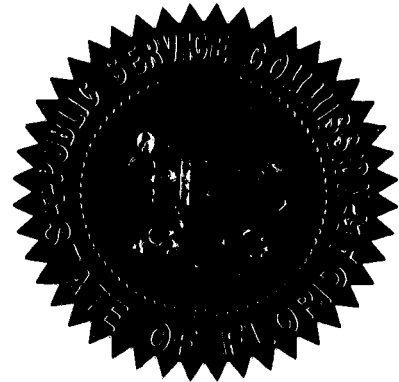


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030106-SU

In the Matter of

APPLICATION FOR STAFF-ASSISTED RATE
CASE IN LEE COUNTY BY ENVIRONMENTAL
PROTECTION SYSTEMS OF PINE ISLAND, INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 8

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

DATE: Tuesday, April 24, 2007

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

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter
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1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, and KEVIN CHERRY,
3 appearing on behalf of the Environmental Protection Systems
4 of Pine Island, Inc.

5 JENNIFER BRUBAKER, ESQUIRE, SAM MERTA, and TROY
6 RENDELL, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And we will move on to our next and
3 final item, which is Item 8. We will give our staff and other
4 interested parties a moment to shift seats and get their
5 documents settled.

6 (Pause.)

7 MS. MERTA: Commissioners, Sam Merta with Commission
8 Staff.

9 Item 8 is staff's recommendation on the true-up of
10 interconnection costs of environmental protection systems of
11 Pine Island, Inc. Staff is recommending a refund and a
12 prospective rate decrease.

13 Mr. Kevin Cherry, President of the Utility, and
14 Mr. Martin Friedman representing the utility are here to
15 address the Commission. And staff is available for questions.

16 CHAIRMAN EDGAR: Thank you.

17 Mr. Friedman.

18 MR. FRIEDMAN: Thank you very much. I'm Martin
19 Friedman of the law firm of Rose, Sundstrom, and Bentley. We
20 represent the Environmental Protection System of Pine Island.

21 Back in November 16th of '04, which is the point at
22 which the utility realized that it was not going to get the
23 work done within the time that had been anticipated. We wrote
24 on behalf of Environmental Protection Systems to the Commission
25 advising that EPS, Environmental Protection Systems, is willing

1 to subject the revenues to a potential for refund, but only
2 after a true-up of the actual construction costs versus the
3 anticipated costs in the order.

4 So what we had contemplated and agreed to do was a
5 true-up when the work was done. And, in fact, we are willing
6 to accept the true-up. The final true-up that the staff
7 calculated was 4.77 percent. The adjustment needs to be 4.77
8 percent. In other words, the construction costs were not as
9 great as anticipated, and the ultimate true-up is that the
10 utility should refund 4.77 percent of the revenue collected
11 during that time period, and also prospectively reduce rates by
12 4.77 percent. And if that were the staff recommendation, then
13 we would all be at lunch today.

14 What the staff has gone further to do is, no, we are
15 not having a true-up, we are going to have a bunch of mini
16 true-ups. And so they picked little time frames and said we
17 are going to true-up November 15th, '03 to August 4, '04; then
18 we are going to true-up August 5, '04 to December 31, '04; and
19 then we are going to true-up January 1, '05 to date.

20 And our position is that doing multiple true-ups
21 isn't what was intended. It certainly wasn't intended when I
22 wrote the letter saying we would agree to do this. What we
23 intended, at the end of the project when it was done, we would
24 true-up. And as we sit here today, the utility is willing to
25 accept the ultimate true-up of 4.77 percent. I have Mr. Cherry

1 here because I wanted him to address for you particularly some
2 of the complications in running a small wastewater system in
3 trying to accomplish what the order ordered him to accomplish,
4 and what ultimately was the benefit, which is an
5 interconnection with Lee County. It was not as simple a
6 process as we had anticipated, and I'm going to ask Mr. Cherry
7 to explain that to you and then we will answer whatever
8 questions you may have.

9 MR. CHERRY: Good afternoon. First, a little
10 background on the interconnect. The plant that I had before I
11 interconnected with Lee County was in an environmentally
12 sensitive area. The plant itself was approximately 100 feet
13 from a canal, and the retention pond, the effluent pond was
14 surrounded by a canal which bordered an aquatic preserve.

15 And DEP was kind to me when I went in to get my
16 permit, my five-year permit. They said, well, we will give you
17 one more permit, Kevin, but you have got to do something within
18 five years. And this is what lead us on the path to connecting
19 with the regional system. And thank God it was in place. And
20 thank you for finding that it was the best cost alternative,
21 because to go out and build a plant today would be
22 astronomical.

23 I thought that, you know, once we went in and got the
24 rate case established that I would have time to go out and
25 procure financing, because the utility basically had no money.

1 And so it was my intention to fund the improvements with land
2 sales. And I was surprised after you folks had passed the
3 resolution giving us permission to connect that I got a letter
4 basically saying, okay, you guys have got to connect now. And
5 I'm thinking to myself how can I connect now? I've got to go
6 build a lift station, I've got to go refurbish a lift station,
7 I have got to get funds to do all this stuff. I'm not going to
8 be able to do it.

9 So I called up the Commission and talked to Mr. Troy
10 Rendell, and, you know, explained the situation to him, and
11 said, you know, I really can't hook up now. I don't really
12 have the infrastructure to do it. Do you want me to start
13 charging these rates now? And he said, yes, we want you to
14 charge the rates. And my response to him was, well, would you
15 please check and make sure that you want me to charge these
16 rates before I send the letter out to these people, because as
17 you know how people get when these -- especially in
18 manufactured housing subdivisions.

19 So he called me back a couple of days later. In
20 fact, I believe I asked him if he would check with his boss,
21 Marshall, and he said, yes, Kevin, by all means we want you to
22 start billing these people even though the infrastructure is
23 not in place and you are not connected. I said, well, what do
24 you want me to do with the money? He said keep it. So that is
25 what I did. I started to, you know, send the bills out. And I

1 started to look for contractors to build the main component,
2 which is a big wet well where the pumps are installed to pump
3 up to the regional plant. And this happened in 2004, or about
4 January is when I started go out and actually look for
5 contractors.

6 Well, as you are all aware during that time period in
7 2004 we were going through an economic boom, and I went to four
8 or five different contractors and gave them plans. And after a
9 couple of months, basically they came to the decision they
10 didn't want to build a lousy lift station on Pine Island for
11 100 grand. They were doing bigger and better things.

12 Fortunately, somebody turned me onto a contractor who
13 was just getting in the business, and I hired him sometime
14 around March, I think. And he didn't really begin construction
15 until maybe around April or May. I tried to get him to sign a
16 contract with me guaranteeing he would be done by the date
17 which I had told you folks. After I told him I couldn't get it
18 done right away, there was an agreement made, you know, that I
19 would get it done, I think, by August 9th.

20 In hindsight, I never should have agreed to that. I
21 don't do this very often, and I thought, you know, well,
22 nine months or whatever it was, was going to be more than
23 adequate time to get all of this stuff done. Anyway, getting
24 back to the contractor. He finally showed up and started doing
25 the work, and he wouldn't sign a contract penalizing him for

1 not getting it done by the 9th. The work was going along
2 pretty well. We were in the wet season. It is a 17-foot deep
3 wet well, as I stated before, it's 100 feet from a canal.
4 Water everywhere.

5 He got the wet well in pretty good shape, but then
6 the manholes that were surrounding the area, they were old,
7 started caving in on him. He had a problem with the fact that
8 he was working 17 feet below the ground and there was water
9 coming in. It took him weeks, I think, to put in like 20 feet
10 of pipe. Then, of course, we got hit with Hurricane Charley,
11 and that put him back. So we had a problem that summer.

12 Finally, sometime around that fall he got done. And
13 I thought, okay, we are finally going to hook up. To my
14 surprise, my engineer had forgotten to procure a DEP permit for
15 this project. And so we had a wet well in the ground ready to
16 start pumping, but we had no DEP permit. So we had to go back
17 and get the DEP permit.

18 After that, we got the DEP permit, the next step was
19 to go to the county and get them to accept the lines. And I
20 had talked with a gentleman several years before when I was
21 negotiating the contract, and just in conversation, he's the
22 engineer for the county, one of the engineers, and I said, you
23 know, once I get my plant up and running, are you folks going
24 to allow me to hook in before I actually have the lines tested.
25 And his answer to me was, yes, you know, so long as you get it

1 tested shortly thereafter. So I was taking him at his word.
2 That was wrong. Because the man who was actually in charge of
3 the project said no way am I going let you hook up until you
4 have proved to me that you don't have any infiltration,
5 although pretty everybody knew that we didn't have much.

6 So I had to go out and get the guys to test the lines
7 and to TV the lines. Well, that took forever to get that done.
8 We finally got that done, and I think it was probably around
9 the summer of 2005. And we finally got actually shipping
10 sewage out to the county. We had a couple of other things that
11 we had to do. One of them was to remove the old plant. I had
12 a problem procuring -- well, I had a contractor, I got him
13 initially, but unfortunately he died in a boating accident. So
14 I had to run out and get another guy. He did get the plant out
15 probably in a couple of months. I did that, and we're talking,
16 I think, of 2005 now.

17 I got that done. I'm trying to think. We had one
18 other thing which was a problem. Oh, we had the lift station.
19 I had to refurbish a lift station. And I had been contacting
20 contractors and there two down there which basically did that
21 type of work. One guy, who is the primary guy down there that
22 does the refurbishment, he came out and he had a bunch of
23 questions for me, and so I gave him some answers. Anyway, a
24 long story short, he stood me up probably six or seven times
25 over the next four or five months. I guess apparently he

1 didn't want the work.

2 I tried bidding it out to the original contractor who
3 did the large lift station. He was like \$32,000 above what was
4 allocated in your order. Another man did give me a contract.
5 When I called one of the local suppliers, he said I wouldn't
6 let that guy touch my lift station. He's lousy. So I didn't
7 think that was very good, so I kind of backed away from him.
8 Anyway, I ended up doing it myself, or what I could of it
9 myself. And, I finally -- I just got that done. In fact, I
10 still have some things that need to be finished up.

11 What it basically boiled down to is we were, you
12 know, didn't have really the funds to do a lot of this work. I
13 couldn't get a loan. I mean, you go to a bank and you tell
14 them you want to get a loan for a sewer plant and they just
15 look at you like you're crazy. If you look at the financials,
16 I guess, you know, they are probably right. So I was having a
17 hard time getting the money.

18 So we were taking the money that was, I guess, you
19 would call it an overage or what have you, and we are applying
20 it to the actual work that was being done. We weren't taking,
21 you know, and going to Acapulco on the weekends or anything
22 like that, we were actually taking the money and buying down
23 what we had to do.

24 So I guess, in conclusion, I want you to understand
25 that we made a good effort. Probably could have done better in

1 some respects, but we really tried. We are a small utility.
2 And, you know, unless you have any questions --

3 CHAIRMAN EDGAR: Thank you, Mr. Cherry.

4 Commissioners, questions at this point?

5 Mr. Rendell.

6 MR. RENDELL: Commissioners, I will try to be brief.

7 This has been a long rate case. It is four years in
8 the making. They filed back in January of 2003. They
9 indicated to staff they would begin the interconnection in
10 November of '04 and it would be completed approximately in
11 seven months. So the order basically directed the utility to
12 complete these interconnections by August of 2004. Hindsight
13 is 20/20 in that staff has learned a lot through this rate case
14 in that we relied on the statements from the utility, and at
15 that point in time we approved the rates on the good faith that
16 they would go forward and have the interconnection.

17 We have learned now that we should have done a two-phase
18 rate increase. We should have had the rates prior to the
19 interconnect and the rates after. I had numerous conversations
20 with Mr. Cherry over these past three years. When it became
21 evident to staff that the interconnection would not occur as
22 planned in '04, staff became very concerned that the ratepayers
23 were paying these rates for costs that weren't there. They
24 paid throughout 2004 for costs that simply have not been
25 expended.

1 So I indicated to Mr. Cherry that we were going to
2 coming to the Commission and recommend that the rates
3 immediately be reduced back in 2004. That resulted in the
4 letter that was submitted in November of '04 giving us
5 jurisdiction of those revenues. That was the result of many
6 conversations with Mr. Cherry indicating that the costs
7 actually were more. That they were going to be substantially
8 more and that actually it would end up in a rate increase.

9 And so what I indicated to the owner was it wouldn't
10 benefit anyone, the customers, the utility, anyone involved to
11 have the rates go down and then immediately go back up. So I
12 agreed to a true-up. I agreed to that, yes, we would look at
13 the costs, and if the costs actually were more, which may
14 result in a rate increase, we would go back to the period of
15 time and calculate the revenues during that period of time
16 where there were no costs in '04, and we would determine the
17 amount and then we would reduce that refund amount by the
18 amount to ensure that the rates actually wouldn't go up.

19 Basically, we would credit those in CIAC so that
20 there would be rate stability for the customers. That was the
21 agreement. That was the agreement prior to them submitting the
22 letter giving us jurisdiction of the revenues. So that is what
23 we have done. We have got the actual costs. You know, as I
24 indicated four years have gone by. It is time to go ahead and
25 get a final decision on this rate case. But we have looked at

1 the actual costs, and although some of the capital costs that
2 the utility incurred have gone up, the major savings occurred
3 in the connection costs. They originally came in with a
4 contract during the rate case with higher connection costs to
5 the city. Well, we have determined and we have contacted the
6 city and they have actually lowered their connection costs,
7 which was a benefit to the customers so that the
8 interconnection costs were substantially less.

9 So, we have calculated what we believe the refunds
10 would be. Now, in an abundance of caution we went back and we
11 determined that the refund would be approximately 46 percent,
12 but we wanted to ensure that the earnings of the utility would
13 not be harmed and the utility would still have that opportunity
14 to earn the rate of return. So we have actually analyzed 2004,
15 2005, and 2006 annual reports, and what we determined is they
16 are overearning. They have overearned substantially over the
17 past three years and they continue to overearn, although we
18 don't have jurisdiction over those entire earnings. So we are
19 limited by the letter that was submitted in November of '04.

20 So staff's recommendation is in compliance with our
21 agreement with the utility to true-up these costs, and we
22 believe that, you know, that there should be a refund and a
23 reduction of rates.

24 MR. FRIEDMAN: And as I have mentioned, we agree with
25 that, except we just disagree on the methodology, because the

1 true-up is supposed to be after the interconnection was done.
2 You true-up at that time, not intervals in between that time.

3 CHAIRMAN EDGAR: Commissioner McMurrian.

4 COMMISSIONER McMURRIAN: I guess that's what my
5 question goes to, and I'm sort of not sure exactly who to
6 direct it to, so I guess I will direct it to both of you.

7 And, Mr. Cherry, I appreciate your comments to
8 explain kind of what happened, and I think that staff in their
9 recommendation in a couple of places have recognized the
10 mitigating circumstances. In particular in the show cause
11 issue, I think that in similar circumstances they might
12 recommend a show cause issue, but I think they realize all the
13 things you went through that were particular concerns in your
14 case.

15 But with respect to this mini true-up concept, and I
16 will address this to Mr. Friedman and to staff, you clarified
17 it had a little bit for me, Mr. Friedman, about what your
18 concern was. That you think this is some departure from how it
19 is usually done, and I want you to elaborate on that, and then
20 I want Mr. Rendell to sort of give his input on that, as well.

21 MR. FRIEDMAN: When I have seen true-ups occur, and I
22 could be wrong, I mean, my memory is not -- I have been doing
23 this 30 years, and so parts of my memory are not great. I did
24 ask one of my partners, Marty Deterding, who has also been
25 doing this almost as long, or probably longer if you include

1 his time at the staff, you know, had he ever seen a situation
2 where when you do a true-up -- and true-ups are not uncommon as
3 you know. You get to a project, you are estimating what the
4 cost is going to be, you get to the end of the project and you
5 true it up. That is a reasonable regulatory principle to
6 undertake, and that is what we anticipated was going to occur
7 here. When the project is complete, you figure out what it
8 cost versus what was in the rates. You make the appropriate
9 true-up adjustment. I have seen that many, many times.

10 I have never seen a true-up adjustment where they
11 trued it up for time periods shorter than when the true-up was
12 supposed to occur. And in this particular case the true-up
13 occurs at the time the interconnection is made and all the work
14 is done. I have never seen a case, neither had my partner,
15 where there had been mini true-ups along the way, where you
16 true-up for one year here, and you true-up one year here, and
17 you true-up one year here.

18 I just have never seen it. I don't think it is a
19 good sound regulatory policy. I think in the end you do a
20 true-up at the point you are supposed to do the true-up.
21 Period, end of story. You do it and you go home.

22 COMMISSIONER McMURRIAN: Mr. Friedman, I'll jump in
23 there. I guess it seems to me that staff is attempting to
24 address the overearning situation by period to make sure they
25 are being absolutely fair within each period to make sure they

1 are not refunding too much or too little in any particular
2 period because of the overearning situation.

3 MR. FRIEDMAN: Well, I didn't look at the annual
4 reports. I had asked Mr. Cherry about the earnings situation,
5 and, you know, the way he looks at it is do I have any money at
6 the end of the day. And he's telling me, he is asking me how
7 he can go about getting a rate increase, and so I'm obviously
8 surprised when Troy thinks he is making money. And I think
9 that is just a difference in, you know, a small utility viewing
10 the financial wherewithal differently than maybe a strict
11 regulatory analysis is.

12 He looks at it from he has spent all of this money on
13 good sound building infrastructure, doing work, paying
14 expenses, and at the end of the day he doesn't have money left
15 over. So, you know, I haven't reviewed the overearnings issue.
16 I would suggest to you that every penny that was spent, as Mr.
17 Cherry mentioned, was spent on legitimate either capital
18 improvements to meet the goal of the interconnection or to meet
19 regular operating expenses. He didn't go to Acapulco or
20 anywhere else. It was all legitimately spent money.

21 And so, you know, the staff trying to do what I guess
22 they figure is the right thing to do, they're -- I am trying to
23 think of a nice way to say this -- they are creating a
24 mechanism that -- they are taking a good principle, which is
25 the true-up principle, and trying to say, but you know we think

1 they made too much money in these years, so we're going to
2 figure out a different way to get the same result that we think
3 you ought to have. And so that is what they have done. They
4 have subverted the true-up process to try to accomplish what
5 they think was overearnings in those years, which Mr. Rendell
6 acknowledged they can do nothing about, even if he did
7 overearn. And Mr. Cherry will be the first guy to be shocked
8 that he overearned.

9 And so I would suggest to you that if there was an
10 overearnings issue, this is not the way to deal with it. Don't
11 create a precedence for doing something in the future that
12 subverts the process of true-ups.

13 COMMISSIONER McMURRIAN: All right. One more before
14 Mr. Rendell responds to that. It seems like, though, from what
15 you are -- the point you're making would be perhaps detrimental
16 to your company with respect to that first true-up period.
17 Because it seems to me, I mean, staff has said, and I think Mr.
18 Rendell mentioned this, that staff calculated a refund of
19 46.41 percent of revenues collected there, but by doing the
20 overearnings analysis they reduced that to 35.64 percent, I
21 believe. So it seems like to me, and, of course, I believe
22 that it is the staff's role and the Commission's role to try to
23 get the rates in the right place in any situation where we can.
24 But it seems like to me that by doing the overearnings analysis
25 that I think you are taking issue with, it has really

1 benefitted you with respect to that first mini true-up period.

2 MR. FRIEDMAN: I don't know, because I don't think
3 that mini true-up periods are sound regulatory policy. I don't
4 know if you have ever done one. Like I said, my experience
5 doesn't show I have ever seen one, my partner, Deterding,
6 hasn't seen one. I would venture to guess that between the two
7 of us, we have been involved in 95 percent of the water and
8 sewer cases that ever come before you.

9 Now, if Mr. Rendell or somebody else over there says,
10 oh, yeah, we did it in so-and-so, then I will stand corrected.
11 My memory is not infallible, I have just never seen it happen.
12 And I think that they are trying to deal with what they
13 perceived as overearnings by subverting what is normally a good
14 sound regulatory principle of true-ups.

15 COMMISSIONER McMURRIAN: I guess this is where Mr.
16 Rendell comes in.

17 MR. RENDELL: Commissioners, you are correct. We did
18 a true true-up. I guess double trues. We originally had a
19 recommendation written to refund 46 percent. It wasn't until
20 after we had the rec written that my management wanted us to
21 look at the earnings. We didn't want to put the utility in a
22 posture of earning below the rate of return. So you are
23 correct, it was only after we had done the analysis, we were
24 prepared to write a recommendation that we looked at the
25 earnings, and it was to the benefit of the utility. It did

1 lower the refund.

2 The period of time that we were truing up truly was
3 '04. It was the period of time there was no work going on,
4 there were no costs whatsoever. And that was the full
5 understanding that Mr. Cherry and I had during our phone
6 conversation, that staff was going to go down and immediately
7 reduce those rates. That those costs weren't there, we were
8 going to reduce the rates, and then they could come back in
9 when they started spending the money and look at the second
10 phase.

11 That's how we are processing these cases now. So,
12 that resulted in the letter giving us jurisdiction. And it was
13 through conversations with the president that we would go back
14 and look at that refund amount and allow for any increase in
15 costs. And, therefore, you wouldn't have the rates going up
16 and down and sending mixed price signals to the customer. So,
17 this is a true true-up in every sense of the word.

18 We looked at actually costs during the periods of
19 time. It gave the benefit to the utility of the intermediate
20 period where they were expending some money, but it wasn't
21 done, and then it had the third period when they actually were.
22 So we had to break it down in those categories.

23 We believe it is consistent with past Commission
24 practice. We have an order -- we had referenced an order for
25 residential where we have looked at different periods of time.

1 So it is nothing out of the ordinary, it is just the
2 circumstances were that through no fault of the utility's owner
3 that the interconnection took substantially longer. And we had
4 conversations numerous times over those three years. I got
5 regular updates from what was occurring. I knew that there
6 were delays. But since we had the letter giving us
7 jurisdiction of the revenues, I wasn't as concerned. If we
8 didn't have that letter, we would be here three years ago
9 reducing the rates without a doubt. So this was an agreement
10 to true it up, and we believe we are consistent with how we
11 have dealt with these in the past.

12 MR. FRIEDMAN: All I can tell you is that wasn't my
13 understanding. I mean, if you look at the letter, it doesn't
14 say -- I mean, what Mr. Rendell is saying is basically we
15 should refund every penny of what was collected in that first
16 period. That's what he said he would have done. Come in here
17 and gotten an immediate reduction of the rates back to some
18 point because none of the work had been done. That's not what
19 this letter says that we agreed to do. We agreed to a true-up
20 when the job was done and subject to refund. And I think that
21 the number is 4.77 percent, and we are ready to reduce the
22 rates and give a refund of 4.77 percent.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: At the risk of alienating my
25 colleagues and everyone else, bear with me.

1 Mr. Rendell, if I may, Madam Chairman, speak to
2 staff. Mr. Friedman's perspective, assuming hypothetically, or
3 assuming a hypothetical that you performed the analysis based
4 upon as he describes it versus how he describes what you
5 actually did, what would the net effect be?

6 MR. RENDELL: If we just refunded the 4.7 percent?

7 COMMISSIONER CARTER: Yes. I mean, what would the
8 impact be on your recommendation in terms of the bottom line,
9 what would the difference be?

10 MR. RENDELL: We haven't analyzed that. It would
11 just be a substantially less refund, but that would -- the net
12 effect would be that the customers paid for over a year for
13 costs that weren't there. There was a rate increase imposed
14 upon them for costs that never transpired during that period of
15 time. And with all due respect, I didn't have any conversation
16 with Mr. Friedman during this period of time, it was all with
17 the president, because it was a staff-assisted rate case and we
18 were in constant contact with the small utility owner.

19 So this letter was submitted on behalf of Mr. Cherry
20 through Mr. Friedman's firm. So the conversations were between
21 me and Mr. Cherry and not me and Mr. Friedman on the
22 understanding of how we were going to true-up the costs.

23 COMMISSIONER CARTER: Commission follow-up.

24 CHAIRMAN EDGAR: Uh-huh.

25

1 COMMISSIONER CARTER: And based upon your
2 conversation with the president of the company, that this is
3 the process -- based upon your recommendation here is based
4 upon your communication and understanding with the president of
5 the company, is that correct?

6 MR. RENDELL: Correct.

7 COMMISSIONER CARTER: Thank you, Madam Chair.

8 CHAIRMAN EDGAR: I know, Commissioners, we heard in
9 the last item some discussion of a desire on all parts to have
10 the right result, and I know that that is what we have here is
11 a desire on all parts to have the right result and also good
12 regulatory policy and process. So, I guess the question is
13 what is that under the facts that are before us in this
14 particular case?

15 Commissioner McMurrian.

16 COMMISSIONER McMURRIAN: Chairman, I hear what
17 Mr. Friedman is saying, and we have heard from the president of
18 the company. It seems to me that staff's analysis here is
19 consistent with refunding the amount of money that was
20 recovered for a project that wasn't done in the time frame, and
21 we understand the reasons and the difficulties that the
22 president had in trying to do that.

23 But it seems to me that it is consistent with
24 returning the right amount of refund to the customers. I don't
25 see that this is a departure from how we normally would handle

1 things like this. I did hear Mr. Rendell say that maybe we
2 should have done this in a two-phase rate increase, maybe there
3 are better way to go about it. And perhaps to the president of
4 the company, I would even suggest that if you have
5 misunderstanding, or you are concerned about the feedback you
6 are getting from staff, my suggestion would be to go ahead and
7 formalize it to make sure you get the best advice you can about
8 how to move forward and deal with issues like this.

9 But, Commissioners, it doesn't appear to me that this
10 is a departure from how staff usually does refunds in these
11 kind of cases, and I guess I would move the staff
12 recommendation in its entirety if you are ready for a motion.

13 COMMISSIONER CARTER: Second.

14 CHAIRMAN EDGAR: Okay. We have a motion and a
15 second, and I concur, so all in favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN EDGAR: Opposed?

18 Show it adopted.

19 Thank you. And that concludes our business for the
20 day. We are adjourned.

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

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.

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 29th day of April, 2007.

Dynda Belus / for

JANE FAUROT, RPR
Official FPSC Hearings Reporter
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