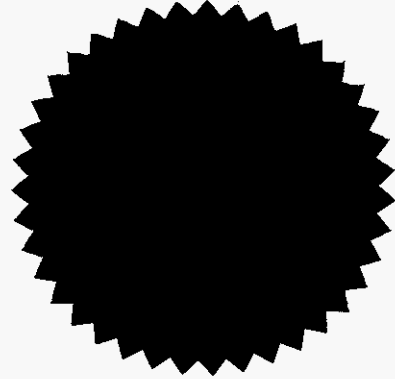


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090349-WS  
APPLICATION FOR LIMITED PROCEEDING  
RATE INCREASE IN POLK COUNTY BY  
CYPRESS LAKES UTILITIES, INC.

---



PROCEEDINGS:

AGENDA CONFERENCE  
ITEM NO. 7

COMMISSIONERS  
PARTICIPATING:

CHAIRMAN NANCY ARGENZIANO  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP

DATE:

Tuesday, June 1, 2010

TIME:

Commenced at 9:32 a.m.  
Concluded at 11:29 a.m.

PLACE:

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

REPORTED BY:

LORI DEZELL, RPR

DOCUMENT NUMBER DATE

04673 JUN-4 0

FPSC-COMMISSION CLERK

## P R O C E E D I N G S

1  
2           **CHAIRMAN ARGENZIANO:** And we'll move to --  
3 we're going to move to Item 7. And we some  
4 customers joining us today. So we're going to move  
5 to Item 7 first. And I believe we'll just proceed  
6 from there. So Item 7, Mr. Mouring?

7           **MR. MOURING:** Commissioners, I'm Curt Mouring  
8 with Commission staff. Item 7 is staff's  
9 recommendation regarding the application for a  
10 limited proceeding increase in water and wastewater  
11 rates in Polk County by Cypress Lakes Utilities  
12 Inc.

13           Mr. Robert Halleen, president of the Cypress  
14 Lakes Homeowners Association, Mr. Robert Attebery,  
15 director of the Cypress Lakes Homeowners  
16 Association, Charles Rehwinkel from the Office of  
17 Public Counsel, and Marty Friedman, counsel for  
18 Cypress Lakes are here to address the Commission.

19           Staff is prepared to answer any questions that  
20 the Commission may have.

21           **CHAIRPERSON ARGENZIANO:** Thank you.  
22 Commissioners, any questions at the onset?  
23 Commissioner Edgar.

24           **COMMISSIONER EDGAR:** Not a question but I  
25 would just ask to those that are here to speak to

1 us on this item, and the next two items if you can,  
2 identify the issues by number while you're going  
3 through your initial comments it would be helpful.  
4 Thank you.

5 **CHAIRPERSON ARGENZIANO:** Thank you. Who's up  
6 first? Mr. Rehwinkel?

7 **MR. REHWINKEL:** I'd be glad to go first.

8 **CHAIRPERSON ARGENZIANO:** Okay.

9 **MR. REHWINKEL:** Thank you, Commissioners,  
10 Madam Chairman. My name is Charles Rehwinkel. I'm  
11 with the Office of Public Counsel and I am glad to  
12 be here today representing the customers of Cypress  
13 Lakes and especially the two who are here with you.  
14 They've already been introduced.

15 The Public Counsel's office intervened in this  
16 case in March of 2010. On behalf of the customers,  
17 we are here today to present our concerns to you  
18 before you vote on the PAA on this case. We have  
19 several full concerns that you are going to hear  
20 about first from Dr. Halleen about water quality  
21 issues and certain issues about the funding of the  
22 water treatment plant expansion, as well as  
23 expenses that they potentially will bear in rates  
24 that they pay.

25 You will also here concerns raised by the

1 Public Counsel's office about the nature of this  
2 proceeding being a limited proceeding, that the  
3 proceeding is narrowly and artificially limited to  
4 not allow full consideration of relevant facts.

5 You will hear concerns that even assuming you  
6 go forward with the limited proceeding, that the  
7 revenue requirement is significantly overstated.  
8 You will hear concerns that we raise about rate  
9 case expense, and we also have legal concerns about  
10 the temporary rates that are recommended in Issue  
11 8.

12 At this time I would like to turn it over to  
13 Dr. Halleen to address the Commission with his  
14 concerns. Thank you.

15 **CHAIRPERSON ARGENZIANO:** Welcome, Dr. Halleen.

16 **DR. HALLEEN:** Thank you, Commissioners. It's  
17 good to be here again. My last appearance here was  
18 in 2007, and of course the chairman then and I  
19 think Nathan were not here, but Lisa, you were  
20 present at that time.

21 We have a handout for you of our issues that  
22 we have concerns, and I'll let staff distribute it  
23 to you.

24 **MR. REHWINKEL:** Madam Chairman, we also have a  
25 handout, so just to get it -- make it quicker,

1 we'll pass ours out at the same time.

2 **CHAIRMAN ARGENZIANO:** Everybody have their  
3 copies?

4 **DR. HALLEEN:** I'm ready to begin. The two  
5 majors issues that we will address are, one, the  
6 first one on the recommendation, the quality of the  
7 water supplied, and then the second one is the  
8 revenue that has been recommended in here.

9 Quality does remain a major issue with the  
10 residents of Cypress Lakes. When we were here in  
11 2007, my now departed compatriot, Dick Holzschuh,  
12 talked at length with the Commissioner,  
13 particularly Commissioner Carter who's no longer  
14 here, and Mr. Friedman about the situation on  
15 quality. We thought the issue was resolved by the  
16 fact that an engineering study was to be conducted  
17 and the cost associated with changes were to be  
18 discussed with the interested parties. But  
19 unfortunately the study was done but the residents  
20 nor the Office of Public Counsel who were in the  
21 order to receive copies never received copies.

22 The utility proceeded with a single change to  
23 the system which they assumed improved quality.  
24 But the quality did not improve. The chlorine  
25 residuals still remain a problem. In fact, Polk

1 County during this year has forwarded another  
2 consent order to the utility with an increased fine  
3 compared to the last one, and to get them to take  
4 care of the chlorine residual problem.

5 They did conduct a flushing that the health  
6 department recommended, but -- that had some effect  
7 but very little effect in the thing.

8 The problem is very simple. It is one of  
9 distribution of the chlorine. In other words, the  
10 chlorine is not getting in parts of the park, in  
11 addition to the problem that they had that led to a  
12 boil water order.

13 The recommendations of the report, which was a  
14 very extensive report, were never discussed. And  
15 unfortunately there are eight other recommendations  
16 in the report that are very significant to the  
17 problem, including one that says, get with the  
18 customers, list the complaints they have and where  
19 the complaints exist, and then see if you can work  
20 out a problem.

21 They never did that but we did. After the  
22 public meeting for this case in November, we took  
23 the list of complainants, and some were for rates  
24 and some were -- but 12 of the 22 people spoke on  
25 quality. We went -- and on the back of the handout

1 that I gave you is a map showing the entire Cypress  
2 Lakes Park. In that -- on that map you will see  
3 highlighted an area up at the top of the map which  
4 is where all of the 12 complaints lie.

5 That's the same basic -- I checked with  
6 Mr. Holzschuh's widow and she said that's the same  
7 place that Mr. Holzschuh commented on the last time  
8 that was a major complaint.

9 Now, it's interesting that one of the new  
10 phases that we put in, phase 12, has only 15 houses  
11 in it but the Polk County park in their survey of  
12 chlorine residues says it has the most acceptable  
13 consistent chlorine residue. And the big  
14 difference is -- and one of the recommendations in  
15 the report was to consider automatic flushing  
16 valves. And the developer when he put that in,  
17 which was in 2006 or '7, did add automatic flushing  
18 valves.

19 So it is our request to you that you order the  
20 utility to sit with the CLHA board of directors and  
21 other interested parties to review all of the  
22 recommendations, including the potential costs,  
23 presented in that engineering report and present to  
24 you for your consideration within three months a  
25 plan agreed to by both parties. We think that will

1 help us on the quality issue. Okay?

2 The second major issue is the revenue increase  
3 by the PSC staff which merely mirrors the request  
4 submitted in the limited proceeding. In other  
5 words, there's virtually no change.

6 The cost will increase approximately  
7 35 percent the water bills for the residents. The  
8 biggest cost increase, the highest contributor, was  
9 the wastewater treatment expansion plant, an action  
10 that was initiated by a legal agreement between the  
11 developer and the utility in 2006. This agreement  
12 indicates that the estimated cost of the expansion  
13 is a quarter of a million dollars with the  
14 developer required to provide an up-front money of  
15 125,000.

16 The agreement further states that the  
17 developer is responsible for half of the final cost  
18 to which the \$125,000 would be applied. The final  
19 cost according to the filing is \$1,040,000. The  
20 revenue request placed the remaining  
21 \$915,000 squarely on the customers built into the  
22 rate without any justification other than it was  
23 requested.

24 It also has an effect that it appears in the  
25 property tax revenue request, Schedule 10, which



1 says the customer will continue to pay for this  
2 forever.

3 It is very interesting that the developer --  
4 and we checked with the developer before we came  
5 here and made sure -- was never advised by the  
6 utility that the cost was going to increase by  
7 400 percent. The answer provided to date by staff  
8 as to the expansion has ranged from it was mandated  
9 by the federal environmental protection group of  
10 Florida to it was a prudent thing to do.

11 We have had no -- the report that was issued  
12 on that volume really indicates only that it meets  
13 EPA standards, it does not demand any changes to  
14 the system. In fact, it is interesting, and this  
15 is an aside, that last time when Mr. Friedman was  
16 addressing the question of phase 12 expansion which  
17 is in the agenda report, he carefully avoided  
18 making any comment about this legal agreement. We  
19 didn't find out about it until you issued a  
20 settlement agreement which said there was such an  
21 agreement.

22 We have to -- we see no justification why at a  
23 minimum the developer is not responsible for half  
24 of the cost. So it is our request to the  
25 Commissioners that they direct staff to provide

1 definitive answers to, one, why isn't the developer  
2 responsible for half of the cost; two, and how  
3 should the customers' share of the remaining half  
4 be determined? Because it's interesting. Even the  
5 original agreement states nothing about where the  
6 other 125,000 was going to be of that quarter of a  
7 million. And then make any request, any revisions  
8 to the revenue request.

9 Now, along with that, it became very apparent  
10 when we reviewed the annual reports that the  
11 utility has put out for 2008 and 2009 that there  
12 has been significant changes in the utility's  
13 accounting practices as apparently the result of  
14 the Phoenix Project, which was a major accounting  
15 change that they made.

16 There are, one, new allocated costs and  
17 accounts that were never previously used. For  
18 example, there's now officer salaries that were not  
19 there, advertising, contractual services, and  
20 engineering and testing, Regulatory Commission  
21 expense. And there's also been, two, a  
22 redistribution of some of the costs. In other  
23 words, the property tax which impacts this revenue  
24 request also previously had one-third of the  
25 property tax of the system tax allocated to water

1 and two-thirds allocated to the wastewater. This  
2 was very consistent with the UPIS for both systems.

3 If you look at the 2008 and 2009 annual  
4 report, all of a sudden the water system now bears  
5 55 percent of the allocation and the wastewater  
6 system which has the greatest allocation of UPS  
7 only gets 45 percent.

8 Further, these allocated costs and the  
9 redistribution costs, for example, change the water  
10 system from a profitable 10 percent return on  
11 investment in 2007 to a negative 3 percent return  
12 on investment without any increase in water being  
13 pumped in purchase power or materials used to treat  
14 the water.

15 So in other words, the operating expense for  
16 the production of water remained the same but the  
17 expenses moved that from a profitable 10 percent,  
18 more than 10 percent return, to less than  
19 3 percent, a negative 3 percent.

20 We would like to request the Commission to  
21 help us also figure out where these allocated costs  
22 come from from the Phoenix Project and how the  
23 numbers were used to allocate the cost of the  
24 Phoenix Project. We accept that we're going to  
25 bear some cost, but we have no idea -- the thought

1 process that was told to us is that they -- one  
2 case used customers, another case used ERCs. We  
3 would like to know which one they used and what  
4 particular numbers they used and how -- and what's  
5 the total that was then used to get our  
6 eight-tenths allocation.

7 So that -- and therefore we're requesting,  
8 number one, that the Commission direct the staff to  
9 verify that the actual cost -- the allocated costs  
10 reflect actual costs previously distributed  
11 differently. We're assuming that the PSC did  
12 conduct an audit to verify the accuracy of the new  
13 system, that the costs from like 2007 when they get  
14 redistributed in the new accounting system come out  
15 to be no different in terms of expenses.

16 And we would like an explanation from the  
17 utility as to why the property tax distribution  
18 changed significantly in 2008 and again in 2009.  
19 And then what methodology numbers were used in the  
20 Phoenix Project.

21 We also take exception to the way the revenue  
22 request for property tax is handled in Schedule 10.  
23 The property tax bill provided to us in the letter  
24 from the utility for 2008 was -- for the entire  
25 system was a little over \$40,000. Whereas the

1 revenue request placed the system cost at \$57,000.  
2 Now, the utility's explanation to us focused on  
3 accruals. They said, well, we accrued some of the  
4 cost from 2007. Because if you look, the total  
5 book value between 7 and 8 represents the two tax  
6 bills. But when you talk about cost, the cost is a  
7 bill for 2008. When you pay the bill doesn't  
8 really matter. The utility can pay it early, pay  
9 it late, and it can accrue or not accrue, but into  
10 the costs that should be associated with it, it  
11 should be the actual cost.

12 So then there's a second issue in that. In  
13 the revenue request, they are asking for additional  
14 revenue to cover the fact that the property tax  
15 will go up further because the UPIS will increase  
16 due to the fact they expanded the water plant for  
17 \$1.2 million approximately and they did a water  
18 repair the next year in 2008 for about 60,000.  
19 Well, the interesting part that we have been unable  
20 to verify, but the tax bills between 2006 and 2007  
21 show an increase of \$1.2 million in assessed value  
22 which ironically corresponds very much to the cost  
23 of the waste water plant basically, and the tax  
24 bill between 2007 and 2008 contains the  
25 \$60,000 increase which we think represents the

1 water thing that they're asking for.

2 So we think that the revenue request reflects  
3 that aspect already that is covered in the taxes  
4 that they paid in 2007 and 2008. So we're  
5 requesting that they reconsider the two items that  
6 we present in there, and if they find, they put the  
7 appropriate cost into the final revenue request.

8 We are concerned about sludge hauling expense  
9 and rate case expense because very interesting,  
10 sludge hauling expense seems to go up \$30,000 after  
11 every rate case hearing. After the first one it  
12 went up from 20,000 to 50,000; after the second one  
13 in -- the test case from 2005 that was in 2007, it  
14 went from 50,000 to 80,000.

15 Now, it's interesting that this year, 2009,  
16 it's gone down by 15 percent. We have no way of  
17 knowing what the expenses and how they're incurred  
18 in that, and simply on the rate case expense we  
19 have no way of knowing. They're just numbers in  
20 the recommendation. And as a result of that, we're  
21 curious. For example, how much of the Phoenix rate  
22 case expense is allocated out in this rate case  
23 expense?

24 Those basically are the concerns that we had  
25 with the staff's recommendation and we appreciate

1 the opportunity to present our thoughts and request  
2 to you for consideration. Thank you. We'll  
3 entertain any questions that you may have.

4 **CHAIRPERSON ARGENZIANO:** Thank you.  
5 Commissioners, any questions for the good doctor?  
6 Okay. Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Yes, ma'am. Thank you.  
8 To probably be overly simplistic, so I apologize  
9 for that in advance, listening to your comments and  
10 having just a moment to quickly skim over the  
11 handouts that you've given us, I think that your  
12 concerns fall into maybe four general categories.  
13 And so I want to say that back to you and let me  
14 know if you agree or if I've missed something. And  
15 again this is being much more general.

16 The first would be the concerns raised about  
17 customer satisfaction and water quality in  
18 particular relating to changes that were proposed,  
19 made or not made, as a result of some of the  
20 discussion from the last rate case.

21 **DR. HALLEEN:** Exactly, yes.

22 **COMMISSIONER EDGAR:** Okay. A second area is  
23 the revenue request amount as it relates to the  
24 wastewater treatment plant expansion.

25 **DR. HALLEEN:** Exactly.

1           **COMMISSIONER EDGAR:** Okay. A third area is  
2 the cost allocation for the Phoenix Project and  
3 related issues.

4           **DR. HALLEEN:** Yeah. That --

5           **COMMISSIONER EDGAR:** And then another area is  
6 the cost allocation and distribution for issues  
7 related to property tax amounts.

8           **DR. HALLEEN:** Very good. Very good. You got  
9 my four.

10           **COMMISSIONER EDGAR:** And again you gave more  
11 particulars and we will get into all of those I'm  
12 sure. But does that kind of encompass the major  
13 areas of concern?

14           **DR. HALLEEN:** Exactly. That's right.

15           **COMMISSIONER EDGAR:** Okay. Thank you. That's  
16 helpful to me.

17           **CHAIRMAN ARGENZIANO:** Thank you.  
18 Mr. Attebery? Welcome.

19           **MR. ATTEBERY:** Thank you for allowing us this  
20 time to speak. First, just a general comment. As  
21 Dr. Halleen mentioned, there have been various  
22 pieces of correspondence and meetings and things to  
23 which the interested parties were not invited to  
24 for some reason. The various times that -- that  
25 the Commission or the staff had -- had meetings or



1 had things going on, we were not invited to.

2 I call your attention to a March 17th meeting  
3 that was supposedly between all interested parties  
4 for this docket. And I received no invitation to  
5 that meeting. And I don't think anyone in the HOA  
6 was invited to it.

7 So I think, you know, that's a concern that --  
8 that we're only getting part of the story for this  
9 rate request because we're not privy to all of the  
10 information that is passed back and forth.

11 Secondly, back on the quality, just very  
12 briefly. There was -- in our discussions, we had  
13 recommendations that were put out by the utility's  
14 TBE unit that was not implemented or not discussed  
15 with the HOA that we feel should have been a part  
16 of discussion with that.

17 Also, the -- they maintain that the customer  
18 complaints are down; however, because of this lack  
19 of correspondence, we didn't even know that changes  
20 were made so we had no reason to furnish additional  
21 complaints.

22 They admit they had received 250 letters and  
23 e-mails from customers expressing concerns, but in  
24 the docket, they say they closed 12. So what  
25 happened to the other 230-some complaints? I think

1 most of those were through e-mails, and maybe they  
2 don't consider e-mails a legitimate form of  
3 complaint. We feel in this modern technological  
4 age, that emails are just as important as letters  
5 are and so those should also be addressed as  
6 legitimate customer complaints.

7 That's basically everything that I had to say.  
8 Dr. Halleen covered all of the other points. Thank  
9 you for our being here.

10 **CHAIRPERSON ARGENZIANO:** Thank you. Any  
11 questions? Okay. You're recognized.

12 **MR. REHWINKEL:** Yeah, I had some further  
13 remarks.

14 **CHAIRPERSON ARGENZIANO:** Okay. I'm sorry, go  
15 right ahead, Mr. Rehwinkel.

16 **MR. REHWINKEL:** Thank you. The Public Counsel  
17 thinks that the concerns raised by the customers  
18 are very valid based on our own independent  
19 analysis of the case. They of course speak with  
20 expertise about the quality of the service that  
21 they receive from the utility. But with respect to  
22 the accounting issues, we have identified some of  
23 the same issues.

24 But before I get into some additional  
25 accounting issues and to -- before I discuss some

1 of those accounting issues, I would first like to  
2 address a broader issue that, Commissioner Edgar, I  
3 cannot identify a specific issue because this is an  
4 overarching issue that I would like to first  
5 address. And it has to do with this case being  
6 filed as a limited proceeding in the context of the  
7 other Utilities Inc. cases that you are hearing  
8 today and that you are hearing -- there's a --  
9 there are four other Utilities Inc. cases, the  
10 three today following this one and what I call the  
11 consolidated Utilities Inc. rate case, which is a  
12 multi-county interconnected case.

13 In this context, and in the same general time  
14 frame, Utilities Inc. has filed for a limited  
15 proceeding. In our opinion this sticks out like a  
16 sore thumb. The limited statute -- I would like to  
17 read this to you because I think it bears  
18 refreshment because I think limited proceedings are  
19 something that the Commission is maybe seeing more  
20 of. And a water and sewer case is really no  
21 different than an electric case when it comes to  
22 limited proceedings because it has an impact on  
23 customers, per customer almost the same magnitude.  
24 So we would like to ask that you consider this when  
25 you consider this case.

1           367.0822 states, "Upon petition or by its own  
2 motion, the Commission may conduct limited  
3 proceedings to consider and act upon any matter  
4 within its jurisdiction, including any matter the  
5 resolution of which requires a utility to adjust  
6 its rates.

7           "The Commission shall determine the issue to  
8 be considered during such a proceeding and may  
9 grant or deny any request to expand the scope of  
10 the proceeding to include other related matters.  
11 However, unless the issue of rate of return is  
12 specifically addressed in the limited proceeding,  
13 the Commission shall not address -- adjust rates if  
14 the effect of the adjustment would be to change the  
15 last authorized rate of return."

16           That's the limited statute, and that's where  
17 your grant of authority to conduct limited  
18 proceedings comes from. And the key sentence is  
19 right there in the middle of that paragraph, that  
20 it is your discretion, not anyone else's, but your  
21 discretion about the scope of the proceeding.

22           You also have a rule that addresses limited  
23 proceedings. And this rule states that in  
24 section -- this is Rule 25-30.445, and it is  
25 information and instructions required of water and

1 wastewater utilities in an application for a  
2 limited proceeding. Section 4(a) states that a  
3 detailed statement of the reasons why the limited  
4 proceeding has been requested shall be filed.

5 The company filed an application for the  
6 limited proceeding that consists of three pages.  
7 The first two pages are essentially what I call  
8 precatory information that has some general  
9 information about mailing addresses and whatnot.  
10 And compliance with section 4(a) that I just read  
11 is a six-line 67-word statement that essentially  
12 lists the items that are requested.

13 It lists four items. Number one, it says,  
14 "The purpose of this limited proceeding is for the  
15 utility to, one, recover the cost of the  
16 modifications to utilities' wastewater treatment  
17 plant. Two, to recover the cost of Project  
18 Phoenix, the utility's modernization of its  
19 information, customer service, and computer  
20 systems. Three, to recover the cost of the supply  
21 main upgrade. And four, to recover the cost of the  
22 increases in property tax and sludge hauling.

23 Now, there's four numbered items there but I  
24 contend there are five items there because I don't  
25 think property taxes and sludge hauling have

1 anything to do with each other. They're mutually  
2 exclusive items. Independent.

3 Your rule further states that in -- and this  
4 is in subsection 6 -- in evaluating whether the  
5 utility's request is improper for a limited  
6 proceeding, the Commission will consider factors  
7 such as, A, whether the utility's filing includes  
8 more than four separate projects for which recovery  
9 is sought, and the requested rate increase exceeds  
10 30 percent. Corresponding adjustments for a given  
11 project are not subject to the above limitation.

12 Well, it's unclear what projects mean but I  
13 think it means items for recovery. In any event,  
14 there's five, not four. And I would also note that  
15 the company's request includes 20-something  
16 percent -- 21 percent for water and 43 percent for  
17 wastewater. Right off the bat the filing to me is  
18 inconsistent with a limited proceeding, but that's  
19 only the beginning of the problem. Because our  
20 **position is that what is styled as a limited**  
21 **proceeding begins to not look like a limited**  
22 **proceeding because it is more than a few issues.**  
23 **It is larger in scope than maybe the rule**  
24 **contemplates. And as you will see when I discuss**  
25 **later, I think the utility has sought to exercise**

1           **their discretion to limit the Commission's**  
2           **discretion about what to look at in the scope of**  
3           **this proceeding.**

4           On -- in the recommendation, I would also note  
5           on Issue 4, if I could direct you to page 14, there  
6           is a discussion at the bottom of this page about  
7           use and useful. And at the bottom of the page it  
8           states that during the last rate case, use and  
9           useful for wastewater was at 95.71 percent. It's  
10          unclear to me based on looking at this filing,  
11          which is the MFRs -- and I have to represent to you  
12          that I have not read all of the discovery requests  
13          but I believe I've looked at all of the affirmative  
14          requests of the utility that are contained in the  
15          Commission's docket files, and I don't see a  
16          specific request that used and useful that would  
17          apply to the entire assessable wastewater plant is  
18          part of the request that is in this -- not a  
19          petition but its application seeking a change. I  
20          contend that's Item No. 5 -- 6.

21          And that is not -- and when you read the  
22          discussion in the staff's recommendation, it refers  
23          to a recent expansion, not necessarily that the  
24          requested items have caused use and useful to go  
25          up. They look at other factors such as customer

1 usage. Those are things that would be looked at in  
2 a rate case, not necessarily a limited proceeding,  
3 based on a full engineering analysis.

4 And another thing that a limited proceeding  
5 doesn't usually having, in this case did not; is an  
6 audit of the utility for their financial  
7 statements. Part of the reason I believe that you  
8 have a rule that tries to limit the nature of a  
9 limited proceeding is so you don't have to do these  
10 audits. But as the case expands, kind of on this  
11 continuum of an expansion of issues, the need to  
12 look at more and more issues that might impact the  
13 case grows, and the fact that you don't have an  
14 audit begins to become an obvious concern and it is  
15 a concern of the customers.

16 Again, I would take you back to the statute  
17 that I just read, that it is your discretion, not  
18 the company's discretion, about whether or not to  
19 expand the case. We believe, and you've heard  
20 customers express concerns about allocation of  
21 expenses with respect to Project Phoenix. We think  
22 that's a legitimate concern because there are other  
23 potential offsetting impacts that a -- that a  
24 mechanization system would -- would impose on a  
25 large organization. Organizations do not incur



1 expenses to mechanize and modernize if they don't  
2 save dollars down the road. And we think that  
3 there has been a lack of looking at the downstream  
4 benefits of this system.

5 We would request that if you go forward with  
6 this as a limited proceeding, that you also  
7 consider the current leverage graph formula for  
8 return on equity that you are looking at today,  
9 you're voting out today. This is a return on  
10 equity that would be, in effect, going forward  
11 during the same time that customers' rates will be  
12 in effect.

13 We also urge that you consider other common  
14 and miscellaneous expense allocations and offsets  
15 that might result from the overall Utilities Inc.'s  
16 allocations to this system.

17 In the handout that we have passed out, I  
18 would like to ask you to turn to what is numbered  
19 page 9 of 12. And this is the second page of a  
20 December 8, 2009 letter from the utility to the  
21 staff responding to the fourth data request that  
22 your staff sent to this company.

23 And if you will look -- if I can direct you to  
24 page 9 of 12, question No. 4, your staff asked a  
25 series of questions. Items 4(a), (b), (c), (d) and

1 (e) about variations in expense, some that one  
2 might read as could be beneficial to the customers  
3 in a determination of revenue requirement. And  
4 then ask you to look at the response on page 10 of  
5 12 that says items 4(a) through 4(e) are outside  
6 the scope of this limited proceeding. And then  
7 they give an explanation for why they don't think  
8 they should answer that question.

9 I would also ask you to turn to page -- well,  
10 on that -- on page 12 of 12, question No. 5, there  
11 are -- there was a question asked by the staff  
12 about -- that looks like there could be some  
13 potential reductions to salaries and wages. At  
14 least the staff was asking about these. And the  
15 response was, "Item No. 5 is outside the scope of  
16 this proceeding." The company did not answer that  
17 question. They did not answer the four questions  
18 associated with question No. 4.

19 Okay. We raise this and we point you to the  
20 rule that says that the company should, in this  
21 document, give their reasons, a detailed statement  
22 of the reasons why the limited proceeding has been  
23 requested. We think that more than a standalone  
24 system, a mom and pop system that might be out  
25 there, you have a utility that serves these

1 customers as part of a big entity. One of the  
2 largest water companies in this country. And they  
3 have chosen to kind of carve up the way they filed  
4 their case within a 90-day period.

5 They filed this case on June 30th, Pennbrooke  
6 on December 28th, Longwood on September 29th,  
7 Sanlando on September 30th. Those three cases you  
8 will hear after this one. And on September 30th  
9 they also filed a test year letter for what I call  
10 the consolidated Utilities Inc. cases. And that  
11 case was ultimately filed on February 10th.

12 In that context, with a system that allocates  
13 a lot of expenses and has a \$21 million billing  
14 system that is being allocated to all of their  
15 entities including this one, coming in and asking  
16 for only what I would call the debits for your  
17 consideration and not letting you look at the  
18 credits is a problem when you are looking at this  
19 large an entity that has these kind of common costs  
20 that are allocated. And I think these customers  
21 deserve a little bit better scrutiny and a little  
22 bit better consideration about what the true scope  
23 of this proceeding ought to be in this context.

24 Here's a time when your staff is auditing the  
25 books of the entire utility. The company just

1 filed on the 28th a response to the audit request  
2 that applies to -- to the consolidated system, and  
3 some of those audit issues address costs that are  
4 common and would be allocated to the utility and  
5 the company agrees with most of these adjustments.  
6 I don't know if they would benefit the company or  
7 would be credits on the -- on the books for the  
8 period going forward, but we won't know that  
9 because the company has asked -- has said that  
10 there's not -- it's outside the scope of this  
11 proceeding.

12 Yes, I do realize that they've asked for a  
13 2008 test year, but you're here to issue a PAA  
14 about what you think is the right thing to do. And  
15 I think what you think is the right thing to do  
16 should consider forward looking adjustments that  
17 are within your discretion. Forward looking  
18 adjustments would say we think that these types of  
19 expense levels match the time period for which  
20 these rates will be in effect so we think you have  
21 the discretion under the statute that we have cited  
22 here, to -- to shape the scope of this proceeding.  
23 And we would ask that you do that.

24 This case cries out for the utility -- for the  
25 Public Service Commission to use its discretion

1 that you're given by the legislature in limited  
2 proceedings.

3 You've also heard about quality of service  
4 from the customers. It appears undisputed that  
5 certain safety related violations have occurred.  
6 And I believe the attorney's fees have been  
7 expended and included in rate case expense to  
8 address these issues. Mr.-- Dr. Halleen mentioned  
9 a show -- a citation from Polk County. And I think  
10 your staff notes in issue one that there were  
11 indeed some violations, primary violations of the  
12 water quality that occurred earlier this year. And  
13 some of that required responses to your staff that  
14 required rate case expense, I believe, from the  
15 utility to deal with. I don't think the customer  
16 should have to pay for that.

17 I would like to now turn the fact issue number  
18 3 which is rate case expense. And again falling  
19 back on the context that I have put forward about  
20 this case in light of the other three cases you  
21 have here and the rest of the system, the  
22 consolidated system being filed, the company filed  
23 this three-page application and then proceeded to  
24 have to answer five or six rounds of discovery from  
25 the staff, some of which they didn't answer.

1           In the staff recommendation on Issue 3, you  
2 will note on page 10 that the original estimate for  
3 legal and filing fees is \$17,625 out of a total  
4 estimate of \$88,259. That's about 20 percent,  
5 legal fees constituting 20 percent of the overall  
6 rate case expense.

7           Ten days before the Public Counsel intervened,  
8 this estimate was revised to increase legal fees to  
9 \$43,012 out of a revised total estimate of \$70,780,  
10 or 60 percent of rate case expense was going to be  
11 legal fees.

12           Public Counsel has served no discovery. We  
13 requested and held with the staff and the company a  
14 consolidated discovery meeting to deal with all  
15 five cases saving money and saving allocations of  
16 these costs to the company.

17           In its estimate to complete that's shown on  
18 page 11 of the staff's recommendation, there's  
19 significant dollars here that -- that estimate that  
20 they will need to respond to requests from the  
21 Public Counsel and staff. I don't know that these  
22 dollars are truly going to be actually incurred but  
23 they -- they essentially, except for an adjustment  
24 to the mix of attorney's time and fees, are  
25 included in the filing.

1           We believe rate case expense is overstated in  
2 light of the fact that the way this case was filed,  
3 it put a lot of pressure on the staff to ask a lot  
4 of questions and to fill out the gaps.

5           There was quality of service issues that  
6 required significant attorney time, it appears, to  
7 address cost expense that are allocated to the  
8 customers.

9           We believe that in light of the  
10 unsubstantiated nature of this filing, that does  
11 not comply with the rule. That the overstatement  
12 of expenses that you've heard some about and I will  
13 address in the next section, that the issues  
14 related to violations of water quality or the time  
15 related to violations of water quality standards  
16 that caused expense, the lack of justification of  
17 the increase in legal fees from the original  
18 \$17,000 estimate to \$43,000, and the lack of  
19 cooperation with this company, with your staff in  
20 answering questions should cause legal rate case  
21 expense to be addressed, again different than the  
22 staff has recommended and reduced perhaps in half.

23           I would like to turn to Issue 4. Public  
24 Counsel believes that even if you proceed with the  
25 limited scope of the proceeding that the company

1 has requested, that there are several errors that  
2 need to be addressed, some of which you've heard a  
3 little bit about so far.

4 We believe the cost of capital is overstated  
5 in two areas. First of all, in the calculation of  
6 the required overall rate of return, the company  
7 has used debt and equity only. And your rule  
8 requires in section 25-30.445(4)(e) that all  
9 sources of capital be utilized. And doing that  
10 would reduce the -- using all sources of capital,  
11 reduce the ROR, rate of return, from 8.87 to 8.40.  
12 We also believe you should use the current leverage  
13 formula you have and you will be voting on today,  
14 and I don't believe there will be any dispute  
15 about.

16 Property tax expense you've heard about in  
17 our -- we agree with the customers wholeheartedly.  
18 We would also note in our exhibit that we have  
19 passed out, if you will look on page 3 of 12 for  
20 the water system, the company booked in 2009 in  
21 account 408.11 \$16,637. On page 4 or 12, for the  
22 wastewater system, same account, \$15,271. That's a  
23 total of \$31,894.

24 In this case, and one of the factors, one of  
25 the things cited in the application, item 4(e), was



1 property tax increase. The company's request has  
2 \$57,703. We believe you should use either  
3 \$31,894 or something along the lines of what is in  
4 the exhibit for the 2010 books but the 2009 tax  
5 year. They paid \$35,382. That's shown on page 6  
6 of 12. That's the early payment discount amount  
7 versus the assessed amount of 36,857 that you would  
8 pay in 2010 if you paid on time. If you pay early,  
9 which the Commission requires companies to do,  
10 35,328 is the number. That is a marked difference  
11 from the \$57,703 that is included in the request  
12 and included in the staff's recommendation.

13 The company -- the customers have talked about  
14 sludge hauling expense, \$87,500 is what's in the  
15 case. The amount that's booked in 2009 as shown in  
16 the annual report that they filed with you, is  
17 shown on page 2 of 12. If you look on account 711  
18 up near the top of that page, \$68,485. Compare  
19 that to the \$87,500 that's in the case. That's a  
20 difference of \$19,015. That needs to be adjusted  
21 downward.

22 Finally, we believe that the staff -- the  
23 company overstated income tax expense in the  
24 filing. The company calculated income tax expense  
25 based on overall rate of return which includes

1       debt. We believe that income tax expense, debt is  
2       a tax deductible item, not a taxable item, that  
3       debt expense. We believe that interest -- that  
4       income tax expense should only be calculated based  
5       on the equity portion of the return, or the return  
6       on equity. And if that is done, the consolidated  
7       rate reduction is about \$22,000. \$3,112 reduction  
8       to water and \$19,273 to waste water.

9               Finally, Commissioners, Item 8 -- Issue 8 is a  
10       significant concern to our office and is a  
11       significant concern to the customers who would be  
12       required to pay these rates. Your staff is  
13       recommending that in the event of a protest, that  
14       something called temporary rates should go into  
15       effect. And temporary rates would just be these  
16       rates that are recommended here subject to refund.

17               We challenge this assertion. Let me read the  
18       staff's analysis. On page 22 it says, "This  
19       recommendation proposes an increase in water and  
20       wastewater rates. A timely protest might delay  
21       what might -- may be justified -- may be a  
22       justified rate increase resulting from an  
23       unrecoverable loss of revenue to the utility.  
24       Therefore, in the event of a protest filed by a  
25       substantially affected person" -- remember that

1 term -- "staff recommends that the recommended  
2 rates be approved as temporary rates."

3 There is no authority in the law or your  
4 precedent for such a thing in this type of case.  
5 This is contrary to your precedent, it's not  
6 supported by the evidence or the nature of this  
7 case, it's not even requested by the utility.

8 And, this is important, because the company  
9 refused to answer your questions, your staff's  
10 questions about the total nature of their earnings,  
11 they cannot meet the standard contained in your  
12 precedent about emergency rates or rates that  
13 require you to consider financial distress.

14 There are three statutes, Commissioners, that  
15 bear upon the issue of interim rates. The first  
16 one is 367.082, and that's the interim statute.  
17 well, first of all, let me go back and state, in  
18 this Issue 8 there is no citation to any authority  
19 whatsoever for temporary rates. And there's a  
20 reason for that. Because there is none.

21 367-0822 is -- I mean, 367.082 is the interim  
22 statute for water and wastewater. Your precedent  
23 that I will get to in a minute says, "interim is  
24 not -- the interim statute is not applicable or  
25 available for use in a limited proceeding."

1           367.081(8), that is the provision of law that  
2           the other three cases are filed under where the  
3           company can come in and ask for you to issue a PAA  
4           in a full-blown rate case, and that if you do so  
5           and a company in a -- a party other than the  
6           company protests it, that those rates can go into  
7           effect subject to refund on an interim basis. This  
8           doesn't apply to this case because they didn't file  
9           asking for relief under that section.

10           367.0814, that's the SARC statute. Subsection  
11           (7) says -- this is for very small class C water  
12           companies under a certain level -- "In the event of  
13           a protest or appeal by a party other than the  
14           utility, the Commission may provide for temporary  
15           rates subject to refund with interest."

16           The statute specifically describes temporary  
17           rates and when they can be -- when they can be  
18           implemented, and that doesn't apply to this case  
19           because not only are they a class B, they didn't  
20           come in asking for staff assistance, nor could  
21           they.

22           My point is you have three statutes that  
23           specifically address interim rates and none of them  
24           address this situation right here. So does that  
25           end the question? No, it does not. Because there

1 is Commission precedent for temporary emergency  
2 rates. No, there's no Commission precedent for  
3 temporary rates.

4 **CHAIRPERSON ARGENZIANO:** Commissioner Skop?

5 **COMMISSIONER SKOP:** Thank you, Madam Chairman.  
6 Mr. Rehwinkel, in regards to the statutes that  
7 you're citing -- and again it seems that there's  
8 multiple concerns here -- do you happen to have a  
9 handout perhaps showing the statutes and why Public  
10 Counsel is alleging that the Commission does not  
11 have the authority under the statutory reference to  
12 do what you say that we should not do in this case?

13 **MR. REHWINKEL:** I have an extra copy of the  
14 statutes.

15 **COMMISSIONER SKOP:** I've got it before me.

16 **MR. REHWINKEL:** One copy. But, I mean, all --  
17 I can read the statutes. That's it. I mean, and  
18 what I was going to get to, I -- you know, I  
19 understand that I haven't provided a handout. Part  
20 of my problem, staff recommendation came out 12  
21 days ago. There's not a shred of authority in here  
22 for temporary rates.

23 So what I spent my Memorial Day weekend on was  
24 doing Westlaw looking at Commission precedent. And  
25 I looked at dozens of cases. And I can represent

1 to you that all of the cases that I looked at,  
2 except for one or two very, very small shoebox, mom  
3 and pop cases, the company always asked for limited  
4 rates for temporary or emergency rates in the  
5 context of their case.

6 Largest -- one of the largest water utilities  
7 in the nation, they can come in and ask -- they can  
8 take care of their own. They don't need anybody to  
9 do something for them.

10 **CHAIRPERSON ARGENZIANO:** Why don't we do this.  
11 Why don't you make your final points because I've  
12 given plenty of time and I want to give the company  
13 the same amount of time if they need be so that we  
14 have a thorough discussion. And then what we can  
15 do, Mr. Skop, is ask staff on those -- on those  
16 very issues some questions pertaining to those  
17 statutes also.

18 **COMMISSIONER SKOP:** That's fine. Thank you.

19 **MR. REHWINKEL:** Okay. I can cite to you Gulf  
20 Utilities in 1998, the company requested -- there  
21 was a limited proceeding. The Commission stated  
22 that interim -- this is kind of one of the leading  
23 cases in your body of law, that interim rates are  
24 not available. It has been the past Commission  
25 practice and policy not to use interim statute in

1 limited proceedings. And they further said that  
2 they noted, the Commission noted that the limited  
3 proceeding statute was passed after the interim  
4 statute and did not allow for interim rates in it.  
5 so that was one of the points that they made.

6 But they said that in the past, temporary  
7 emergency rates have been allowed in order to  
8 preserve the public health, safety and welfare.  
9 Your precedent says that in cases where the DEP has  
10 come in and they put a real screws down on the  
11 utility, got mandates you've got to interconnect,  
12 you've got to put in some improvements and there's  
13 a cash flow issue maybe with the company that they  
14 need the money in order to comply, get into this  
15 catch 22. So you have said, if you have that kind  
16 of an exigent circumstance that emergency temporary  
17 rates can be put into place. No emergency here, no  
18 emergency alleged.

19 Utility's Inc. case in 1992, emergency -- I  
20 mean interim statute doesn't apply. No basis shown  
21 for emergency rates. Betmar Utilities, kind of an  
22 odd case, they did -- you did grant emergency  
23 temporary rates in a limited proceeding. There was  
24 a -- some health issue associated with installation  
25 of back flow preventers, kind of a one of a kind

1 case. But again the Commission found that an  
2 emergency existed.

3 Aloha, 2001, the company requested, you denied  
4 it, said that a true emergency did not exist. But  
5 again, that was part of a petition that was filed  
6 for these types of rates.

7 Ortega Utilities, that's a good case. That  
8 case you granted interim rates. You granted these  
9 emergency temporary rates. The company requested  
10 them, the United States Environmental Protection  
11 Agency mandated they interconnect with the City of  
12 Jacksonville. The City of Jacksonville said you  
13 have to do it by a certain date or you're going to  
14 lose your -- the contract you have with us. So  
15 there was a certain level of exigency there and the  
16 Commission allowed it. Again citing public health,  
17 safety and welfare.

18 Mad Hatter Utilities of Pasco County. You  
19 granted it, you said, "Given the facts set forth in  
20 the petition and information we have received from  
21 the county and other sources, we believe the  
22 situation requires our immediate action in order to  
23 preserve the public health, safety and welfare.  
24 Therefore, we think it's appropriate to grant the  
25 instant request for emergency rates." Go on and



1 on. And I don't belabor this any more, but these  
2 circumstances do not exist here. And so we -- we  
3 strongly object to that. That closes my remarks.  
4 Thank you.

5 **CHAIRPERSON ARGENZIANO:** Okay. Any questions?  
6 Commissioner Edgar?

7 **COMMISSIONER EDGAR:** Thank you.  
8 Mr. Rehwinkel, I appreciate you going through your  
9 comments orderly issue by issue as you did. That's  
10 helpful.

11 I would like to come back for the moment to  
12 this sort of overarching issue that you raised at  
13 the beginning of your comments and I think you kind  
14 of closed with kind of at the end of your comments  
15 now regarding the appropriateness or applicability  
16 of using the limited proceeding statute.

17 I guess my first question is, what remedy or  
18 approach do you request or recommend at this point  
19 in time, realizing all of the work that has gone in  
20 to from the customers, your office, the utility,  
21 our staff, and many others, I'm sure, that brought  
22 us to this point today, what approach do you  
23 recommend to address those concerns? Efficiently  
24 and effectively, I would hope.

25 **MR. REHWINKEL:** Yeah. It's an excellent

1 question. We think at a minimum you should make  
2 the adjustments that we recommend. I do have an  
3 additional handout that I can provide that shows  
4 what we think their true revenue requirement is,  
5 assuming you stay within the limited scope.

6 Certainly there's a possibility that a protest  
7 could ensue, and certainly if a protest ensued, I  
8 think you would see the issues that you've heard  
9 today raised in that protest. Because, you know,  
10 cases can -- can involve both issues of fact and  
11 law and policy, and I think this case would beg for  
12 that.

13 I don't have -- because they haven't provided  
14 information and we haven't done the analysis about  
15 how these other factors might offset the request.  
16 And I think the Dr. Halleen has raised a very good  
17 issue about the sources of funding for the  
18 wastewater treatment expansion.

19 I don't -- I don't have any concrete dollars  
20 to say adjust this, adjust this, adjust this, but  
21 that's part of the problem that we've been left  
22 with based on the scope of this proceeding.

23 So my answer to your question it it's a good  
24 one and I don't have a full answer to you other  
25 than we think you at least need to make the

1 adjustments that we've laid out here, if that's --  
2 if that's helpful.

3 I understand I'm not -- one of the  
4 circumstances that you have when you're this far  
5 down the reasoned and you've had this much rate  
6 case expense expended is say, well, convert it to a  
7 rate case. Where does that leave you? You can win  
8 the battle and lose the war. And we understand  
9 that. And I would not want to visit that upon the  
10 customers. So I think what --

11 **COMMISSIONER EDGAR:** That was going to  
12 probably be my next question.

13 **MR. REHWINKEL:** Yeah. And I think -- you  
14 know, I don't know if any further -- we haven't  
15 heard from the parties and staff about what's out  
16 there, but I think this case does not beg for a  
17 quick resolution here today. But if you have to go  
18 forward, we think you should at least make those  
19 adjustments.

20 **COMMISSIONER EDGAR:** Okay. And then just one  
21 more question on that point and then I'm sure we'll  
22 get into the more specific adjustment request that  
23 you've made. And I look forward to hearing from  
24 the company on all of these points as well.

25 It's a little -- it gives me pause to hear

1 some of these legal issues being brought up at this  
2 point for all of the reasons that we are  
3 discussing, not the least of which, maybe the most  
4 important of which is rate case expense and time  
5 and resources from all interested that have gone on  
6 to this point.

7 So I guess -- you know, I'm just wondering  
8 when I look at the information before us and see  
9 that the application was filed for a limited  
10 proceeding pursuant to 367.822 as you've noted  
11 almost a year ago, and I would expect that prior to  
12 making the request for intervention, that of course  
13 your office would have looked into the case and the  
14 application a little bit, that that grant of  
15 intervention was given by this Commission the day  
16 after it was requested a couple of months ago. Was  
17 there not an opportunity to maybe raise some of  
18 these issues earlier so that we would be in a  
19 different posture?

20 **MR. REHWINKEL:** Well, Commissioner --

21 **COMMISSIONER EDGAR:** And that's separate from  
22 the specific adjustments that you --

23 **MR. REHWINKEL:** Sure. I understand. Let me  
24 say this. Issue 8, as far as I know, has only been  
25 alive since the day this recommendation was filed.

1 Again I pointed out this was not requested by the  
2 company.

3 **COMMISSIONER EDGAR:** I understand. I do have  
4 some --

5 **MR. REHWINKEL:** We would have had no reason,  
6 no reason whatsoever based on the precedent of your  
7 Commission to think that temporary rates would be  
8 part of this recommendation because --

9 **COMMISSIONER EDGAR:** I'm sorry. Am I hearing  
10 you say that only Issue 8, the recommendation for  
11 temporary rates to go into effect, is the only  
12 concern that you have about a limited proceeding  
13 being the procedural mechanism used in this case?

14 **MR. REHWINKEL:** No, no, no. The -- the that's  
15 just -- that's an issue that has arisen within  
16 staff recommendation and we think it's a serious  
17 issue that -- that -- there are other issues  
18 about -- about expenses and the other adjustments.  
19 We've been working -- like I mentioned to you  
20 earlier in my remarks, we had a meeting, I want to  
21 say it was in February -- I mean in March.

22 But Patricia Merchant is here and can address  
23 kind of the level of our involvement and the level  
24 of involvement with the staff and the company in  
25 that regard. I don't think that the Public Counsel

1 sat on its laurels and waited for this thing to  
2 happen.

3 **MR. MARTIN:** Good morning, Commissioners.  
4 Tricia Merchant with the Office of Public Counsel.  
5 We did meet with staff and we met with them on all  
6 of the rate cases and Cypress Lakes, and we  
7 presented our concerns at that time about the  
8 company picking only the increases that would  
9 impact rates and not choosing the decreases.

10 And one of the things that I've looked at is  
11 compared the annual reports from 2005 all the way  
12 up to 2009 which we just got late in May. But the  
13 company's costs, the rate base, has dropped a lot  
14 more than it's increased. And that hasn't been  
15 considered in the company's petition. So that's  
16 one thing. Accumulated depreciation.

17 **COMMISSIONER EDGAR:** What did you say had  
18 dropped.

19 **MS. MERCHANT:** Rate base, their investment in  
20 their plan, their total investment in their plan.

21 So they want us to just look at the Phoenix  
22 cost and the water plant and the waste water  
23 treatment plant additions, and they included one  
24 year of depreciation expense on that as a reduction  
25 to that.

1           But what happened in reality is as time went  
2           on from that last rate case, test year 2005,  
3           depreciation for 2006, 2007, 2008 and now 2009  
4           which is historical has reduced that investment.  
5           And we looked at the company's rate of return in  
6           2009, in their annual report. And their expenses  
7           have gone down dramatically in 2009. 2008 was one  
8           of the highest years, it was the highest year. So  
9           it was going up, up, up, and then went back down in  
10          2009.

11           So there's a lot of changes that we have been  
12          looking at based on their own unaudited numbers but  
13          their filings. So we did address this and it was  
14          not considered by the company or by staff.

15           Now, the income tax error we did not find  
16          until we saw staff's recommendation. So -- when we  
17          got that out. And that's the first time we brought  
18          that up. But the property taxes, the sledge  
19          hauling, all of those went up in '08 and down in  
20          '09.

21           **COMMISSIONER EDGAR:** Thank you. I look  
22          forward to more discussion.

23           **CHAIRPERSON ARGENZIANO:** Just to expand on the  
24          question I think that Commission Edgar -- one of  
25          the questions that she asked, was one of your

1 problems -- well, I heard a few different problems  
2 with the limited proceeding. And going back to the  
3 rule you cited, to 25-30.445(4)(a), are you saying  
4 that what was required to be detailed wasn't  
5 detailed enough in your opinion?

6 **MR. REHWINKEL:** Yes, exactly, Madam Chairman.  
7 And -- and -- and not detailed in the context of --  
8 this -- the elephant in the room, which is all of  
9 this other stuff. You know, this big pot of common  
10 costs that are allocated that could -- that could  
11 positively impact the revenue requirement. That  
12 elephant in the room needed to be discussed and it  
13 wasn't.

14 **CHAIRMAN ARGENZIANO:** And also pertaining to  
15 that rule, I think under paren 6 you had mentioned  
16 that there were five projects, possibly six as you  
17 later elaborated, which that was another problem  
18 with it being a limited proceeding?

19 **MR. REHWINKEL:** Yes.

20 **CHAIRPERSON ARGENZIANO:** And then I believe --  
21 well, I guess that would be expanding the project.

22 **MR. REHWINKEL:** You could even look at the  
23 customer -- the quality of service issues and the  
24 need to respond to the violation that occurred as  
25 Item No. 7, because there are costs associated with



1 that that the customers have here and it was not  
2 part of the original request.

3 **CHAIRMAN ARGENZIANO:** And the reason I'm  
4 asking is I'm trying to get to the point you made,  
5 and then the company actually will respond to  
6 those. But also the cost of the capital, the debt  
7 and equity being used solely.

8 **MR. REHWINKEL:** Yes.

9 **CHAIRPERSON ARGENZIANO:** Rather than all  
10 costs; is that correct?

11 **MS. MERCHANT:** Right. They left out  
12 short-term debt which has a much lower cost and  
13 they left out deferred income taxes and customer  
14 deposits. Those two are not as material but the  
15 short-term debt is much lower.

16 **CHAIRMAN ARGENZIANO:** Okay. Thank you.  
17 Commissioner Skop, any questions?

18 **COMMISSIONER SKOP:** I'll wait to hear from the  
19 rest of the parties.

20 **CHAIRMAN ARGENZIANO:** Okay. Mr. Friedman?

21 **MR. FRIEDMAN:** Thank you. Madam Chairman,  
22 Commissioners, Martin Friedman of the law firm  
23 Rose, Sundstrom & Bentley and we represent Cypress  
24 Lakes Utilities in this matter.

25 Because the issues are so varied, we have

1 presentations by numerous people. I have with me  
2 also Christian Marcelli from my office. Back here,  
3 I think you all probably know John Williams whose  
4 the director of public affairs for the Utilities  
5 Inc. companies, and then with me is also  
6 Patrick Flynn who is the regional director who's  
7 the primary Florida representative, all of which  
8 will address the Commission on various issues.

9 **MR. DEVLIN:** Madam Chair, if I can have an  
10 opportunity. I speak for staff. We don't believe  
11 it's going to be possible to resolve all of the  
12 issues that are presented to us this morning, legal  
13 issues, regarding whether a limited proceeding  
14 should be used or is appropriate. And if it is,  
15 there's a protest, whether temporary rates are  
16 viable in the situation. There have been a lot of  
17 concerns expressed by Dr. Halleen and whether all  
18 of the adjustments should be -- were made that have  
19 been proposed by Mr. Rehwinkel.

20 I can't see us being able to resolve this, you  
21 know, oral fashion. I would strongly suggest -- we  
22 can spend more time here, but I think we're going  
23 to have to come back anyway. And another point, on  
24 the leverage formula, that's on here today. And if  
25 we come back in July, that could very well be a

1 final order at that point that we would take into  
2 our account in recommendation, subsequent  
3 recommendation, if you will. So I suggest at this  
4 time that we move on and defer this item to a July  
5 agenda.

6 **CHAIRPERSON ARGENZIANO:** Okay. The only  
7 problem is we didn't give the company their side to  
8 respond. And I think -- I think we should do that  
9 and then discuss that possibility next.

10 Commissioner Skop, did you want to say  
11 something first?

12 **COMMISSIONER SKOP:** Yes, Madam Chair.  
13 Although we may ultimately end of deferring the  
14 matter, in the interest of time I think it would be  
15 appropriate from a due process perspective to hear  
16 from the company and others. And I do have a  
17 concern that I want to address prior to deferral.

18 **CHAIRPERSON ARGENZIANO:** So Mr. Friedman, can  
19 I ask you this favor? Can we take like a  
20 four-minute break? Because I don't want to miss  
21 your side and I have to just excuse myself for a  
22 moment. So if we take a four-minute break, I'll be  
23 back and we can hear your total --

24 **MR. FRIEDMAN:** Thank you very much.

25 **CHAIRMAN ARGENZIANO:** Thank you.

1 (Break taken.)

2 **CHAIRMAN ARGENZIANO:** Continue.

3 **MR. FRIEDMAN:** Thank you very much. We're  
4 prepared to address all of these issues and spend  
5 another hour. I just wonder if you're going to  
6 defer -- if you're inclined to defer the case, you  
7 know, whether it is wise use of our time for us to  
8 make a -- to take an hour making an argument,  
9 although we're certainly prepared to do so and  
10 would like to do so.

11 I just wonder if you all are truly inclined to  
12 defer, I'm not sure what deferral is going to get  
13 us, but if that's your inclination, I'd suggest to  
14 you that we move on to the other cases we have.

15 **CHAIRPERSON ARGENZIANO:** Well, Mr. Friedman,  
16 it would depend on what you had to say.

17 **MR. FRIEDMAN:** Well, I'll start at the  
18 beginning then and I'll --

19 **CHAIRPERSON ARGENZIANO:** With me anyway. I  
20 don't know if Commissioners --

21 **MR. FRIEDMAN:** I'm sorry, what?

22 **CHAIRMAN ARGENZIANO:** I'm not going to speak  
23 to the other Commissioners. But for me, it would  
24 depend on what you had to say.

25 **MR. FRIEDMAN:** Okay. Well I'll try to address

1 all of the issues raised by Mr. Rehwinkel. Some of  
2 the technical ones, technical accounting ones I'm  
3 just not prepared to deal with because they haven't  
4 been raised before.

5 **CHAIRMAN ARGENZIANO:** Sure.

6 **MR. FRIEDMAN:** But the larger issue about  
7 whether it's appropriate for a limited proceeding  
8 or not, I mean, it is typical for a limited  
9 proceeding. If you look at your rules, whether  
10 there's four issues or five issues or six issues,  
11 it's still appropriate for a legal -- for a limited  
12 proceeding. That's a determination for you to  
13 make.

14 It doesn't say that there's a bright line that  
15 you can't go across 4 or you can't have a limited  
16 proceeding. That's not what the rule says or the  
17 statute says. Those are the guidelines that you  
18 all have set forth in your rule to determine when a  
19 limited proceeding -- because like Mr. Rehwinkel  
20 pointed out, you don't want to get to the point  
21 where you have so many issues that you might as  
22 well have filed a full rate case.

23 And we have filed numerous limited proceedings  
24 in the past where -- where four or five issues have  
25 been discussed. And so I don't think it's -- I

1 don't think this is inappropriate for a limited  
2 proceeding merely because of the fact that there  
3 are four or five or as Mr. Rehwinkel says, maybe  
4 even six issues depending upon how you look at it.

5 I would point out though when you -- when  
6 Mr. Rehwinkel raised the question of well, you  
7 know, there may be other issues out there that you  
8 ought to address, well, you know, that's -- there's  
9 a big elephant in the room. That's true of every  
10 limited proceeding, of every limited proceeding by  
11 virtue of the fact that it is a limited proceeding,  
12 you're only looking at several issues.

13 There obviously is always an elephant in the  
14 room to look at other issues. And so that's --  
15 that's -- I think is a red herring.

16 I would also point out that, that  
17 Mr. Rehwinkel made comment numerous times about the  
18 refusal of the company to respond to an issue of  
19 the salaries and making that a big issue. Well,  
20 you know, if you look at these other -- these other  
21 three rate cases that you will hear this morning,  
22 salaries is an issue in every one of them, and the  
23 issue is the salaries have gone up drastically.

24 So if -- if salaries would have been brought  
25 into this limited proceeding, it would not have

1           been a reduction in the revenue requirement for the  
2           limited proceeding. It would have been a  
3           substantial increase as you'll see and hear in our  
4           arguments on the -- in these other three rate  
5           cases.

6           So that again is something that makes it sound  
7           like, oh, the company is not giving us information  
8           we requested. It wasn't an issue in the rate case.  
9           And had it been an issue, the revenue requirement  
10          would have been substantially higher.

11          The issue with -- that was spoken about often,  
12          the last issue about whether you can grant  
13          temporary rates or not, what -- what Mr. Rehwinkel  
14          has done is the cases -- and he's got a big stack  
15          up there he keeps holding up -- if you look at  
16          those cases, those are not post-PAA cases. Those  
17          are cases where you've ask initially, we want a  
18          rate -- we want a limited proceeding, give us  
19          temporary rates, give us limited, give us interim  
20          rates.

21          And he's right. Interim rates are not  
22          appropriate in a limited proceeding. And we didn't  
23          ask for them in a limited proceeding; we didn't ask  
24          for temporary rates. But once you get to the PAA  
25          process, it's a different standard because what

1           you're doing is then you're saying in your PAA  
2           order we think the company at least preliminarily  
3           is entitled to this revenue and in order to protect  
4           what we think during the pendency of a -- of a  
5           drawn-out administrative proceeding that may last  
6           another nine months or a year, is that we're going  
7           to allow them to collect what we at least in our  
8           PAA order think that they're entitled to collect.  
9           And what that does is that helps to reduce the  
10          regulatory lag. I mean, that's the purpose of  
11          those type of -- of -- of increases, is because  
12          there is a lag between the time the company spends  
13          money and the time it actually sees a -- a revenue  
14          increase as a result of that.

15                 And so the fact that you all are authorizing  
16          temporary rates, if there is a protest to the PAA,  
17          I think is a whole different story than the cases  
18          that Mr. Rehwinkel has relied upon.

19                 The -- I'm going to -- on the issue of --  
20          well, obviously the issue of rate case expense, I  
21          mean, we started out low because typically -- and  
22          that's the estimate that we made on -- seems like  
23          he zeroed in on the legal rate case expense. The  
24          original estimate we made was based upon other  
25          limited proceedings that we have done. We have



1 done one relatively not too much in the past prior  
2 to this one for Alan Faye (phonetic) and another  
3 one for a company in the Keys and those went  
4 smoothly. Not a lot of data request. And so the  
5 rate case expense was relatively moderate. And we  
6 had totally expected this one to be that way also.

7 We sat down with the staff, and Public Counsel  
8 was invited. I don't remember if they -- if they  
9 were there or not. But before we filed this  
10 limited proceeding in these other rate cases, we  
11 sat down with the staff to talk about, you know,  
12 what we had -- kind of give them a heads up.  
13 Here's what we're getting ready to do in the future  
14 so they can plan also.

15 And so we went over the fact that we were  
16 going to file a limited for Cypress, not a full  
17 rate case, and that we were going to file full rate  
18 cases for these other utilities. And that was  
19 talked out and thought through.

20 And so this is a -- it's typical that you  
21 limit a limited proceeding to a certain number of  
22 issues, and somebody has got to decide what those  
23 issues are, and those are the issues that drive the  
24 reason for the company not reaching its authorized  
25 rate of return. And so we identified those issues.

1 I'm going to let Mr. Flynn talk about quality  
2 of service. But I will address one other issue  
3 that was -- that was mentioned by the customers,  
4 and that's dealing with the -- why the developer is  
5 not paying for the cost of that plant.

6 If you all remember, and I think all three of  
7 you were around then, that in the Cypress -- last  
8 full rate case for Cypress Lakes, Cypress Lakes had  
9 no service availability charge. And the Public  
10 Counsel raised that as an issue at the agenda  
11 conference and, in fact, this Commission, and they  
12 offered up a number. I'm thinking it was 2,000 but  
13 I could be wrong. They said you ought to at least  
14 have a service availability charge of this amount.

15 And the Commission agreed with them and  
16 imposed a service availability charge even though  
17 we had not requested one. As was mentioned, we had  
18 an agreement with the developer who was -- needed  
19 the expansion for his section 12, we call it, the  
20 new -- I think the new and last phase of Cypress  
21 Lakes, to have him pay a portion of that cost.  
22 And, in fact, that developer protested the order  
23 because it -- the developer took the position that  
24 it increased his responsibility. And as you know,  
25 this Commission can supersede that developer

1 agreement, and that's exactly what you did in  
2 rendering and establishing a service availability  
3 charge which you superseded what that agreement  
4 said and you have the constitutional authority to  
5 do that.

6 And so it was at the -- at the behest of the  
7 Public Counsel that the service availability charge  
8 was imposed superseding the developer agreement.  
9 So I find it interesting that now the customers are  
10 complaining that they now want the developer  
11 agreement because they find in retrospect that it  
12 might have been a better deal for them.

13 But the -- you know, the law is what the law  
14 is and you all have made a decision on that and  
15 that means that developer agreement is ineffective  
16 and they have to live with what they asked for,  
17 even the unintended sequences.

18 I'm going to ask that the quality of service  
19 issues be addressed by Mr. Flynn.

20 **MR. FLYNN:** Good morning. I'm Patrick Flynn.  
21 I'm the regional director for Cypress Lakes  
22 Utilities and the other Florida operations of  
23 Utilities Inc.

24 With respect to the quality of service issues  
25 raised in this proceeding, I want to put in context

1           what occurred last rate case a little bit. In that  
2           time period, one of the items identified was a lack  
3           of chlorine residual throughout the distribution  
4           system on a continuous basis as defined by the Polk  
5           County Health Department documents.

6           And in that -- in that proceeding last time  
7           there was a decision made to require that we, the  
8           utility, undertake an investigation of what was the  
9           culprit and address them and report back within  
10          nine months of the final order to the Commission.

11          We certainly did that. We failed to provide a  
12          copy of that to our -- to the other parties, OPC  
13          and the HOA, which was certainly our fault and we  
14          apologize for that.

15          But in essence we hired a consultant to  
16          investigate what was causing the low chlorine  
17          residuals in Cypress Lakes. That -- that  
18          consultant was not directed to any specific thing  
19          other than to look comprehensively at what was  
20          potentially the problem and come up with  
21          recommendations to solve the issues.

22          So they did that. What they found was that  
23          there was a need to modify piping at the water  
24          treatment plant site. That was the source of why  
25          chlorine and chlorine residuals vary from time to

1 time depending on which well of the two wells was  
2 used to provide water to the system.

3 So we proceeded to get permission to modify  
4 the piping adequate to address the issue as  
5 recommended by the consultant. That cost about  
6 \$60,000 to do.

7 The effect of that was after 2008 when we  
8 completed the modifications, was that we had very  
9 good success. Residuals throughout the  
10 distribution system on a regular basis were in  
11 compliance with Polk County Health Department rule.  
12 So that's all fine and dandy. We were confident  
13 that was a good solution and moved forward.

14 There were other recommendations in the  
15 report. There were three others. We followed up  
16 with two of them. The fourth recommendation was a  
17 function of whether the first three was inadequate.  
18 One of the recommendations was to add additional  
19 flushing valves, automatic flushing valves in our  
20 distribution system. We, in fact, installed three  
21 of them in specific areas subsequent to the water  
22 plant piping modifications. And of course we  
23 monitored the effects of the residual to see if  
24 there was any continuing problems thereafter. And  
25 there wasn't really any until this past February

1 where we had low chlorine residuals in some parts  
2 of the system.

3 We proceeded to address those issues in  
4 February, March, all the way through this time  
5 period. We've made a number of different  
6 modifications to our operations in an effort to  
7 address that in a more permanent fashion. We met  
8 with the Polk County Health Department staff on a  
9 number of occasions, at least two, two times in  
10 their offices to discuss it, as well as on site.

11 We feel we have successfully addressed their  
12 concerns and we have confidence we can provide  
13 adequate chlorine residual going forward without  
14 any additional significant investment or cost.

15 We certainly are looking at ways that we can  
16 add additional flushing valves in specific areas  
17 where that would be appropriate and cost-effective,  
18 and also prudent in the sense of making sure we use  
19 the best -- we use the water wisely and don't waste  
20 water.

21 So that's in place. We're moving forward. We  
22 resolved the issues with the Polk County Health  
23 Department satisfactorily. We feel confident that  
24 going forward we'll have that issue behind us.

25 We also made an effort to analyze the water

1 quality of the source water, the aquifer water  
2 itself to see if in fact there's been any change in  
3 that quality. If, in fact, there has been, then  
4 that changes the game a little bit because  
5 obviously the assumption typically is the water  
6 quality doesn't change much at all. If it does  
7 change, it's going to require consideration of what  
8 other treatment might be required to address any,  
9 any impacts of a change and still maintain  
10 compliance with the health department's  
11 regulations.

12 Right now, as far as I know, we haven't had  
13 any information that says there's been any change  
14 in water source quality. But like I said, we'll  
15 continue to monitor that and see if there's any  
16 changes.

17 In essence we feel confident that we've  
18 addressed those issues raised recently by the  
19 health department. We certainly would be glad to  
20 entertain a meeting with HOA to discuss their  
21 concerns and issues irrespective of any decision by  
22 the Commission because we're certainly concerned  
23 about their issues.

24 We also know that any treatment upgrades that  
25 might be required that are over and above what is

1 required by health department standards or rules or  
2 regulations would be a step beyond what might be  
3 prudent without having support by the HOA that's an  
4 appropriate investment to meet an esthetic issue.

5 And my understanding from talking to  
6 Dr. Halleen and the HOA board, some of the issues  
7 are esthetically associated. So to the extent that  
8 we have to address nonaesthetic issues, we will.  
9 The esthetic issues that are on the table, we'd  
10 certainly like to discuss with them what that means  
11 in terms of solutions and the cost to implement  
12 those solutions.

13 **CHAIRMAN ARGENZIANO:** Let me ask a question.  
14 How many recommendations were there?

15 **MR. FRIEDMAN:** Four.

16 **CHAIRMAN ARGENZIANO:** I thought I heard that  
17 there were eight or nine.

18 **MR. FRIEDMAN:** My recollection from reading  
19 the report --

20 **DR. HALLEEN:** There were four --

21 **MR. FLYNN:** -- my recollection from reading  
22 the report was that there were four major  
23 recommendations by TBE group in their writeup.

24 **CHAIRMAN ARGENZIANO:** Dr. Halleen?

25 **MR. HALLEEN:** Yes. There were four mechanical



1            recommendations. In other words, the piping, the  
2            valves and that. But then there was the  
3            recommendation to meet with the customer, establish  
4            a spreadsheet of the possible localized problems,  
5            we went through that. And very interestingly, the  
6            last recommendation said one of your problems is  
7            flushing. You ought to meet with the customers and  
8            work out a waterline program to continue to use the  
9            water for something useful rather than dumping it  
10           down the drain, that a washing -- a flushing thing.

11                    And to that extent, the current water usage  
12                    which is one of the problems that leads to the  
13                    chlorine residual --

14                    **CHAIRMAN ARGENZIANO:** Okay. I didn't want --  
15                    I just wanted you to -- if you don't mind, I just  
16                    wanted you to answer the how many, how many  
17                    recommendations --

18                    **DR. HALLEEN:** There were eight or nine  
19                    recommendations.

20                    **CHAIRMAN ARGENZIANO:** Okay. And you're saying  
21                    that you don't recall the others, you recall four?

22                    **MR. FRIEDMAN:** I'd defer to him if that's what  
23                    he describes. That's fine.

24                    **CHAIRMAN ARGENZIANO:** And please continue,  
25                    Mr. Friedman.

1           **MR. FRIEDMAN:** Thank you. In addition to  
2 issues raised by Public Counsel, we do take  
3 objection on Issue 2 with regard to the treatment  
4 of the Project Phoenix cost. And our position on  
5 that issue is twofold. The first is the  
6 amortization period that I'll address and then Mr.  
7 Marcelli will address the other.

8           The staff has recommended an amortization  
9 period for project management of ten years. As  
10 pointed out in the staff recommendation, in 2007  
11 when the Commission first started considering the  
12 Project Phoenix cost, the three cases that you  
13 considered then, the amortization period was  
14 established at six years which was what the staff  
15 had recommended based upon your rule that says six  
16 years is the correct amortization period.

17           They -- staff also points out that in the 2008  
18 rate cases -- I think they cited four of them --  
19 that the amortization period that the staff went  
20 with there was eight years. And the eight years  
21 seems to be because of the fact that the utility  
22 itself for internal purposes was amortizing the  
23 Project Phoenix over eight years.

24           Now, out of all of those cases only one time  
25 was there ever any real argument about it. You may

1 or may not remember that Public Counsel and I  
2 argued vehemently over what the correct  
3 amortization period should be for Project Phoenix.  
4 And this was in the '07 docketed cases.

5 And after our argument, the Commission voted  
6 along with the staff's recommendation that the six  
7 year was appropriate because that's what the rule  
8 says.

9 The subsequent cases where it went to eight  
10 years, we didn't object to it because it just  
11 wasn't material enough to come to the agenda and  
12 make an argument about the difference between a  
13 six-and an eight-year amortization.

14 Well, now, the Commission staff is  
15 recommending that you jump from six basically,  
16 which is what this last real decision that the  
17 Commission rendered, to a ten-year amortization.  
18 And one of the reasons that they have used for that  
19 is they're saying, well, under GAAP accounting  
20 principles, the amount of time to amortize those  
21 type of assets is between four and ten years. And  
22 so they picked ten years.

23 The -- as you know, GAAP accounting principles  
24 are different from the NARUC accounting principles  
25 and may or may not apply. And I would suggest to

1           you that -- that ignoring your own -- ignoring your  
2           own rule and going to a ten-year amortization  
3           period merely because it's within the -- the scope  
4           of what GAAP allows I think is inappropriate. I  
5           don't think there's been any basis for why you  
6           should ignore the precedence that you set when  
7           you -- we argued this back in '07 to go to six  
8           years.

9           And I would suggest to you that without any  
10          explanation as to why it should go from six to ten,  
11          that it's inappropriate to just ignore the  
12          Commission's precedence in that case and  
13          arbitrarily go to ten years. And we suggest that's  
14          not appropriate.

15          And Mr. Marcelli is going to address the other  
16          part of the problems with the staff recommendation  
17          on Issue 2 in the Project Phoenix.

18                 **MR. MARCELLI:** Good morning, Commissioners.  
19          As you know, another component of Issue 2 is  
20          staff's denial of a portion of the recovery for  
21          Project Phoenix. Staff for the four cases that are  
22          at the agenda conference today denies a total of  
23          1.7 million in Project Phoenix recovery and they  
24          deny that portion of the recovery because staff  
25          claims that that portion was a part of the gain on

1 sale from the recent, recently divested systems,  
2 Wedgefield Utilities Inc., Miles Grant and  
3 Hutchinson Island.

4 This is -- this is a violation of Florida  
5 Statute 367.0813 which makes it clear that the  
6 policy of this state is that gains or losses on the  
7 sale of systems flow to the shareholders.

8 Essentially staff's recommendation uses a  
9 portion of the Wedgefield, Miles Grant and  
10 Hutchinson Island gains to reduce the rate base of  
11 Cypress Lakes.

12 And I want to point out initially that no part  
13 of Project Phoenix was sold to the -- to the  
14 entities that acquired those systems.

15 And essentially this denial of the cost  
16 recovery means that they're taking money from --  
17 taking money from the utility in the form of cost  
18 recovery is no different than a refund or any other  
19 method that they might use to share a gain on sale  
20 with the customers of an unrelated system.

21 Staff's recommendation does not directly say  
22 that they are going to use the gain on sale from  
23 Wedgefield, Miles Grant and Hutchinson Island to  
24 compensate the customers of the current systems.  
25 However, that's exactly what their reallocation of

1 the ERCs and the costs of Project Phoenix does.

2 They're -- essentially they're saying that the  
3 shareholders are already compensated for Wedgefield  
4 and other share of the Project Phoenix amounts from  
5 the gain on sale, so let's take that same portion  
6 of the gain on sale and give it to the customers of  
7 Cypress Lakes and Sanlando and Longwood and  
8 Pennbrooke.

9 And so staff admits that the updated ERC count  
10 is how this asset should be allocated to the  
11 different systems which is exactly what the audit  
12 staff recommended.

13 However, audit staff did not say that the -- a  
14 portion of the Project Phoenix should be reduced by  
15 the amounts that were previously allocated to the  
16 systems that were divested.

17 And essentially it's my understanding that  
18 staff is going to say, well, this isn't a gain on  
19 sale issue. But if this isn't a gain on sale  
20 issue, then it's essentially an arbitrary reduction  
21 in the amount to be recovered.

22 So the question becomes if it's merely an  
23 arbitrary reduction, any time that there's a gain  
24 on sale of unrelated systems, they could use it to  
25 reduce Project Phoenix or any other allocated rate

1 base. It's just purely arbitrary that they picked  
2 Project Phoenix to single out.

3 And the question becomes, what if the utility  
4 lost money on those divested systems? Would they  
5 say that the customers of Cypress Lakes should  
6 contribute extra money to make up that shortfall?  
7 Keep in mind the statute says that gains or losses  
8 flow to the shareholders. However, under Staff's  
9 theory here, only -- you know, only the gains would  
10 be available to reduce the cost for the customers  
11 of the utility.

12 Also it should be noted that under staff's  
13 theory, it's okay if the ERC base is expanded. So  
14 if there's more system, if the utility buys systems  
15 and there's more utilities to spread the cost, then  
16 they'll include those systems but they won't  
17 include the systems if there's a divestiture.

18 And so essentially staff doesn't want it both  
19 ways. They want to put forth this theory that, you  
20 know, the portions that were previously allocated  
21 to another system shouldn't be reallocated when --  
22 when that increases the cost for the customers.

23 And for the most part, utility rate making is  
24 something that's prospective. So when audit staff  
25 recommended that the remaining amount of Project

1 Phoenix be reallocated based on an updated ERC  
2 count, that is essentially a forward-looking thing.  
3 They're using more recent information.

4 Well, if you're going to use the more recent  
5 information, then that more recent information  
6 should also include, you know, consideration for  
7 the systems that were divested.

8 Staff is essentially saying that those systems  
9 that are no longer a part of Utilities Inc.  
10 umbrella have already paid their share of the  
11 Project Phoenix when that's simply not the facts.  
12 Thank you.

13 **CHAIRMAN ARGENZIANO:** Thank you.

14 Mr. Friedman?

15 **MR. FRIEDMAN:** That concludes our  
16 presentation. If you have any questions, we'll be  
17 glad to answer them.

18 **CHAIRMAN ARGENZIANO:** Questions?

19 Commissioner Skop?

20 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

21 On page 11 of the staff recommendation, with  
22 respect to the appropriate amounts of rate case  
23 expense, it shows that the middle of the page  
24 estimate to complete through PAA process for the  
25 remaining legal fees. And the specific item that I



1 have concern with is the "prepare for and attend  
2 agenda conference, discuss agenda with client and  
3 staff."

4 In this particular instance, 15 hours at a  
5 rate of \$330 an hour is listed. In light of the  
6 other Utility Inc.'s items before us today, same  
7 law firm, same lawyers, I'm wondering if that 15  
8 is, in fact, not a typographical error. It's also  
9 listed in one other docket but this is a limited  
10 proceeding. And I guess perhaps if the Commission  
11 wants to, certainly we can take official  
12 recognition of the similar line item on page 36 of  
13 staff recommendation to Item 8 which shows  
14 seven-and-a-half hours for a full rate case for the  
15 same type of legal activity.

16 So again, I think, you know, it's important to  
17 have a full appreciation of the expenses associated  
18 with the rate case to ensure that the costs are  
19 fair, just, reasonable and prudently incurred.  
20 Staff cites legal precedent for showing why the  
21 Commission must do so on rate case expense.

22 But I think with respect to this item, you  
23 know, today there's been discussion from the  
24 executive director about potentially deferring the  
25 item because of a lot of questions and concerns

1 that have been raised that I don't think that we'll  
2 have the time to get to today. And it's certainly  
3 important to have a commanding understanding of the  
4 appropriate revenue requirement.

5 But this is one area of concern when this  
6 comes back to agenda that I hope that staff would  
7 look into a little bit further.

8 **MR. FRIEDMAN:** May I -- may I comment on that?

9 **COMMISSIONER SKOP:** You may. Thank you.

10 **MR. FRIEDMAN:** Thank you, Commissioner Skop.

11 If you look at the other staff recs, we did  
12 just that because those three cases all traveled  
13 together and so we did do an allocation. But  
14 because of the amount of issues involved in all of  
15 these, we thought Mr. Marcelli and I both needed to  
16 attend the agenda.

17 But there is an allocation in these other  
18 cases. The reason that Cypress Lakes doesn't  
19 include that allocation, because originally Cypress  
20 Lakes was not on the same agenda with these other  
21 three. So when we filed this staff -- when we  
22 filed our updated rate case expense on this, this  
23 was an item that was going to be on the agenda all  
24 by itself.

25 But that's the reason why if you look at the

1 other one, as you pointed out Commissioner Skop,  
2 has seven-and-a-half hours, because that was half  
3 of 15 hours which was dividing that between two of  
4 the cases.

5 So we did -- we do make -- we try to make  
6 those allocations when we know something is going  
7 to be on the same agenda. But unless we know it  
8 is, I don't know how we can do that. Thank you.

9 **CHAIRPERSON ARGENZIANO:** Commissioner Skop?

10 **COMMISSIONER SKOP:** Thank you, Madam Chair.

11 I'd also look at on Item 10, page 35, same  
12 line item, 15 hours. And on item I think there's  
13 one additional one I was looking for, the specific  
14 reference in there. Again, I don't want to waste  
15 the Commission's time at this point looking at  
16 that. It seems as if, you know, there may be a  
17 reason why, you know, there's a difference, but  
18 it's something that caught my eye because of the  
19 inconsistency between the cases.

20 And also on Item 8, page 37, staff discusses,  
21 you know, travel to the agenda conference.

22 Mr. Friedman I'm reasonably certain, unless your  
23 agreement states otherwise, that lawyers can't  
24 charge travel to their client.

25 **MR. FRIEDMAN:** We charge all of our clients

1 for travel.

2 **COMMISSIONER SKOP:** Fair enough. Thank you  
3 for the better understanding of that. And again  
4 I'm prepared to make a motion to defer at the  
5 appropriate time, Madam Chair.

6 **CHAIRPERSON ARGENZIANO:** Any questions to  
7 staff?

8 Commissioner Edgar?

9 **COMMISSIONER EDGAR:** I guess my question to  
10 staff at this point would be is there any direction  
11 that you're looking for from us that may or may not  
12 be helpful at this point?

13 **MR. FLETCHER:** Well, I would suggest in light  
14 of the issues that both OPC and the utility has  
15 raised regarding this limited proceeding, that we  
16 perhaps have another informal meeting to discuss  
17 that and then at that time in order to allow --  
18 make sure that not -- no issue has not been  
19 addressed because there was lengthy issues. And go  
20 over the -- like OPC's calculations, make sure  
21 we've got them down pat and then bring the item  
22 back to agenda once we've had that conference.

23 **COMMISSIONER EDGAR:** Thank you for that. I  
24 would hope that that would be included in our  
25 direction and in the go-forward from this point.

1 I would also ask, which is probably embodied  
2 in that, but that staff work with OPC and the  
3 company and look particularly and specifically at  
4 the four general issues that our two customer  
5 representatives today.

6 **CHAIRMAN ARGENZIANO:** Question?

7 **MR. REHWINKEL:** And we would request the  
8 homeowners' association be included in that.

9 **CHAIRPERSON ARGENZIANO:** Yes. Absolutely.  
10 Just a question in regards to I think it was -- I  
11 don't think it was Dr. Halleen, I think it was  
12 Mr. Attebery that indicated that staff -- was it  
13 staff that did not include the homeowners --

14 **DR. HALLEEN:** E-mails.

15 **CHAIRMAN ARGENZIANO:** No, no. There were  
16 emails but the emails, yes, be included as  
17 complaints. That was one question. But as far as  
18 being part of discussions.

19 **MR. FLETCHER:** Yes. The informal meeting that  
20 happened in March, the parties of record here, they  
21 are interested persons. Usually whenever we send  
22 out an informal meeting notice, and we did for not  
23 only the four items that are on today's agenda but  
24 as Mr. Rehwinkel said, the Utilities Inc. of  
25 Florida rate case as well, it's sent to the parties

1 of record. We'll make sure that also interested  
2 parties are informed as well.

3 **CHAIRMAN ARGENZIANO:** Okay. Great.  
4 Commissioner Skop?

5 **COMMISSIONER SKOP:** Thank you, Madam Chair.  
6 And to that point, again we've heard a lot of  
7 concerns here this morning and certainly from the  
8 members of the homeowners' association, the  
9 customer concerns. I think that Mr. Friedman had  
10 some concerns on Issue 2 with respect to the  
11 Phoenix Project and gains on sales, certainly the  
12 rate case expenses.

13 But most importantly, I think Issue 8, having  
14 a better understanding as to the legal authority  
15 for approving rates on a temporary basis, seems to  
16 be a lot of opposition from Public Counsel to that  
17 point in terms of interim rates under the statute  
18 367.082.

19 So staff, when we bring this back and can  
20 further develop that, citing specific legal  
21 authority that does support the staff  
22 recommendation.

23 **MR. FLETCHER:** Yes.

24 **CHAIRPERSON ARGENZIANO:** Before we go to a  
25 motion, just to make sure, was there any other

1 customers on the phone? Okay. Not on this case.

2 Okay. Thank you. Do we have a motion then?

3 **COMMISSIONER SKOP:** Yes, Madam Chairman. At  
4 this point I'd like to make a motion to defer  
5 Item 7 consistent with the Commission's discussion.

6 **COMMISSIONER EDGAR:** Second.

7 **CHAIRMAN ARGENZIANO:** All those in favor?

8 (Unanimous).

9 **CHAIRMAN ARGENZIANO:** Okay. Deferred. Thank  
10 you. We're going to -- I believe we need to take a  
11 short break because we need to -- I think there are  
12 people that are joining us by phone on the next --  
13 on issue --

14 **CHAIRPERSON ARGENZIANO:** One person. Okay.  
15 So not people, but person. Okay. Then we'll take  
16 a short five-minute break.

17 (Discussion concluded.)

18 \* \* \*

19

20

21

22

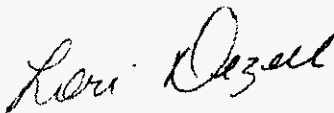
23

24

25

1 CERTIFICATE OF REPORTER  
2  
3  
4

5 STATE OF FLORIDA )

6 COUNTY OF LEON )  
78 I, LORI DEZELL, RPR, CCR, certify that I was  
9 authorized to and did stenographically report the  
10 proceedings herein, and that the transcript is a true  
11 and complete record of my stenographic notes.12 I further certify that I am not a relative,  
13 employee, attorney or counsel of any of the parties, nor  
14 am I a relative or employee of any of the parties'  
15 attorney or counsel connected with the action, nor am I  
16 financially interested in the action.17 WITNESS my hand and official seal this 3rd day  
18 of June, 2010.  
1920   
2122 LORI DEZELL, RPR, CCR  
23 2894-A Remington Green Lane  
24 Tallahassee, Florida 32308  
25 850-878-2221



June 1, 2010

Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Attention: Public Service Commission Members  
At Agenda Hearing

Dear Commissioners,

In order to assure that our concerns with the recommendations offered by the Public Service Commission staff are clearly stated, we are presenting them in document form, We will direct these comments to you in an oral form so you may interject comments or questions as we proceed.

**The two major issues that we will address are (1) Quality of the water supplied and (2) the revenue recommended for your approval.**

**Quality** remains a major issue for the residents of Cypress Lakes. At the last Agenda Hearing, considerable discussion ensued between Mr. Holzschuh, the Commissioners and the Utility Attorney. Resolution of the issues was thought to be an Engineering study of the options to improve the Quality and the potential cost associated with them that was to be sent to the PSC, OPC and CLHA Board of Directors with the intent that discussion between parties would lead to a plan and cost to improve the quality. Unfortunately that did not happen, The report was developed, but no copies were sent to either the OPC or CLHA Board. Further, no discussion was initiated by the Utility. Unilaterally, the Utility proceeded to implement a single item and then presumed that the Quality was improved.

The Quality is not improved. The Chlorine residuals remain a problem. The Polk County Health Department has forwarded another Consent Order to the Utility with an increased fine compared to the last one. The Health Department also recommended that the Utility conduct a uni-directional flushing of the entire system, which they completed during the week of May 17<sup>th</sup>; residents at a recent Town meeting indicated an improvement. The Health Department also advised us that the most consistent section of the community from a chlorine residue aspect was Phase 12 – the new phase with less than 15 homes **but with automatic flushing valves installed initially by the Developer. The report provided to the Utility and PSC had other excellent suggestions that either were dismissed by the Utility or not even considered.** The report clearly recommended that the Utility developed with the community a list of problem complaints in order to localize problem areas; such a map was developed from the 12 people who complained about quality at the PSC Customer Meeting. A copy is included with this letter; it clearly shows that the complaints are highly localized in a limited section of the community.

Parties/Staff Handout  
Internal Affairs/Agenda  
on 6/1/10  
Item No. 7  
090349-WS

**Therefore, it is requested that, as a minimum, the PSC Commissioners order the Utility to sit with the CLHA Board of Directors and other interested parties to review all recommendations, including potential costs, presented in the Engineering report and present to the PSC Commissioners within three months a plan agreed to by both parties.**

The second major issue is the **Revenue Increase** recommended by the PSC Staff which merely mirrors the request submitted in the Limited Proceedings filing. Several items concern the customers of Cypress Lakes Utility as the increased cost results in an almost **35 % increase in their monthly bill** (From \$ 78.68 per month to \$ 105.46 per month for 6,000 gallons per month usage). The highest contributor to this increase is the **Wastewater Treatment Plant Expansion – an action initiated by a legal agreement between the Developer and the Utility in December 2006. This agreement indicates that the estimated cost of the expansion is \$ 250,000 with the developer required to provide upfront money of \$ 125,000. The agreement further states that the developer is responsible for ½ of the final cost, to which the \$ 125,000 will be applied. The final cost, according the filing, was \$ 1,040,000.** The Revenue Request recommended places the remaining \$ 915,000 squarely on the customers of the Utility **without any justification**, other than it was requested. **This increase also appears in the Property Tax Revenue Request (Schedule 10)**, which means that the customer pays again. It is interesting that the Developer was never advised that the project had taken a 400 % increase in cost. The answers provided to date from the PSC Staff have ranged from it was mandated by the FDEP to it was a prudent think to do.

**It is requested that the PSC Commissioners direct Staff to provide definitive answers as to (1) why the developer is not responsible for one-half of the final cost, which would change the CIAC part of the Revenue Request, (2) how the customer share of the remaining one-half is to be determined, and (3) make any revisions to the Revenue Request as determined by the above information.**

Reviewing the annual reports for 2008 and 2009, it is apparent that there have been significant changes in the Utility Inc.'s accounting system as a result of the Phoenix Project. There are (1) new allocated costs in accounts previously not used; for example: Officers Salaries, Advertising, Contractual Services-Engineering,-Testing and Regulatory Commission Expense and (2) redistribution of other costs such as Property Tax which impact the Revenue Request. System Property Tax was previously divided about 1/3 for the water system and 2/3 for the wastewater system which were somewhat in line with the UPIS for each entity. However, the 2008 and 2009 reports show the system tax now divided about 55 % for the water system and 45 % for the wastewater system – clearly not in line with the UPIS. **In fact, the new allocated costs and the redistribution of property tax changed the water system from a profitable !0 % return in 2007 to a negative 3 % in 2008 without any increase in the operating accounts of purchased power, chemicals and materials and water pumped.**

Again, relative to the Phoenix Project, we have requested, but not received, documentation on the specific methodology used on cost allocation and the specific numbers associated with Cypress Lakes Utility.

**Therefore, we request that the PSC Commissioners direct staff to (1) verify that allocated costs reflect actual costs previously distributed differently (we are assuming that the PSC conducted an audit to verify the accuracy of the new system), (2) provide from the Utility an explanation as to why the Property Tax distributed cost changed significantly in 2008, and (3) provide methodology and specific numbers associated with the Cypress Lakes Utility's allocated costs.**

In regard to the Revenue Request for Property Tax relief (Schedule 10), we challenged the value presented for 2008. The Property Tax bill for the total system for 2008 was \$40,298.90 (Utility letter of December 8, 2009) whereas the Revenue Request has a system value of \$57,188. The Utility's explanation (Letter of March 8, 2010) focuses on accruals which place the majority of the 2007 tax into 2008. How the Utility chooses to pay its bills does not determine the actual cost.

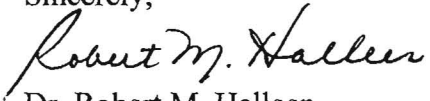
The Revenue Request also includes in Schedule 10 an amount for increased Property Tax based on increases in the UPIS for the wastewater plant and water piping. Review of the Property Tax bills for 2006, 2007 and 2008 shows that the assessed value of the plant in 2007 was increased \$1,200,000 and in 2008 another \$60,000., which are almost identical to the costs of the two items. Therefore, we believe that the increase in UPIS is already reflected in the assessed value of the system. We have been unable to verify this as the Polk County Assessor Office considered them confidential to the Utility. To date, the PSC staff has not addressed an inquiry to the Utility on this matter.

**Therefore, we request that the PSC Commissioners direct staff to reconsider these two items and then reflect the appropriate cost for 2008 in the Revenue Request.**

The final items of concern are (1) **Sludge Hauling Expense** and (2) **Rate Case Expense**. Relative to Sludge Hauling expense, it increased significantly in 2006 over the 2005 level and continued at that level through 2008. However, the 2009 annual report shows a 15% drop in cost, although the wastewater flow handled increased slightly. Because we have no knowledge as to the method for costing sludge hauling, we have no defined basis to determine if this reduction is continuing or will the cost return to previous levels. Our requests for this information have been answered by "this is not a rate case and that would be a rate case question." If this is not a Rate case, why is the Rate Case Expense in the Revenue Request equal to or slightly greater than it has been for our previous rate cases? Items such as the rate case cost of the Phoenix Project allocated to this rate case are not identified. Because we have no specific information to base any request for action, we leave the items as an open issue for the Commissioners to consider.

**We appreciate the opportunity to present our thoughts and requests for your consideration.**

Sincerely,

A handwritten signature in black ink that reads "Robert M. Halleen". The signature is written in a cursive style with a large initial 'R'.

Dr. Robert M. Halleen  
President, Cypress Lakes Homeowners Association  
2237 Big Cypress Blvd,  
Lakeland, FL 33810

cc: PSC Staff , Cypress Lakes Utility, OPC

Cypress Lakes Residents that spoke to the Public Service Commission Staff at the Customer Service Hearing held on November 19, 2009 at the Cypress Lakes Clubhouse:

1. James Nickerson 3026 Peavine Trail –Water Quality Complaint
2. Hank Newman 2910 Fox Branch Court - Sand in Filter, etc... Water Quality Comp.
3. Bill Heffelfinger 2206 Common Loon Drive – Water Quality Complaint
4. Al Heilemann 2246 Cypress Cross Loop – Excessive Increase
5. Ed DeLang 2885 Peavine Trail – Water Quality Complaint / Letter to PSC
6. Ed Hobbie 1758 Big Cypress Blvd – Black Sediment from Shower
7. Nancy Bates 1676 Big Cypress Blvd – AIG Involvement?
8. Diane Vollmer 9461 Big Apple Lane – Plugged Filters / \$ 4500 for filters
9. Frank Martinoli 2248 Big Cypress Blvd – Excessive Computer Cost
10. Parker Finney 3010 Peavine Trail – Water Quality Complaint
11. Bob Benvissuto 1773 Big Cypress Blvd – Water Quality Complaint
12. Isabel Detringo 9541 Cypress Lakes Drive – Commissioner’s Qualifications?
13. Hank Newman 2910 Fox Branch Court – Second Input to Water Quality
14. Jeffrey Unett 9311 Hoosier Circle – Massive Filtration Issue
15. Bob Betts 2460 Peavine Circle – Need More Effort to Resolve Problem
16. Bob Attebery 9944 Killdeer Lane – Better Cost Justification
17. Ted Fletcher 9378 Hoosier Circle – Water Quality Complaint
18. Ed Chandler 9738 Cypress Lakes Drive – Quality Comparison: Fine Dining  
Vs. Golden Corral
19. Bob Benvissuto 1773 Big Cypress Blvd – Second Comment / Cost Structure
20. Larry Rumbaugh 2377 Little Cypress Drive – Project Phoenix Driving Force
21. Marie Carlton 2202 Common Loon Drive – Alternate Meter Option?

22. Ron Nightingale 2149 Firestone Way – Large Expenditure w/o Budget Approval

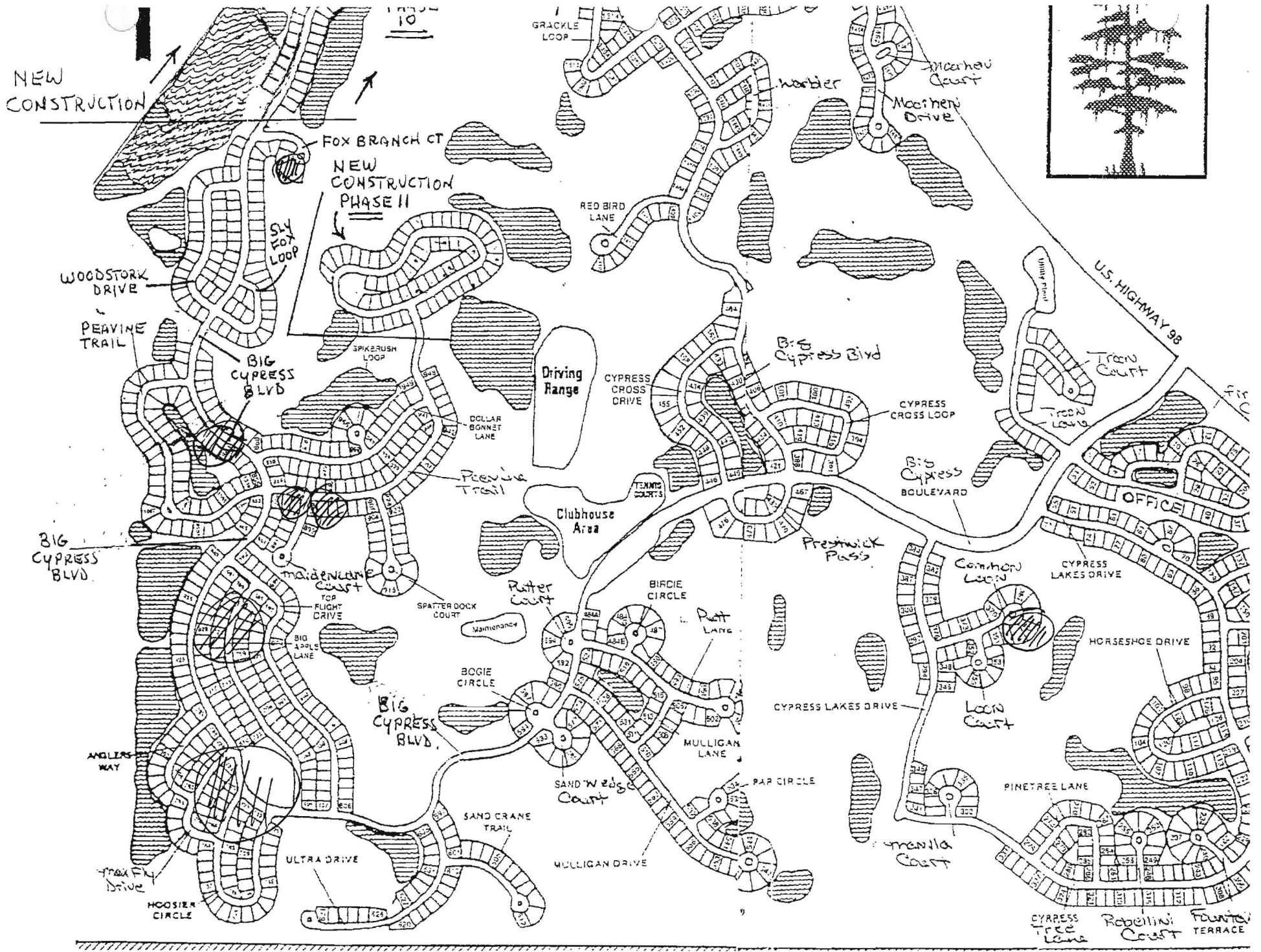
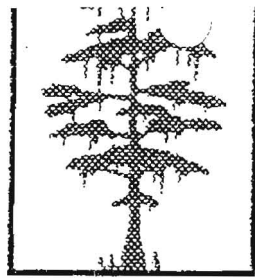
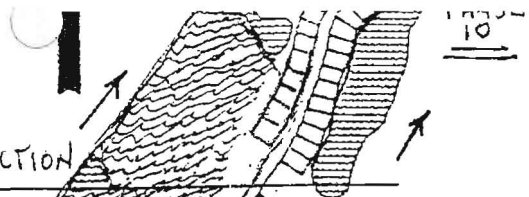
Summary: Water Quality Complaints: 12 Individuals

Phoenix Project Complaints: 2 Individuals

Excessive Increase: 4 Individuals

Other Issues: 4 Individuals

NEW CONSTRUCTION



CYPRESS TREE Lane  
Robellini Court  
Fountain TERRACE

Docket No. 090349-WS  
Application for limited proceeding rate increase  
in Polk County by Cypress Lakes Utilities, Inc.

Office of Public Counsel  
Agenda Handout for Item 7

Parties/Staff (OPC) Handout  
Internal Affairs/Agenda  
on 6/11/10  
Item No. 7



UTILITY NAME:

CYPRESS LAKES UTILITIES INC

<p>YEAR OF REPORT 31-Dec-09</p>
-------------------------------------

SYSTEM NAME / COUNTY : Polk County

WATER UTILITY EXPENSE ACCOUNTS

ACCT. NO. (a)	ACCOUNT NAME (b)	CURRENT YEAR (c)	.1 SOURCE OF SUPPLY AND EXPENSES - OPERATIONS (d)	.2 SOURCE OF SUPPLY AND EXPENSES - MAINTENANCE (e)
601	Salaries and Wages - Employees	\$ 70,285	\$ 7,675	\$ 7,675
603	Salaries and Wages - Officers, Directors and Majority Stockholders	8,469	-	-
604	Employee Pensions and Benefits	22,313	2,175	2,175
610	Purchased Water	-	-	
615	Purchased Power	9,001	-	
616	Fuel for Power Purchased	-	-	
618	Chemicals	7,744	1,291	1,291
620	Materials and Supplies	6,831	854	854
631	Contractual Services-Engineering	4,546	-	-
632	Contractual Services - Accounting	1,372	-	-
633	Contractual Services - Legal	378	-	-
634	Contractual Services - Mgt. Fees	-	-	-
635	Contractual Services - Testing	5,083	847	847
636	Contractual Services - Other	13,250	1,656	1,656
641	Rental of Building/Real Property	-	-	-
642	Rental of Equipment	-	-	-
650	Transportation Expenses	6,163	770	770
656	Insurance - Vehicle	-	-	-
657	Insurance - General Liability	-	-	-
658	Insurance - Workman's Comp.	-	-	-
659	Insurance - Other	9,749	1,219	1,219
660	Advertising Expense	24		
666	Regulatory Commission Expenses - Amortization of Rate Case Expense	14,425		
667	Regulatory Commission Exp.-Other	1,186	-	-
668	Water Resource Conservation Exp.	-	-	
670	Bad Debt Expense	584		
675	Miscellaneous Expenses	30,326	3,791	3,791
Total Water Utility Expenses		\$ 211,731	\$ 20,277	\$ 20,277



W-10(a)  
GROUP \_\_\_\_\_

UTILITY NAME: CYPRESS LAKES UTILITIES INC

YEAR OF REPORT  
31-Dec-09

SYSTEM NAME / COUNTY : Polk County

WASTEWATER UTILITY EXPENSE ACCOUNT MATRIX

ACCT. NO.	ACCOUNT NAME	CURRENT YEAR	.1 COLLECTION EXPENSES- OPERATIONS	.2 COLLECTION EXPENSES- MAINTENANCE	.3 PUMPING EXPENSES - OPERATIONS	.4 PUMPING EXPENSES - MAINTENANCE	.5 TREATMENT & DISPOSAL EXPENSES - OPERATIONS	.6 TREATMENT & DISPOSAL EXPENSES - MAINTENANCE
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
701	Salaries and Wages - Employees	\$ 64,515	\$ 7,045	\$ 7,045	\$ 7,045	\$ 7,045	\$ 7,045	\$ 7,045
703	Salaries and Wages - Officers, Directors and Majority Stockholders	7,774	-	-	-	-	-	-
704	Employee Pensions and Benefits	20,482	1,996	1,996	1,996	1,996	1,996	1,996
710	Purchased Sewage Treatment	-						
711	Sludge Removal Expense	68,485					68,485	-
715	Purchased Power	59,471	19,824		19,824		19,824	
716	Fuel for Power Purchased	-	-		-		-	
718	Chemicals	7,109	1,185	1,185	1,185	1,185	1,185	1,185
720	Materials and Supplies	7,796	974	974	974	974	974	974
731	Contractual Services-Engineering	4,173	-	-	-	-	-	-
732	Contractual Services - Accounting	1,259	-	-	-	-	-	-
733	Contractual Services - Legal	347	-	-	-	-	-	-
734	Contractual Services - Mgt. Fees	-	-	-	-	-	-	-
735	Contractual Services - Testing	15,648	1,956	1,956	1,956	1,956	1,956	1,956
736	Contractual Services - Other	1,852	232	232	232	232	232	232
741	Rental of Building/Real Property	-	-	-	-	-	-	-
742	Rental of Equipment	-	-	-	-	-	-	-
750	Transportation Expenses	5,657	707	707	707	707	707	707
756	Insurance - Vehicle	-	-	-	-	-	-	-
757	Insurance - General Liability	-	-	-	-	-	-	-
758	Insurance - Workman's Comp.	-	-	-	-	-	-	-
759	Insurance - Other	8,949	1,119	1,119	1,119	1,119	1,119	1,119
760	Advertising Expense	22						
766	Regulatory Commission Expenses - Amortization of Rate Case Expense	13,241						
767	Regulatory Commission Exp.-Other	1,088	-	-	-	-	-	-
770	Bad Debt Expense	536						
775	Miscellaneous Expenses	29,765	3,721	3,721	3,721	3,721	3,721	3,721
Total Wastewater Utility Expenses		\$ 318,171	\$ 38,758	\$ 18,934	\$ 38,758	\$ 18,934	\$ 107,243	\$ 18,934

S-10(a)  
GROUP \_\_\_\_\_

UTILITY NAME: CYPRESS LAKES UTILITIES INC

YEAR OF REPORT 31-Dec-09
-----------------------------

SYSTEM NAME / COUNTY : Polk County

**WATER OPERATING STATEMENT**

ACCT. NO. (a)	ACCOUNT NAME (b)	REFERENCE PAGE (c)	CURRENT YEAR (d)
	UTILITY OPERATING INCOME		
400	Operating Revenues	W-9	\$ 291,817
469	Less: Guaranteed Revenue and AFPI	W-9	-
	Net Operating Revenues		\$ 291,817
401	Operating Expenses	W-10(a)	\$ 211,731
403	Depreciation Expense	W-6(a)	66,545
	Less: Amortization of CIAC	W-8(a)	(9,775)
	Net Depreciation Expense		\$ 56,771
406	Amortization of Utility Plant Acquisition Adjustment	F-7	-
407	Amortization Expense (Other than CIAC)	F-8	-
408.1	Taxes Other Than Income		
	Utility Regulatory Assessment Fee		26
408.11	Property Taxes		16,637
408.12	Payroll Taxes		6,967
408.13	Other Taxes and Licenses		19,959
408	Total Taxes Other Than Income		\$ 43,590
409.1	Income Taxes		(15,795)
410.1	Deferred Federal Income Taxes		2,687
410.11	Deferred State Income Taxes		459
411.1	Deferred Income Taxes - Credit		-
412.1	Investment Tax Credits Deferred to Future Periods		-
412.11	Investment Tax Credits Amortized		-
	Utility Operating Expenses		\$ 299,443
	Utility Operating Income		\$ (7,626)
	Add Back:		
469	Guaranteed Revenue (and AFPI)	W-9	\$ -
413	Income From Utility Plant Leased to Others		-
414	Gains (losses) From Disposition of Utility Property		35
420	Allowance for Funds Used During Construction		0
	Total Utility Operating Income		\$ (7,591)

W-3  
GROUP \_\_\_\_\_

UTILITY NAME: CYPRESS LAKES UTILITIES INC

**YEAR OF REPORT**  
**31-Dec-09**

SYSTEM NAME / COUNTY : Polk County

**WASTEWATER OPERATING STATEMENT**

ACCT. NO. (a)	ACCOUNT NAME (b)	REFERENCE PAGE (c)	WASTEWATER UTILITY (d)
	<b>UTILITY OPERATING INCOME</b>		
400	Operating Revenues	S-9A	\$ 525,535
530	Less: Guaranteed Revenue (and AFPI)	S-9A	-
	Net Operating Revenues		\$ 525,535
401	Operating Expenses	S-10A	\$ 318,171
403	Depreciation Expense	S-6A	130,732
	Less: Amortization of CIAC	S-8A	(23,937)
	Net Depreciation Expense		\$ 106,794
406	Amortization of Utility Plant Acquisition Adjustment	F-7	-
407	Amortization Expense (Other than CIAC)	F-8	-
408.1	Taxes Other Than Income		
	Utility Regulatory Assessment Fee		24
408.11	Property Taxes		15,271
408.12	Payroll Taxes		6,395
408.13	Other Taxes and Licenses		18,321
408	Total Taxes Other Than Income		\$ 40,011
409.1	Income Taxes		(14,498)
410.1	Deferred Federal Income Taxes		2,467
410.11	Deferred State Income Taxes		422
411.1	Provision for Deferred Income Taxes - Credit		-
412.1	Investment Tax Credits Deferred to Future Periods		-
412.11	Investment Tax Credits Restored to Operating Income		-
	Utility Operating Expenses		\$ 453,366
	Utility Operating Income		\$ 72,168
	Add Back:		
530	Guaranteed Revenue (and AFPI)	S-9A	\$ -
413	Income From Utility Plant Leased to Others		-
414	Gains (losses) From Disposition of Utility Property		32
420	Allowance for Funds Used During Construction		0
	Total Utility Operating Income		\$ 72,201

Polk County Tax Collector

generated on 5/25/2010 10:08:40 AM EDT

**Tax Record**

Last Update: 5/25/2010 10:08:37 AM EDT

**Ad Valorem Taxes and Non-Ad Valorem Assessments**

The information contained herein does not constitute a title search and should not be relied on as such.

<b>Account Number</b>		<b>Tax Type</b>		<b>Tax Year</b>	
000000-000032-007014		TANGIBLE PROPERTY		2009	
<b>Mailing Address</b> CYPRESS LAKES UTILITIES INC 2335 SANDERS RD NORTHBROOK IL 60062-6108			<b>Physical Address</b> 10000 US HIGHWAY 98 N  <b>GEO Number</b> 000000-000032-007014		
<b>Exempt Amount</b>		<b>Taxable Value</b>			
\$25,000.00		\$2,345,503.00			
<b>Exemption Detail</b> A1 25000		<b>Millage Code</b> 600000		<b>Escrow Code</b> SAJ	
<b>Legal Description</b> 10000 US HIGHWAY 98 N LAKELAND 232634000000012020					
<b>Ad Valorem Taxes</b>					
<b>Taxing Authority</b>	<b>Rate</b>	<b>Assessed Value</b>	<b>Exemption Amount</b>	<b>Taxable Value</b>	<b>Amount</b>
POLK COUNTY					
GENERAL REVENUE FUND	5.6665	2,370,503	25,000	\$2,345,503	\$13,290.79
ENV LAND AQUIST FUND	0.0100	2,370,503	25,000	\$2,345,503	\$23.46
LAND MGMT TRUST FUND	0.1300	2,370,503	25,000	\$2,345,503	\$304.92
TRANSPORTATION/ROADS	1.0000	2,370,503	25,000	\$2,345,503	\$2,345.50
ENV LAND DEBT SERVIC	0.0600	2,370,503	25,000	\$2,345,503	\$140.73
POLK COUNTY PARKS M5TU	0.4219	2,370,503	25,000	\$2,345,503	\$989.57
POLK COUNTY LIBRARY	0.2109	2,370,503	25,000	\$2,345,503	\$494.67
POLK COUNTY SCHOOL BOARD					
GENERAL FUND	6.0860	2,370,503	25,000	\$2,345,503	\$14,274.73
LOCAL CAPITAL IMP.	1.5000	2,370,503	25,000	\$2,345,503	\$3,518.25
HILLSBORO RIVER BASIN	0.2421	2,370,503	25,000	\$2,345,503	\$567.85
SOUTHWEST FLORIDA WATER MGMT	0.3866	2,370,503	25,000	\$2,345,503	\$906.77
<b>Total Millage</b>		15.7140	<b>Total Taxes</b>		\$36,857.24
<b>Non-Ad Valorem Assessments</b>					
<b>Code</b>	<b>Levying Authority</b>				<b>Amount</b>
<b>Total Assessments</b>					\$0.00
<b>Taxes &amp; Assessments</b>					\$36,857.24

If Paid By	Amount Due
	<b>\$0.00</b>

Date Paid	Transaction	Receipt	Year	Amount Paid
11/23/2009	PAYMENT	7043754.0001	2009	\$35,382.95

Prior Year Taxes Due
NO DELINQUENT TAXES

Cypress Lakes Utilities, Inc.  
 Limited Proceeding Docket No. 090349-WS  
 OPC Analysis

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2009 &gt; 2005</u>
<u>Wastewater Gallons Treated MG</u>	44.283	44.456	45.895	45.895	46.791	
Sludge Hauling Expense	\$57,500	\$81,375	\$88,520	\$87,500	\$68,485	\$10,985
Cost per MG Treated	\$1,298	\$1,830	\$1,929	\$1,907	\$1,464	

<u>Property Taxes</u>	<u>2005</u>	<u>2008</u>	<u>2009</u>	<u>2009 &gt; 2005</u>
Water	\$6,219	\$30,086	\$16,637	\$10,418
Wastewater	<u>\$11,198</u>	<u>\$27,617</u>	<u>\$15,257</u>	<u>\$4,059</u>
Total	\$17,417	\$57,703	\$31,894	\$14,477

LAW OFFICES  
**ROSE, SUNDBSTROM & BENTLEY, LLP**  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301

FREDERICK L. ASCHAUER, JR.  
CHRIS H. BENTLEY, P.A.  
ROBERT C. BRANNAN  
F. MARSHALL DETERDING  
JOHN R. JENKINS, P.A.  
KYLE L. KEMPER  
STEVEN T. MINDLIN, P.A.  
CHASITY H. O'STEEN  
WILLIAM E. SUNDBSTROM, P.A.  
DIANE D. TREMOR, P.A.  
JOHN L. WHARTON  
ROBERT M. C. ROSE (1924-2006)

(850) 877-6555  
FAX (850) 656-4029  
www.rsbatorneys.com

REPLY TO CENTRAL FLORIDA OFFICE

December 8, 2009

CENTRAL FLORIDA OFFICE  
SANLANDO CENTER  
2180 W. STATE ROAD 434, SUITE 2118  
LONGWOOD, FLORIDA 32779  
(407) 830-6331  
FAX (407) 830-8522

MARTIN S. FRIEDMAN, P.A.  
BRIDGET M. GRIMSLEY  
CHRISTIAN W. MARCELLI  
BRIAN J. STREET

E-FILING

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 090349-WS; Cypress Lake Utilities, Inc.'s Application for a Limited Proceeding Water and Wastewater Rate Increase in Polk County, Florida  
Our File No. 30057.182

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is the response of Cypress Lake Utilities, Inc. (the "Company") to Staff's fourth data request dated November 9, 2009. Staff has requested the following information in order to complete its analysis in the above-referenced docket.

1. During the October 22, 2009 meeting between Cypress Lakes [Utilities, Inc.] and the Cypress Lakes Estates Home Owner's Association (HOA), Cypress Lakes [Utilities, Inc.] noted that certain modifications to the wastewater treatment plant were a holdover from 2000. Please provide a detailed description of these modifications as well as the costs associated with them.

RESPONSE: The Company believes that Staff is referring to as "holdover modifications," the following modifications:

"[E]xpanding the surge tank by removing the wall separating the surge tank and aeration tank #1; adding a static screen and washing device; modifying the PD blowers and piping for the EQ tank; construction of a new EQ tank pumping station and its associated piping; installing a EQ tank jib crane; fabrication and installation of

DOCUMENT NUMBER-DATE

11825 DEC-8 8

FPSC-COMMISSION CLERK



Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
December 8, 2009  
Page 2

---

a new raw water splitter box, piping, support structure and walkways; new centrifugal blower and air piping modifications for the existing aeration basins; refurbishment of the existing centrifugal blowers; construction of an in-plant drainage pump station and associated controls; installation of a new emergency generator and all associated electrical component upgrades based on the above listed modifications.”

(See the Requests for Proposal attached hereto in response to Item No. 2.)

2. Please provide a copy of the request for bid proposals issued by Cypress Lakes for all major projects relating to the modification to the wastewater treatment plant, as well as copies of all the bid proposals that Cypress Lakes received.

**RESPONSE:** Please see the attached Requests for Proposal dated February 11, 2008, and the responses received by the Company.

3. Please provide a copy of the property tax bills for Cypress Lakes for 2006 through 2008.

**RESPONSE:** Please see the attached tax bills from the Polk County Tax Collector for the requested years.

4. In Cypress Lakes 2008 annual report, O&M Expenses for water have increased by approximately 52 percent since 2007. Several expense accounts seem to be driving this substantial increase. Please explain the following:

(a) Please explain why the salaries and employee pensions and benefits accounts (accounts 601, 603, and 604) have increased by a total of \$33,641 or approximately 40.12 percent since 2007, particularly in light of the fact that little, if any, growth appears to have occurred during this time period. Please also list the name, title, and a detailed description of the duties and responsibilities of any new employees, both for the Utility and any new employees with allocated salaries and benefits.

(b) Please explain why, in 2008, \$2,386 was recorded to account 610 - Purchased Water.

(c) Please explain the substantial increases for account 631 - Contractual Services - Engineering and account 659 - Contractual Services - Other. These accounts increased by a total of \$12,692 or approximately 145.8 percent. Please indicate what portion, if any, of this increase can be attributed to the ongoing maintenance projects; for all items or projects of \$400 or more, please include invoices or other support documentation.

(d) Please explain why, in 2008, the amount recorded in accounts 659 and 759 - Insurance - Other increased by \$7,569 or 319.91 percent for water and \$4,793 or 110.77 percent for wastewater. Please include support documentation for these accounts.

(e) Please explain why, in 2008, the amount recorded in accounts 675 and 775 - Miscellaneous Expenses increased by \$19,874 or 109.01 percent for water and \$25,916 or 146.31 percent for wastewater. Please include support documentation for these accounts.

**RESPONSE:** Items 4(a) through 4(e) are outside the scope of this limited proceeding. The Company's requested increase is not attributable to the items or accounts addressed in Items 4(a)(increased salaries), 4(b)(purchased water), 4(c)(contractual services accounts), 4(d)(insurance costs) or 4(e)(miscellaneous expenses accounts). The items for which the Company is seeking recovery are limited to a short list of capital improvements and increased costs. The only items for which the Company seeks recovery in this proceeding are as follows:

- Capital improvement - Supply main upgrade in the amount of \$60,039. The Company requests recovery on the capital asset, its accumulated depreciation, as well as depreciation expense and property taxes.
- Capital improvement - WWTP modifications in the amount of \$1,049,052, discounted by \$125,000 of CIAC. The Company

requests recovery on the capital asset, its related CIAC, its accumulated depreciation and accumulated amortization of CIAC, as well as depreciation and amortization expense and property taxes.

- Capital improvement - New financial and customer care/billing system in the amount of \$170,183 (an allocation to Cypress Lakes Utilities, Inc. from WSC). This amount derived from an allocation across all of the companies owned by Utilities, Inc. on a per ERC basis. The amount allocated to Cypress Lakes Utilities, Inc. is based on ERCs for both water and wastewater service. The Company requests recovery on the capital asset, its accumulated depreciation, as well as depreciation expense and property taxes.
- Increased cost - The increase in property taxes since the last test year (2005). Property tax expense increased by \$39,771 over 2005 expense. The 2008 expense includes the tax bill of \$38,686.94, the accrual for taxes incurred but not yet paid of \$18,527.12, and an allocation of a credit balance of (\$25.73) (Please see the attached tax accrual document; See also the property tax bills attached in response to Item No. 3).
- Increased cost - The increase in sludge hauling since the last test year (2005). Sludge hauling has increased by \$30,000. The increase in sludge hauling is attributable primarily to an increase in the volume of sludge produced in addition to an increase in the unit cost of sludge hauling. The increased volume is partly due to increased plant flow and to the plant's operating constraints prior to completing the WWTP improvements.
- Flow-Through Increase - The increase in its income taxes and regulatory assessment fee associated with the resulting net taxable income and gross revenue. These increases are customary and reasonable in the course of a limited proceeding.

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
December 8, 2009  
Page 5

---

The Company will be happy to provide any data and support related to the above requested increases and adjustments, as they are within scope of this proceeding.

5. In prior Utilities, Inc. (UI) cases, UI cited customer growth and increased revenues as the justification for adding several new customer support employees, both in the state of Florida as well as positions in Northbrook, IL whose salaries were allocated to Labrador and all other UI subsidiaries. Due to the recent sale of UI systems causing a decline in revenues, please explain why no reductions to Salaries and Wages - Employees or Contractual Services - Other have been made to reflect the reduction of revenues.

**RESPONSE:** Item No. 5 is outside the scope of this proceeding. The Company is not requesting an increase in the recovery of salaries, benefits or other employee costs. The amount of salaries and wages recovered in rates is based upon the 2005 test year (See Docket No. 060257-WS) and annual index increases.

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



CHRISTIAN W. MARCELLI

For the Firm

CWM/tlc  
Enclosures

cc: John P. Hoy, Chief Regulatory Officer (w/enclosures) (via e-mail)  
Ms. Kirsten E. Weeks (w/enclosures) (via e-mail)  
Patrick C. Flynn, Regional Director (w/enclosures) (via e-mail)  
Mr. Curt Mouring, Division of Economic Regulation (w/enclosures) (via e-mail)

M:\1 ALTAMONTE\UTILITIES INC\CYPRESS LAKES\(-182) 2009 RATE CASE\PSC Clerk 12 (4th RAJ).Jrr.doc

Rose, Sundstrom & Bentley, LLP  
SANJANDO CENTER, 2180 W. STATE ROAD 434, SUITE 2118, LONGWOOD, FLORIDA 32779