

Three areas of increased cost were quoted but no substantiating background was given to support the statements. One mentions the Renewal of the Water Use permit. When calculated out, over the twenty year term, it is a cost of one-one thousandths of a cent per month per customer..

Figures given in the letter are understated for the cost of water (\$28) and for wastewater (\$47) as the actual request is for \$42 and \$65 respectively.

Florida statutes allow for a fair return on investment. In this economy, a ten percent return is not realistic. Social Security had no increases for two years and in

the last year only a three percent. How do seniors manage if their utilities increase by over twenty-five percent?

A business should be held accountable for the service they provide to their customers. A business should not be rewarded for poor and unacceptable service.

Labrador Utilities is a business and should be required to provide the services for which they are being paid not receive an unearned increase.

As one of our signs says..... IMPROVEMENT THEN PROFIT

Thank you for allowing me to speak to you today. My name is Joe McDonald. I am a resident of Forest Lake Estates, and have been since 2007. I live at 6047 Utopia Drive, the street adjacent to the Labrador Sewer Plant, and am here to ask the Public Service Commission to deny the proposed rate increase, and in particular to speak on the issue of odor emanating from the Labrador sewer treatment plant.

The odors released by this process are a daily issue, some days better than others, though I believe the better days are due more to the wind currents than treatment efficiencies or process control. On the worst days the odor is suffocating. From my home, relief comes only from leaving. Closing the house up just doesn't keep the odors out, and actually makes us prisoners of the problem. There are days when the odor travels much farther than my street. In fact on one night last week this suffocating odor covered an area of several hundred homes, reaching all the way to the lake, 5 streets over. Calls for help went unanswered for 3 days, as Labrador has no personnel on weekend duty, and their 800 number was out of service.

This problem is persistent and has been going on so long that homeowners are leaving. Please consider this. On Utopia Drive, in the area adjacent to the Sewer Plant there are 23 building lots. On those lots are 20 homes. Of those homes 7 are or were for sale, representing 35% of the homes in this area. Adding in the 3 undeveloped lots, results in 43 % of the lots in this area on which people don't want to build or want to sell. Of those homes, one has sold in the last year at a price under \$ 10,000, it's not a perfect home but it certainly would have been worth a whole lot more in some other area. By way of comparison, entire Forest Lake community has 894 lots or which 83 are for sale, or

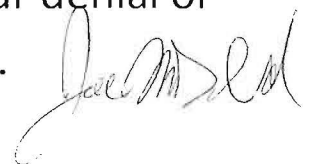
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9.8 %. And keep in mind that of the 894 lots in Forest Lake, 4 are undeveloped, of which 3 are located here on Utopia. People won't buy here, people won't build here, and a significant number of those here want to sell and move out all because of the terrible odors coming from this treatment process.

I'm not sure that Labrador understands how significant this problem is. I would call this process out of control. In my five year history, I've no knowledge of Labrador ever stating that they understand the problem, view it as a problem, or will make any measureable changes. I don't know that Labrador has requested redesign or upgrades to solve the problems. Rather I believe Labrador conveys the system as in great shape, and working fine.

As you deliberate this rate increase, please consider that approving a rate increase will be in effect approving the status quo as acceptable when it simply is not. Our community has been patient, we have requested meetings and filed complaints, we have even filed suit to force Labrador to provide adequate services for the rates already in effect for water and sewer service. And yet over all these years we have made no progress on getting Labrador to address this issue.

Please send Labrador packing. They can fix the system if they choose to. They can come back to the Commission for rate adjustments once the problem is solved. But I think it is just not right, fair, or appropriate to award a significant rate increase for a system that is not working. Please join us in our effort to insist on quality sewage treatment for the residents of Forest Lake. We are entirely at your mercy. Our only real avenue for forcing Labrador to address this problem is your denial of these requested increases for such poor customer service.



I am not here to dazzle you with numbers, but there are a few pertinent to the dilemma we face in Forest Lake Estates, relative to the rate hike sought by Labrador Utilities.

In the last four consecutive years – same month each year – the water base has actually decreased 1.5% the water metered rate has increased 50%..... the wastewater base has increased 84.3% while the metered rate has gone up 6%.

On top of that, as others have addressed, the service from Labrador is abysmal. The lack of quality water coming into our homes forces most of us to have some sort of filtering system & we still purchase bottled water for consumption. The treatment facility for wastewater is a joke the noxious odor from the plant is stifling. IT JUST ISN'T FAIR! And their request for increased rates is not for an increase in service or to improve anything it's just to maintain what already exists. Something is terribly wrong with this scenario!

Most of the residents in our development are on fixed incomes some haven't seen a cost of living increase in a couple of years. Any that has been realized is meager, at best, & no where near the 40 – 50% Labrador is seeking.

We have come here today to ask – no – **BEG** the commission to not only deny the rate hike, but to rescind the amount of the interim rate already allowed. It is the right thing to do!

Donald Meader 5857 Naples Dr. Zephyrhills, FL 33540
813-715-4161

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Hello,

My name is Doug Sage. I live at 5724 Viau Way, Zephyrhills, FL in the community of Forest Lake Estates whose water and sewer system is served by Labrador Utilities, Inc. There are two main complaints-the odor from the sewage treatment plant and the quality of the drinking water. The odor comes from the aeration compartment of the sewage plant where bacteria breakdown the sewage and purify the wastewater. This treatment process depends on many factors, the most important of which are 1) the quality of the sewage, 2) the volume of the sewage, 3) the amount of air that is blown into the chamber, 4) the amount of sludge that is in the chamber and 5) the "health of the bacteria".

The treatment process in the aeration compartment is done by aerobic bacterial. There is bacteria in the sewage. This bacteria is used to treat the sewage. By adding oxygen to the aeration chamber, the bacterial action will increase and the quality of the treatment will improve. Any condition that harms or destroys the bacteria reduces the quality of the treatment process resulting in a poor quality effluent and an odor. Conditions that harm bacteria are: 1) toxic chemicals discharged into the sanitary sewer (very unlikely in our senior citizen community), 2) a sharp increase or decrease of sewage (snowbirds coming or going which regularly happens every spring and fall), 3) too little or too much air being pumped into the chamber (which the operator should know how to adjust), 4) too much sludge in the chamber (which the operator can see the build up during routine daily inspections and arrange to have removed). It is the job of the operators of the plant to determine the cause of the problem and make the necessary corrections.

The most important thing to do is to get the bacteria restored and working again. To get the bacteria level up in the treatment chamber, operators may use a commercial product called "liquid live micro organism" which is usually pumped into the chamber for a set period of time. This product is non-toxic and is also used in the food processing and fish hatchery industries. Bottom line is if the waste water treatment plant is properly managed the operator should be able to control the odor where it would be noticeable for only a few hours, not days or weeks.

The drinking water system seems to be a mystery as to why some residents have good quality and some residents have very poor quality. Possible factors could be 1) the plant filtration system fails to filter out the sand and other particles that are pumped from the well and 2) the water line distribution system could have design problems. Labrador Utilities should be made to answer these questions and provide solutions. If the quality of water is pristine in part of the community (and it is) then it should be good in the entire community.

There are three areas of the community that are licensed and inspected by government agencies. They are 1) the wastewater treatment plant, 2) the drinking water plant, and 3) the swimming pools. The inspection reports that are generated by these government inspectors are public record as are the laboratory reports from random samples collected by the regulatory agencies. A review of these inspection and lab reports would lend insight into the quality of the operators, i.e. if the same problems are repeatedly being reported without any improvement then there is an obvious problem with the operators. Also, if there are complaints about odor from the sewage plant or quality

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issues about the drinking water and nothing improves, then there is a problem not only with the operators but also the inspecting agency.

Florida Department of Environmental Protection Rule 62-302.500(2) prohibits producing conditions so as to create a nuisance. Odor is a nuisance.

There are at least 7 parameters of compliance for drinking water and 10 parameters for the sewage plant that are absolutely necessary.

For water:

1. Chlorine
2. Bacteria
3. Volatile organic compounds
4. Turbidity
5. Phenol
6. ph
7. Radiological

For Sewer:

1. Biological oxygen demand
2. Chemical oxygen demand
3. Total organic carbon
4. Total suspended solids
5. Ammonia
6. Temperature
7. PH
8. Total nitrogen
9. Total phosphorus
10. Dissolved oxygen

If the operators complied with these parameters, our odor problems would go away and so would the complaints. Labrador Utilities, Inc. needs to have more than one employee for the plant and they need to keep a supply of "liquid live micro organism" on hand to treat when necessary.

Thank you.

WSC Computer Maintenance Charges
 Calculation of Allocation Factor to Labrador
 Test Year Ended December 31, 2010

	2007	2008	2009	2010	2011	5 Year Average	3 Year Average	Labrador Allocation Factor	Labrador Allocation Amount	Labrador Adjustment from TY Amount
Total	1,022,146	1,208,569	1,778,919	1,914,523	1,389,050	1,462,642	5 yr avg	0.0056	8,191	(2,285)
Less Non-recurring Charges	(1,340)	(68,926)	(507,135)	(518,020)	(33,575)					
Subtotal	1,020,806	1,139,643	1,271,784	1,396,503	1,355,475	1,236,842	5 yr avg		6,926	
						1,694,164	3 yr avg		9,206	(1,270)
						1,914,523	TY Amt		10,476	

Reduce Computer Expenses by 10.82%
 Consistent with Phoenix Plant Adjustment

	Phoenix Plant % Adj	OPC Calculated Maintenance	OPC Recommendec Adjustment	Adj for Water	Adj for Wastewater
Maintenance per Company	10,476	(1,133.50)	9,342		
Maintenance per Staff	9,206	(996.09)	8,210		
Maintenance per OPC	8,191	(886.24)	7,305	(3,171)	(1,598) (1,573)

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Labrador Utilities, Inc.
 Transportation Plant & Expenses
 Test Year Ended December 31, 2010

	2007 Approved Test Year	2010 Per Books	2010 Realloc Adjust	2010 Proforma Adjust	2010 Requested Test Year	\$ Increase Between 2010 & 2007	% Increase Between 2010 & 2007
Water	2,826	9,896	(4,908)	1,731	6,719	3,893	138%
Wastewater	2,766	0	4,908	1,704	6,612	3,846	139%
Total Transportation Expense	5,592	9,896	0	3,435	13,331	7,739	138%

	2007	2010	% Decr	2011	2011 % Incr/07
Average Price of Regular Gas	2.801	2.788	-0.46%	3.527	26%

OPC Recommended CPI-U Inflation Adjustment

	2007	2011	Difference	% Difference
CPI-U Annual Average	207.342	224.939	17.597	8.49%

OPC Recommended Amount

	2007 Expense Approved	2011 Inflation Adjustment	OPC Test Year Amount	2011 Gas Inflation Adjustment	OPC 2011 Amount
Water	2,826	240	3,066	732	3,558
Wastewater	2,766	235	3,001	717	3,483

OPC Recommended Adjustments

	Request Per Comp	OPC Recomm	OPC Adjustments
2010 Test Year Transportation Expense			
Water	6,719	3,558	(3,161)
Wastewater	6,612	3,483	(3,129)

Note: Transportation Plant increased 98% from 2007 to 2010.

WATER AND SEWER MEETING IN TALLAHASSEE
MARCH 27TH 2012

GOOD AFTERNOON:

I AM EVA RUSH, FOREST LAKE ESTATES WHERE I HAVE LIVED ALMOST 20 YRS. FIRST I WANT TO SAY THANK YOU FOR GIVING OF YOUR TIME TO LISTEN TO US. IN THE LAST 10 YRS WITH THE UTILITIES BEING SOLD TO PRIVATE CONCERN I HAVE WATCHED PRICES GO FROM \$15.00 TO \$92.04 INTRIM RATES FOR 3,000 GALLONS OF WATER.

IN THAT TIME WATER TO DRINK HAS GOTTEN WORSE AND THE SEWER AT TIMES THE SMELL IS HORRENDOUS.

I SHOW TO YOU JUST A SMALL AMOUNT OF THE WORK DONE DURING YEARS 03 TO DATE TRYING TO APPEAL TO YOU.

SOME OF YOU MAY RECOGNIZE THIS FOLDER FROM 03.

WE REALIZE LABRADOR NEEDS A PROFIT, WE ARE ALL BUSINESS PEOPLE HERE. BUT IF MY HUSBAND AND I TREATED OUR CUSTOMERS IN THIS WAY WE HAVE BEEN TREATED WE WOULD NOT BE LIVING IN FLORIDA TODAY.

I COME TO YOU TODAY NOT ASKING BUT BEGGING YOU TO GIVE US A FAIR SHAKE AND STOP THIS STEAM ROLLING OF PRICES THAT IS KILLING OUR PARK. LABRADOR OR UTILITIES INC. HAVEGOTTEN THEIR LARGE RAISES EVERY 3 TO 4 YRS BUT THEN BY LAW WHICH I AM WELL AWARE OF THEY TAKE THEIR SMALL RAISES EVERY YEAR. SMALL YES BUT ADD THEM UP BECAUSE THEY DO NOT EVER COME OFF.

WE HAVE FRIENDS AND NEIGHBORS THAT ARE STRUGGELING JUST TO LIVES FOR THOSE PEOPLE THAT IS WHY THIS LONG TRIP HAS BEEN MADE

WE ARE A VERY CARING PEOPLE

AGAIN I SAY THANK YOU TO ALL OF YOU FOR GIVING THIS GROUP THE OPPORTUNITY TO SERVE BUT HOPE YOU WILL SEARCH DEEP INSIDE FOR ANSWERS

THANK YOU AND GOD BLESS

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