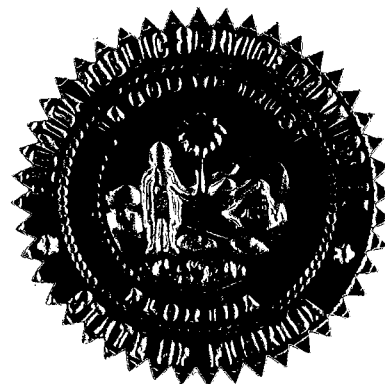


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060254-SU

In the Matter of:

APPLICATION FOR INCREASE IN WASTEWATER
RATES IN PINELLAS COUNTY BY MID-COUNTY
SERVICES, INC.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 7

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW

DATE: Tuesday, January 23, 2006

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

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

1 PARTICIPATING:

2 STEPHEN C. REILLY, ESQUIRE, and TRICIA MERCHANT,
3 representing the Citizens of the State of Florida.

4 MARTIN FRIEDMAN, ESQUIRE, FRANK SEIDMAN, and JOHN
5 WILLIAMS, representing Mid-County Services, Inc.

6 ROSANNE GERVASI, ESQUIRE, JAY REVELL, MAHNAZ
7 MASSOUDI, and TROY RENDELL, representing the Florida Public
8 Service Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN EDGAR: Item 7.

MR. REVELL: Item 7 is staff's recommendation on final rates for Mid-County Services, Inc. Mid-County Services is a Class A wastewater only utility in Pinellas County. Also today --

CHAIRMAN EDGAR: Let's take a moment and let everybody get settled. Did we catch you by surprise?

MR. FRIEDMAN: Somebody said we were second.

CHAIRMAN EDGAR: That changed. We will give them a second.

Okay. Let's begin at the beginning.

MR. REVELL: Okay. Also with us today is Mr. Steve Riley and Ms. Tricia Merchant representing Office Public Counsel, and also Mr. Marty Friedman and Mr. Frank Seidman representing the utility. And with that, staff is available to answer any of your questions.

CHAIRMAN EDGAR: Okay. Mr. Friedman, I am going to begin with you, and ask if you would give us a brief overview of your comments. If there are specific issues that you have particular concerns about or would like to touch on, if you can also identify them by number, that is very helpful to us. And to OPC, I would ask the same thing.

MR. FRIEDMAN: Thank you, Commissioners.

My name is Martin Friedman of the law firm of Rose,

1 Sundstrom & Bentley, and our firm represents Mid-County
2 Services in this case. With me also is Frank Seidman and John
3 Williams back here. And we may want to reserve some discussion
4 on some comments that we understand the Public Counsel may
5 make.

6 From the utility's perspective, this issue of the
7 salaries that we have discussed in some of these prior rate
8 cases, it is the allocation of salaries. The staff had
9 recommended a 4.51, I think, percent increase in the salaries,
10 and I think what they did is good as far as it goes. What the
11 staff's recommendation does not take into consideration is the
12 fact that in order to ensure better quality of service and
13 customer relations, and also to meet more stringent and ever
14 changing environmental regulations. The company has added two
15 new positions, one a regional vice-president of operations.

16 In the past everything went directly to the COO in
17 Northbrook, and what they have done is brought that
18 decision-making management closer to the systems. And Florida
19 is one of the states that Utilities, Inc. has the most systems
20 and customers. They are devoting substantial amounts of money
21 to capital improvements in all of their Florida systems, and
22 having the management closer is a benefit to everyone,
23 including the customers.

24 The company has about 403 water and wastewater
25 systems in Florida, and you can imagine that the environmental

1 and regulatory compliance for those systems is extensive. And
2 as a result, last year the company added a new position of
3 compliance and safety manager. And, I don't know if you recall
4 in some of these other cases where the quality of service
5 issues have arisen, not necessarily the quality of the product,
6 but quality of the product has been raised as an issue in one
7 of these cases that you will hear today. So this new position
8 has been created to help meet the ever increasing environmental
9 and regulatory requirements, and we think will result in better
10 quality of service to the customers. And it is these two
11 positions that the staff recommendation has ignored, and this
12 is Issue 12.

13 CHAIRMAN EDGAR: Twelve.

14 MR. FRIEDMAN: Yes, Issue 12. And that, in round
15 numbers, is about a \$30,000 reduction. The exact amount is in
16 the staff recommendation. But we think that the staff
17 overlooked the fact that we added two new positions that are a
18 benefit to the customers and will help to increase the customer
19 service as well as environmental compliance. That's all the
20 comments we have now. Thank you.

21 CHAIRMAN EDGAR: Okay. Thank you very much.

22 Mr. Reilly.

23 MR. REILLY: I would just start by supporting staff's
24 analysis on Issue 12. I think they did attempt to do some
25 reasonable restraint on the growth of increase in salaries. I

1 think it was really fairly conservative and fair to the utility
2 with their 4.51 percent, which is certainly greater than the
3 Commission's 2006 price index of 2.74.

4 Likewise, on rate case expense, I think staff did a
5 very diligent job to try to provide restraint to the tremendous
6 rate case expense that this company was asking. And I think it
7 is particularly good to note what staff did when you consider
8 that this company had just come in for a rate case just a short
9 time ago, and the customers were already paying an amortized
10 rate case expense, a rate case order that was just issued in
11 August of '04. So when you find that doubling and compounding
12 effect that even makes it more imperative for the staff to
13 really scrutinize and closely look at rate case expense and to
14 bring it into some kind of reasonable level.

15 The three issues, however, that we would take
16 exception with staff's recommendation are Issues 1, relating to
17 quality of service, and Issues 4 and 6, 4 being other rate base
18 adjustments, and 6 being working capital, which we believe is
19 overstated. I would like to speak to the issue of quality of
20 service, and I would like to yield to Tricia Merchant in our
21 office to speak to Issues 4 and 6.

22 As to the quality of service issue, the Commission
23 has a rule, 25-30.4331, which states the Commission in every
24 rate case shall make a determination of the quality of service
25 provided by the utility. This shall be derived from an

1 evaluation of three separate components, and that's the quality
2 of the utility's product, the operational conditions of the
3 plant, and the utility's attempt to address customer
4 satisfaction.

5 The staff in its recommendation did specifically
6 address the other two points, and specifically found that the
7 company was satisfactory on its operational conditions and
8 addressing customer satisfaction. It did find that the company
9 was overall marginal on quality of service and that related to
10 the problems relating to the first component.

11 And the only exception I take to staff's
12 recommendation on the first component, which is the water
13 quality, is staff didn't really -- when you read the
14 recommendation, it really didn't frontally address and come to
15 a finding. If you read the recommendation, it concedes that
16 DEP has found that the company had unsatisfactory water
17 product. That all through the test year and even all through
18 2006, time and again, even through January of '06, August of
19 '06, and November '06, warning letters were sent. There is a
20 consistent pattern through the test year. And all the way
21 through the year after the test year the company continually
22 failed to produce a correct product. Their total nitrogen,
23 total phosphorous, fecal coliform, CVOD effluent limits were
24 not met.

25 So it is true that the company has been endeavoring

1 to solve the problem. It may be even as a result of efforts
2 that they have made that they may be approaching a resolution
3 of the problem. So staff in its recommendation said the
4 Commission shall require them to spend and do whatever is
5 necessary to finally bring themselves into compliance.

6 My only exception to that recommendation is, number
7 one, I think it would be helpful for the Commission to make a
8 finding, as it should, that, in fact, the water product is not
9 satisfactory, just like DEP did. Secondly, I don't even think
10 that the Commission has to change its overall quality of
11 service. It can still find it to be marginal as a result of
12 that finding of unsatisfactory on the water quality.

13 But then lastly, the Commission should go further and
14 not just say go out and do good, but say we are concerned about
15 this problem, we require you to verify that you have solved the
16 problem in the next six months. That when you have solved the
17 problem you will notify your customers; number two, you will
18 give a report to our staff verifying the solution has been
19 solved; and if, in fact, you have not solved the problem
20 halfway through 2007, then I think the Commission should take
21 action, enforcement action, show cause action.

22 Of course, we feel more strongly about if they
23 consistently don't provide the product, we think it's
24 appropriate to even consider a half percent on the return on
25 equity, something that actually benefits the customer since

1 they are getting something less than they are paying for.
2 However, at minimum a show cause proceeding to make sure that
3 the company has and will solve the problem. So that's our
4 comments on what further you should do with regard to the
5 quality of service.

6 CHAIRMAN EDGAR: Okay. And we'll go ahead and hear
7 your discussion and points on Issues 4 and 6.

8 MS. MERCHANT: Thank you.

9 Good morning, Commissioners. I'm Tricia Merchant
10 with the Office of Public Counsel. And I would first like to
11 talk about Issue 4, and staff has labeled this issue as other
12 adjustments to rate base. And we believe that there is an
13 additional adjustment that needs to be made that staff hasn't
14 addressed in their recommendation. And staff has made several
15 adjustments to the pro forma plant that the company has
16 requested, but we believe further adjustments are necessary.

17 First, I want to point out that the company requested
18 and the Commission approved the use of a 13-month average test
19 year ended December 31st, 2005. They made pro forma
20 adjustments to that, which is standard practice, but they went
21 a little bit beyond that when they did that. They made two
22 types of pro forma adjustments. One they called non-specific
23 plant adjustments as of July 15th, 2006; the other were the
24 specific type of pro forma adjustments like the odor control
25 system.

1 So I want to talk specifically about the non-specific
2 pro forma adjustments that they made. These items are all the
3 plant additions that they have made from January 1st, 2006, to
4 July 15th, 2006. So what they have done is they have updated
5 the rate base, the plant component of rate base, and a small
6 component for depreciation expense. So one year's depreciation
7 expense on all of those plants additions.

8 But they didn't update all the rest of the components
9 of rate base, like accumulated depreciation that would continue
10 to be paid for by the customers as time goes on, and the change
11 in contributions-in-aid-of-construction. And CIAC is not a
12 very large amount, but it is a component that would offset the
13 additional plant.

14 And we believe that the company has kind of done a
15 quasi-projected test year. They have asked for the items that
16 increase rate base without matching up the other items that
17 offset it. So we would ask that the Commissioners not allow
18 the company to add in all of these normal regular plant
19 additions that update the test year to July 15th, '06, and
20 instead allow the pro forma adjustments that are reasonable and
21 prudent that we also agree with. But use the standard 13-month
22 average test year ended 2005 and disallow the non-specific
23 plant adjustments. That's about \$77,000 of reduction to plant
24 and there would be corresponding adjustments to depreciation
25 and accumulated depreciation.

1 Now, on the other pro forma adjustments, one in
2 particular was for the odor control plant, which we certainly
3 agree with that was necessary. The staff made several
4 adjustments to the actual amount, but the company admitted in
5 some discovery that when they put in this odor control plant
6 they would no longer have to pay about \$5,000 in annual costs
7 in odor masking agents that they have been using for the past
8 several years to control the odor. They admitted that that
9 would no longer be incurred and we believe that that adjustment
10 should also be made in O&M expenses associated with that odor
11 control plant.

12 Now, the second issue -- and that is all I have on
13 Issue 4. Issue 6 deals with working capital. And this is a
14 Class A utility, and the larger water and wastewater companies,
15 as well as the electric company have to use the balance sheet
16 approach for working capital. It's a very complex calculation,
17 current assets minus current liabilities, add in a few accounts
18 on both the asset and liability side, but it is a much more
19 complicated method than what we use for the smaller companies.

20 The smaller B and C sized utilities use a formula
21 approach, which is 1/8th of O&M expenses, very simple to apply.
22 But when I started looking at the working capital allowance
23 allowed for Mid-County, I noticed that it was much greater than
24 the 1/8th of O&M expenses, and I started looking into it and
25 seeing why was it so high. And it appears that the company

1 doesn't have all of the standard accounts that most Class A
2 utilities have on their balance sheet to be able to make this
3 calculation. And there is one main reason why that is. It's
4 because the company is a subsidiary of a very large water
5 company. It has a service corporation in Illinois that has the
6 majority of the transactions that get filtered down to all of
7 their utilities in Florida and elsewhere. They, for accounting
8 purposes, simplify their balance sheet, and that makes sense
9 for an accounting basis.

10 And it doesn't matter when you have a smaller
11 company, because you are doing the formula approach. But in a
12 rate case when you have a balance sheet method of working
13 capital, it is very crucial that you have all the accounts
14 payable coming down, allocated down on the subsidiary level,
15 like Mid-County, and filter down the whole current asset and
16 whole current liability picture so you can get a true picture
17 of their investment in working capital.

18 And we believe that the balance sheet doesn't do that
19 for this company, and also that holds true for Alafaya, which
20 is coming next, and for another Class A that will be heard in a
21 couple of weeks for Utilities, Inc. So in lieu of -- since we
22 don't believe that the balance sheet represents all of the
23 costs coming down that should come down, we believe that the
24 Commission should instead use the formula approach specifically
25 for Mid-County and also for Alafaya. And for Mid-County, that

1 represents about a \$72,000 reduction in the amount of working
2 capital that staff has recommended.

3 And that concludes our remarks. And Mr. Reilly has
4 one more.

5 MR. REILLY: I'm going to perhaps add one more thing
6 to that. Just one point to add that I think we would like to
7 make is that that issue concerning getting the non-specific pro
8 forma plant allocations out of rate base and not included, it
9 is very important to know that that is what staff recommended
10 to do in the case that is coming up next, Alafaya. And I read
11 from that recommendation. It says, "Based on the MFR dollar
12 amounts of the documents provided by the utility, staff
13 believes these additions are normal recurring plant additions.
14 If normal recurring plant additions were allowed, a strong
15 argument could be made that CIAC and accumulated amortization
16 of CIAC should also be projected forward another year due to
17 the expected growth as well as billing determinants and
18 expenses. This would have the effect of changing the approved
19 2005 historic test year to a projected test year. Because of
20 the utility's assertion in its test year request letter that
21 the 2005 historic test period is representative of a full year
22 of operation and expected growth for the utility, staff
23 recommends that these normal recurring plant additions be
24 removed from plant."

25 So we just recommend similar treatment in Mid-County

1 as staff recommends in the coming case, Alafaya. And we think
2 it was appropriate in Alafaya and should have been done in
3 Mid-County. Thank you.

4 CHAIRMAN EDGAR: Thank you, Mr. Reilly and
5 Ms. Merchant. I'm going to look to our staff and ask you if
6 you could comment to us on the points that have been raised,
7 and if I can also identify by issue number that helps me keep
8 track of it with my notes, as well.

9 MR. REVELL: Okay. I'll do it in the same order that
10 Mr. Reilly did. I'll address Issue 4 first, on the other rate
11 base adjustments. When we received the package, we
12 automatically always request as much backup and documentation
13 from a utility as possible. That's usually in our first data
14 request and it is fairly standard. In this case we also
15 noticed that the amount of other projects that they had
16 proposed adding were somewhat significant, more so than some
17 other utilities, and actually the utility responded to a
18 specific data request on these projects from OPC which detailed
19 pretty much everything they were going to do in the
20 non-specific projects. We had all the invoices, and on that
21 basis we made our adjustments. And, our recommendation was to
22 allow these projects. However, all things considered, I don't
23 think -- the staff would not have an objection to adopting
24 OPC's proposal on this particular item.

25 CHAIRMAN EDGAR: Excuse me. That's Item 4, correct?

1 MR. REVELL: Yes, ma'am, that's Item 4.

2 The next item that was addressed was Item 6 on
3 working capital, and this particular issue deals with some
4 specific items, specific adjustments to working capital as was
5 presented in the MFRs. I'd like to point out that one of the
6 things our staff auditors did in the field was to audit the
7 complete working capital account, and they developed a balance
8 as of December 31st, 2005. That was an audit finding. On top
9 of that, once we had the balance right that date, we went
10 forward with a number of adjustments, including rate case
11 expense and a couple of other items that they indicated were
12 incorrect.

13 The method, as was pointed out for Class A utilities,
14 is the balance sheet method. It's not 1/8th O&M, it's very
15 clear in our rules that we are to use the balance sheet method.
16 I believe, if I understand OPC correctly, they want to say that
17 because of specific circumstances for Utilities, Inc., that
18 another method should be applied. Well, all I can say is that
19 we applied the rule as it is presently written, and I don't
20 think we would be able to present any other method than the
21 balance sheet method. So we believe our recommendation on
22 Issue 6 is correct.

23 MR. RENDELL: Commissioners, if I might. Troy
24 Rendell with Commission Staff. Staff's concern is that this
25 analysis appears to be more of a rule challenge or the

1 applicability of this rule to a Class A utility. Staff
2 consistently applied the Commission's rules and it's consistent
3 with past Commission practice. If we start picking and
4 choosing which utilities rules are applied to it, it creates an
5 environment of regulatory instability and the financial
6 institutions would look at that. The utilities have to have
7 some type of stability when rules are promulgated and applied
8 to them, so we are concerned with it and we have consistently
9 applied our rule as well as applied with Commission practices
10 in this case, in Alafaya's case, and upcoming cases, as well.

11 CHAIRMAN EDGAR: Thank you for that additional
12 information. And I'm going to ask our staff to speak to the
13 points raised on Item 1, which regards the quality of service.

14 MS. MASSOUDI: This is Mahnaz Massoudi. First, I
15 have to mention that Mid-County Utilities serves wastewater to
16 its customers, not water, and which makes a different case
17 here. Usually DEP is more strict to the water if it's going be
18 a bad quality, the wastewater.

19 Second, as I mentioned in my report, Page 5, the
20 utility is not in compliance due to effluent quality issues
21 just for a couple of the months, not for 12 months. They had
22 the problem just in like January or February, two or three
23 months per year. But the utility took steps to resolve the
24 problems and they are cooperating with DEP. DEP is very
25 concerned about these issues. They have so many meetings with

1 them and they give them warning. And the last month, they had
2 a face-to-face meeting with DEP, and after that they promised
3 to DEP that they are going to find out the real reason, and
4 based on the letter the utility sent to DEP, they find out the
5 problem was due to the taking sample in the wrong location of
6 the sampling point. And at this moment they give training to
7 the operators and they made some changes to their operations.

8 And I had an e-mail from DEP that they said they are
9 going to examine for the several months the data in the reports
10 and to see if they are in compliance or not. And I am very
11 close to the DEP in contact with e-mail, and I am in their cc.
12 They are sending me any e-mails that is regarding to the
13 Mid-County Utility, and they are going to notify me if they are
14 in compliance or not.

15 I don't know how many months it is going to take,
16 because as I said it is not really every month they have
17 problem. Maybe they have -- you know, for six months they are
18 okay, and then the seventh month is not going to be, again, in
19 good shape. DEP can't say how many months it's going to take
20 to show the results.

21 MR. RENDELL: Commissioners, I would like to point
22 out staff is not opposed to additional reporting requirements,
23 that the utility can report back to staff when they are in
24 compliance and additional enforcement action, if necessary. We
25 don't believe that in this case this rises to the level of

1 unsatisfactory. And I would like to point out that OPC is in
2 agreement with the overall quality of service marginal. So I
3 don't believe it rises to that level, but we are not opposed to
4 the additional reporting requirement.

5 CHAIRMAN EDGAR: Okay. And then I'm going to -- if
6 it is all right, ask to hear on the remaining one or two issues
7 that Mr. Friedman had raised. And then, Commissioners, open it
8 up for questions. Okay.

9 Mr. Friedman had raised some concern about the issue
10 regarding salaries, 12.

11 MR. FLETCHER: Yes, Commissioners. With regards to
12 Issue 12, we sent out a data request, and based on the
13 utility's response they said they were going to add new
14 employees, but we didn't have the justification, no support.
15 It was just a simple statement there.

16 And then we sent out an additional data request, but
17 that information provided -- we wanted it through
18 September 30th of 2006. It was only provided through June of
19 2006. And that information indicated a net reduction of
20 employees of eight, not an increase. Regarding the two new
21 positions that Mr. Friedman spoke about, the company last week
22 submitted the job description of those employees, no dollar
23 amounts associated with them on the two-page document
24 reflecting their job description and their duties.

25 But staff also has a concern that the information

1 that we have is only through June of '06. What happens from
2 July '06 to the present regarding other employee changes? We
3 would need that information in order to make sure -- I mean, if
4 there was a corresponding other net decrease or other employee
5 reduction that would offset the two new employees that the
6 utility has mentioned. So we stand by our recommendation in
7 only allowing an average increase of 4.51 percent on the
8 historical salaries.

9 CHAIRMAN EDGAR: Thank you very much.

10 Commissioners, questions? Commissioner Carter, did
11 you have a question? No.

12 Okay. Briefly, Mr. Friedman.

13 MR. FRIEDMAN: Thank you. Yes, I will try to be
14 brief.

15 You know, this quality of service issue, and we are
16 talking about wastewater. I know Mr. Reilly mentioned water
17 and, of course, all of those bad things that he said may be in
18 wastewater, but they are not in the water that they get from
19 us.

20 You know, there are instances sometimes where
21 particularly wastewater utilities exceed certain of the testing
22 parameters. I mean, it just happens. It could happen for many
23 different reasons. And as the Commission engineer pointed out,
24 it's not something that happens each and every month. It has
25 happened on occasion. It's something we are concerned about,

1 and it's something that the company believes that it has now
2 resolved by educating its testing people on where and how to
3 run those tests. So we think that issue has been resolved.

4 We certainly don't think it should be unsatisfactory.
5 I mean, you shouldn't set the precedent that if a utility
6 doesn't meet each and every environmental parameter each and
7 every month of the year that that necessarily means that the
8 quality of service is unsatisfactory. Obviously, this doesn't
9 involve a product that is being provided to the customers, but
10 nonetheless is a product that does have environmental
11 implications and we are concerned about it and we will resolve
12 it. But we don't think that occasional violations rise to the
13 level of unsatisfactory quality of service, and we would
14 suggest to you that the staff's recommendation is all that
15 needs to be done on that.

16 The other issue I was going to address was Issue 4 on
17 the other rate base adjustments. I know that Mr. Reilly argued
18 that the staff took a different position in the Alafaya case,
19 which is coming up next, and the staff kind of rolled over and
20 said, well, okay. There are differences between Alafaya and
21 Mid-County. Alafaya is a growing system, and I think that's a
22 substantial difference. Mid-County is not a growing system.
23 Mid-County is basically stagnant. So when you add those other
24 projects, it makes sense. It doesn't make sense, maybe, to add
25 those common projects in a growing system, but in a stagnant

1 system we think it makes sense to do that, and we think the
2 staff recommendation was correct on that point.

3 CHAIRMAN EDGAR: Thank you. Commissioner Tew.

4 COMMISSIONER TEW: Thank you. I have a couple of
5 questions for Mr. Reilly about the quality of service
6 recommendation in Issue 1. First, I just want to make sure I
7 understand. Are you -- with both questions, are you suggesting
8 that we need to make a finding on each of the three parts in
9 the statute and say satisfactory or unsatisfactory or marginal
10 on each of the three? And, then, if so, what is the import of
11 that? Where do we go from there?

12 I think I agree with what Mr. Rendell said about
13 reporting requirements. I think we should stay on top of these
14 companies meeting their DEP requirements, but I'm trying to
15 understand what we are trying to get to in making findings on
16 each of the three parts.

17 MR. REILLY: My reading of the rule is that there
18 should be a finding. And I think it kind of forces a process
19 where a decision is made, whether it's satisfactory or
20 unsatisfactory or marginal. And then I think then you look at
21 the totality of the three to come to your overall rating. I
22 think that is a good process.

23 In fact, that is what happened in this case. There
24 was a finding on the other two, but somehow there was just a
25 statement that said, well, we concede that DEP has found -- and

1 I kept saying water, but, of course, I understand it is
2 wastewater -- product does not meet standards. And even until
3 the end of this year they were still asking for the company to
4 show proof that they had solved these problems.

5 And so I felt like the Commission should, given the
6 fact that DEP had made that determination that it was
7 unsatisfactory and said so in the order. It says DEP has had a
8 finding that it's unsatisfactory, and I felt uncomfortable and
9 wanted to recommend to the Commission that if its sister agency
10 had found that the wastewater product was unsatisfactory, that
11 the Commission could follow that and meet its rule requirement
12 and have the same finding.

13 Now, what does all of this lead to? It doesn't
14 necessarily lead to an overall change of the rating. But it
15 does, I think, move you to making sure that you don't just say
16 go out and do good, but we require that you go back to our
17 staff, verify that this is solved, and even maybe put some
18 teeth into it. Say, in fact, if we have not verified, then you
19 are still getting occasional months where these are not being
20 met, we are going to take further steps against you. And that
21 is what we are recommending.

22 COMMISSIONER TEW: Thank you.

23 Could I make a comment?

24 CHAIRMAN EDGAR: Please.

25 COMMISSIONER TEW: I understand what Mr. Reilly is

1 saying. I guess for me, I believe it's always unsatisfactory
2 if a utility is not meeting DEP standards. I think that that
3 is something that we have to require and it's something we
4 evaluate consistently. I'm not sure it's important to make
5 findings on each of the three parts. I understand what you
6 have read out of the rule, and I think that we are required to
7 make a finding overall. And I think that staff essentially
8 goes through the three parts, as you have suggested there, and
9 essentially makes a finding on each of the three in order to
10 come to the conclusion in the recommendation that it's
11 marginal.

12 I am interested in some kind of reporting
13 requirement. I don't think that's bad idea at all to keep up
14 with it. I do hear what Ms. Massoudi said about keeping in
15 touch with DEP. I think staff is doing that. But if that
16 gives some comfort to all that we are staying on top of things,
17 then I don't have a problem with that.

18 I suppose what I would support on this recommendation
19 is moving staff with some kind of modification for reporting
20 requirements, and maybe we need to discuss exactly how that
21 would be done, or maybe get a recommendation from staff on how
22 to do that.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: Madam Chairman, thank you so
25 kindly. What I would suggest, in light of what we have heard

1 today, and in light of the staff report, and in light of
2 Commissioner Tew's discussions, I think it would be appropriate
3 for us to move staff's recommendation with the following
4 modifications: One, in terms of Item 4, we would adopt OPC's
5 position; secondly, in terms of Item 1, we would add additional
6 reporting requirements, including constant communication with
7 DEP. And at that point in time, Madam Chairman, I think that
8 would cover the concerns that we have and we could also make
9 sure that we have met the terms and conditions of the statutes
10 and the rules. So I would make that as a motion.

11 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

12 Commissioner Tew, thoughts or comments.

13 COMMISSIONER TEW: I can second that motion. That
14 was consistent with where I was on Issue 4.

15 CHAIRMAN EDGAR: I'm clear. Is the staff clear?

16 MS. GERVASI: For the purposes of writing the order,
17 perhaps we could get a little bit more specific in terms of
18 requiring the utility perhaps to file a status report within a
19 period of months, maybe six months with the understanding that
20 if they are not working satisfactorily with the DEP we will
21 bring a recommendation back to advise.

22 COMMISSIONER CARTER: That makes sense.

23 CHAIRMAN EDGAR: Commissioner Carter says yes.
24 Commissioner Tew says yes. I concur with that additional
25 wording to flesh out the motion that was made.

1 And so we have a motion and a second. All in favor
2 say aye.

3 (Unanimous affirmative vote.)

4 CHAIRMAN EDGAR: Opposed? Show it adopted. Thank
5 you all.

6 MR. RENDELL: Commissioners, one clarification.

7 CHAIRMAN EDGAR: Mr. Rendell.

8 MR. RENDELL: That we could do these changes
9 administratively and not have to bring them back to the
10 Commission. They will be just fallout issues.

11 CHAIRMAN EDGAR: That is my understanding.

12 MR. RENDELL: Thank you.

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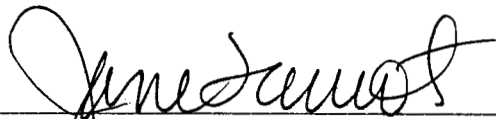
CERTIFICATE OF REPORTER

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

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

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

DATED THIS 30th day of January, 2007.



JANE FAUROT, RPR
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