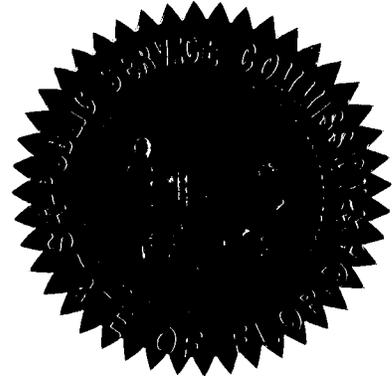


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060253-WS

In the Matter of:

APPLICATION FOR INCREASE IN WATER AND
WASTEWATER RATES IN MARION, ORANGE,
PASCO, PINELLAS, AND SEMINOLE COUNTIES
BY UTILITIES, INC. OF FLORIDA.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 14

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. MCMURRIAN
 COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 22, 2007

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

REPORTED BY: LINDA BOLES, RPR, CRR
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1 PARTICIPATING:

2 MARTIN FRIEDMAN, ESQUIRE, and JOHN WILLIAMS,
3 representing Utilities, Inc. of Florida.

4 STEPHEN C. REILLY, ESQUIRE, and TRICIA MERCHANT,
5 Office of Public Counsel, representing the Citizens of the
6 State of Florida.

7 RALPH JAEGER, ESQUIRE, KATHY KAPROTH, MARSHALL
8 WILLIS, JENNIE LINGO and TOM WALDEN, representing the Florida
9 Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We will be on Item 14. And, again,
3 we will wait just a minute to let people get settled.

4 Okay. If you could give us an overview, please.

5 MS. KAPROTH: Yes. I'm Kathy Kaproth with --

6 CHAIRMAN EDGAR: If you would, pull the microphone to
7 you and make sure it's on.

8 MS. KAPROTH: All right. It's on.

9 CHAIRMAN EDGAR: Okay.

10 MS. KAPROTH: I'm Kathy Kaproth with Commission
11 staff.

12 Item 14 Is Utilities, Inc. of Florida application for
13 rate increase in Marion, Orange, Pasco, Pinellas and Seminole
14 Counties. The parties here are: Steve Reilly is representing
15 OPC; Marty Friedman is from Rose, Sundstrom & Bentley; and also
16 from OPC is Tricia Merchant; and also for the utility is John
17 Williams and Frank Seidman.

18 Staff is ready to answer questions on an
19 issue-by-issue basis or at the Commissioners' discretion.

20 CHAIRMAN EDGAR: Okay. I think I'd like to go ahead
21 and hear from those interested parties who would like to, to
22 talk to us on this matter today.

23 Mr. Friedman, would you like to begin?

24 MR. FRIEDMAN: Yes. Thank you. Martin Friedman, Law
25 Firm of Rose, Sundstrom & Bentley. We represent Utilities,

1 Inc. of Florida. I'm going to ask John Williams to make a few
2 comments first, and then I'll slide back in.

3 CHAIRMAN EDGAR: Okay. Thank you. And as, as we
4 have done on other similar items in the past, Mr. Friedman,
5 Mr. Williams and Mr. Reilly, if there are specific issues that
6 you have specific concerns about, if you can help identify
7 those by number for us, that's always very helpful to me to
8 help us go through the discussion.

9 Mr. Williams.

10 MR. WILLIAMS: Good morning, Commissioners. My name
11 is John Williams. I'm the Director of Governmental Affairs for
12 Utilities, Inc., the parent company of Utilities, Inc. of
13 Florida. I'm addressing Issue 2A regarding the gain on sale
14 issue regarding the Ravenna Park/Lincoln Heights property in
15 Seminole County. The staff is recommending that the gain on
16 the sale of the utility's wastewater treatment plant and the
17 loss of customers be treated as CIAC, offsetting the initial,
18 the additional investment we had to incur to connect to the
19 municipality after our facility was condemned.

20 The Commission a few years ago actually -- I'm sorry.
21 The Florida Legislature adopted specific legislation to address
22 gains on sale in this regard, particularly when there is a
23 condemnation of a utility's assets which result in the loss of
24 customers served by such assets. And that's exactly what
25 happened in this case.

1 The statute is quoted on Page 16 of the staff
2 recommendation. And as you'll note, the statute did not give
3 the Commission the authority to adopt rules to implement the
4 statute. The statute just basically says this is how to treat
5 a gain on sale when there is a condemnation of assets and
6 customers are lost. So, therefore, the company can't
7 understand why the OPC or the staff would recommend treatment
8 other than what the statute directs.

9 CHAIRMAN EDGAR: Mr. Friedman.

10 MR. FRIEDMAN: Yes. To follow up on what John said,
11 and this is still on Issue 2A. That's the only issue that I'm
12 going to address today. If Mr. Reilly raises some other issue,
13 I might want to respond to that. But Issue 2A on the gain on
14 sale is the, is the issue.

15 And as was pointed out, the language of the statute
16 says that if there's a gain or loss from the condemnation of
17 the utility assets that results in a loss of customers, that
18 gain or loss inures to the shareholders. In this case, we had
19 a utility plant and a number of customers, I think 12
20 customers. But the statute doesn't say how many customers. It
21 could have been one customer as far as the statute is
22 concerned. And those customers were lost as a result of the
23 condemnation. So clearly this scenario falls within the
24 parameters of 367.0813 and the gain or loss inures to the
25 benefit of the shareholders of the utility.

1 Aside from the, from the legal issue, the staff also
2 has a calculation of, of that gain on sale amount, which is on
3 Page 18 of the staff recommendation, and it's Table 2A3. I
4 would suggest to you that what is not included in that
5 calculation are the state and federal income taxes which the
6 utility would pay or would have to pay on the gain on the sale
7 of those assets. There's a 5 percent state tax and the state,
8 the federal -- 5.5 percent state taxes and the federal taxes on
9 it would be 35 percent. There are no taxes included in this
10 calculation of what that gain would be, and it's our position
11 that you would have to reduce the gain on sale by the amount of
12 state and federal income taxes that the utility is going to
13 have to pay on that gain. Thank you.

14 CHAIRMAN EDGAR: Mr. Reilly.

15 MR. REILLY: Yes. When Utilities, Inc. first filed
16 its rate case we had, you know, many, many concerns with it.
17 And I'm pleased to report that staff's initial recommendation
18 addressed many of our concerns. However, we still had several
19 concerns that were not addressed by the first recommendation.
20 And what has become a practice of this Commission, you've been
21 scheduling these conferences between the parties and staff
22 prior to an agenda to discuss what might come up at agenda and
23 what concerns various parties might have with the
24 recommendation. It was, frankly, as a fallout from one of
25 those pre-agenda discussions that we made some arguments

1 concerning this gain on sale. We felt that staff had been led
2 to believe that the combination had resulted -- the
3 condemnation of the utility assets had resulted in the loss of
4 customers, thereby triggering the statute.

5 Our looking into it further had concluded that that
6 was, in fact, not the case at all, that the condemnation of the
7 utility assets did not result in the loss of a single customer,
8 that there was the ancillary condemnations of separate
9 properties owned by separate people in separate proceedings
10 that actually did result in the loss of some isolated number of
11 customers.

12 The statute that we're talking about really seems to
13 be addressing the Legislature's intent that when you're buying
14 a system and you're buying a system with the customers, that
15 that gain, that's not an asset or gain that has to be shared
16 with the ratepayers. And so we argued to staff in this
17 conference that they really should revisit this and relook at
18 this.

19 And, frankly, I want to give a tremendous amount of
20 credit to staff, that upon looking at this and some of the
21 other arguments they said, you know, we're going to pull the
22 recommendation and give this some further thought. They didn't
23 say you're right, they didn't say you're wrong, but we think
24 there's enough merit to this that we should look at it more
25 closely. And staff then sent out a pretty good amount of data

1 requests to really probe into this very, very detail; not only
2 on the issue of whether they lost customers, but to really
3 fine-tune what exactly the net gain was. And as a result of
4 all that considerable effort by staff you have 2A.

5 We had recommended that the, whatever was determined,
6 the net gain would be handled, as it has often times been
7 handled in the past, amortized over five years, which would
8 give a little more bang, a little more bang to the customers on
9 the short-term. But staff chose to go this other route and
10 look at it as CIAC, which, frankly, I don't think is all that
11 unreasonable when you consider that the company as a result of
12 the condemnation paid over a half a million dollars in impact
13 fees to, to provide, to get wastewater treatment from a
14 governmental entity as well as 300 and something thousand
15 dollars worth of interconnection costs, you had 800,000 plus
16 dollars of utility money being spent to go to the purchasing of
17 wastewater treatment. Now all of that was in rate base, you
18 understand, and the customers were paying for that. But I
19 think it was appropriate to offset that investment by this gain
20 because the statute does not apply, and I think the, your legal
21 department as well as your staff concluded that that was the
22 case. So we support 2A 100 percent and feel that it is an
23 appropriate way to go with the CIAC.

24 I think they likewise appropriately separately looked
25 at the gain that was a result of the subsequent sale of the

1 remaining property. And, and that they did properly handle as
2 an amortization over five years, which gave an immediate
3 benefit to the Seminole County wastewater customers. So those
4 two actions really helped a great deal to make more fair in the
5 sharing of the gain that was realized by, by assets that have
6 been paid for by customers in rate base and this gain being
7 realized. So we support 2A completely.

8 Also at that, at that little conference we had some
9 concerns about bad debt expenses in Pasco, I think it was in
10 Pasco and Seminole Counties, seemed very inappropriately high.
11 And I don't know that that would have been enough to trigger a
12 delay from agenda, but since they were already delaying it for
13 the big issue, they did look at that issue as well. As a
14 result of that, you have Issue 12A, which we also support.
15 That was an attempt by staff to just make it more reasonable, a
16 bad debt expense. They looked at the history of that expense
17 and came up with a figure that, that really is more
18 appropriately kind of a bad debt expense that should be going
19 in the revenue requirement on a prospective basis.

20 I would say also staff did -- and now let me go into
21 the one thing I don't agree -- now that I'm finished with this
22 love fest.

23 CHAIRMAN EDGAR: I was waiting, Mr. Reilly.

24 MR. REILLY: I've been setting you up for this one.
25 They, I think staff did, as they have in a lot of the

1 Utilities, Inc. cases, did a fairly credible job of trying to
2 rein in this incredibly expensive process, rate case expense.
3 And we're not in even a contested rate case and you can see
4 what they did, and I'm not taking exception to those
5 adjustments.

6 The one thing I am taking exception to and I'm
7 strongly advocating that you reconsider the recommendation as
8 it relates to Marion County water system. Rate case expense to
9 Marion County water system is not what it should be.

10 In this case, staff has allowed rate case expense to
11 be collected from the Marion County water customers to
12 establish that Utilities, Inc. is not entitled to any rate
13 increase at all but, in fact, entitled to a rate decrease, and
14 we don't think that's fair or reasonable. There are a number
15 of dockets that the Commission is familiar with where companies
16 have come in and asked for rate increase, not gotten them and
17 actually got rate decreases where the Commission has determined
18 that you're not entitled to rate case expense when you have
19 such a result. There's a Florida Cities case in a '97 docket,
20 Docket 971663, and then the Aloha cases we've talked about
21 before, Docket 970536 and 980245.

22 In addition to this practice of disallowing rate case
23 expense when a company coming in for a rate increase actually
24 ends up with a rate decrease, the Commission is also very
25 familiar with its broad discretion in what it allows for rate

1 case expense. And I think that discretion should be employed
2 in this case not to allow Marion County water rate case
3 expense. You will notice in this recommendation staff
4 recommends that Orange County water rate case expense be
5 disallowed. While the company came in and asked for an
6 increase in Orange County, it actually turns out that they were
7 not entitled to a rate increase or decrease, so their rates
8 stayed the same. So staff is recommending that you disallow
9 rate case expense in Orange County because they didn't get
10 their rate increase. I think even more so they shouldn't get
11 their rate increase when it's determined that there actually
12 should be a rate decrease.

13 So you ask yourself, well, why does staff recommend
14 with a rate decrease to allow rate case expense and in Orange
15 County they did not? And the argument that staff gives you can
16 be found on Page 78 of the recommendation. And on 78 you will
17 see that staff argues that the Commission has allowed utilities
18 to recover rate case expense associated with overearnings
19 investigations. In this rate proceeding, the customers' rates
20 have been reduced to reflect the recommended decrease of
21 13,733 for water and 7,050 for wastewater. And then staff goes
22 on to argue, therefore, the customers have received a benefit
23 from rate case expense and no change to Marion County's revenue
24 requirements is recommended. So I guess the argument goes
25 since, since they've received this rate decrease, you know, and

1 they've received a benefit, therefore, we'll charge them the
2 rate case expense. I would argue that that's misplaced. And I
3 think that the example that staff gives is inapplicable in this
4 case because I think there's a big difference between when the
5 Commission initiates a proceeding against a utility such as an
6 overearnings investigation and then allows the company to some
7 amount of rate case expense to defend its existing rates.
8 That's a different situation when it's a, I think, I would
9 argue, when the Commission initiates a proceeding against a
10 utility versus when a Commission, when a company comes in and
11 initiates it themselves to seek a rate increase from its
12 ratepayers.

13 And, in short, I'm basically arguing that Utilities,
14 Inc. should have done in Marion County water what it did in
15 wastewater. If you look at this case, the company, Utilities,
16 Inc., looked at its numbers and says, you know, we're looking
17 at these wastewater numbers and we're, we're slightly
18 overearning in wastewater. So they actually in this proceeding
19 said that they will have a slight decrease in wastewater. I
20 suggest they should have done the same in water and they chose
21 not to. They went and burdened the customers' rate case
22 expense to try to prove their right and entitlement to a rate
23 increase and they, in fact, got a rate decrease. And I think
24 consistent with prior practice I think that the rate case
25 expense should be disallowed, that it's not fair to make

1 ratepayers pay for a case to prove that they should have gotten
2 a rate decrease.

3 So, in conclusion, I think that the recommendation as
4 it relates to Marion County water is inconsistent with Marion
5 County, excuse me, with the Orange County disallowance, we
6 think it's inconsistent with the Commission's rulings about
7 disallowing rate case expense when it results in rate
8 decreases, we think the justification for allowing the rate
9 case is misplaced because I argue there's quite, there's a
10 difference between a company-initiated rate increase versus a
11 staff-initiated overearnings investigation. And, frankly,
12 given the Commission's broad authority, it should be exercised
13 to protect Marion County ratepayers from paying for this
14 company to prove that they should have a rate decrease. So, I
15 mean, this is not a huge number, I think it's a 4,000 some odd
16 dollar number, but it's about a 31 percent difference. I mean,
17 the rate decrease will be made 31 percent higher if you just
18 rightly vote on this one issue. So I would argue basically to
19 go along with staff, except for disallowing Marion County water
20 rate case expense. Thank you.

21 CHAIRMAN EDGAR: Thank you, Mr. Reilly.

22 Mr. Friedman.

23 MR. FRIEDMAN: If I might just address the rate case
24 expense issue.

25 CHAIRMAN EDGAR: You may.

1 MR. FRIEDMAN: We think the staff's recommendation is
2 acceptable. The -- we obviously disagree on rate case expense,
3 that it should be denied in Seminole County just because they
4 didn't get an increase, and here's why. Contrary to the cases
5 that Mr. Reilly has referred you to, the Florida Cities case,
6 you know, this is a case where you have multiple systems in
7 multiple counties. And there is an economy of scale and
8 benefit from handling all of those systems in one filing
9 whether each individual system is going to get an increase or
10 not. And so we would suggest to you that the prudence factor
11 is the one that ought to be considered, and that it was prudent
12 for the utility to file the rate case for the, all of its
13 systems and, as Mr. Reilly said, in one system filed for a
14 decrease, acknowledging there was a decrease. And that the
15 benefit to the customers of that economy of scale outweighs,
16 particularly with the amount of rate case expense Mr. Reilly
17 said this issue is dealing with, it outweighs Mr. Reilly's
18 suggestion that they be disallowed for Marion County. We think
19 it was a prudent investment, a prudent way to handle the rate
20 case, and, as a result, we think the rate case expense is also
21 prudently incurred. Thank you.

22 CHAIRMAN EDGAR: Thank you. And I would like to look
23 to staff. Let's begin with the issue that has been raised
24 regarding the rate base expense for Marion County. And who
25 would like to respond on that?

1 MR. WILLIS: Chairman, I'll handle that.

2 CHAIRMAN EDGAR: Thank you.

3 MR. WILLIS: When staff looked at the rate case
4 expense for Marion County and Orange County, in Orange County
5 the company, the way we look at the Orange County rate increase
6 is there shouldn't have been a rate increase. In cases where
7 there shouldn't have been a rate increase, where there was no
8 lowering of rates, staff looks at that as if the company never
9 should have filed a case and that's why we recommend that rate
10 case expense should be denied in those cases.

11 In Marion County, if you look at both systems, water
12 and wastewater, the company filed for a rate decrease in the
13 wastewater rates. In that case no one is complaining that
14 we're giving the company rate case expense, and rightfully so.
15 Water should be treated the same way.

16 In overearnings cases where we actually require the
17 company to lower rates, the Commission has traditionally
18 allowed companies consulting fees in the form of rate case
19 expense to come in and posture their position as to exactly how
20 far the rate should be lowered. That's why staff is
21 recommending to the Commission that the company be given rate
22 case expense in both the water and wastewater systems for
23 Marion County.

24 CHAIRMAN EDGAR: Thank you.

25 Commissioner McMurrian.

1 COMMISSIONER McMURRIAN: This is for Mr. Willis as
2 well. Mr. Reilly, I asked this same question this morning, so
3 it's kind of strange that it comes up. And Mr. Willis and I
4 had a conversation this morning about this issue too. But am I
5 correct in understanding from our discussion that if you were
6 to call the company in for an overearnings investigation, that
7 the company might get more expenses in that sort of a case for
8 a rate case expense than they would in this sort of a case, in
9 a regular rate case as what we're in now?

10 I guess I'm trying to establish if the customers
11 would be better off to have one sort of a case versus this type
12 of a case. And when we spoke this morning, we talked about
13 that if, if staff determined that the company was overearning,
14 that you would ask them to come in and then the company would
15 be entitled to some form of rate case expense in that, in that
16 sense.

17 MR. WILLIS: Commissioner, the question is a little
18 hard to answer because in most overearnings cases that are
19 initiated by the staff, that we do not require the company to
20 file minimum filing requirements. So there is one difference
21 there.

22 I do remember many years ago when you had very large
23 companies, staff would require through the Commission to file
24 minimum filing requirements. But recently when we initiate
25 overearnings investigations, that's one difference.

1 I can't think of a single overearnings case though in
2 which the Commission did not allow rate case expense though for
3 the company to defend their rates and expenses in an
4 overearnings case. But they might be less in that proceeding.

5 In this case you're splitting rate case expense over
6 five systems. So with that split of five systems you already
7 have a lessening of rate case expense impact.

8 COMMISSIONER McMURRIAN: Mr. Reilly also brought up
9 several cases where we had disallowed rate case expense before,
10 and we talked a little bit about that this morning too,
11 although we didn't talk about specific cases.

12 I thought I had recalled a case, in fact, I thought
13 it wasn't that long ago where a company had asked for a rate
14 increase and staff determined a rate decrease was necessary and
15 ultimately we didn't allow rate case expense. But my memory is
16 fuzzy and so I'm not sure. But I noticed that Mr. Reilly
17 pointed out several -- I guess they were '97 and '98 time frame
18 cases. I guess this is for anyone. Can anyone remember a more
19 recent case where we've done that? Because I thought maybe
20 even with regard to this company in another system that we had
21 had this same sort of discussion recently.

22 MR. REILLY: I believe your memory is correct. I
23 think it came up in Utilities, Inc. I didn't -- at 10:00 last
24 night I didn't come up with that. I was -- but I do believe we
25 had this come before us very recently. And I need to -- but I

1 don't, I don't have the case for you.

2 COMMISSIONER McMURRIAN: I guess --

3 CHAIRMAN EDGAR: Commissioner McMurrian.

4 COMMISSIONER McMURRIAN: I guess another comment for
5 staff. If we could get some clarification on that. Because if
6 we've done, if we've considered this same sort of issue with
7 respect to a Utilities, Inc. system lately and perhaps have
8 done something different than what staff recommends here, I
9 would think we would need to know that. And maybe my memory
10 is, is wrong, but it seems like staff maybe recommended
11 something similar to this in a Utilities, Inc. case, but --

12 MR. REILLY: There was an issue, almost an internal
13 situation where it was recommended in one situation and we
14 argued that it should be done in both systems. Can you help?

15 CHAIRMAN EDGAR: Mr. Willis, do you have
16 additional --

17 MR. WILLIS: Commissioners, I've thought back and
18 asked staff about the recent Utilities, Inc. rate cases. Now
19 there was one rate case, Labrador Utilities, which the
20 Commission dismissed. We did not allow rate case expense for
21 that because we dismissed the case. Now I don't remember one
22 in a recent Utilities, Inc. case where we have decreased rates
23 and not allowed rate case expense. I just don't.

24 CHAIRMAN EDGAR: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I think I would be

1 interested, I guess, if it was because it was dismissed and
2 that was the sole reason. I'm just not sure that disallowing
3 the rate case expense -- I'm not sure it was a prudent decision
4 if you knew, I mean, if the determination ultimately was that
5 there was a decrease. So I'm sitting here for the first time
6 on one of these, not knowing the history at the PSC, I'm not
7 real comfortable with that.

8 CHAIRMAN EDGAR: Mr. Reilly.

9 MR. REILLY: I would argue that there was experience
10 with Utilities, Inc. in the very last rate case. The Marion
11 County system was overearning and that's the last case of last
12 impression. You had an assessment that the wastewater was, was
13 slightly overearning, and they actually came in for a rate
14 case.

15 I think the company could have, should have known
16 that they were overearning. They should not have, you know,
17 put on a case to try to prove that they were entitled to a rate
18 increase. I don't think it was prudent or reasonable to bring
19 a rate increase request for Marion County water in this
20 instance. They should have done for Marion County water what
21 they did for wastewater. We have not questioned rate case
22 expense with regard to the reduction of wastewater. It's,
23 it's -- given the fact that it had overearned in the last case,
24 the fact that they have all the numbers, they should have known
25 it was not reasonable to make ratepayers pay to put on a case

1 to prove that they have a right to a decrease. It is unfair
2 and unreasonable, and we would argue that the Commission should
3 make a, you know, should, should, should send -- well, should
4 vote and say that when a company acts in this way and has these
5 numbers, they should not have come in for the rate increase,
6 and that the 4,000 some odd dollars of rate case expense should
7 not be borne by these ratepayers. That would be our argument.

8 CHAIRMAN EDGAR: Mr. Friedman.

9 MR. FRIEDMAN: Not to belabor the point, but as
10 Mr. Reilly pointed out, we filed for a decrease in wastewater
11 and he doesn't have a problem with rate case expense in that
12 case. And I think it's analogous to what happened on the water
13 side. Thank you.

14 CHAIRMAN EDGAR: Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: To that point though, maybe
16 you recognized very clearly that it was, it was a decrease that
17 should have been taking place but maybe not on the water side,
18 recognizing that an increase was not a prudent thing to go
19 after. Could that be?

20 MR. FRIEDMAN: I would disagree for a number of
21 reasons, not the least of which would be that we filed a
22 system, company-wide rate case for all the systems including
23 both the systems in Marion County. And so I would suggest to
24 you that the prudent thing to do would have been to include the
25 water and wastewater both together. Otherwise, as staff has

1 pointed out, if we wouldn't have filed the water system case,
2 the staff would have filed a rate investigation. And I think
3 that, that the rate case expense in a rate investigation would
4 have been substantially more than the small amount that
5 occurred because of this manner of dealing with the
6 overearning. I think it was a prudently incurred rate case
7 expense.

8 CHAIRMAN EDGAR: Commissioner McMurrian.

9 COMMISSIONER McMURRIAN: Thank you.

10 Mr. Friedman, I do appreciate that you filed for a
11 rate decrease on the wastewater side. I guess what my concern
12 is is that it seems as if your company made the decision to
13 file rate cases all at once and perhaps wasn't as prepared
14 maybe as they should have been on some of the individual cases.
15 And maybe I've, maybe I've gone too far in saying that, but it
16 seems to me what's happened is that you filed all these cases
17 at once, and staff has gone through the exercise of deciding,
18 you know, what things should be included and what things
19 shouldn't be, and they've determined for you that there should
20 be a rate decrease to these customers instead. And I see that
21 as a little bit different than, of course, you filing a rate
22 decrease in the first instance.

23 I am concerned that if we were to take, if we were to
24 have taken a different tact and you didn't file for a rate
25 increase in Marion County, that staff would have come to us

1 later and we would have had an overearnings investigation, and
2 perhaps in that situation the ratepayers might have paid more
3 in rate case expense. But it doesn't seem like it's easy to
4 say in which type of case ratepayers would have paid more or
5 less. But -- and I guess I'll allow you to speak to that. But
6 it seems to me that it's -- you know, you file for a rate
7 increase and then the staff turn around and do the work to
8 decide that there should have been a decrease. And I think
9 what Mr. Reilly is saying is that it was great that you filed
10 for a rate decrease on the wastewater side, but perhaps you
11 should have done the same thing on the water side.

12 MR. FRIEDMAN: Well, you know, as you know, having
13 been in this business as long as you have, you know, when rate
14 cases are filed there are adjustments that are made pro and,
15 plus and minus in every rate case. And I would suggest to you
16 that Utilities, Inc. of Florida when they filed this rate case
17 did so prudently and believed prudently that all those expenses
18 were legitimate. I don't remember exactly what adjustments
19 were made in Marion County to result in a rate decrease, but I
20 would suggest to you that they were prudent for filing for an
21 increase. And as luck would have it, they weren't entitled to
22 it.

23 But the problem you get in this situation was if you,
24 if we had not filed, and this happened in a case that
25 Mr. Reilly was involved in, you know, if we waited and filed --

1 if we didn't file water this time and we waited and filed just
2 Marion County water all by itself in two or three years, I
3 would suggest to you that Public Counsel would probably be
4 saying why didn't you file it with all the rest of them? And
5 so that's why I'm saying that when we have all these systems
6 that are all under the same utility, that it's prudent and it
7 makes sense to, to file for them all and that everybody shares
8 a little bit in the rate case expense. That's why really I
9 disagree in disallowing rate case expense in Orange County, but
10 it's not a material amount of money that we ought to be sitting
11 here for an hour arguing about it.

12 CHAIRMAN EDGAR: Mr. Reilly, do you want to speak to
13 what you may or may not have done?

14 MR. REILLY: Well, several things. It was whispered
15 in my ear we think it might be Pembroke wastewater system that
16 might have had a determination of rate case expense, but I
17 hesitate to say that on the record. I'd have to go back and
18 confirm that. But I think that -- and I'll have to -- I don't
19 want to delay this item on that small point. But on the other
20 issue of policy, rate case expense is becoming a greater and
21 greater issue. This issue of companies coming in more
22 frequently than not for rate increases is also an issue.

23 So I would argue to the Commission that there is a
24 policy consideration here by disallowing rate case expense. If
25 a company is going to continue to come in and come in for rate

1 increases, there should be some liability or some
2 discouragement for them to go in and initiate a rate proceeding
3 against ratepayers if, in fact, it's going to ultimately result
4 in a rate decrease.

5 So I would argue there is potentially something for
6 you to consider here, that from a policy standpoint the
7 Commission should perhaps discourage companies from seeking
8 rate increases too frequently or in situations where perhaps
9 they don't have one entitled to them. And that by establishing
10 a policy that if you come in for a rate increase and we
11 determine you're entitled to a rate decrease, you're going to
12 have to eat that rate case expense. Now that's going to be a
13 very sober, serious thing for a, for a company to consider
14 before they come in for a rate increase. And, frankly, I think
15 that's good. I think that's good policy.

16 So I just, I just still argue it's, the dollars
17 aren't real big in this case, but I think the principle is
18 valid. And that is when a company initiates an effort to
19 collect higher rates from its customers and it's borne out that
20 they are not entitled to any, that they assume that risk. And
21 that's probably a risk that might discourage companies or delay
22 companies from coming in for rate increases. They're going to
23 say, well, we're too close to, you know, breaking even or
24 possibly overearning. We're going to hold back on this rate
25 case and perhaps wait another year. And if they do that,

1 that's probably a good thing for staff and it's a good thing
2 for the customers. Thank you.

3 CHAIRMAN EDGAR: It might be a good thing for
4 Commissioners, too.

5 MR. REILLY: It might be a good thing for
6 Commissioners. Right.

7 MR. WILLIS: Commissioners, if I could just comment
8 on the Pembroke case that was brought up.

9 CHAIRMAN EDGAR: Mr. Willis, yes.

10 MR. WILLIS: In the Pembroke case the Commission did
11 allow rate case expense. They allowed rate case expense in
12 that case because there was a material change in rate
13 structure. Yes, there was a decrease in rates, but there was a
14 material change in rate structure because of the
15 cross-subsidization going on between different classes of
16 customers. The Commission -- the staff looked at it in that
17 case and the Commission agreed that this is a company that
18 would have had to come in and change its rate structure once
19 that material distortion in the rate structure was discovered.

20 CHAIRMAN EDGAR: Thank you for that clarification,
21 Mr. Willis, and for refreshing memory.

22 Commissioner Argenziano.

23 COMMISSIONER ARGENZIANO: In looking at this several
24 different ways, I'd like to ask the public, the Office of
25 Public Counsel if, if the company knows that it's overearning

1 and we don't allow them to come in and your argument would be,
2 you know, until maybe the Commission pulls the company in for
3 an overearning, would that be benefiting the consumer?

4 MR. REILLY: I believe so. I think that if the
5 company assumes a risk when it comes in and asks for a rate
6 increase and it's proven that they are not entitled to it, in
7 fact, a decrease, that that risk is that they will have to
8 absorb rate case expense. I think that's a good policy and I
9 hope the Commission would vote that way. And I think it would,
10 it would make a company who has all the books and records,
11 they're the ones holding all the facts and figures, they should
12 know what they're earning and what they're not earning. We in
13 a case are trying to discover it and involve ourselves to find
14 out what's going on. So if the person who is holding all this
15 information makes a judgment that they're going to go after a
16 rate increase, if they're wrong, I think there should be, there
17 should be some liability and some responsibility and that you
18 should not make ratepayers prove that they're not entitled, you
19 know, to a rate decrease.

20 It has been handled in these other cases. I mean,
21 there is certainly precedent for it. And more than that, I
22 just think it's good public policy.

23 COMMISSIONER ARGENZIANO: Madam Chair.

24 CHAIRMAN EDGAR: Yes.

25 COMMISSIONER ARGENZIANO: What I mean is that if they

1 know they're overearning and there's no incentive, I mean, they
2 may not come in for, to file for an increase or a decrease.

3 MR. REILLY: I don't, yeah, I don't know of any
4 instance when a company has ever initiated a rate increase
5 standalone that says, oh, we've looked at our numbers and we
6 believe we're entitled to a rate decrease. I don't think
7 that's ever happened. I think it would only happen in a
8 situation like this where you have an omnibus case and multiple
9 systems and they're looking at them, and in this case they
10 handled the wastewater side, you know, and said I think we've
11 got a slight decrease. That's what they should have done in
12 the water system. And to have put, put through the additional
13 case to try to prove, you know, an entitlement to an increase
14 is something that the customers should not pay. I guess I tag
15 team with Tricia Merchant.

16 CHAIRMAN EDGAR: Ms. Merchant.

17 MS. MERCHANT: Tricia Merchant with the Office of
18 Public Counsel. A lot of times when you have a company that
19 recognizes that they're overearning, staff would look at their
20 annual reports and see and have a conversation with them, and
21 it didn't necessarily result in an overearnings investigation
22 with MFRs filed and a whole huge analysis. A lot of times we
23 would work with the company, make sure, see what kind of rate
24 reduction they might have or have any other type of adjustment,
25 maybe an increase in CIAC. So there were a lot of avenues

1 available to utilities that realized they were overearning that
2 staff may have noticed that they were overearning. So it
3 didn't always result -- and a lot of times we didn't want to
4 have to incur the expense if we saw the company was
5 overearning, so we were looking for easy, inexpensive ways to
6 lower rates, see what was happening in the near future. Maybe
7 they were going to have a need for a rate increase two years
8 down the road or a year down the road. You know, measure all
9 the components. But a lot of times those were done through
10 settlements and discussions without a lot of rate case, a lot
11 of rate case expense, so.

12 CHAIRMAN EDGAR: Commissioner McMurrian.

13 COMMISSIONER McMURRIAN: Thank you. I have a
14 question for, for staff. I guess it's really two-part. How
15 much discretion do we have in determining the amount of rate
16 case expense? And I guess Part B would be if we wanted to, to
17 send a signal or provide an incentive for a company to request
18 the proper amount, whether it's a decrease or an increase,
19 would there be a way for us to somehow cut the appropriate
20 amount of rate case expense that we have before us, to cut it
21 by some amount and not allow 100 percent of the rate case
22 expense for that county?

23 MR. WILLIS: Commissioner, by the statute you have
24 complete discretion, broad discretion when it comes to rate
25 case expense. I imagine because of that you can do practically

1 what you want as long as you're fair and reasonable, but you
2 might want to talk to the lawyers.

3 MR. JAEGER: I think in any, any -- this is Ralph
4 Jaeger, legal staff. In any rate case expense, as he said, you
5 have broad discretion, but it must be based on some -- and it
6 has to be for a reasonable and prudent rate case expense. And
7 so if you, if you make a decision that some of this rate case
8 expense was prudent but maybe not all of it, then I think you
9 could split the baby or make a decision, taking away some of
10 the rate case expense, saying some of it went to the benefit of
11 the customers and some of it didn't.

12 CHAIRMAN EDGAR: Commissioner Carter.

13 COMMISSIONER CARTER: Thank you, Madam Chairman. I
14 was listening to this and I really am -- I was looking at this
15 recommendation by staff and I've noticed that in every area,
16 it's a very comprehensive perspective, but in every area staff
17 has made adjustments, and I don't see any place where the
18 company asks for anything that staff has not made an adjustment
19 to decrease the amount that was requested. And I'm thinking
20 overall in the context of where we are now and in the
21 consistency that, from what staff has done I think overall is
22 in probably the best interest of the customers because at no
23 point what the company requested did staff agree with that.
24 Not saying that staff should disagree with the company just
25 because they requested it, but I think they've made, they have

1 a justifiable perspective on why they reduced the recommended
2 amounts in each category, not just rate case expense, but all
3 the rest of them in terms of the water, wastewater, even with
4 the multiple systems. And I think that if you look at -- we
5 were talking about the rate case expense that's on Page 74.
6 You'll see where staff has made an adjustment, if I'm reading
7 it correctly, of about \$173,000. And so I think that if you
8 look at all of the other aspects of this case, staff has gone
9 pretty much throughout this and made what I think are
10 appropriate adjustments in this matter here. And I just wanted
11 to make a statement, Madam Chairman. That's all.

12 CHAIRMAN EDGAR: Thank you, Commissioner Carter. And
13 I note that in a very complex item of 30 some issues that we
14 are down to about \$4,000. So I strive for, for good, clear
15 policy on every issue, but appreciate reminding us of the
16 context a little bit as well.

17 Commissioner Argenziano.

18 COMMISSIONER ARGENZIANO: Could I just get
19 clarification again, because I need a basis for an expense,
20 rate, I mean, collection or whatever you want to call it. I'm
21 sorry. And you mentioned before that, I guess, because on
22 one-half you had the decrease and you're entitled to a rate
23 expense on that. What is the basis for the increase? They
24 asked for the increase when actually there was a decrease in
25 the water side.

1 MR. FRIEDMAN: Well, Commissioner, I don't remember
2 the exact reasons what adjustments that the staff made that
3 went from a purported increase to a decrease. I don't know
4 what those adjustments were.

5 What I'm suggesting to you is that when you have a
6 system or a company that has multiple systems in multiple
7 counties, that there is an economy of scale and benefit to
8 including all of those systems. And in this county you
9 actually got a rate decrease, which certainly is a benefit. If
10 the utility had not filed for Marion County water at all and
11 just left it completely out of the case, then the customers
12 would be paying the same rate now even though it's, the staff
13 believes it's excessive. So the customers do get a benefit out
14 of that. And as was pointed out, you know, it's not a
15 substantial amount of rate case expense that was allocated to
16 this system.

17 MR. REILLY: Just a very brief point. I do agree
18 with Commissioner Carter, and I said quite a lot of comments at
19 the beginning of my comments about the good job staff has done
20 across the board as well as on rate case expense.

21 It's really on two points. It was really a matter of
22 principle and policy that I felt that it would be a good
23 decision for the Commission to say, look, there is a risk to
24 this. When you come in and ask for a rate increase, make your
25 case. Because if you don't, then you're going to have to bear

1 all the rate case expense. I just think that's good public
2 policy.

3 Now on the issue of de minimis, \$4,000, I admit it's
4 not a lot of money, but frankly it is a relatively material
5 figure for the Marion County customers because it's a small,
6 fairly small system and you can see it makes about a 30 percent
7 difference or something on the rate decrease. So it is small
8 dollars but it's not immaterial to the Marion County people.

9 Number two, I just think it's good public policy,
10 particularly as we're seeing your poor water and wastewater
11 staff just being inundated with rate cases, and I just think
12 it's probably a good thing to say be careful. You know, if
13 you're going to come in and ask for a rate increase, you
14 justify it. Because if you don't, your shareholders are going
15 to pay the cost of that rate case, not the ratepayers. I think
16 that's an excellent policy that I hope you would vote out
17 today.

18 CHAIRMAN EDGAR: Commissioner Argenziano.

19 COMMISSIONER ARGENZIANO: Do we have an understanding
20 on how many rate increases that are asked for that are actually
21 turned into decreases? Is there -- in other words, is this
22 just happening often and then the costs being borne by the
23 consumer?

24 MR. WILLIS: No, Commissioner, I would not, I would
25 not say there's an indication that this happens frequently.

1 COMMISSIONER ARGENZIANO: Okay. Thank you.

2 CHAIRMAN EDGAR: Thank you.

3 Commissioner Skop.

4 COMMISSIONER SKOP: Thank you, Madam Chair.

5 I just had a question I want to make sure to staff
6 that I'm understanding this correctly, but in Table 24-1 on
7 Page 78 the recommended increase, decrease for the water in
8 Marion is approximately \$13,733 per year. So on an annual
9 basis am I correct to understand that that is the excess
10 revenue which would have been generated had the reduction not
11 been put in place?

12 MS. KAPROTH: That's correct.

13 COMMISSIONER SKOP: Okay. So basically the magnitude
14 of the rate case is about -- or the magnitude of the
15 recommended decrease is about three times the magnitude of the
16 rate case expense; correct?

17 MS. KAPROTH: That's correct.

18 COMMISSIONER SKOP: Thank you.

19 CHAIRMAN EDGAR: Thank you. Commissioners, further
20 comments or questions on this item?

21 Commissioner Carter.

22 COMMISSIONER CARTER: Just a comment, Madam Chairman.
23 And after my comment, if it's appropriate, I'm prepared to make
24 a motion. But I would caution us to -- when you start to put
25 in provisions that would be putting a pecuniary penalty on

1 companies, some companies, I mean, we're just talking about
2 Utilities, Inc. now, but on some companies you may put the
3 company to where they're out of business and then you've got a
4 lot of people without this necessary resource, water. So I
5 think that in this case based upon what staff, and staff has
6 done a masterful job, they've dotted all the Is, crossed all
7 the Ts, looked under the rug, behind the mattress, and, I mean,
8 they've checked this thoroughly.

9 And I think that -- I just go back to basics, Madam
10 Chairman. You reduce the rate case expense by \$173,000 and in
11 every area whatsoever -- Commissioner Skop points out that the
12 amount saved is \$13,000 versus, on an annualized basis, versus
13 the amount paid is \$4,000.

14 I think that overall staff has done a masterful job
15 of looking at this case, multiple systems, multiple counties,
16 water, wastewater, and brought in a recommendation that I think
17 sends a consistent message to the industry as well as a
18 consistent message to the consumers that you won't get,
19 consumers won't be end run. For an example, if you put
20 penalties, financial penalties on a company, then the company
21 may try to end run and come back and say, well, you know, we
22 were in business but because of this we can't get it out of the
23 rate base for consumers, but we're going to have to go out of
24 business unless we can get an expense to pay, pay for certain
25 things. And then you start to get into what's a legitimate

1 expense, what's an illegitimate expense, what do we put in
2 parameters on the front end that would cause the company to do
3 creative financing, for lack of a better word? And I just
4 think that, I think on this case, on this case when things are
5 laid out, on this case you've got multiple systems, on this
6 case everything is fairly up-front and aboveboard, I don't
7 think this is the kind of case we need to be experimenting on.

8 CHAIRMAN EDGAR: Thank you, Commissioner.

9 Commissioner McMurrian.

10 COMMISSIONER McMURRIAN: Thank you.

11 Commissioner Carter, I don't disagree with anything
12 you've said there, and I'm frankly torn with this issue. I do
13 agree with some of the comments that Mr. Friedman has made
14 about, you know, what might happen if this case had gone
15 differently and he didn't propose an increase here or he didn't
16 include Marion County's water system in this case. Not only
17 would customers not be getting a decrease now, we might be down
18 the road and staff may look at an overearnings case and there
19 may still be rate case expense for the customers.

20 Of course, on the other hand, I can't get out of the
21 back of my mind that I believe that this company has filed
22 several rate cases at one time for this, for this large company
23 and in some sense has sort of left it up to us to find out the
24 problems and to say where there should be adjustments and then
25 passed on that rate case expense to customers. So I'm torn. I

1 don't really know how to get myself out of this quandary, but
2 that was why I threw out the idea. It sounds like there's
3 probably no easy way to do that. And it's not so much a
4 penalty to the company as what I was proposing, and I'm sure
5 that's how they would interpret it, you're probably right.
6 More I just want to send the right signal about getting all
7 your ducks in a row before you file a rate case at all. It
8 shouldn't be a surprise to them that it ultimately is a
9 decrease. I mean, they have accountants and staff that should
10 be able to determine whether they should be filing for a rate
11 increase or a decrease in my mind. So that's the quandary I
12 find myself in.

13 But it's absolutely correct that we wouldn't be
14 determining a benefit of those customers of that \$13,000 if
15 they hadn't filed something in the first case or at least not
16 in this instance. So with that said, I really don't know, I
17 don't know what to do to get out of that quandary. I guess
18 maybe just note that I have continuing concerns with that.
19 Maybe it's something we can look at further in the future with
20 the help of OPC and some of the parties, maybe some way to
21 address that, because it does seem like there's no disincentive
22 for a company to file everything under the sun and then have us
23 figure out whether it's an increase or a decrease.

24 And I know that sounds harsh, Mr. Friedman, and I
25 don't try to dissuade you from filing any case you think is

1 appropriate, that's what we're here for, but in my mind it
2 almost seems like a staff assisted rate case because there's so
3 much filed at once and it's sort of up to the staff to find the
4 adjustments and everything and decide whether or not you should
5 have filed for an increase in the first place.

6 MR. FRIEDMAN: I've been doing this for 30 years and
7 I haven't seen a rate case that the staff didn't make
8 adjustments in. So I don't think you can say just because the
9 staff made adjustments that there was some flaw in what the
10 utility should be filing. I mean, they just, they make
11 adjustments -- this is a complicated case, as Commissioner
12 Carter said, because it does involve multiple systems of all
13 different sizes and configurations, and that's why we think
14 that it was prudent. It's not a standalone. We didn't get a
15 decrease in a standalone. We got a decrease in one of a number
16 of systems that were all filed simultaneously that have
17 prorations that go back and forth between systems. So we think
18 it was prudent to do that even if we thought our rate increase
19 was marginal and ultimately turned out to be a decrease.

20 COMMISSIONER McMURRIAN: Mr. Friedman, I'm not saying
21 that you shouldn't have filed. And I agree with you, staff is
22 going to make adjustments --

23 MR. FRIEDMAN: Every one.

24 COMMISSIONER McMURRIAN: -- in any case or every
25 case. I think it's an order of magnitude. Just, and I'm just

1 sharing with you my impression that it feels like that there
2 was a rush to file all of these cases. We've had several
3 issues in the Utilities, Inc. cases, not just in this one,
4 where it seemed like you weren't entirely prepared for the rate
5 cases you filed. And I'll just tell you that's my impression.
6 Maybe that's the wrong one. But I feel like that that's sort
7 of what we're looking at here is whether or not you were
8 prepared and knew whether or not it was going to, within some
9 reasonable amount, result in a rate increase or a decrease.
10 But I don't want to dissuade you from filing for a rate
11 decrease or even an increase to the extent your company needs
12 one.

13 MR. REILLY: Commissioner McMurrian, I have a quick
14 quote from a recent Commission order. It's Commissioner Order
15 PSC-00165-PAA-WS. And I read, it says, "Given these
16 considerations and the fact that our adjusted revenue
17 requirements showed the utility is earning a rate of return
18 above the approved range, we find that a portion of the rate
19 case expense shall be disallowed. We find that that fair
20 portion disallowed is 50 percent." So I'm just showing you
21 there is a recent case where the Commission did grapple with
22 these issues and made a 50 percent in a recent case.

23 CHAIRMAN EDGAR: Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Madam Chair.

25 I just wanted to echo Commissioner Carter's comment

1 about the diligence of staff in making adjustments, and I agree
2 with that.

3 With respect to the instance of the recommended
4 decrease, I guess my concern would be the order, the
5 overearnings, if that were the case that the utility was
6 overearning, then why should it be rewarded for the rate case
7 expense to begin with? Now I'm not sure that I have a complete
8 understanding of that. But the order of magnitude of the rate
9 case is nearly, or the recommended decrease is three times what
10 the proposed reimbursement of the rate case expense would be.

11 And also to touch on another point that Commissioner
12 McMurrian made looking at the order of magnitude, essentially
13 the requested increase to begin with is almost 180 degrees out
14 of phase with what the actuality of the situation was on a
15 percentage basis because the proposed decrease is about
16 8 percent, whereas the recommended increase was 8.75. So I
17 just want to be sure in the interest of consumers that if there
18 was an overearnings potential or that was occurring to the
19 benefit of the utility, excuse me, that we're not awarding them
20 with the rate case expense for diligence or lack thereof in
21 filing a request for increase that ultimately was shown not to
22 be warranted. Thank you.

23 CHAIRMAN EDGAR: Thank you.

24 Okay. Commissioners. Commissioner Carter.

25 COMMISSIONER CARTER: Madam Chairman, I would, I'm

1 prepared to make a motion to move staff in this case.

2 CHAIRMAN EDGAR: Okay. And, Commissioner, that --
3 your motion encompasses the entire Item 1 through 34.

4 COMMISSIONER CARTER: Yes, ma'am.

5 CHAIRMAN EDGAR: Commissioner Argenziano.

6 COMMISSIONER ARGENZIANO: Madam Chairman, does
7 that -- are we dealing with even the increases that are in here
8 right now? If we are to take a vote now, we're also talking
9 about the increase to Pasco County and Pinellas County?

10 CHAIRMAN EDGAR: Yes, ma'am. It is the issue in its
11 entirety as it's laid out.

12 COMMISSIONER ARGENZIANO: Okay. If I may, Madam
13 Chair.

14 CHAIRMAN EDGAR: Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: I agree with the other
16 Commissioners in many things that were said. I just, I do have
17 some problems with the justification of rewarding the company.
18 I'm not here to penalize them or to reward them. I just look
19 for justification and I'm not sure that I see justification,
20 maybe half of that going towards the decreased portion of the,
21 of the issue. But in looking at the whole thing before us, I
22 have a real hard time, and I know you've been here before, and
23 looking over the history of this I have a real hard time with
24 the 48 percent increase and the 32 percent increase of Pasco
25 and Pinellas. And I'm just having a hard time with the

1 justification of then, on top of these increases, the
2 additional \$4,000. I know it's a small amount, but just --

3 CHAIRMAN EDGAR: Every dollar counts.

4 COMMISSIONER ARGENZIANO: Yes.

5 CHAIRMAN EDGAR: Commissioners, further discussion.
6 Commissioner Skop.

7 COMMISSIONER SKOP: Yes. I just have one quick
8 question before we consider Commissioner Carter's motion. With
9 respect to Issue 1, I'm just wondering -- my question is
10 directed to staff. What weight did staff give to the finding
11 of the unsatisfactory water quality and customer satisfaction
12 issue in this Summer -- I'm trying to think where it is,
13 Summer, yeah, in Summertree --

14 CHAIRMAN EDGAR: Summertree.

15 COMMISSIONER SKOP: -- Summertree with respect to the
16 recommended rate increase in Pasco County?

17 CHAIRMAN EDGAR: Thank you. I'm not sure who on
18 staff can speak to the customer satisfaction and other water
19 quality issues in the Summertree portion of the system.

20 MR. WALDEN: I'm Tom Walden on the Commission staff.
21 Is your question, Commissioner, about a monetary reduction in
22 rate of return or are you talking about the follow-up that we
23 are looking at from the company in order to make sure that the
24 water service is improved?

25 COMMISSIONER SKOP: I think my question pertains to

1 the material finding that addressed the quality or lack thereof
2 of the water and the customer service with respect to the
3 Summertree, and then how that factored into the determination
4 and whether there should be any discretion in terms of a rate
5 increase adjustment on the basis of that finding with respect
6 to water quality.

7 MR. WALDEN: Yes, sir. Our focus from an engineering
8 perspective is always that the company comply with the rules
9 and regulations of the DEP. On the Summertree system the, the
10 water quality was having some issues with trihalomethanes due
11 to using chlorine in the water as a method of disinfection.
12 The company is moving to a different method. They are
13 converting their disinfection process to chloramines after the
14 utility was cited by the DEP for failure to meet standards.
15 The way that standard works, it's called a rolling average.
16 The company is required to test quarterly, and after their four
17 quarters where the water does not meet standards, that's when
18 the DEP steps in and works with the company to get the, to get
19 the problem corrected. So our focus is to follow the DEP's
20 suggestions and their indications that there's a consent order
21 outstanding that the company is complying with, and the goal is
22 to have the water quality meeting the state standards.

23 COMMISSIONER SKOP: Thank you.

24 CHAIRMAN EDGAR: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: To the Summertree facility

1 also, am I correct they will, those customers, those consumers
2 of that utility will also now be receiving another rate
3 increase?

4 MR. WALDEN: That is the staff recommendation in this
5 case, yes, ma'am, that they will receive an increase.

6 COMMISSIONER ARGENZIANO: And the -- it seems that
7 the customer complaints were not only due to the, I guess,
8 chlorine taste but the aesthetic quality of the water, recent
9 boil water notices, rude customer service when people call,
10 and, and I guess the DEP -- there is a consent order on that?

11 MR. WALDEN: That's correct.

12 COMMISSIONER ARGENZIANO: And I think that the
13 customers, if you can, I think I'm right here, the customers of
14 that facility already had great concern over the increase at
15 the recent meetings?

16 MR. WALDEN: That's correct. At the customer, the
17 Customer Service Hearing that we held, the Customer Service
18 Meeting they voiced opposition to any increase in the rate due
19 to the water quality and the quarterly notices that they have
20 been receiving from the company that the water was not meeting
21 standard. That's a notice that the utility is required to send
22 all its customers as a result of the DEP violation.

23 COMMISSIONER ARGENZIANO: Madam Chair. So overall
24 the quality of consumer service in that particular facility has
25 been, has been poor, according to the consumers.

1 MR. WALDEN: That's correct. And that was the reason
2 that staff concluded in our recommendation that the quality of
3 water and service to those customers of Summertree was
4 unsatisfactory.

5 COMMISSIONER ARGENZIANO: Thank you.

6 MR. FRIEDMAN: I would like -- if I could point out
7 one thing about the quality of service issue on Summertree
8 dealing with the trihalomethanes, is that keep in mind that the
9 water quality is, is the same as it has been in the past. What
10 changed was that DEP standards changed for smaller systems.
11 And so what was not a violation a couple of years ago all of
12 the sudden is a violation today because of a change in
13 standard, not because of the water quality changing at all.

14 And what -- as Mr. Walden pointed out, what happens
15 is in order to come into compliance you've got to meet this
16 rolling average over four periods. So if the problem is cured
17 today and they tell me today the water being produced is, is
18 within the standards, it's not going to show up today because
19 you have to average in the last three quarters. So it's going
20 to take almost a full year before the average shows that your
21 water quality is satisfactory, even though the water quality
22 they're getting today is satisfactory.

23 And boil water notices just happen. I mean, it's
24 unfortunate, but you can pick up the paper every day and when
25 there's a line break or a reduction in pressure, you have to

1 give boil water notices. You know, there's not an unusually
2 high number of boil water notices in this system that you would
3 say they're doing something terribly wrong.

4 And unfortunately, you know, sometimes the customer
5 service people aren't as cheerful as they ought to be. And
6 that's, that's not an excuse for them, but I don't think again
7 that an isolated incidence of somebody being rude to a customer
8 necessarily means that they've got this pervasive quality of
9 service problem.

10 And I would suggest to you that, that, that
11 notwithstanding the fact that the THMs do not meet standards,
12 it's only because of the rolling average, not because the water
13 being provided today doesn't meet that standard.

14 CHAIRMAN EDGAR: Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: And I can certainly
16 understand that. If the standards have changed, then that
17 needs to be taken into account. And I would like to check with
18 DEP on the standard changes and what they really are.

19 And, but what struck me about this, and I understand
20 what you're saying, there could be times that someone might fly
21 off the handle, but it just seemed out of all the meetings that
22 took place, it was that facility that had all the complaints.
23 So it may suggest to me that that facility needs a little
24 management.

25 Thank you, Madam Chair.

1 CHAIRMAN EDGAR: Thank you.

2 MR. FRIEDMAN: It's certainly not perfect, and the
3 company does take these type of comments to heart and does try
4 to do the best they can to do it. But, you know, as nature
5 would have it, rate cases bring out people.

6 CHAIRMAN EDGAR: Commissioner Carter.

7 COMMISSIONER CARTER: Madam Chairman, as you know, I
8 have a motion on the floor.

9 CHAIRMAN EDGAR: Yes, sir.

10 COMMISSIONER CARTER: But I don't think staff was
11 kind of -- in response to Commissioner Argenziano's question, I
12 don't think staff fully explained that there's a continuing
13 obligation to monitor this situation in Summertree along with
14 DEP. I think that they maybe should have been a little bit
15 more clear on that. There's a continuing obligation of our
16 staff to monitor this situation to ensure that they did follow
17 up on that, even though DEP changed the rules, that they did
18 follow up on that and to continue this process and they have to
19 share with us whatever information they share with DEP in this
20 process.

21 CHAIRMAN EDGAR: In addition, every customer concern
22 that is raised at the meetings is looked into further by our
23 staff as well.

24 Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: Just one other question

1 maybe to our staff.

2 CHAIRMAN EDGAR: Yes, ma'am.

3 COMMISSIONER ARGENZIANO: Could you provide to me the
4 differences in the previous standard of quality of water to the
5 DEP's changed standards?

6 MR. WALDEN: Yes, we can provide that information to
7 you.

8 COMMISSIONER ARGENZIANO: Thank you.

9 CHAIRMAN EDGAR: Thank you.

10 Commissioners, we have had good discussion. We do
11 have a motion. Is there further, further discussion?

12 Commissioner Skop.

13 COMMISSIONER SKOP: Madam Chair, I'd like to offer a
14 friendly amendment to Commissioner Carter's motion on the
15 floor.

16 CHAIRMAN EDGAR: Commissioner Skop.

17 COMMISSIONER SKOP: Yes. I'd like to offer the
18 amendment that the proposed -- let me get to the page -- that
19 the proposed rate case expense for Marion County be denied as a
20 friendly amendment.

21 CHAIRMAN EDGAR: So in a suggested amendment to the
22 staff recommendation in Issue 22, a portion of Issue 22.

23 Commissioner Carter, I'll let you get there.

24 COMMISSIONER CARTER: Madam Chairman, I think we had
25 a discussion about that and I think that Mr. Reilly had

1 mentioned that as a matter of principle. And I think that
2 that's such a small aspect to the overall case that I have no
3 problem with that. Because I think that the case stands on its
4 own. If that's an issue we should look at, Commissioner
5 McMurrin also mentioned that maybe that's an area we should
6 probably look at, then maybe we should do that. So I would
7 accept that as a friendly amendment to the motion.

8 CHAIRMAN EDGAR: Okay. Before we go further, let's
9 look to staff and make sure -- yes, ma'am. Did you have a --
10 thank you.

11 MS. LINGO: Good morning. Jennie Lingo with
12 Commission staff. I was just going to point out that if there
13 are any changes that are going to be made to the revenue
14 requirements of any of the systems, there will obviously be the
15 fallout of the calculations regarding the rates.

16 CHAIRMAN EDGAR: Fallout adjustments that will need
17 to be made by our, our staff in keeping with the overall
18 recommendation.

19 Yes, Commissioner Argenziano.

20 COMMISSIONER ARGENZIANO: Well, that's the other
21 concern I had. And not being here prior to today to see the
22 justifications of the rate increases, I've read through some of
23 them, has any, I don't know, impact statement or any kind of
24 impact concern on the rate increases, what does that mean to
25 the average consumer when you bump up by 48 percent in Pinellas

1 County for water? Is it, is it too much of a hit at one time?
2 I just need a little bit more comfort on raising rates by that
3 high percentage.

4 CHAIRMAN EDGAR: And Mr. Jaeger.

5 MR. JAEGER: Commissioners, I believe once you
6 determine a rate of return and that you have that range, then,
7 and you determine their expenses, then you must give the
8 utility the opportunity to earn that rate of return.

9 And so basically the way the calculations fall out,
10 that is a 37.94 percent increase to put them to the midpoint of
11 that rate of return. And I don't know of any basis in law
12 where we can, because of the hardship -- I know there's
13 hardship and sometimes we've had phase-ins, but basically if we
14 don't give them that fair rate, opportunity to earn that fair
15 rate of return as calculated, then we'd be depriving them.

16 CHAIRMAN EDGAR: Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: Do we have an understanding
18 as to what that is on a dollar amount on a consumer's bill?

19 MS. LINGO: Commissioner Argenziano, if I may please,
20 ma'am. In Pinellas County the average water usage is less than
21 3,000 gallons. So if I take the bill at 3,000 gallons, the
22 percentage increase would be 42 percent or approximately \$6.

23 CHAIRMAN EDGAR: Commissioner McMurrrian.

24 COMMISSIONER McMURRIAN: And maybe I'm off base here,
25 but I think perhaps what the Commissioner is getting at is if

1 we've got -- and I think it's on some of these schedules.
2 Could we look at the schedules for Pasco and Pinellas County
3 that show us about how much a typical residential bill would be
4 on 3,000 and 5,000 gallons and just see if that helps? I think
5 it would help me. And there's a lot of schedules here.

6 MR. REILLY: I believe it's Page 134. It's Pinellas
7 County water service rates.

8 MR. WILLIS: Commissioners, if you look on Page 127,
9 you'll find the water monthly service rates for Pasco County.

10 MR. REILLY: Oh, Pasco. I thought she said Pinellas.

11 MR. WILLIS: No. It was Pasco and Pinellas.

12 MR. REILLY: Okay.

13 COMMISSIONER CARTER: What page are you on?

14 MR. WILLIS: Down at the bottom of the chart you'll
15 see typical bills.

16 CHAIRMAN EDGAR: 127, Page 127.

17 MR. WILLIS: Page 127.

18 MS. LINGO: And on Page 127, ma'am, the typical bill
19 for 3,000 gallons for Pasco County residents would go up
20 approximately \$4.50. And then again, ma'am, in Pinellas
21 County, which is on Page 134, the typical bill would go up
22 slightly greater than \$5, \$5.09 at 3,000 gallons.

23 CHAIRMAN EDGAR: Thank you.

24 Commissioner Argenziano, does that help get to your
25 question?

1 COMMISSIONER ARGENZIANO: Yes.

2 CHAIRMAN EDGAR: Thank you. Okay.

3 Commissioners, we have an amendment or, excuse me, a
4 motion that is before us for the staff recommendation with a
5 change to the recommendation in Issue 22, recognizing that
6 there would be fallout adjustments to be made to go along with
7 that.

8 Commissioners, is there further discussion? Is there
9 a second?

10 COMMISSIONER McMURRIAN: Second.

11 CHAIRMAN EDGAR: All in favor of the motion, say aye.

12 (Unanimous affirmative vote.)

13 Opposed? Show it adopted. Thank you to our staff.

14 Thank you to the parties.

15 (Agenda Item 14 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 24th day of May, 2007.

Linda Boles
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