

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060406-SU

APPLICATION FOR STAFF-ASSISTED RATE
CASE IN POLK COUNTY BY CROOKED LAKE
PARK SEWERAGE COMPANY.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 8

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW
COMMISSIONER KENNETH W. LITTLEFIELD

DATE: Tuesday, January 9, 2007

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

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 STEVE REILLY, ESQUIRE, representing the Citizens of
3 the State of Florida.

4 SHANNON HUDSON, GERALD EDWARDS, TROY RENDELL, RALPH
5 JAEGER, ESQUIRE, and MICHAEL COOKE, GENERAL COUNSEL,
6 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN EDGAR: We will be here in a moment on Item 8.

MS. HUDSON: Commissioners, Shannon Hudson on behalf of staff. Item Number 8 is a staff-assisted rate case by Crooked Lake Sewage Company in Polk County. Staff is prepared to answer any questions you may have at this time.

CHAIRMAN EDGAR: And do we have anybody here for the utility or for customers that would like to speak to this item?

MR. JAEGER: Chairman, I believe the president of the utility had originally indicated he wanted to speak, but we have not seen him today, so I guess he did not come.

CHAIRMAN EDGAR: And is there anybody who would like to speak from the Office of Public Counsel?

MR. REILLY: Good afternoon.

CHAIRMAN EDGAR: Good afternoon.

MR. REILLY: Steve Reilly with the Office of Public Counsel. I really had not planned on speaking on this particular item, and the only reason why I made myself ready to speak is I understood the company president was going to be present.

I will go ahead and speak anyway. I think the one thing that I take exception to on the recommendation is the recommendation that the company be show caused or pay \$500 why they should not be found guilty of all the numerous and

1 extensive violations, environmental and quality of service
2 violations. I know this is a troubled utility. They have had
3 just an incredible amount of violations. I know the staff has
4 told me DEP is pursuing them aggressively with fines and civil
5 suits, and so forth. And I guess, you know, I'm not
6 necessarily suggesting heaping coals upon their already flaming
7 fire, but I just think the Commission needs to address the
8 issue of how seriously do you take your orders? How seriously
9 do you take these, you know, dumping sewer in water bodies and
10 so forth.

11 I just feel the signal that you send with a \$500 fine
12 or show cause is just an invitation to say don't explain
13 anything to us, just pay this little \$500 fine and go on your
14 way. I mean, I can't imagine that this utility would spend a
15 lot of time, money, and effort addressing the show cause
16 proceeding for its numerous violations with something as small
17 as \$500. So I'm not suggesting that figure, but I just think
18 it sends a very bad signal to say that, oh, that's DEP's
19 problem and quality of service is not something that we are
20 going to be, you know -- but by the way, if you do this and you
21 continue to do it, then you are still subject to a \$5,000 fine
22 in the future. That is also in the recommendation.

23 But to get off all of these years of violations,
24 staff is recommending and you are going to be voting out, if
25 it's not changed, a very paltry \$500 fine. And I just think to

1 set it high enough so that at least you get this man to show up
2 before you to explain instead of just another no show. You are
3 going to get another no show if you vote out this \$500 fine.
4 That's my one criticism.

5 Thank you.

6 CHAIRMAN EDGAR: Mr. Jaeger, could you speak to this?

7 MR. JAEGER: Chairman, yes. Three points. The first
8 thing he sort of did touch on, DEP is going after them with a
9 heavy -- and this is their primary quality of service. The
10 other point is we have reduced salary by \$12,000. That is the
11 real penalty. That is where we nailed the utility for his lack
12 of actions. So that is \$12,000.

13 CHAIRMAN EDGAR: Which is also 50 percent, is it not?

14 MR. JAEGER: That's 50 percent. And then we -- you
15 know, we wanted to just say, hey, we had an order out there and
16 you violated it, so we are giving him \$12,500 is the real
17 penalty that we're doing here. And so we are not -- I don't
18 think that is a slap on the wrist for a utility of this size.
19 It is a very small wastewater-only utility, and it is serious
20 what he is doing, and we think DEP will take care of -- you
21 know, they are really on him on this. And we did do \$12,500
22 based on the poor quality of service.

23 MR. EDWARDS: Commissioners, staff engineer.
24 Commissioners, at this point in time, the proposed fines that
25 DEP is sanctioning this utility by is in excess of over

1 \$300,000, and this is a very small utility, but they are in
2 violation. So as a matter of fact, the jurisdictional preview
3 is by DEP, and they are aggressively pursuing this.

4 CHAIRMAN EDGAR: Thank you. Commissioner Tew.

5 COMMISSIONER TEW: This is for staff. We have had
6 cases similar to this one before. Is this consistent with
7 other fine amounts that we have rendered in similar show cause
8 issues?

9 MR. JAEGER: Commissioner, there is basically four
10 ways the Commission addresses poor quality of service. First
11 of all, sometimes we just order them to fix it and tell them
12 exactly what to do, but we like for the utility to, you know,
13 do their own management, day-to-day management.

14 The second way is we reduce the return on equity from
15 the midpoint down to the lower, like 50 basis points to 100
16 points. The courts say you can't take them out of that range
17 on equity, and so sometimes we will put them down at the very
18 bottom.

19 In this case equity was, you know, they are on about
20 an 8 percent return on \$100,000 of rate base. So we are not
21 talking -- if you do 100 basis points, you're talking about
22 \$1,000. So we could have done the equity, but we thought the
23 salary is the next way we do it. We look at salary and reduce
24 the salary.

25 And, of course, show cause is the fourth way where we

1 do it. So we're hitting them on two of the four -- well, we
2 are hitting them on three of the four, show cause, salary and
3 telling them to get it right, get it done, fix this stuff. We
4 didn't do the equity, because it is a miniscule -- well, not
5 miniscule, it is a thousand dollars, basically.

6 CHAIRMAN EDGAR: Commissioner Arriaga.

7 COMMISSIONER ARRIAGA: There has to be a reason why
8 we qualify the service, we say it is satisfactory or
9 unsatisfactory. Why do we do that? What are the reasons for
10 us doing that, and what are the consequences of a decision?

11 MR. JAEGER: Well, it's required by rule, and we look
12 at those three and the consequences are the show cause,
13 reduction on equity or salary, and those are the normal ways.
14 We usually either do salary or equity, not both. It is not
15 precluded, you could do both, but that is just several ways of
16 handling poor quality of service. We would rather get it fixed
17 and let the utility earn their fair rate of return. That is
18 the preferable way. We want them to be an operable utility
19 making enough funds where they don't have an abandonment or
20 where the quality of service goes worse because they don't have
21 the money to make the fixes.

22 COMMISSIONER ARRIAGA: So there is a reason, a very
23 weighted reason for qualifying the service?

24 MR. RENDELL: It is one of the -- by statute it is
25 one of the items the Commission must take into consideration

1 when it sets rates. If the Commission determines that the
2 utility does not meet that quality of service, then we look at
3 the options. As Mr. Jaeger indicated, are there some items
4 they can put into service and the Commission can order them to
5 do it within the time to address it.

6 Absent that, we would look at return on equity, that
7 would be the stockholders' or the investors' return. And for
8 larger corporations that may have a very large impact, if they
9 have many shareholders who are going to hold the board of
10 directors accountable. For the smaller utilities who have no
11 equity, this particular utility has no equity at all, so that
12 would be a zero influence. So what the Commission has done in
13 the past is held the president accountable, and in doing so,
14 reducing that salary. And that is an annual reduction, and it
15 is not going to get increased until they come back in and show
16 that they have taken an active role.

17 We actually had the DEP representative at my customer
18 meeting. I invited him, he attended. So we have been working
19 very closely with them. This has been ongoing for several
20 years, for approximately eight years. And I have been
21 discussing it with the president and asking him, are you going
22 to address it in this rate case? And he does not know what he
23 is going to do. He is basically addressing the court case with
24 DEP in the circuit court. So we are still going to monitor it
25 with DEP to see what may come of it. He indicated if it

1 doesn't go well, he may either abandon the utility or sell it.
2 So we will continue to work with him, and if he needs to
3 abandon or find a buyer, we will assist him in that pursuit.

4 COMMISSIONER ARRIAGA: What I was trying to get at,
5 and I think you are addressing it, is that there are important
6 consequences to poor quality of service. And I'm hearing eight
7 years of deviations and wastewater and all kinds of sewer
8 problems. And you have stated that DEP has already fined him,
9 I think, over \$300,000, which speaks highly of DEP. They are
10 doing their job. Now, are we doing ours?

11 Just because DEP is doing their job doesn't mean we
12 don't have to do ours. This is a continuous violation. The
13 guy doesn't even show up. The president doesn't show up. They
14 are paying no attention. They don't care. So we should be a
15 little more stringent. I think I tend to agree with Mr. Reilly
16 here.

17 CHAIRMAN EDGAR: Commissioners? Commissioner Carter.

18 COMMISSIONER CARTER: Thank you, Madam Chairman.
19 Would you -- you would say that in addition to the \$300,000, in
20 addition to the \$12,000 and in addition to the \$500, that we
21 should do another \$5,000 on a company that is pretty much, for
22 all practical purposes, on the verge of its last breath of
23 existence?

24 MR. REILLY: I would suggest that the Commission care
25 enough about the quality of service and the serious problems,

1 environmental problems with this utility that they should at
2 least in the show cause order say you are subject to have to
3 pay 5,000, 10,000, or 20,000, any number you want to pick that
4 is serious enough that he will at least respond to you. The
5 \$500 is a go out the door and walk, don't show. It will be
6 easier for him to write a check for \$500 than to even answer
7 your show cause order.

8 So it's not that you are going to impose the 5,000 or
9 impose the 10,000, but to set in this PAA high enough so that
10 he has to respond and come to you and make a signal to this
11 utility and any other utility that this Commission is serious
12 about these grievous violations over extended periods of time.
13 And that when you issue these orders, they need to be taken
14 seriously.

15 Now, what you finally decide is an appropriate fine
16 after the show cause and he comes to you and is available to
17 answer your questions, then you decide that based on the whole
18 range of options; what DEP has done to them, what their
19 capabilities are, and everything else. But to send the signal
20 out today in a PAA that we don't -- basically, we don't want to
21 hear from you, we will let DEP take care of that, is a wrong
22 signal to send. So you can issue a PAA order, 10,000 or
23 20,000, but you haven't assessed it. You've just said show
24 cause, come in here, and you are subject to having this fine if
25 you don't come to us and tell us why you have done all of these

1 things, and what you are doing to correct it, then I think this
2 Commission has taken a stand that it takes its orders seriously
3 and that it cares about quality of service.

4 COMMISSIONER CARTER: Follow-up?

5 CHAIRMAN EDGAR: Yes, sir.

6 COMMISSIONER CARTER: So you are saying that
7 notwithstanding the fact that our staff has followed our
8 statutory guidelines, our rules, our procedures and all like
9 that, in addition to that the only way that we can show that we
10 are serious about the quality of service is to put up a
11 possible fine for \$10,000? Is that what you're saying, because
12 that is what I'm hearing you say.

13 MR. REILLY: I think I'm saying that the fine needs
14 to be high enough so that it makes a signal that you are
15 serious about it, and it has to be high enough so that he will
16 consider responding to it. The fine that has been set in this
17 PAA is so low that he will not respond, I'm predicting.

18 COMMISSIONER CARTER: Go ahead, Madam Chair.

19 CHAIRMAN EDGAR: Thank you.

20 COMMISSIONER CARTER: I'll defer.

21 CHAIRMAN EDGAR: Let me be clear, I can go beyond
22 sending a signal. I will go further and say we are very
23 serious about quality of service. I believe we, I know I am
24 very serious about environmental impacts and environmental
25 concerns, and I believe that we show that just about every time

1 we sit at this bench. So some of your discussion about signal,
2 sending out smoke into the air, I find a little disturbing,
3 quite frankly. Because I will make the statement, I don't need
4 to send a signal, we take it very seriously.

5 Now, I think that from my perspective what we are
6 trying to do is follow the law and figure out how to get the
7 best result ultimately for the customers, part of which is
8 service and good quality service.

9 Mr. Cooke, can you speak to the procedure of the show
10 cause?

11 MR. COOKE: Well, one thing to keep in mind is that
12 by statute there is a \$5,000 limit per offense, so there would
13 be have to multiple offenses to go beyond that amount. And I
14 think that whatever you decide to do with regard to the final
15 number for the show cause, it ought to be done in this hearing
16 so the show cause order can go out with whatever number you
17 feel comfortable with.

18 I guess one other comment is it is also important,
19 and I think one of the goals of staff is to ensure compliance
20 and to make sure that appropriate resources are spent on
21 compliance as well. Making sure that it is taken seriously is
22 important, but not to the point where perhaps that diverts
23 resources that could be used for ensuring water quality.

24 CHAIRMAN EDGAR: Thank you.

25 Commissioner Carter, I think I interrupted you. I

1 apologize. Did you have a further comment or question?

2 COMMISSIONER CARTER: Yes, ma'am. Thank you, Madam
3 Chairman.

4 It's just that I was just trying to see if I could
5 put some kind of logical perspective on the fact that our staff
6 has done all that the statute and the rules has required them
7 to do, and this Commission is on record both before I got here
8 and as I have been here, and we will in the future continue to
9 stand up for the rights of health, safety, and welfare of our
10 citizens of Florida.

11 But to say that -- notwithstanding following our
12 requirements, our rules, our procedures to say that we are not
13 serious unless we come up with some amorphous number, I don't
14 find that credible. I really don't. I mean, I respect the
15 Office of Public Counsel, and I presume that they respect the
16 Commission, but I think that to make a statement like that it's
17 an insult to the professional staff that we have, it's an
18 insult to the fact that we are charged by the Legislature in
19 following the rules and procedures, and I just don't understand
20 how you can come up with that perspective. It just doesn't
21 make sense to me.

22 MR. REILLY: To respond, I believe you are serious.
23 I think to make that -- to have a \$500 fine is a way of saying
24 you can write a check for \$500 and not explain why you have had
25 this multiple year of violations of our orders concerning

1 quality of service. I'm only saying make the suggested fine
2 high enough so that at least the offender, not even maybe ever
3 pay a fine, but at least come to you and explain to you what
4 has happened and what he is going to do to correct it.

5 If you make the fine as low as staff has recommended
6 in this recommendation, you vote this out, it sends a signal,
7 that is the signal I send is that we don't need to hear from
8 you, that you can write a check for \$500, and it is low enough
9 that it would be more cost-effective for you to write the check
10 for \$500 than it would be for you to even come in here, as he
11 promised he was going to come today, and answer to the staff
12 and to this Commission what has happened in the past and what
13 he is going to do to correct it in the future. That is the
14 signal I keep talking about that you should not send today.
15 The \$500 is too low. That's our respectful position.

16 CHAIRMAN EDGAR: Okay. That is your interpretation
17 of --

18 MR. REILLY: That is correct.

19 CHAIRMAN EDGAR: -- to send or not send, perhaps
20 potential signals.

21 Mr. Rendell.

22 MR. RENDELL: I think in this instance staff believes
23 that his resources would be better utilized addressing the
24 court case with DEP. DEP has been tracing this case. They are
25 well aware of all the violations, and they have actively filed

1 a circuit court case. I believe that the utility's resources
2 would be better utilized addressing those concerns because that
3 is their rules that they are violating. So in this instance we
4 believe we have addressed, consistently with past cases,
5 reducing his salary and at least getting some type of a fine
6 out there.

7 Now, whether he will respond or not, I do not know.
8 I am surprised he did not show up today. He indicated to staff
9 he would be here, so I'm surprised he is not here to address
10 it.

11 CHAIRMAN EDGAR: Did anyone on our staff request or
12 direct -- I'm sorry, what is the gentleman's name?

13 MR. RENDELL: Mr. Knowlton.

14 CHAIRMAN EDGAR: Request or direct Mr. Knowlton to
15 attend this afternoon?

16 MR. RENDELL: We spoke with him last week. I had my
17 staff call him to see if he was going to come up. He called
18 both my staff -- I listened in when she was talking to him. He
19 said he would be here.

20 CHAIRMAN EDGAR: But did you ask him to be -- I mean,
21 he offered to be here, but did we --

22 MR. RENDELL: We asked him.

23 CHAIRMAN EDGAR: Because Mr. Reilly is telling us
24 that he broke a promise or a commitment, and I was not aware
25 that we made the request.

1 MR. RENDELL: No, ma'am. We asked if he was going to
2 attend. We didn't request him to be here.

3 CHAIRMAN EDGAR: Okay. Was a promise made to you or
4 your staff that has not been met regarding attendance today?

5 MR. RENDELL: I don't believe there was a promise,
6 no.

7 MR. REILLY: And to clear the record, I never
8 suggested he promised that he would be here. It is just staff
9 told me he was going to be here, that's all I believe I said.
10 And I was looking forward to him being here, but I don't -- if
11 I did suggest he promised he would be here and he broke that
12 promise, I certainly don't mean to suggest anything I have said
13 indicates that.

14 CHAIRMAN EDGAR: Okay. Mr. Reilly, then maybe I
15 misunderstood, because I thought very clearly that that's what
16 I heard you say.

17 Commissioner Carter.

18 COMMISSIONER CARTER: Thank you, Madam Chairman. I
19 believe in view of where we are, staff has clearly and
20 succinctly and deliberately laid out a set of rational and
21 reasonable perspectives in terms of how we should allay the
22 statutory and rules in terms of how we apply penalties for
23 violations of the rules in this process. I think that even in
24 a show cause, we don't -- \$500 does not say that that is what
25 we are charging. So in view of the fact that staff has

1 followed the statute, followed the law, I would move staff
2 recommendation on this issue.

3 CHAIRMAN EDGAR: Thank you. Commissioners?

4 Commissioner Tew.

5 COMMISSIONER TEW: I can second that motion, but I
6 just wanted to add, I am not sure, I want to be frank, how
7 important it is to get him to respond. I'm not sure -- I think
8 he has a tall, a very tall list of things to explain here, and
9 I think that he has got a high hurdle to overcome in trying to
10 not have a fine assessed, quite frankly. And I'm not sure how
11 to come up with a number to get him to respond.

12 We are more focused on getting him to resolve the
13 problems. And, of course, we haven't been successful in
14 getting him to do that yet, and that is a point well-taken. I
15 think I agree that staff has followed a consistent methodology
16 in assessing the fine and that, hopefully, this will send the
17 signal that we are trying to send to get the president to act.

18 So I second that motion.

19 CHAIRMAN EDGAR: Thank you.

20 Commissioner Carter.

21 COMMISSIONER CARTER: If I may, and, Mr. Cooke, you
22 may want to speak to this, nothing we say here today would
23 preclude us from adding additional fines or penalties to this
24 case, does it not?

25 MR. JAEGER: Commissioner Carter, I think on this

1 show cause here what we are saying is if you don't do anything
2 and you just want to send in the check for \$500, that is what
3 we would fine him. And then if he doesn't do anything, that is
4 a continuing violation. But then we would come in again and
5 say up the ante or -- so right now, if you vote on staff's
6 recommendation, then the fine would be \$500 as of today if he
7 does nothing 21 days hence.

8 COMMISSIONER CARTER: That is in addition to the
9 other --

10 MR. JAEGER: The \$12,000 salary reduction.

11 CHAIRMAN EDGAR: Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: I'm not going to vote against
13 the motion, but I just wanted to make a comment. It is evident
14 that the quality of service qualification should have some kind
15 of respect on the part of the person that has been told that it
16 is unsatisfactory. It is also evident that it is eight years
17 of violation, and he is not paying attention. I would have
18 preferred a more stringent fine or a more stringent action on
19 our behalf, but just to let him go so easily -- you know, I'm
20 not talking about signals here, it is about our own decisions.

21 Again, I'm not going to vote against the motion, but
22 I think that there was an opportunity here to be a little more
23 stringent. If not with him, have other people that are
24 listening to us, other potential violators understand that we
25 mean business.

1 Thank you.

2 CHAIRMAN EDGAR: Commissioner Carter.

3 COMMISSIONER CARTER: Thank you, Madam Chairman.

4 Mr. Cooke, is there anything that would preclude
5 us -- if we vote this out today, is there anything that would
6 preclude us from -- if our staff finds that for whatever reason
7 that the party has chosen not to follow the terms and
8 conditions, is there anything that would preclude us from
9 expediting an action on this matter that you know of?

10 MR. COOKE: Commissioners, on a show cause order, if
11 you vote the \$500 fine today, the company would have an
12 opportunity to pay that, and that would resolve it at that
13 point, so that would close as to anything that exists as of
14 today.

15 Now, if they choose to fight that, there may be some
16 opportunity to perhaps increase that. Although my preference
17 or my direction would be if you expect a higher fine, it would
18 be appropriate today to state whatever it is the Commission is
19 seeking. I wouldn't count necessarily on an increased fine
20 after today and after a vote today with whatever level you set.

21 CHAIRMAN EDGAR: Commissioner Tew.

22 COMMISSIONER TEW: Sensing some concern about where
23 we are going, let me ask this about consistency, because that
24 is somewhat the basis for, I think, the path we are going down.
25 Earlier when I asked you about consistency, you talked about

1 the four different methods we use, and that we usually use some
2 combination of the two. And I think you said that if we
3 adjusted the ROE it would amount to about \$1,000. Is that --

4 MR. JAEGER: I may have misspoke, because I think
5 it's only on ROE, return on equity, and I thought they had a
6 rate base, but it is all debt. It is all financed by debt. So
7 I don't think adjusting the equity would do even that. There
8 is no equity by this owner. So return on equity would not
9 cause any change in the revenue requirement.

10 COMMISSIONER TEW: Follow-up, Chairman?

11 CHAIRMAN EDGAR: Commissioner Tew.

12 COMMISSIONER TEW: In comparing this case to similar
13 cases, if we moved forward with the staff rec, would we be
14 levying the maximum fine with these kind of circumstances that
15 we have done in the past? Is \$500 fairly consistent for show
16 cause issues where a party has a great number of DEP
17 violations, such as this company?

18 MR. JAEGER: I think we take into account the size of
19 the utility and also -- I wasn't going to say -- under 367.161,
20 it says -- Sub 1, it says, however, any penalty assessed by the
21 Commission for a violation of Section 367.1112 shall be reduced
22 by any penalty assessed by any other state agency for the same
23 violation. And 367.1112 is quality of service type items where
24 we look at DEP. So I think what we wanted to do is just get
25 his attention.

1 We had orders, we wanted you to do something. But
2 the main thing is he has to comply with DEP, and that is his
3 main trouble is with DEP. But what we have done, his whole
4 salary is -- we reduced the salary to 12,000, which is
5 50 percent, and that is the main part where we hit him
6 financially. And there is no return on equity, so that's his
7 sole money that he is getting for this utility.

8 MR. RENDELL: And that is annually until he fixes the
9 quality of service and comes back in a rate case. So that is a
10 reduction that the ratepayers are basically benefitting from
11 until he fixes the problems. So there could be 10 or 12 years
12 until the rates are increased for that, so that is an annual
13 amount of \$12,000.

14 COMMISSIONER TEW: And how does that relate to
15 president salaries with similar -- I should say with presidents
16 with similar involvement in the utility? I know that sometimes
17 presidents have differing roles and that justifies different
18 amounts of salaries. But, in similar cases, how does \$12,000
19 compare?

20 MR. RENDELL: Well, it is not the dollar amount. We
21 reference two orders on Page 13 of the recommendation of when
22 we've reduced president salaries by 50 percent. It is the
23 percentage. And in the Mad Hatter case and in the King Sales
24 (phonetic), when the quality of service consistently was
25 unsatisfactory, we hold the president accountable. And so in

1 doing so to get their attention so that they would comply, we
2 reduced the president's salary 50 percent, and that is
3 consistent with those two past rate cases.

4 CHAIRMAN EDGAR: Commissioners, any further
5 questions?

6 COMMISSIONER CARTER: I've just got one, Madam
7 Chairman.

8 CHAIRMAN EDGAR: Commissioner Carter.

9 COMMISSIONER CARTER: If I may, to Mr. Cooke.

10 CHAIRMAN EDGAR: Of course.

11 COMMISSIONER CARTER: I was listening aloud to my
12 colleague in my former geographical location, and I was kind of
13 listening to see that maybe we had deferred from precedent or
14 maybe starting out on a new territory, and I didn't really get
15 the warm and fuzzies on whether we were or whether we weren't.
16 But I do feel that if we need to have more ammunition in the
17 context of this fine, because we're looking at it, and, Madam
18 Chairman, to be honest with you, I am looking at it in the
19 total circumstances. They are facing \$300,000 with DEP, they
20 are facing -- I mean, I don't know how much this guy is making,
21 but if I lost half of my salary for a year I think you would
22 get my attention.

23 In addition to that, you have got a show cause order
24 here pending for him, and the \$500. What, Mr. Cooke, is under
25 the -- this case and under these facts here, what would be the

1 maximum amount of penalty we would be able to apply on this, if
2 we want to pile on?

3 MR. COOKE: Commissioners, I can't say the total
4 amount, because it is \$5,000 per day per violation. So it
5 would depend on the number of violations, the multiplicity of
6 what we are looking at, and I don't know the answer to that.
7 It could be a significant number. And I would defer to either
8 Mr. Jaeger or staff if they have any information on the number
9 of potential violations we could allege.

10 MR. JAEGER: We know there has been at least -- you
11 know, I'm not sure it went continuous, how many -- I would have
12 to talk to the engineer, but since that time it hasn't been
13 continually dumping into Crooked Lake, but there have been
14 instances of where there has been wastewater overflows or they
15 have diverted water from overflows. So we don't know how many
16 violations. We know there has been at least this one.

17 Gerald, how many -- did DEP say how many times they
18 found them?

19 MR. EDWARDS: (Inaudible).

20 CHAIRMAN EDGAR: Okay. One of you will need to
21 answer that to us.

22 MR. RENDELL: If I could intercede, the show cause
23 issue in Issue 12 is if they should be show caused for failure
24 to come into compliance with the order. The order was issued
25 in 1999. There were two provisions of the order: One was to

1 install the pro forma improvements that was allowed in rate
2 base; the other one was to get in compliance with DEP. They
3 met the first requirement. They did install the pro forma
4 improvements to address the inflow and infiltration problems.
5 Staff verified that and closed the docket. So I believe if you
6 follow that logic, and they are in violation of the order, it
7 would be \$5,000 per day from when the order became final in
8 1999, and that would be one violation.

9 I don't believe that we are show causing them for the
10 different rules they are violating with DEP. DEP is already
11 doing that. They are pursuing that through circuit court. We
12 are only show causing them for not coming into compliance with
13 DEP. So I think that would be one violation for every day from
14 1999 forward to 2006. I don't have a calculator, but it is
15 very substantial.

16 CHAIRMAN EDGAR: To our staff, did you have further
17 comment?

18 MR. JAEGER: I'm not sure I totally agree with
19 Mr. Rendell in that they have been in and out of compliance
20 with DEP, I think, over the years. And I'm not sure -- I think
21 some of the things they have been out of compliance for the
22 whole time, but it is -- you know, it is fluid and they haven't
23 done everything. But what we were trying to do in that order
24 we said do these things, and there was like five things we said
25 do. And we know two of them they haven't done of those five

1 for sure in this last violation that they have done.

2 So I think if they continue, if they don't fix the
3 problems, then, you know, it could be the \$5,000 per day for
4 each day that the violation continues. And if we do this show
5 cause, and we tell them, you know, comply and then we find out
6 later they still are just tripping down their way, then I think
7 we come back and say you haven't done it and fine them for
8 however many days forward you want to keep going.

9 CHAIRMAN EDGAR: Commissioners, it feels to me that
10 we really are all pulling in the same direction, which is,
11 obviously, to uphold the statutes, to further our commitment to
12 environmental protection to the extent that we have the
13 jurisdiction and responsibility, and to pay very close
14 attention to quality of service issues and violations. But I
15 think what we are struggling with is what is the right number
16 in this narrow -- the issue before us for the show cause,
17 realizing, as Commissioner Carter has pointed out and as our
18 staff have described to us, the other -- both with this agency
19 and with other agencies, processes and procedures that are
20 ongoing to address many of the same issues and circumstances.

21 So I know that we all have -- I think it sounds like
22 we are all, like I said, pulling in the same direction and it
23 is just on, I believe, the only concern I'm hearing is on this
24 one issue which is, I think, Issue 12 as to the amount
25 recommended by our staff in the show cause. You have heard Mr.

1 Jaeger and other members of our staff give the analysis as to
2 the consistency with prior actions and also looking at the
3 specific numbers and factors for this utility, and as to why
4 they have recommended that amount to us.

5 I will, again, just state very clearly my personal
6 commitment to environmental protection and to quality of
7 service issues. The comments that were made by our staff about
8 wanting resources to be devoted to fixing problems resonates
9 with me, and it sounds to me like in this instance the
10 financial resources are very limited. So I think that is where
11 we are.

12 We did have a motion and a second for the staff
13 recommendation in its entirety, Issues 1 through 14. I'm glad
14 to continue further discussion if, indeed, further discussion
15 will give all of us, any of us, additional comfort about that
16 number on that issue or any of the other issues. But I also
17 think we are kind of going around and around over the same
18 thing, so what is your pleasure?

19 Are there further comments or questions?

20 COMMISSIONER CARTER: Madam Chairman, I didn't
21 realize it was \$5,000 per violation per day. That certainly is
22 interesting. Additionally, I didn't realize that, you know,
23 that \$500 would terminate the matter. But, you know, I just
24 feel, Madam Chairman, that maybe we could bifurcate this and go
25 with all the issues except for Issue 12. It just seems that we

1 are getting a little heartburn on that issue. And, I mean, I
2 do think the staff has done a good job on this, but this Issue
3 12 in terms of the amount for that, I would like to do a little
4 more research on it myself, and maybe staff can come back with
5 us with a greater recommendation.

6 If I'm in order, Madam Chairman, I would like to
7 modify my motion with the acquiescence of my colleague on the
8 end and maybe modify her second to accept staff's
9 recommendation all for except Issue 12 as it pertains to the
10 show cause and the \$500 amount.

11 CHAIRMAN EDGAR: Okay. What I think I'm hearing,
12 Commissioner Carter, is a modification to your motion such
13 that, and do tell me if I get this wrong, but for my own
14 thinking and for, hopefully, clarity, modification of your
15 prior motion such that we would have before us the staff
16 recommendation for Issues 1 through 14 with the exception of
17 Issue 12, at which you would request that our staff go back,
18 evaluate some of the discussion, some of the other factors and
19 perhaps get additional information as to the status of the
20 processes and procedures for the administration of the
21 penalties pending with our sister environmental agency.

22 COMMISSIONER CARTER: That's perfect.

23 CHAIRMAN EDGAR: And then maybe come back with
24 whatever the recommendation would be at that time.

25 And what I would ask Mr. Cooke is if, indeed, that is

1 something procedurally we can do, go ahead and take up 13 of
2 the 14 issues and leave the remaining one pending.

3 MR. COOKE: One modification is I would keep Issue
4 14, I would keep the docket open.

5 CHAIRMAN EDGAR: Of course, yes. Thank you.

6 MR. COOKE: Otherwise, we can come back with an
7 additional recommendation.

8 CHAIRMAN EDGAR: The old don't close-the-docket issue
9 that I often move right through.

10 Yes. Thank you for that clarification, Mr. Cooke.

11 Okay. Not to speak over you, Commissioner Carter,
12 jump right in, but --

13 COMMISSIONER CARTER: Madam Chairman, I think you
14 have spoken as eloquently as you always do on the issues and
15 that is exactly what I was saying.

16 CHAIRMAN EDGAR: Okay. Thank you, Commissioner
17 Carter.

18 Commissioner Tew.

19 COMMISSIONER TEW: And I certainly agree with that.
20 I would ask that the -- this is a point I probably glossed over
21 a little bit earlier. I would ask that Public Counsel whenever
22 we do take this issue up again perhaps address how important it
23 is to the customers of that utility that the utility respond
24 because that may help us in coming up with some kind of a
25 number.

1 MR. REILLY: Okay.

2 COMMISSIONER TEW: Otherwise, I second the revised
3 motion.

4 CHAIRMAN EDGAR: Okay. Thank you. Then we have a
5 modified motion with a second before us. We have had
6 discussion. All in favor of the motion say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN EDGAR: Opposed?

9 Show it adopted.

10 Thank you, Commissioners. Thank you, staff. And
11 thank you, OPC.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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

7

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

10

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

13

DATED THIS 16th day of JANUARY, 2007.

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Jane Faurot for

JANE FAUROT, RPR

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