

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110200-WU

APPLICATION FOR INCREASE IN
WATER RATES IN FRANKLIN COUNTY
BY WATER MANAGEMENT SERVICES,
INC.

PROCEEDINGS: COMMISSION CONFERENCE
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Thursday, August 2, 2012

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

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

P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** This takes us to Item Number
3 7, Docket Number 110200-WU, WMSI PAA rate case. After
4 everyone gets settled, Mr. Brown, you can go ahead and
5 introduce the item. Give them a few seconds to settle
6 in. (Pause.)

7 Okay. I think we're ready now.

8 **MR. BROWN:** Good morning, Commissioners. I'm
9 Todd Brown with Commission staff.

10 Item 7 is staff's recommendation on Water
11 Management Services' request for a rate increase. The
12 Office of Public Counsel and the utility are here to
13 address the Commission this morning. I believe there
14 also may be a Franklin County Commissioner here, and as
15 you can see from the gallery, numerous customers are in
16 attendance today.

17 Staff has an oral modification that has been
18 previously provided to the Commissioners and all
19 parties. Staff is prepared to answer any questions the
20 Commission may have.

21 **CHAIRMAN BRISÉ:** Thank you very much.

22 I believe that we have about seven
23 individuals who are interested in speaking, and we are
24 going to proceed with that shortly. The instructions
25 are that you have three minutes. There is a light

1 fixture at the podium. So long as the light is green,
2 you can continue going. When it turns yellow, on this
3 one you have two minutes left; when it turns red you
4 have 30 seconds, and then once it starts flashing, you
5 need to stop, okay.

6 So we certainly appreciate that you will
7 respect the time. I really don't want to have to ask
8 you to stop, but if I need to I will do that. So at
9 this time we will begin with Mr. Mason Bean.

10 **MR. BEAN:** Good morning, Commission. I'm
11 impressed already. Thank you for the prayer. That was
12 powerful. I appreciate that.

13 I'm Mason Bean; I'm President of the St.
14 George Island Civic Club, here speaking on behalf of
15 probably 370 customers and property owners. As you can
16 see, we are well represented here. We were supposed to
17 wear blue shirts, but there would probably be more
18 people if it wasn't a workday, but I think we've got
19 plenty of customers. And we are concerned about
20 quality water service at a reasonable price on the
21 island.

22 We have also had tremendous support from our
23 Commissioner, District 1 commissioner, Pinki Jackel.
24 She is here and she will speak later. We, as
25 customers -- and we want to be fair, but we are

1 concerned about the viability of Water Management
2 Services, Incorporated, especially given the need for
3 improvements -- for additional financing for plant
4 improvements.

5 In WMSI's 2011 annual report, it shows a
6 negative common equity of over 2.6 million. We are
7 also aware that 1.2 million flowed out of the water
8 company to another owner's company. And on top of all
9 of that, there is an additional \$930,000 of interest
10 that has incurred due to a lack of payment to a DEP
11 loan. We are concerned that this lack of equity and
12 managerial imprudence will inhibit the opportunities of
13 financing for needed capital improvements.

14 It also seems that there were several
15 previous payments to the owner of WMSI that were not
16 used to improve the plant or perform maintenance to the
17 water system. So we question the wisdom of granting
18 WMSI additional monies without requiring proof that
19 these improvements have been made. So we ask you today
20 to require WMSI to establish escrows to ensure that
21 payments of loans, capital improvements, repairs,
22 maintenance, and other needed expenses has been
23 demonstrated before -- that you have oversight by the
24 PSC to do right by its customers, to make sure these
25 things are done. Thank you very much.

1 **CHAIRMAN BRISÉ:** Thank you very much.

2 At this time we will have Mr. Rick Watson.

3 **MR. WATSON:** Mr. Chairman and members of the
4 Commission, I'm Richard Watson, and have been a
5 resident of St. George Island for over 20 years. I'm
6 here today to speak as President of the St. George
7 Island Plantation Owners Association.

8 For those of you that aren't familiar with
9 the Plantation, it is a planned unit development that
10 was started in 1977. It's the five western miles of
11 the island. There are 899 homesites. At this time
12 there are 509 homes and 390 lots which are undeveloped.

13 I'd like to make three points. Item 15 of
14 the Proposed Agency Action, which is the \$1.2 million
15 that has been transferred out of the utility. Your
16 staff and the staff of the Public Counsel suggests the
17 utility's cash advances to the utility's president and
18 associated companies adversely impact the utility's
19 ability to meets its financial obligations and
20 operating responsibilities. We completely agree.

21 Imagine our surprise when we learned that the
22 utility had been collecting increased rates for us to
23 pay for the pipe under the new bridge and that payments
24 to DEP are in default. Those funds, we believe, should
25 be repaid with interest to the utility so the utility

1 can begin to meet its debt obligations. As mentioned
2 by Mr. Bean, we want to ask the PSC for strict
3 oversight and the utility be required to establish
4 multiple escrow accounts to ensure its fiduciary
5 responsibility. The Plantation Owners Association and
6 the St. George Island Civic Club, the two largest
7 associations on the island, are united in this request.

8 The second item, Item 5, we are opposed at
9 this time to approval of Phase II rate increases based
10 on the pro forma plant additions and associated
11 expenses. The ratepayers have no confidence that the
12 needed improvements will be made at a reasonable price
13 in a reasonable amount of time.

14 Yellow light. Third item, we object to Item
15 24 of the PAA which triples the availability charges to
16 \$5,310. For the reasons stated in Point 2, the
17 improvements justifying the increase are speculative in
18 view of the utility's past performance. Thank you.

19 **CHAIRMAN BRISÉ:** Thank you very much.

20 Mr. Newt Colston.

21 **MR. COLSTON:** Thank you, Commissioners.

22 My name is Newt Colston, and I'm a retired
23 partner of Black and Veatch, a large design engineering
24 firm. I spent 25 years in the Carolinas designing
25 water and wastewater facilities.

1 WMSI borrowed \$4 million from DEP in
2 2003/2004 to hang a new 12-inch raw water line on the
3 new 4.3 mile bridge to the island. The line was
4 specified to have a ceramic or similar coating that
5 would inhibit rusting as it is exposed to salt air.
6 When the construction was completed, WMSI became aware
7 that the pipe lacked the coating specified and paid
8 for. We understand that WMSI subsequently sued and the
9 case was settled for approximately three-quarters of a
10 million dollars. The money was not returned to WMSI
11 and ended up somewhere else. The funds could have been
12 used to pay down the DEP loans.

13 As well as not benefiting from the advantage
14 of having a rust resistant pipe, we, the users, are
15 being charged for the use of the 750,000, plus
16 interest, and we will have to pay for a new water line
17 sooner than we should have paid, than we should have.
18 WMSI obviously didn't inspect the pipe during the
19 12-month construction schedule or it would have been
20 obvious that the pipe did not meet specifications.
21 Consequently, on the proposed Phase II construction, we
22 are deeply concerned that WMSI's demonstrated lack of
23 attention to inspection and certification of
24 construction material and workmanship will, again, be a
25 problem.

1 We urge the PSC to require that WMSI provide
2 competent, independent -- and that's a big word --
3 independent on-site inspection, as well as project
4 administration during construction. The construction
5 contractor must be qualified and have demonstrated
6 relevant experience in the construction of large ground
7 storage tanks, high service pumps, electrical, and
8 other required trades. He should also have
9 successfully accomplished water plant projects in the 3
10 to \$5 million range.

11 On Page 12 of the PSC document, the contract
12 was awarded for a low bid of 2.6 million. We would
13 like to know has the Commission scrutinized the bidding
14 process or evaluated the cost estimates submitted by
15 WMSI. Again, we are extremely concerned that we, the
16 citizens and users on St. George Island, will not get a
17 quality product and request that the PSC require a
18 qualified experienced contractor.

19 Again, WMSI to date has not demonstrated any
20 concern for the welfare of its customers. Thank you.

21 **CHAIRMAN BRISÉ:** Thank you, Mr. Colston.

22 At this time we will ask Mr. Don Murray to
23 come forward.

24 **MR. MURRAY:** Good morning. I'm Donald
25 Murray, a Ph.D. economist. I have concentrated on

1 capital costs, market structure and pricing issues, and
2 the economics of regulation in the energy industries.
3 Earlier in my career I served as chief economic studies
4 at the U.S. Federal Power Commission, now the FERC. I
5 have testified as an expert witness in approximately 40
6 different state and federal courts and regulatory
7 bodies, including this Commission. I am here today as
8 a concerned customer of Water Management Services,
9 Incorporated, or WMSI.

10 Apparently a private entity acquired
11 certification from the PSC to operate as a monopoly
12 private water utility on St. George Island. However, a
13 recent report raised serious issues from the staff,
14 especially referring to the funds discussed previously.
15 If the Commission may find it necessary to adjust for
16 these reasons, the role and authority and actions
17 regarding WMSI may be important to the Commission. I
18 believe it is relevant that for months, while this
19 proceeding was working through a regulatory process,
20 that WMSI was negotiating with a municipality for the
21 sale of WMSI. I only learned recently of this
22 negotiation.

23 The issue is if the Commission takes action
24 to try to move some of these funds into different
25 locations, it may not survive the sale of WMSI to a

1 nonregulated entity. For example, if funds are taken
2 from rate base, that doesn't affect the asset value and
3 would probably not affect the fair market value. So
4 the actions of the Commission would not survive the
5 acquisition of the company. And that's a primary
6 concern I would like to leave with the Commission this
7 morning. Thank you.

8 **CHAIRMAN BRISÉ:** Thank you, Mr. Murray. Next
9 we have Mr. Ed Aguillar (phonetic).

10 **MR. AGUILLAR:** Good morning. My name is Ed
11 Aguillar. I have been a banker, builder, and developer
12 for 30 years in the State of Florida and in several
13 other states. As a developer, I had to build a water
14 treatment plant. I had to own and manage it for five
15 years in order to get approvals for a 13,000 unit
16 master plan community, so I know the headaches
17 involved, I know the challenges involved. With that,
18 we ended up selling that to a municipality, but what we
19 have seen here -- you have heard from several of us
20 regarding many different issues. As you can see, we
21 are a large group of citizens who organized initially
22 just to gather information. We were just looking to be
23 find out information about a very secretive plan to
24 sell the company. Obviously it's our water supply as
25 residents, and we became further united once we found

1 out all the questionable practices regarding many
2 different topics.

3 As mentioned earlier, the DEP and bank loans
4 are not performing. They haven't been kept up to date.
5 In addition, the DEP loan was restructured and recast
6 to not only reduce interest rates, but extend the
7 maturity date by ten years. We understand there may be
8 a good reason for this. All of this still resulted in
9 nonpayment further jeopardizing the company. So after
10 receiving the benefit of the restructuring, it still
11 remained noncurrent, nonperforming.

12 As a banker, I can't imagine any underwriting
13 criteria that would support a loan with this borrower's
14 track record. It appears that, once again, a dire
15 picture is being created or fabricated through
16 transfers of monies or other possible nonpayment of
17 loans that would create an artificial increase in the
18 company's value by asking for a rate increase. So
19 after nonperformance, looking to be rewarded for that
20 to either sell the property or increased rates so that
21 the loan-to-value would be more attractive for a lender
22 that was willing to accept a questionable past history
23 on performance from a borrower with a limited ability
24 to tax its customers under a monopoly, and a
25 manufactured lower loan-to-value to overcome a past

1 full of questionable behavior.

2 As mentioned by others earlier, whether it is
3 a parent siphoning off of funds, the manipulation of
4 defaulted loans, or the secretive approach to
5 circumvent the public and the PSC's oversight, we
6 request your continued vigilance in assuring that all
7 of us are treated fairly.

8 I understand that WMSI claims that their
9 restructure of the DEP loans was for financial
10 accounting benefits, but this doesn't address anything
11 regarding the nonpayment history which then continued
12 after the restructure was complete. And WMSI claims
13 that the OPC, the PSC, and the citizens are misinformed
14 and inaccurate regarding questions and statements made,
15 yet the transparency that all three groups have
16 requested time and time again has been repeatedly
17 challenged, ignored, or delayed.

18 Thank you for your past support and
19 continuing attention to these important issues.

20 **CHAIRMAN BRISÉ:** Thank you very much.

21 At this time we will hear from Commissioner
22 Jackel from Franklin County District 1.

23 And welcome.

24 **COMMISSIONER JACKEL:** Thank you. I'm a
25 little shorter than those guys.

1 Good morning. I'm Pinki Jackel, Franklin
2 County Commissioner for District 1, which is Eastpoint
3 and St. George Island. I am currently Chairman of the
4 Franklin County Commission.

5 I want to thank you all for the opportunity
6 to come before you this morning to have comment on
7 these very important decisions that you will make
8 regarding the future of Water Management Services and
9 the customers it serves. I'm speaking to you today in
10 two capacities; one, as my district's representative,
11 and the other as a customer of Water Management
12 Services where I am a resident of St. George Island.

13 The last time I appeared before you was on
14 St. George Island in 2010. You were considering at
15 that time an approximate rate increase of 100 percent
16 that you later determined was not set forth properly
17 and documented sufficiently enough to warrant approval.

18 The request before you today reminds me of
19 the expression "deja vue all over again." Many of the
20 concerns expressed by the folks that you have heard
21 from today are the same concerns that you have heard
22 previously when you denied WMSI their request for rate
23 increases. It would seem that we all continue to go
24 round and round on these issues, and we end up at the
25 same place every time.

1 In my role as Commissioner, my board receives
2 a lot of communications on issues that affect our
3 residents' pocketbooks, and that's really the bottom
4 line. We live in a county that is 64th in economy and
5 rank in the whole state of 67 counties in the State of
6 Florida. We live in an area that has experienced 75 to
7 80 percent decrease in real estate values in the past
8 seven years. And further, we have a struggling economy
9 affected by the national economic disaster and the
10 disaster of the BP Horizon oil spill.

11 Franklin County was one of those eight
12 affected counties by the disaster. You may ask, "What
13 does this have to do with your hearing today and the
14 decisions that you will make?" But I believe the
15 perspective of those who are affected by your decisions
16 is very important in your consideration. It is one
17 thing to consider the actual validity and predications
18 of this request, but it is certainly another to
19 consider those who will bear the burden of an increase
20 in a stagnant struggling economy that is dependent upon
21 two industries still in a state of freefall since you
22 were last considering your rate increases for the same
23 customers.

24 I believe the case of the residents of the
25 St. George Island has been stated very clearly and

1 succinctly today. In a nutshell, these are problems --
2 there are problems with this request. We know it; the
3 Office of Public Counsel knows it, and you know it. We
4 have stated the many questions regarding the management
5 of WMSI, and we have concerns about their future
6 viability to deliver quality water services at a
7 reasonable price. We have concerns about the oversight
8 of funding any future rate increase as it pertains to
9 improvements. Who will do this? Who will take the
10 responsibility for the people being served to make sure
11 that additional rate money received will be seen in the
12 agreed-upon improvements? Who will be accountable at
13 the end of the day?

14 Sitting where you sit today, I believe the
15 questions and concerns you have listened to are fair
16 and reasonable. I could go on, and we could continue
17 to go round and round. But just like last time, we
18 believe that we will end up at the same beginning and
19 starting point.

20 I respectfully ask you to continue to
21 carefully decide, as you have in the past, for the
22 residents of St. George Island, the customers of St.
23 George Island as you make these very important
24 decisions regarding the rate increase request before
25 you today.

1 I thank you again for this opportunity to
2 appear before you. I thank you for the very hard work
3 that you do for the State of Florida, and commend you
4 for your efforts. And, lastly, I invite all of you to
5 Franklin County to come and eat some of the best
6 oysters in the whole wide world. Thank you.

7 **CHAIRMAN BRISÉ:** Commissioner, there's a
8 question for you. Commissioner Graham has a question
9 for you.

10 **COMMISSIONER JACKEL:** Yes, sir.

11 **COMMISSIONER GRAHAM:** Madam Chairwoman,
12 welcome.

13 **COMMISSIONER JACKEL:** Thank you.

14 **COMMISSIONER GRAHAM:** A quick question.
15 Since the last rate case, and I know it hasn't been
16 that long, what things has the county done to help
17 alleviate some of these problems; anything?

18 **COMMISSIONER JACKEL:** I'm sorry, could you
19 repeat the last part of that? I could hardly hear you.

20 **COMMISSIONER GRAHAM:** Has the county done
21 anything to help alleviate some of these issues?

22 **COMMISSIONER JACKEL:** Could you be more
23 specific as to the issues you're referring to?

24 **COMMISSIONER GRAHAM:** Well, anything to help
25 relieve the burden of this utility. I mean, one of the

1 big issues that keeps coming up are a lot of the
2 shallow wells that are out there. Have we done
3 anything to deal with those shallow wells? Are we
4 still handing out permits for those shallow wells? Are
5 we looking to take those back?

6 **COMMISSIONER JACKEL:** The wells, as I
7 understand it, and permitting shallow wells is not a
8 role of the county government in Franklin County. I
9 believe that comes under the Northwest Florida
10 Management Water District, and they are the determining
11 entity for the issuance of permits for shallow wells.
12 So that does not come before the Franklin County -- my
13 board.

14 **COMMISSIONER GRAHAM:** Have you guys taken a
15 position on those wells, like sent some sort of
16 resolution to the water management on those shallow
17 wells?

18 **COMMISSIONER JACKEL:** We have not been
19 previously asked to take a position or to state a
20 resolution on the status of those permits.

21 **COMMISSIONER GRAHAM:** Well, I guess the
22 question is have you guys done anything in the past
23 couple of years to help this utility out?

24 **COMMISSIONER JACKEL:** During the past two
25 years this utility has not come before my board and

1 requested any assistance in helping them.

2 **COMMISSIONER GRAHAM:** Okay. Thank you.

3 **COMMISSIONER JACKEL:** Thank you, sir.

4 Any other questions I could answer?

5 **CHAIRMAN BRISÉ:** All right. Seeing none,
6 thank you, Madam Chairperson.

7 **COMMISSIONER JACKEL:** Thank you very much.

8 **CHAIRMAN BRISÉ:** Our last speaker this
9 morning is Mr. Walter Armistead (phonetic).

10 **MR. ARMISTEAD:** Thank you, Commissioners.

11 I have been on St. George Island -- my family
12 built the seventh house there in 1959, and we still
13 have numerous commercial businesses on the island, and
14 so we are very concerned about the water rates. And I
15 believe that our family is probably the single highest
16 water user on the island, individually. And I'm very
17 familiar with the water company. I've worked with Gene
18 over to the years, tried to help him a couple of times
19 in getting some loans through the bank, the old
20 Apalachicola State Bank.

21 And there are some concerns. Like, you know,
22 we didn't bring up this issue of 1.2 million. It was
23 brought up by staff. And this was -- I was at the rate
24 case hearing two years ago when it was brought up, and
25 I was flabbergasted, to be honest with you, when we

1 came back this time to find out that that issue hasn't
2 been resolved. I mean it's two years. I mean, it
3 doesn't take that long to do an audit and to find out
4 whether it was an improper taking or not. And so from
5 a business perspective, I was upset that that had not
6 been already addressed.

7 And, secondly, you know, we are business
8 people. I understand that improvements have to be made
9 on the island. The water company has to maintain
10 itself, and we understand that. And I'm not against
11 any rate increases if they're proper. We know that you
12 cannot make proper improvements without rate increases.
13 I understand that. But having said that, I know that
14 the utility company since the early '90s has always had
15 financial problems. They have always been cash
16 strapped. It has always been a struggle for Mr. Brown
17 to maintain the utility from a cash standpoint and to
18 make improvements in there.

19 Having said that, the quality of the service
20 is good. I have no problem with that. The quality of
21 the water is good. He has always done -- they do a
22 good job. His people down there do a really good job,
23 and I cannot, you know, say any more for them for that.
24 But we are concerned, because when you see a rate base
25 of \$3 million, and then you see that the debt on the

1 whole company is now \$7 million, and as long as I have
2 been here it looks like to me the debt is increasing.
3 It's not going backwards. It's getting more and more
4 and more.

5 And then if y'all allow him to borrow another
6 \$3.3 million to put these improvements in, the loan
7 could potentially go to \$11 million. And so, yes, that
8 is a concern, especially when we read in y'all's report
9 that the DEP loan is in technical default. And it
10 didn't say in there what DEP is going to do. They
11 said, well, we will wait until after the rate case
12 hearing to see what positions that we'll take on it.
13 So, yes, we are concerned about it.

14 And, lastly, I know the red button is up
15 there, but I just want to make one more comment here.
16 For our tap fees to go from 1,600 to 5,300 is
17 exorbitant, and it looks like to me based on what Erik
18 Sayler's report said, that that rate base from going --
19 I mean, that tap fee going from 1,600 to 5,300 is all
20 because you're going to possibly preapprove this case
21 in two stages here all at one time. Well, nothing has
22 been done yet; there has been no improvements. And so
23 I see no sense in going from 1,600 to 5,300 overnight
24 without any improvements being made.

25 And if you need to have an escrow account, I

1 know it was done in the early '90s, y'all did require
2 the company -- go back and look. It probably wasn't
3 when y'all were here, but it was done. They had to
4 escrow money to make sure that improvements were made,
5 and you may have to do that again. Thank you.

6 **CHAIRMAN BRISÉ:** Thank you very much.

7 All right at this time we'll end customer
8 participation, unless there is someone else who failed
9 to sign up and who's interested in speaking.

10 Okay. Seeing no takers. Thank you very much
11 for your participation. At this time we'll go back
12 into the regular process here. I guess, Mr. Brown, you
13 could tee us back up again.

14 **MR. BROWN:** I can go issue-by-issue, if you
15 like, or if you wanted to hear -- I don't know if the
16 other parties have any opening statements this morning.

17 **CHAIRMAN BRISÉ:** Okay. We will hear from
18 Commissioners as to what their preference is, whether
19 we are going to go issue-by-issue or address some of
20 the bigger issues that are outstanding there.

21 Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

23 For me, I think it would be helpful to hear a
24 brief general overview from our staff, including the
25 procedural posture that we are in. I recognize that

1 this is a PAA and we have recently, just within the
2 last few years, had a full hearing, and I know some
3 years before that, and all of that is referenced in the
4 background material. I think it would be helpful to
5 hear, again, a brief general overview of the case, the
6 docket that is before us, and the procedural posture
7 that we are in. And then per your leave, of course,
8 maybe a brief statement by each of the parties before
9 we go into the issues.

10 **MR. FLETCHER:** Commissioners, I'm Bart
11 Fletcher with Commission staff. To give a background
12 about the WMSI, the last case was in a docket in 2010,
13 and in that docket it was directly a formal proceeding.
14 It went directly to hearing and the final order of that
15 case came out in January of last year.

16 In that case, the Commission approved a
17 1 percent increase for the utility. It was roughly
18 about a \$13,000 increase. In that last case, the
19 utility did come and in its petition request certain
20 pro forma items. One was the storage tank, as it did
21 in this case. Others was a potential looping of lines,
22 and that is also in this case here. But what was
23 decided in the record in the last case is that there
24 was no documentation regarding those pro forma item
25 requests for that plant. There was just the

1 engineering estimate, conceptual estimates, and the
2 Commission has not relied on that in order -- for
3 inclusion to get recovery in service rates. So that
4 was the reason for the 1 percent and the excluding the
5 requested pro forma items.

6 In the last case it was -- it came out the
7 outflow -- basically, the balance in Account 123,
8 investments in associated companies. The Commission's
9 decision there was to -- we only had, basically,
10 opinion testimony. We had no audit regarding that
11 account at the time. The Commission's decision was to
12 order staff to conduct a cash flow audit, and that
13 audit was issued July of last year, and that's one of
14 the reasons why you will see this in this case. We did
15 have that audit. We were aware a few months after that
16 test year -- or, excuse me, that audit was issued that
17 the utility had filed a test year for this case. So
18 staff's track was we have an upcoming rate case, the
19 issue will have to be addressed regarding the cash flow
20 audit in the new rate proceeding.

21 In this case, the utility has filed also for
22 some of those same pro forma plant items, for the
23 ground storage tank with a little bit different take on
24 it, if you will, a little bit of modifications to its
25 original plan in the last rate case. In this case,

1 they have actually had a new treatment plant added to
2 their pro forma items requested, and also an upgrade in
3 the capacity of the storage tank. That's different
4 from the last case, as well as a request for Well
5 Number 5. That's the reason why you will see a
6 difference from the last case of the pro forma items.
7 It's an additional request of about a million dollars
8 more than what the request was in the last case.

9 And that's -- basically, in this case it was
10 originally planned to go to a full hearing in their
11 test year, but when the MFRs were filed in this case
12 the utility elected to ask for the PAA track, informal
13 track over five months statutory deadline, and it has
14 been waived by the utility through this agenda date.
15 And, that's basically the differences between the last
16 case and the reason why you were addressing the cash
17 flow audit in this case.

18 **CHAIRMAN BRISÉ:** Thank you, Mr. Fletcher.

19 I suppose at this time it would be
20 appropriate for Mr. Friedman to make some statements.

21 **MR. FRIEDMAN:** Thank you.

22 Do you just want introductory remarks now,
23 and not any argument on any particular issues?

24 **CHAIRMAN BRISÉ:** That would be correct.

25 **MR. FRIEDMAN:** Thank you. My name is Martin

1 Friedman of the law firm of Sundstrom Friedman and
2 Fumero. We represent Water Management Services, Inc.

3 As an introduction, in order for you to have
4 a perspective on the arguments that you heard from the
5 customers earlier and the arguments that you will hear
6 from Public Counsel, you need to keep in mind a couple
7 of things. One is that a group of these customers out
8 here have formed a water company in anticipation, I
9 guess, of trying to somehow take over the assets of
10 this utility, and they have been aided and abetted in
11 that effort by Public Counsel.

12 So when you hear the comments of the
13 customers and the Public Counsel, keep in mind that the
14 purpose of their argument is not to reach a fair and
15 just rate. Their argument is to try to cash strap this
16 company and make it as difficult as they can to operate
17 financially in order to assist them in whatever efforts
18 they are going to make to try to acquire the utility.

19 The staff -- unfortunately, some of the staff
20 have aided and abetted the Public Counsel and the
21 customers in that endeavor. It's clear when you read
22 every one of these issues in the staff recommendation
23 that at every opportunity the staff has -- let me just
24 say at almost every opportunity; you should never say
25 never -- at almost every opportunity the staff has

1 adjusted otherwise reasonable and necessary expenses
2 and taken them out of the revenue requirement. One
3 clear example that just jumps out at you is this issue
4 of Issue 12 of the staff recommendation. And I'm not
5 going to argue the merits of this, because dollar-wise
6 it's not a big issue, but it really point outs that
7 something has gone awry with the staff.

8 As I view the staff's job, it's like your
9 job. You're balancing. You're a regulator. You
10 balance the interests of having a viable utility with
11 the interest of keeping rates as reasonable as possible
12 for the customers. That's the same job that the staff
13 ought to have when they bring you a recommendation.
14 And I think that they have failed to do that in this
15 case.

16 One of the most obvious things is in this
17 Issue 12 where the staff recommends the reduction in
18 transportation expense for mileage reimbursement for
19 Mr. Brown and Ms. Chase, who are the administrative
20 staff, because they say they should have been
21 maintaining records, and we have been telling you since
22 1994 that you should be maintaining records. Then they
23 go on to quote from an order that says these employees
24 shall maintain travel records prospectively so that we
25 may adequately consider the level of expenses in the

1 proceeding.

2 Now what the staff has failed to point out to
3 you is that when it talks about "these employees," the
4 order is referring to field employees, not
5 administrative employees. This was made really clear
6 in the order that was entered after the last rate case.
7 There was a show cause about whether they failed to
8 keep those records, and this Commission in that order
9 made it clear that the reference to "these employees"
10 referred to field employees and not administrative
11 personnel. They specifically made this determination
12 in that case. So the staff or somebody at the staff is
13 intentionally trying to mislead you to believe that
14 that quote from the 2004 order referred to
15 administrative employees, whereas this Commission has
16 clearly said subsequently it does not apply to
17 administrative employees. And, in fact, that
18 requirement for the administrative staff to keep travel
19 records didn't happen until the last order, which was,
20 I guess, in January. And they kept keeping those --
21 they have kept those records since they were required
22 to do so.

23 It makes you wonder why would the staff
24 intentionally mislead you into a minor issue like that.
25 It's a three or four thousand dollar or five thousand

1 dollar issue. Why would the staff intentionally
2 mislead you by quoting something that they know that
3 you disagreed with in a subsequent order? It makes you
4 wonder. I think it taints the whole staff's
5 recommendation, and I hope that you keep that and the
6 fact that the customers are trying to take over this
7 utility when you consider the staff's recommendation
8 and the comments of the customers. Thank you.

9 **CHAIRMAN BRISÉ:** Thank you very much.

10 Mr. Saylor.

11 **MR. SAYLER:** Thank you, Mr. Chairman. One
12 moment. I do have excerpts from some orders that I
13 would like to pass out for the benefit of the
14 Commissioners. Ms. Vandiver has it. If she could pass
15 it out. And if you don't mind, just a moment. I have
16 a couple of copies for the utility.

17 Just a little background about that handout.
18 This is an order, and the highlighting on the orders
19 are my highlighting that I added. The bolded print is
20 just a keyword search that Westlaw does to just give
21 you a little context.

22 **CHAIRMAN BRISÉ:** Just for further practice,
23 when handouts are to be handed out, if your staff could
24 make it available to our staff so that they can --

25 **MR. SAYLER:** Yes, sir.

1 **CHAIRMAN BRISÉ:** Thank you. I would
2 certainly appreciate that.

3 **MR. SAYLER:** Good morning, Commissioners and
4 Mr. Chairman. My name is Erik Sayler, and I'm with the
5 Office of Public Counsel. And I have the distinct
6 pleasure to appear today before this Commission on
7 behalf of the citizens of the State of Florida and the
8 customers of Water Management Services.

9 I want to thank all the customers who came
10 out today driving almost two hours to come and appear,
11 and those who spoke, and those who came to listen and
12 watch and see how the PAA process works here before
13 this Commission. I would like to take a moment to say
14 that we are here today on WMSI's rate increase and your
15 deliberation on staff's proposed agency action, or PAA
16 recommendation.

17 The other day we filed a letter with this
18 Commission on July 31st. I have extra copies of that
19 letter in case anyone needs that. And this letter
20 raises succinctly, I think, most of -- well, not all of
21 our concerns, but all of the major concerns and
22 questions and issues that we have with this rate case
23 and staff's recommendation at this juncture in the PAA
24 process. I am not going to try to attempt to go
25 through many of those. I'll save those substantive

1 arguments, just like counsel for WMSI, until the issues
2 themselves.

3 However, there are a few ones that keep
4 repeating themselves, and that is Issue 5, and that is
5 related to the \$3.3 million pro forma plant request.
6 You know, we disagree with some aspects of it. Some
7 aspects we don't feel are supported, but the main thing
8 we are concerned about is making sure that if this
9 Commission does order it that the monies are prudently
10 expended and actually all go into rate base and into
11 plant.

12 The next issue as it relates to is Issue 15.
13 We agree with audit staff's analysis of the
14 \$1.2 million. We also agree with staff's finding of
15 managerial imprudence. You agree with some of the
16 remedies, but we also agree or believe that some of the
17 remedies don't go far enough. And, again, those are
18 succinctly stated in our letter.

19 And as several of the customers have
20 mentioned, there is quite a long history that this
21 utility has before this Commission. And when I was
22 preparing for this case, I learned that this utility
23 was started in 1978. And as part of my preparation, I
24 decided to read every single order I could find in
25 every docket from 1987 to present. And before you

1 today is an excerpt from one of those orders. But let
2 me tell you, this utility has a colorful and
3 interesting history before this Commission. Much more
4 proactive interaction between this Commission and this
5 utility than in most utilities that you will see coming
6 before this Commission. And as you are aware from
7 looking at the handout, that this utility in 1992, this
8 Commission under its own motion sought to potentially
9 revoke this utility's certificate for providing water
10 service.

11 And what I would like to do, with your
12 indulgence, is just read a little excerpt from the
13 first order and then the last order. And you'll notice
14 they're Bates-stamp paged. On Page 1, "As a result of
15 the utility's history of noncompliance with orders,
16 rules, and statutory requirements, we issued a notice
17 of our intention to initiate revocation of Certificate
18 Number 302-W for water services in Franklin County
19 issued to St. George." That was the prior name of the
20 water utility, St. George Island.

21 On July 9th, 1992, St. George filed a formal
22 objection to the notice of intent to initiate
23 revocation and the case was set for hearing. In the
24 intervening months, staff and the utility reached some
25 sort of agreement or stipulation on it, and that is

1 what is memorialized by this order approving the
2 stipulation. But as you can see in the top corner of
3 your page, it says, "The purpose of this agreement is
4 to determine whether utility funds are being used
5 appropriately for utility purposes and to protect the
6 customers from any dissipation of utility assets."

7 And I would assert to you, Commissioners, you
8 may be in a very similar situation today as we were --
9 as this Commission was back in 1992/1993 as it relates
10 to this utility. And that is something that we would
11 ask you to make a determination of and consider. You
12 will see from the proposed stipulation that there are
13 many requirements of this staff to be actively engaged
14 in so-called micromanagement of this utility, but it
15 was ultimately for the benefit of the utility and to
16 protect the customers from dissipation of the utility
17 assets. And this was initiated in 1992.

18 In 1995, if you will turn to Page 9, in the
19 order closing the docket -- in the meantime from the
20 initiation of this proceeding to the closing of the
21 docket, the utility had filed two rate cases. The
22 first one was dismissed; the second one actually went
23 through to full hearing and decision and that was the
24 last rate case that this utility had before 2010, which
25 came before you just recently.

1 But in that docket, and I direct you to the
2 highlighted portion on the right-hand side, it says,
3 "The record for Docket Number 940109-WU indicates that
4 St. George has made significant strides towards
5 bringing itself into compliance with the Commission and
6 the Department of Environmental Protection's
7 requirements. In addition, there are still a number of
8 encumbrances --" I would say probably debts or liens --
9 "on utility property. St. George does not appear to be
10 in immediate danger of forfeiting any of its assets.
11 Since it appears that many of the concerns that led to
12 this docket are resolved to one extent or another, we
13 find that this docket shall be closed. Should
14 circumstances warrant such an action, we may reinitiate
15 revocation proceedings at a later date."

16 So in 1995 this utility started turning the
17 corner. A few years later when this utility came
18 before this Commission on the water main case, one of
19 the things this Commission did was review whether
20 escrow requirements should be continued for the service
21 availability charges. At that time, the Commission had
22 some very appreciative language in those orders and
23 complimented the utility on doing a fine job and
24 released itself from the escrow requirements. However,
25 unfortunately it seems like we may be back in a

1 situation where history is repeating itself.

2 Again, thank you very much for your time and
3 for listening to a brief history. I would encourage
4 anyone to read the history of WMSI or consult with the
5 staff, because many of the -- I don't want to say
6 old-timers, but the veteran staff probably can tell you
7 some war stories that are quite interesting. But,
8 again, thank you for your time, and I look forward to
9 discussing with you any of the issues, and I hope we
10 have a full, frank, forthright, and productive
11 discussion today. Thank you.

12 **CHAIRMAN BRISÉ:** Thank you, Mr. Sayler.

13 Commissioner Edgar, your light is still on.

14 **COMMISSIONER EDGAR:** A few general comments,
15 and then to maybe move in if that is appropriate.

16 **CHAIRMAN BRISÉ:** Sure.

17 **COMMISSIONER EDGAR:** Thank you.

18 Thank you, Mr. Chairman. As Mr. Sayler has
19 pointed out, this particular utility has been before
20 the Commission a number of times. That is not unusual
21 for small privately owned utilities that we regulate.
22 I recognize that -- well, let me just put it this way.
23 I want to kind of set the stage, if I may, from my
24 perspective. We are not in an evidentiary hearing
25 posture. This is a PAA. We have recently had an

1 evidentiary hearing. I was a participant, and
2 Commissioner Graham was on the panel with me. At that
3 point in time we had significant expert witness
4 testimony and also participation by a large number of
5 customers.

6 I want to thank the customers. From my
7 perspective, thanks to the customers who have come
8 today to participate and to share their thoughts with
9 us. And I note that we had a number of customers when
10 we had the hearing on-site who shared comments with us
11 and that was very, very helpful.

12 But often with a small tightly knit
13 community, which I perceive the St. George Island
14 community to be, and also with island communities,
15 although friendly and welcoming, sometimes there can be
16 factions and sometimes opinions can run strongly and
17 there can be emotions that also can enter in. So I
18 would certainly ask, and I know our advocates will
19 stick to the facts and try to refrain from any of the
20 rhetoric.

21 I also note that we did receive, as
22 Mr. Saylor has pointed out, a letter from OPC of
23 July 31st detailing their comments in great detail.
24 And I know that that was eleven days after the
25 recommendation was filed, so that was a lot of

1 information, I think, for our staff and for my office
2 to absorb on a short turn around. And I note that the
3 utility filed a response to that, and I'm sure we'll
4 hear more about it.

5 So I guess what I would like to say is just
6 to point out again, PAA. This is not evidentiary. And
7 I am certainly going to try to stick to the issues that
8 are before us and look prospectively as we are supposed
9 to do.

10 So, Mr. Chairman, if you are ready, I'm ready
11 to tee up Issue 1, and then we may be able to take 2,
12 3, and 4 as a group, and then and dive into Issue 5.

13 **CHAIRMAN BRISÉ:** All right. Is everyone
14 ready for Issue 1? Okay. So we will go to Issue 1.

15 **MR. RIEGER:** Thank you, Commissioners. My
16 name is Stan Rieger of Commission staff.

17 Issue 1 deals with the quality of service
18 provided by WMSI. Staff is recommending that the
19 quality of service provided by the utility should be
20 considered satisfactory.

21 **CHAIRMAN BRISÉ:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

23 I note that from the customers that we have
24 heard from today we have not had any complaints or
25 concerns raised about the water quality service or the

1 customer service. I also recall from my perspective
2 that at the evidentiary hearing of a year and a half or
3 so ago we did not have complaints about customer
4 service or about water quality. And my understanding
5 from the written information is that that remains the
6 same. And so with that, I would move the staff
7 recommendation on Issue 1.

8 **COMMISSIONER BROWN:** Second.

9 **CHAIRMAN BRISÉ:** Okay. It has been moved and
10 second. All in favor stay aye.

11 (Vote taken.)

12 **CHAIRMAN BRISÉ:** Okay. Seeing that, Issue 1
13 is voted favorably. Moving on to Issue 2.

14 **MR. BROWN:** Okay. Issue 2 is are the audit
15 adjustments to which the utility and staff agreed; they
16 amount to \$877 worth of reductions.

17 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis.

18 **COMMISSIONER BALBIS:** Thank you, Mr.
19 Chairman.

20 I move staff's recommendation on Issue 2.

21 **CHAIRMAN BRISÉ:** All right. It has been
22 moved. Is there a second?

23 Okay. It has been moved and properly
24 seconded. All in favor say aye.

25 (Vote taken.)

1 **CHAIRMAN BRISÉ:** All right. It was voted
2 affirmatively, so Issue 2 supports -- the Commission
3 supports the staff recommendation on Issue 2.

4 Moving on to Issue 3.

5 **MR. BROWN:** Issue 3 is about the audit
6 adjustments contested by the utility based on the audit
7 that was performed by audit staff. As you can see,
8 there were numerous adjustments laid out in the
9 recommendations statement and discussion of those
10 within the recommendation itself. If there are any
11 that need to be discussed, I can take care of that.

12 **CHAIRMAN BRISÉ:** Okay. Commissioners, any
13 discussion on issues pertaining to Issue 3?

14 Commissioner Brown.

15 **COMMISSIONER BROWN:** I move staff the
16 recommendation on Issue 3.

17 **CHAIRMAN BRISÉ:** Okay. It has been moved and
18 seconded. All in favor say aye.

19 (Vote taken.)

20 **CHAIRMAN BRISÉ:** All right. Issue 3 supports
21 -- I mean, the Commission --

22 **MR. FRIEDMAN:** Mr. Chairman. May I make a
23 brief comment, Mr. Chairman?

24 Just because we are not arguing against some
25 of these minor issues, please don't take that as our

1 acquiescence that we believe that the staff
2 recommendation is correct. We have picked a number of
3 primary issues that we are going to address, but we do
4 disagree with a lot of these. As I mentioned in my
5 opening, a lot of these other adjustments that were
6 made. I just wanted to make sure my silence wasn't
7 treated as acquiesce.

8 **CHAIRMAN BRISÉ:** Understood and appreciated.

9 **MR. SAYLER:** That would also echo some of the
10 OPC's concerns, so --

11 **CHAIRMAN BRISÉ:** Okay. Thank you.

12 **MR. SAYLER:** About agreeing with some
13 adjustments and not agreeing with others. But as a
14 wise man once told me, focus on the major things and
15 let the minor things -- don't sweat them.

16 **CHAIRMAN BRISÉ:** Thank you. Understood.

17 Moving on to Issue 4.

18 **MR. BROWN:** Issue 4 addresses any additional
19 test year plant adjustments that needed to be made.
20 Staff believed approximately \$9,300 of plant
21 adjustments should be made basically removing or
22 reclassifying certain items that should have been
23 capitalized to plant.

24 **CHAIRMAN BRISÉ:** Any questions or comments by
25 Commissioners on Issue 4?

1 I'm ready to entertain a motion.

2 **COMMISSIONER BALBIS:** Mr. Chairman, I move
3 staff's recommendation on Issue 4.

4 **CHAIRMAN BRISÉ:** Okay. It has been moved.
5 Is there a second?

6 Moved and seconded. All in favor say aye.

7 (Vote taken.)

8 **CHAIRMAN BRISÉ:** Okay. Let the record
9 reflect that the Commission supports staff
10 recommendation on Issue 4.

11 Moving on to Issue 5.

12 **MR. BROWN:** Issue 5 addresses the adjustments
13 to be made to the utility's pro forma plant additions
14 and associated expenses. Staff is recommending a
15 two-phase rate increase. In the first phase, staff is
16 recommending removing all of those pro forma plant
17 expenses or plant additions and associated expenses.
18 In Phase II most of those expenses get put back in with
19 the exception of the cost associated with Well Number 5
20 and a minor deduction for some land costs.

21 **CHAIRMAN BRISÉ:** All right. Thank you.

22 I suppose there is going to be some
23 discussion on Issue 5. So, Commissioners?

24 Commissioner Balbis.

25 **COMMISSIONER BALBIS:** Thank you, Mr.

1 Chairman.

2 I just want clarification from staff on this.
3 With this two-phased approach, there was some
4 discussion by some customers here today that the
5 utility should not recover any rates until the
6 improvements are made. With this phrased approach that
7 is, in essence, what would happen, that until all of
8 the documentation is provided and the improvements have
9 been completed, that is when the increase would occur?

10 **MR. BROWN:** That's correct, Commissioner.

11 **COMMISSIONER BALBIS:** Okay. Thank you. I
12 just wanted to point that out. I think that was,
13 again, discussed, and I think it is important to point
14 out. The other really discussion I would like to have,
15 and it started in Issue 1 and really deals with all the
16 pro forma plant increases or plant additions, and
17 that's really the process to have these improvements
18 constructed.

19 I think that the storage tank and the other
20 improvements have been identified as needing repair
21 with engineering reports, you know, our staff, et
22 cetera, and yet, you know, it has taken years to get to
23 the point for the utility to move forward with that.
24 And I understand that there is a water commission that
25 has formed, and maybe that's something that can be

1 addressed if the chairperson of that water committee
2 would take note.

3 I think it's interesting in the municipal
4 utility sector, which I have experience in, that a
5 capital improvement plan is presented to the Commission
6 and approved, and then on a yearly basis those
7 additions are reviewed and approved again. And it
8 seems to be an easier process for utilities to make
9 improvements without having to go through an extensive
10 regulatory process. So hopefully the water study
11 commission will look at that, but I just wanted to have
12 that discussion. I thought it was appropriate for this
13 issue. And those are all the comments I have on this.

14 **CHAIRMAN BRISÉ:** All right.

15 Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you.

17 I have a couple of questions for staff. The
18 first question, during the last rate case the
19 Commission found that the pro forma plant additions
20 were reasonable and prudent. Is that conclusive
21 evidence that in this case that those pro forma plant
22 additions are, in fact, reasonable and prudent?

23 **MR. JAEGER:** Commissioner, this is PAA. And
24 I think what staff is saying is in the last rate case
25 everyone agreed that we needed that ground storage

1 tank, even OPC's witness, and we don't think anything
2 has changed in this PAA proceeding. Nothing has shown
3 staff that that is not still the case. And also there
4 was that looping and some other stuff for fire flow
5 that people agreed at the last hearing. So it is PAA,
6 so we don't have an evidentiary record for this case,
7 but we still think those are needed.

8 What we did throw out was the well, because
9 there was very little growth and they didn't show any
10 need for this well, so we threw out about \$571,000 of
11 pro forma on the well, and then we adjusted some other
12 minor adjustments, like Mr. Brown said, for land
13 acquisition and stuff. But basically we're saying that
14 we did go to hearing on the ground storage tank and on
15 this looping, and we don't see anything that has
16 changed that those are necessary.

17 **COMMISSIONER BROWN:** I understand that.
18 Thank you. But the utility has provided enough cost
19 justification to support those pro forma plant
20 additions at this phase?

21 **MR. JAEGER:** On August 18th I think they did
22 receive three bids they submitted, and they let the
23 bids out to a -- I'm sorry, I should have probably let
24 Todd Brown answer that one -- but they did submit these
25 for bids, and they actually had an outside, I think,

1 consultant doing it, so they weren't involved directly
2 in the bids.

3 Todd, you can correct me.

4 **MR. FLETCHER:** That is correct; Mr. Jaeger
5 stated it correctly. In August of last year, they did
6 have three bids submitted, and that was conducted by an
7 outside third-party, Professional Engineer Les
8 Thompson. So that is the distinction between this case
9 and the last case is we have actual bids this time and
10 went through the bidding process versus last time the
11 only cost estimate we had was conceptual from an
12 engineering study.

13 **COMMISSIONER BROWN:** Well, I think that also
14 answers one of the concerns that was raised by a
15 customer about whether staff has reviewed the bid
16 process and found it to be fully vetted.

17 **MR. FLETCHER:** Yes, we believe that
18 everything has proceeded accordingly and appropriate
19 because it was administered by a professional engineer,
20 the bidding process.

21 **COMMISSIONER BROWN:** Okay. Another question
22 about the DEP not complicit in subordinating its loan
23 to Fidelity Bank. Can you address that issue and how
24 that affects WMSI's ability to obtain the loan if DEP
25 is not willing to subordinate its position?

1 **MR. MAUREY:** Andrew Maurey, Commission staff.
2 We do not know if DEP will subordinate to the Fidelity
3 loan, and we won't learn that until sometime in the
4 future. We can't suppose what might or might not
5 happen.

6 **COMMISSIONER BROWN:** But at this time the
7 evidence that we have, through the data requests we
8 have learned that DEP does not want to subordinate its
9 loan.

10 **MR. MAUREY:** It does not typically
11 subordinate loans, no.

12 **COMMISSIONER BROWN:** I have a question for
13 WMSI regarding whether our Commission decision today is
14 a prerequisite for obtaining the loan.

15 **MR. GENE BROWN:** Definitely; absolutely.

16 **MR. FRIEDMAN:** Yes; that is correct. They
17 are looking to this Commission's decision to be able to
18 support that there is going to be sufficient additional
19 revenue to pay the loan, and that's part of our concern
20 that I'll address when I get a chance to do that.

21 **MR. GENE BROWN:** The rates have to be in
22 place. I don't know if any of you were here when we
23 built the water line across the bridge, but you did a
24 three-phase process. The first phase was preliminary
25 soft costs and preliminary planning. The second phase

1 you put in effect in 2003. That gave us firm rates
2 that showed cash flow, and then we built the project,
3 and it ended up costing \$7,009,000.

4 But we had to have that money, that cash
5 flow. No bank is going to loan another 3.5 million on
6 a promise that -- especially with some of this language
7 in there about what a bad manager is running this.
8 Nobody is going to make that loan unless the rates are
9 in place. That's just the reality.

10 **COMMISSIONER BROWN:** Thank you, Mr. Brown.

11 **MR. GENE BROWN:** I've got good credit, but,
12 you know, General Motors couldn't make that loan.

13 **COMMISSIONER BROWN:** Thank you, Mr. Brown.
14 Actually you just got to a point that I have a question
15 for the staff regarding. Not to go to Issue 15, but
16 somewhat related to this, if we find that the company
17 mismanaged -- mismanagement, as staff is recommending,
18 does that cripple WMSI's ability to obtain the
19 financing through Fidelity?

20 **MR. MAUREY:** We do not believe so. He was
21 correct on the point about cash flow. And staff was
22 very careful in crafting this recommendation to focus
23 on the cash flow -- the project, the need for the
24 project and the necessary cash flow to make the project
25 come to fruition, and we focused on that. There will

1 be a lot more of that come out in Issue 15.

2 **COMMISSIONER BROWN:** Okay. I'm done.

3 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis.

4 **COMMISSIONER BALBIS:** Thank you.

5 I have a follow-up question following the
6 same line of questioning Commissioner Brown had for Mr.
7 Maurey. The phased approach, will that affect their
8 ability to obtain financing, or do you feel that it
9 will not hinder that ability?

10 **MR. MAUREY:** Staff believes that with a final
11 order in hand from this Commission that it will have
12 suitable cash flow in the future when these projects
13 come on-line is satisfactory to induce a lender to make
14 funds available.

15 **COMMISSIONER BALBIS:** Okay. Thank you.

16 **CHAIRMAN BRISÉ:** Any further questions on
17 Issue 5?

18 Commissioner Brown.

19 **COMMISSIONER BROWN:** Thank you.

20 I'm ready to make a motion. If there's no
21 further questions, I move staff recommendation on Issue
22 5.

23 **MR. FRIEDMAN:** Can we comment on this issue?

24 **COMMISSIONER BROWN:** I'll get through my
25 motion first, and it's up to you. I move staff.

1 **CHAIRMAN BRISÉ:** You moved staff. Is there a
2 second?

3 **COMMISSIONER BALBIS:** Second.

4 **CHAIRMAN BRISÉ:** All right. Is the
5 Commission interested in hearing any further comments
6 on Issue 5?

7 **COMMISSIONER EDGAR:** I am.

8 **CHAIRMAN BRISÉ:** Okay. We are.

9 So, Mr. Friedman.

10 **MR. FRIEDMAN:** Thank you, Commissioners.

11 Our concern with Issue 5, and we take
12 exception with Mr. Maurey opining that an order of the
13 Commission saying you're going to get the money in the
14 future gives any comfort to a lender that that money is
15 going to be there. And also I take great exception
16 with his comment that this order -- the Commission
17 putting in an order that this gentleman mismanaged his
18 company would not have any impact on a lender who's
19 reading this order to see whether he or she would want
20 to make this loan.

21 Both of those points he's completely
22 incorrect. And what I would suggest to you and what we
23 have requested is that instead of doing a two-phased
24 approach like the staff has recommended, that we do a
25 two-phase approach where we go ahead and include the

1 24.1 percent increase in the first phase of the rates.
2 And then when the construction is finished, we true it
3 up, and that way the customers are protected and the
4 utility is protected, as well.

5 The company would be willing to escrow that
6 portion. I think it's important when you're a banker,
7 and these guys aren't bankers, they don't understand --
8 you know, I don't know how many of them have ever been
9 in business and tried to get money and scrape and
10 borrow. You know, the Commission wrote a report back
11 in 2001 about the challenges of small water and sewer
12 utilities like this in obtaining financing, pointing
13 out that most of them the owners are out there getting,
14 you know, scraping to get cash, putting home equity
15 loans, using credit cards, you know, all those kind of
16 things that utilities -- that small utilities have to
17 do in order to survive is exactly what this utility is
18 doing. And the Commission will hamper that ability.
19 Not that they can't do it, but it will sure create
20 challenges.

21 If the Commission just says, yes, once you
22 get it done, you know, we may give it to you. And by
23 the way, you know, the owner mismanages the company. I
24 think that has a tremendous adverse impact. What I
25 would ask that you do is that you go ahead and allow

1 the rate increase for the pro forma adjustments. Put
2 it in an escrow account. That way the bank looks at it
3 and says, okay, we know the money is going to be there.
4 They are not going to change their mind in the future.
5 The money is going to be there. It's in an escrow
6 account; it's starting to be collected. And that gives
7 them some level of comfort that the money is really
8 going to be there.

9 It also protects the customers. The money is
10 in an escrow. It's going to be used for the purpose
11 that it was intended to be used for. How can anybody
12 be harmed by that process? That's exactly what you
13 did, as Mr. Brown pointed out earlier, when they did
14 the bridge replacement. They did an escrow account,
15 and at the end of the escrow account the Commission
16 commended the utility on the way it handled the escrow.
17 It did a great job on doing it. It did everything
18 according to what the Commission wanted them to do, and
19 they closed the escrow account. And that's all we're
20 asking you to do here is let's go ahead and get those
21 rates in effect so a lender will have the comfort that,
22 in fact, the rates really are going to be there, the
23 revenue is really going to be there. And that is the
24 modification that I would request that you make to the
25 staff's recommendation.

1 **CHAIRMAN BRISÉ:** Thank you, Mr. Friedman.
2 Commissioner Graham.

3 **COMMISSIONER GRAHAM:** Thank you, Mr.
4 Chairman.

5 I just want to hear staff's feedback to that
6 recommendation.

7 **MR. MAUREY:** The recent proposal you just
8 heard wasn't included in the filing. I mean, it's
9 something this Commission and staff could consider, but
10 it wasn't before us.

11 When the pipeline was built, the increase was
12 based on a final order and the increase was granted in
13 stages. The project was completed, and that's a
14 significantly larger project than the one that is
15 before you now. That tripled rate base at the supply
16 main.

17 Now, the --

18 **CHAIRMAN BRISÉ:** Mr. Maurey, if you would
19 just wait one second.

20 Thank you, gentlemen.

21 Go ahead.

22 **MR. MAUREY:** Now, the issue of management
23 imprudence, that's a tough call. Staff struggled with
24 that. But the results of the cash flow audit are what
25 they are. And that's all I have to say about that.

1 **COMMISSIONER GRAHAM:** I guess what I'm
2 looking for is do you -- does staff feel that Mr.
3 Friedman's recommendation was palatable or not?

4 **CHAIRMAN BRISÉ:** Does staff need -- you're
5 good, or do you need a break?

6 **MR. MAUREY:** No, I'm good. If the
7 arrangement were structured in the way that counsel has
8 suggested, that is palatable to staff. We could work
9 with that, and it would be more conducive to secure
10 financing. Lenders would certainly like to see that
11 money already collected, already available.

12 **CHAIRMAN BRISÉ:** Commissioner Graham.

13 **COMMISSIONER GRAHAM:** Well, I can hold off
14 and wait until I hear any other comments that are out
15 there, but I didn't have a problem with the
16 recommendation that the counsel had laid out there, and
17 staff doesn't appear to have a problem with it, so at
18 the time I will make the proper amendment, or let
19 somebody else do it.

20 **CHAIRMAN BRISÉ:** Sure.

21 Commissioner Brown.

22 **COMMISSIONER BROWN:** Thank you.

23 And I think having the escrow account is a
24 good thing, and it provides some security to the
25 utility as well as to the customers that these projects

1 are going to be built. I did want to hear from OPC,
2 though.

3 **MR. SAYLER:** Thank you, Commissioner Brown.

4 We have been advocating escrow accounts all
5 throughout this case for this utility, and we believe
6 that any money for a rate increase, even the one that's
7 recommended in Phase I potentially should go into an
8 escrow account to make sure that the funds, as
9 designated, go where they are supposed to go.

10 The thing I'd like to point out is that this
11 is at a PAA recommendation. Some of the things are
12 holdovers from the last case, like the replacement of
13 the water main, or, excuse me, the groundwater storage
14 tank and the looping. Those are things that our office
15 agreed to. There was some dispute in the last case
16 whether or not they needed, you know, \$400,000 worth of
17 land, and that's still an issue that we would have, and
18 we have not had an opportunity to engage an engineer to
19 determine the reasonableness of this, nor have we had
20 an opportunity to engage an engineer to determine
21 whether or not they need the parallel line or need to
22 relocate the system.

23 So there are some aspects of their pro forma
24 requests that should be implemented, and there are a
25 lot of aspects that we believe should be determined

1 ahead of time and not just kind of preapproved on a --
2 as is being suggested by counsel for WMSI. I would
3 like to point out that their engineer, Les Thomas, has
4 worked for WMSI, if I recall from the last rate case,
5 numerous times over the years. He is their engineer.
6 He was their witness in the case. He's independent of
7 WMSI, but yet he is their witness. The bidding process
8 was not handled by staff hiring someone to go out and
9 do an independent bidding process. So it is what it
10 is, and that's why it raised a lot of our concerns
11 with, you know, was there a review of the bidding
12 process and things of that nature.

13 And I will tell you this, when I was
14 reviewing the bids and who prepared the bids, I did
15 notice that one of the bids was prepared by someone now
16 who works for the Public Service Commission. So as far
17 as the cost related to that bid, I have great comfort,
18 because I have a lot of, you know, trust in this
19 particular staff person. But I just wanted to say that
20 we are concerned about the money. Even if it goes into
21 an escrow account, what kind of controls are going to
22 be on it to make sure that you don't have gold plating
23 or \$500 hammers or things of that nature go through the
24 escrow accounts.

25 **COMMISSIONER BROWN:** Thank you.

1 **CHAIRMAN BRISÉ:** Thank you.

2 Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you, Mr.

4 Chairman.

5 I just want to have staff confirm with this
6 option of an escrow account we have -- I don't want to
7 get too much into Issue 15, but we have an issue in
8 this case of potentially withdrawing funds for utility
9 purposes and using them for something else. I want to
10 make sure that this escrow option will protect the
11 customers' money and to make sure that it is used for
12 utility purposes.

13 **MR. MAUREY:** It would not be the typical way
14 that these assets are financed, but it's something we
15 could certainly work. And, yes, it would -- the
16 escrowing of the account would ensure that. It would
17 offer that protection.

18 And one final point to Commissioner Graham's
19 question to me earlier that I neglected. The staff's
20 representation of the company management imprudence,
21 that that would impede the company in getting a loan,
22 the fact that it's currently in default on its current
23 loan is more of an impediment than what the staff
24 referenced in the staff recommendation. Thank you.

25 **COMMISSIONER BALBIS:** The other question I

1 had for staff -- and we have had discussion, and there
2 is a lot of information in the recommendation on the
3 financial viability of the company. If there is a
4 change in ownership, if there is a bankruptcy, if there
5 is any other change and we do move forward with this
6 escrow option, are the customers protected, as well?
7 Because, in essence, they will be paying for these
8 improvements immediately, only it will go to the escrow
9 account.

10 **MR. MAUREY:** That's correct, yes.

11 **COMMISSIONER BALBIS:** Okay, thank you.

12 That's all I had.

13 **CHAIRMAN BRISÉ:** Okay. In terms of posture,
14 we have a motion on the table to accept staff's
15 recommendation. These are our options. We can
16 either -- the mover and the seconder of the motion can
17 withdraw the motion, and I think it would probably make
18 sense, if that was the desire, for staff to maybe take
19 a fifteen-minute break to synthesize what was proposed
20 by Mr. Friedman, since there may be some consensus
21 there, and for them to come back with their full
22 understanding of that, and then maybe we can look at a
23 motion at that time to move forward. So if that is the
24 desire of the movers and the seconders, I will
25 entertain a withdrawal.

1 **COMMISSIONER BROWN:** Mr. Chairman, I withdraw
2 my motion.

3 **CHAIRMAN BRISÉ:** Okay. Does the seconder --

4 **COMMISSIONER BALBIS:** I withdraw my second.

5 **CHAIRMAN BRISÉ:** So there is a withdrawal of
6 the second. At this time we will take a 15-minute
7 recess.

8 **COMMISSIONER JACKEL:** May I ask a question,
9 please?

10 **CHAIRMAN BRISÉ:** Sure. Come forward. It's
11 not typical.

12 **COMMISSIONER JACKEL:** I'm not sure what the
13 protocol is, and I don't want to impede the progress of
14 this meeting, but since this is new information that we
15 have not heard of prior, and this is a new proposal on
16 the part of WMSI to your staff, I have concerns about
17 what you will entertain as far as conditions in escrow.

18 Escrow accounts are fine. I think this is a
19 wonderful idea. However, how can we be assured or how
20 can you be assured that the escrow requirements that
21 are set forth will be stated for the purposes of loan
22 repayment only? That would be a primary concern.

23 If the escrow account is established for the
24 repayment of a new loan, then that is one thing. But
25 if it's just established for a broad-based use of the

1 utility owner, then I have grave concerns about that.
2 So I would ask your staff to entertain in what this
3 appendix to this issue may be is that that be
4 structured very tightly, very strictly such that those
5 funds could only be used for the use of loan repayment
6 or debt repayment regarding this improvement.

7 **CHAIRMAN BRISÉ:** Thank you, Madam
8 Chairperson.

9 **COMMISSIONER JACKEL:** Thank you.

10 **CHAIRMAN BRISÉ:** And that is part of the
11 reason why we are taking a break so that they can --

12 **COMMISSIONER JACKEL:** And I would not ask you
13 for this comment except for this is new information to
14 the public and introduced to this proceeding.

15 Thank you, Mr. Chairman.

16 **CHAIRMAN BRISÉ:** Thank you very much.

17 At this time we will take a 15-minute break.
18 We will be back at 11:05.

19 (Recess.)

20 **CHAIRMAN BRISÉ:** All right. Where we were in
21 the process was we took a break so that staff could
22 synthesize some of the conversation that was going on.
23 So at this time we want to hear from staff as to what
24 they have come up with during the break.

25 **MR. FLETCHER:** Yes, Commissioners.

1 What staff believes would be a palatable way
2 of addressing the utility's request would be to escrow
3 the Phase II amounts. And if I could direct your
4 attention to Page 40 of the recommendation. And,
5 again, I believe for Phase II with the oral
6 modification there was a slight adjustment in material.
7 I will say that, if you're looking at that page.

8 But on the recommendation paragraph that is
9 for Phase II, you see the \$346,491. We would recommend
10 that that entire amount be escrowed, which is basically
11 24 percent of the Phase I revenue requirement. And
12 then also, in addition to that, as the utility had
13 stated in a letter that it would be willing to escrow
14 the amount of the DEP loan, that right now, again, as
15 it has been discussed, that that number will fluctuate
16 based on DEP's restructuring for that loan. But right
17 now the numbers we have, it would be -- they are paying
18 two payments a year which total about 300,000. So if
19 you would add the 300,000 to that 346, and once you
20 take that figure and you divide it by the Phase I
21 revenue requirement, it basically is about 45 percent
22 of the total revenues of the Phase I.

23 We would recommend that that 45 percent of
24 the Phase I revenue requirement be placed in the escrow
25 and that would be to secure the amount that would be

1 for pro forma plant items, and then all -- that staff
2 has recommended in Issue 5, and as well as to pay the
3 debt service to escrow those amounts in order to ensure
4 the debt service payments are paid on the DEP loan.

5 Now, the procedure that would be set up would
6 be kind of similar for interim purposes where an escrow
7 account would be established, an agreement would be
8 made where the Commission Clerk would be a signatory to
9 the escrow agreement, and then also with that, because
10 of the escrow in making sure that dollars are paid
11 from -- are drawn from the account, escrow account are
12 properly made, there would be a request by the utility
13 to withdraw, whether it be the interest payments to the
14 bank, if it is Fidelity Bank, or whoever the financial
15 institution is that they secure financing with, is that
16 interest payments are made -- it will be made -- once
17 they make a request by the Commission that there be a
18 withdrawal, we would look at that request, we would
19 look at the documentation from the bank, and then the
20 Commission would approve that because we will be a
21 signatory to the escrow amount. It would require our
22 approval before that is withdrawn to make those
23 interest payments on the loan while the pro forma plant
24 items are being constructed, and that would be
25 administratively done by staff. We would look at their

1 withdrawal request, and we would administratively
2 oversee any withdrawals of that.

3 And then also when the pro forma plant items
4 are placed into service, then that will commence -- the
5 bank would want -- the debt service payments would
6 include not only the interest, but the principal
7 payments. Again, the same procedure. They would have
8 to request for a withdrawal of that. We would look at
9 that administratively in order to make those
10 withdrawals from the escrow account to pay those debt
11 service payments. It would be included in that for the
12 pro forma items as well as the DEP debt service
13 payments, those withdrawals.

14 We envision -- and the utility can speak to
15 it further, but looking at the project and the scope of
16 it and the scale, about one year it would take to --
17 from the final order issued in this case in order to
18 secure that financing and also to complete the pro
19 forma plant items. And they can speak to that, as
20 well. That would be amenable, period, or speak to
21 that. We believe it is because the scope is about six
22 months we believe that it would take to complete them,
23 and it would allot six months for the securing of
24 financing. That's how we came up with the one year.

25 Another note is as it continues to go in

1 escrow, twelve months after all pro forma items have
2 been completed, we recommend that there be -- twelve
3 months after that that there be a true-up, looking at
4 the exact revenue requirement that is taken -- that
5 snapshot in time after it has been twelve months since
6 they have been placed into service and do a true up
7 proceeding, come back to the Commission regarding that
8 as far as any rate adjustments. And then also to
9 address what the Commission wishes to do with the
10 disposition of the escrow, whether to continue or what
11 that may be at that point.

12 Again, that would require the utility's
13 sign-off as far as the procedure setup. But in a
14 nutshell, the effect on the recommendation if this were
15 to go, it would definitely be the revenue requirement
16 and just the normal fallout issues as it would take
17 through the rates and everything, we would ask
18 administrative authority.

19 **CHAIRMAN BRISÉ:** Okay. Mr. Friedman.

20 **MR. FRIEDMAN:** The only thing I didn't
21 understand was the one year. I'm not sure what that
22 one year context was. Otherwise, I mean, we offered to
23 escrow those DEP loans. We've offered to do that for
24 some time now. So, you know, nothing that he has said
25 causes us any concern. I'm just not sure I understood

1 the one year -- the significance of a one-year time
2 period, if they could explain that so I could
3 understand it.

4 **CHAIRMAN BRISÉ:** Sure. I think, Mr.
5 Fletcher, if you could provide some more information on
6 that.

7 **MR. FLETCHER:** Yes. Given the scope of the
8 pro forma projects, staff's engineers reviewed that --
9 in their opinion that it would be about six months in
10 order to complete those, and we were allotting six
11 months additional in order to secure financing. That's
12 how we arrived at the one-year period.

13 **CHAIRMAN BRISÉ:** Okay. Mr. Friedman.

14 **MR. FRIEDMAN:** My only comment would be that
15 I noticed that in the staff rec they had an 18-month
16 time frame to do all the things that Mr. Fletcher just
17 said he thought we could do in twelve months. And
18 while everybody would love to do things in twelve
19 months, I think that, you know, Murphy's law comes into
20 play, and I'd I would prefer to have 18 months than
21 twelve months. And, like I say, that is what I thought
22 the staff had in the recommendation was 18 months.

23 **CHAIRMAN BRISÉ:** Okay. Understood. Mr.
24 Fletcher?

25 **MR. FLETCHER:** Eighteen months is fine,

1 Commissioner. I was told a year, but 18 months is
2 fine. I wasn't aware of that.

3 **CHAIRMAN BRISÉ:** All right. Thank you very
4 much.

5 Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Just a question for Mr.
7 Fletcher. So the true-up that you're talking about is
8 going to be twelve months after the loan is in place.
9 So roughly two and a half years from now?

10 **MR. FLETCHER:** The true-up would be twelve
11 months after all items are placed into service.

12 **COMMISSIONER GRAHAM:** So two and a half years
13 from now?

14 **MR. FLETCHER:** About two and a half, yes;
15 about that.

16 **MR. JAEGER:** I'm sorry, I heard him say Phase
17 I. I think what we're talking about is 45 percent of
18 the final revenue requirement. I wanted to make sure.
19 I heard him say 45 percent of the Phase I revenues, but
20 there is not going to be a Phase I and Phase II under
21 this. There's just going to be one revenue
22 requirement, is that correct?

23 **MR. FLETCHER:** That is correct. But in order
24 to -- I can give you a ballpark of the figures. If you
25 were to look on Page 40, it would be -- roughly what

1 needs to go into the escrow would be 45 percent of the
2 Phase I revenue requirement, and that was just real
3 roughly trying to calculate the dollar amount. And, of
4 course, that would fall out.

5 It would be a different percentage if you
6 were to look at the revenue requirement, but I was just
7 trying to come up with a number. It will fluctuate.
8 We can memorialize the correct percentage in the order,
9 based on the Commission's vote.

10 **CHAIRMAN BRISÉ:** Thank you very much.

11 Before I go to Commissioner Graham, OPC.

12 **MR. SAYLER:** Yes, Commissioner. Chairman,
13 thank you for the opportunity.

14 I know we are in the PAA procedure posture,
15 and oftentimes the Commission does adjustments to
16 staff's recommendation on the fly, and this is one of
17 those situations. And we are concerned that it appears
18 that this is an on-the-fly recommendation of more than
19 a 30 percent increase for this utility over the
20 initially recommended 10 percent increase for the Phase
21 I rates. We are also concerned that you are asking
22 to -- you are being asked to approve rates for this
23 Commission for a project that hopefully will be built,
24 but may not be built. And the question is is it
25 prudent or appropriate to approve rates ahead of time

1 for a project that has not been placed in service?

2 I know you did something similar to that with
3 the bridge main, so there is a little bit of precedent
4 there, but this is way more complicated than a bridge
5 main. The bridge main was one simple project; you had
6 one contractor, and he apparently wasn't overseen
7 properly because they got the wrong coating on it. But
8 here you're talking about at least five or six
9 different projects. You're talking about a tank.
10 You're talking about some parallel lines which we
11 dispute are even needed. You've got some looping and
12 things of that nature.

13 And these are lots of costs and lots of
14 things that we think that have just been kind of not
15 tested in a way that we think is appropriate. So we
16 are very concerned about on the fly, while in principle
17 you agree with escrow accounts, but there are a number
18 of things that should be included such as who is going
19 to oversee the construction project from the
20 Commission's standpoint? Are you going to trust the
21 utility to do so? Their engineer, Les Myles -- or not
22 Les Myles, Les Thompson, you know, the question is do
23 you want them approving it or do you want someone
24 within Commission staff kind of being there to help
25 monitor it and make sure that, you know, things are

1 prudently being done, prudently installed, and things
2 of that nature. And that is not part of this proposal.

3 And neither is this proposal anywhere similar
4 to any of the things that this Commission has done as
5 far as escrow accounts for this utility in the past.
6 So the question that we have is we do appreciate that
7 there is a true-up, but the question is are some of the
8 underlying costs that you are approving for even
9 prudent to begin with. I was just told by one of the
10 customers that the lots that Mr. Brown has under
11 contract for over \$420,000, those lots really go for
12 about \$25,000 apiece. And this person is a realtor on
13 the island.

14 Now he may have mixed motives or whatnot, but
15 at the same time 25,000 times eight lots, that's
16 200,000. You're talking a significant difference. So
17 these are the questions and concerns that we have with
18 approving this on the fly.

19 Let's see. Safeguard true-up at the end.
20 Who is going to monitor the escrow account? We
21 understand that it will be the Clerk's Office, but, you
22 know, who is going to monitor the day-to-day running of
23 it. And those are some of those concerns that we had
24 initially with the staff's proposal, but we thought
25 there was great protection as the staff had written

1 Issue 5, meaning the utility had to go get financing,
2 they had to go put it into service, and then after it
3 is used and useful in the public service then the
4 Commission would do that review.

5 Also the question is what about holding any
6 of these revenues subject for refund. You know, he
7 needs to have some sort of timetable, like, you approve
8 these rates, they go into the escrow account, they will
9 be held subject to refund like you do for interim
10 rates, and then if he does not get financing, say,
11 within six or nine months for the building of this
12 project, then I think it would be entirely appropriate
13 that all that money be returned to the customers.

14 And so those are just a few of the concerns
15 that we have with what is being proposed on the fly and
16 we would want more time to review. And this isn't --
17 like I mentioned earlier, this is an eleventh-hour
18 request. They could have proposed this, you know, nine
19 days ago when they saw the recommendation. They could
20 have proposed it months and months ago, but they
21 didn't. They waited until the eleventh hour. And
22 perhaps it would be useful if the utility provided an
23 actual proposed -- this process fully vetted, something
24 that the Commission can review and tinker with after
25 some time to review and deliberate on it.

1 So thank you very much.

2 **CHAIRMAN BRISÉ:** Mr. Fletcher, any comments
3 on that?

4 **MR. FLETCHER:** To the protection of the
5 customers, the whole nature of this with the true-up,
6 they are subject to refund. And also the security is
7 the escrow, so the customers are protected just in case
8 later on there is any amounts that were deemed by the
9 Commission or through the analysis of the true-up they
10 need to be refunded back to the customers.

11 And then also I just wanted to follow up with
12 one more thing with reflection of the escrow amount,
13 the percentage amount to the Phase II. I want to give
14 you -- state that. If you look on Page 40, that was
15 the 1,784,357. I think it was slightly off of the oral
16 modification, but with what I had stated earlier about
17 the debt service for DEP and the Phase II, that would
18 be roughly 36.25 percent of the Phase II revenue
19 requirement that would have to go into the escrow
20 account.

21 **CHAIRMAN BRISÉ:** Thank you very much.

22 Commissioner Balbis, you had a question or
23 comment?

24 **COMMISSIONER BALBIS:** Yes, thank you. I just
25 wanted to follow up on OPC's statements. And I

1 appreciate staff's follow-up. I think that the
2 explanation of how the escrow would work and how, you
3 know, it would be subject to refund, I think is
4 important. But, you know, I think we have to remember
5 that everyone agrees we have an above-ground storage
6 tank that is crumbling. They need to make these
7 improvements immediately, and whatever we can do to
8 have those funds available and still protect the
9 customers is something that we need to do. And I
10 believe that this compromise can protect the customers,
11 provide the funding, or the ability to obtain the
12 funding for the utility to make these improvements. So
13 whenever we're ready to be in a posture for a motion, I
14 would be more than happy to make it.

15 **CHAIRMAN BRISÉ:** Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

17 And as often happens, Commissioner Balbis
18 beat me to it and made some of the comments that I
19 wanted to make.

20 I agree, as I think our staff elaborated
21 upon, and Commissioner Balbis pointed out that the
22 process that we have been discussing here as resolution
23 to Issue 5 before us is intended -- and I do believe
24 does have significant protections for the customers --
25 is intended to facilitate the improvements that it is

1 my understanding from the information we have that are
2 needed for improved and continued quality service.

3 And I do believe that when we have discussed
4 now, with the back and forth discussion here, that a
5 true-up in 18 months would also include, if
6 appropriate, a refund under those circumstances similar
7 to interim rates, as has been discussed. And I do not
8 believe that we are making a decision on the fly, if
9 that is the direction that we intend to go.

10 And, quite frankly, I don't appreciate the
11 characterization, as this is an issue that has been
12 before us for many, many, many months. Our staff has
13 pored over it. We have pored over the information. We
14 received a nine-page letter a day and a half ago. Some
15 people may consider that being presented at the
16 eleventh hour. But I do recognize, as I said earlier,
17 that all involved want to advocate strongly for their
18 position, and I respect that, but this Commission is
19 making the best decisions that we possibly can
20 thoughtfully.

21 **CHAIRMAN BRISÉ:** I think we are in probably
22 the best posture at this point for a motion, and I'm
23 waiting to see who's going to lights up.

24 Commissioner Balbis.

25 **COMMISSIONER BALBIS:** Thank you. And I hope

1 I get this correct.

2 I move that we revise staff's recommendation
3 to include the escrow account as discussed by staff.

4 (Laughter.)

5 **CHAIRMAN BRISÉ:** So are you saying you're
6 moving staff's revised recommendation on Issue 5?

7 **COMMISSIONER BALBIS:** Yes. I just wasn't
8 sure if it was presented as a formal revised
9 recommendation, so I wanted to be careful with my
10 statement.

11 **CHAIRMAN BRISÉ:** All right. I think that the
12 recommendation is understood and the motion is
13 understood.

14 Is there a second? Or, before we go to the
15 second, I think we may have some counsel from our
16 General Counsel.

17 **MR. KISER:** Yes. I would just recommend that
18 that motion list, you know, those major provisions that
19 were outlined by staff so that it is clearly in the
20 motion and not something that has to be gleaned from,
21 you know, going back and looking at the transcript. It
22 would probably be cleaner if we just said, you know, A,
23 B, C, D, what the major points are.

24 **CHAIRMAN BRISÉ:** Okay. So what we will do is
25 we will ask staff to list or put into the record the

1 revised recommendation and at that point we will be in
2 a posture to have a clear motion.

3 **MR. FLETCHER:** Commissioners, staff's revised
4 recommendation for Issue 5 is to approve the Phase II
5 improvements now under escrow where the entire amount
6 of the Phase II would be placed into escrow. Plus, as
7 submitted by the utility, also hold in escrow the
8 payment of the debt service for the DEP loan. And this
9 would be an escrow agreement where the Commission Clerk
10 would be a signatory, as well as the utility with the
11 bank, and the procedure would be for any kind of
12 withdrawals during the construction of the pro forma
13 items would have to be submitted to the Commission, and
14 it would be upon the approval of Commission staff
15 whether any withdrawals are released to pay interest
16 payments during the construction.

17 And when the pro forma items are placed into
18 service, the debt service costs for the principle and
19 interest payments, again, any withdrawals that come
20 forward submitted by the utility would have to be
21 approved by Commission staff, and then as well as
22 Commission withdraw -- withdrawals from the escrow
23 account for any DEP debt services.

24 In our motion we recommend a true-up
25 mechanism, twelve months after all pro forma items are

1 placed into service. We are recommending a 12-month
2 true-up after the items are placed into service for
3 twelve months. We are recommending a true-up mechanism
4 where staff would come back to the Commission regarding
5 any required -- whether there's going to be any
6 customer refunds that need to be made as a result of
7 that recommendation and as well as bring to the
8 Commission the disposition of the escrow agreement. I
9 think that captures -- oh, and the company has 18
10 months to complete the securing of the financing and
11 the pro forma plant items.

12 **CHAIRMAN BRISÉ:** Okay. Is that clear for
13 everyone? Okay. Does the revised recommendation as
14 stated into the record reflect our understanding prior
15 to us going into the motion?

16 **MR. FLETCHER:** Excuse me, one last point.
17 The amount of revenues to be placed into escrow is
18 approximately 36.25 percent.

19 **CHAIRMAN BRISÉ:** All right.

20 **MR. BAEZ:** Mr. Chairman, and if they can also
21 include -- just make sure that the delegation is part
22 of the motion, as well.

23 **CHAIRMAN BRISÉ:** Okay. All right. I think
24 we have clear minds.

25 **COMMISSIONER EDGAR:** Mr. Chair, I am clear

1 and I am if we are in that posture to make the motion
2 or, second the motion, and move it for a vote.

3 **CHAIRMAN BRISÉ:** All right. Commissioner
4 Balbis, did you want to make that motion?

5 **COMMISSIONER BALBIS:** Let's try this again.
6 I move to approve staff's revised recommendation with
7 the provisions set forth by Mr. Fletcher.

8 **COMMISSIONER GRAHAM:** Second.

9 **CHAIRMAN BRISÉ:** All right. It has been
10 moved and seconded. Any further discussion?

11 Okay. I think that this recommendation
12 addresses many of the issues that were potentially
13 outstanding in my mind. And for the record, I think
14 that it is our duty anytime there are things that come
15 before us for us to take a hard look at them, and we do
16 have the authority to adjust them as necessary as we
17 feel will be best for the whole or serve the public
18 interest. So that is my thought on this process.

19 So at this time we are ready to vote. It has
20 been moved and properly seconded. All in favor say
21 aye.

22 (Vote taken.)

23 **CHAIRMAN BRISÉ:** All right. Let the record
24 reflect that the revised recommendation on Issue 5 has
25 been approved by the Commission.

1 Moving on to Issue 6.

2 **MR. RIEGER:** Commissioners, Issue 6 deals
3 with the used and useful percentages of the utility's
4 water system. Staff recommends that the water
5 treatment plant storage facilities should be considered
6 100 percent used and useful. The utility's
7 transmission and distribution lines should be
8 considered 100 percent used and useful except for the
9 distribution lines serving the area known as The
10 Plantation, and it's just those lines that are less
11 than eight inches in diameter. This recommendation is
12 consistent with the methodology approved by the
13 Commission in the utility's prior rate cases.

14 **CHAIRMAN BRISÉ:** All right. Thank you.
15 Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.
17 I did want to hear from the parties on this
18 issue starting with WMSI.

19 **CHAIRMAN BRISÉ:** Okay. Mr. Friedman.

20 **COMMISSIONER BROWN:** And whether it supports
21 the staff recommendation as delineated.

22 **MR. FRIEDMAN:** No, we concur in the staff's
23 recommendation on used and useful percentages.

24 **MR. GENE BROWN:** No, we don't.

25 **COMMISSIONER BROWN:** We will start with OPC.

1 **MR. GENE BROWN:** -- (inaudible) they are used
2 and useful. The houses are all served.

3 **CHAIRMAN BRISÉ:** All right. Mr. Saylor.

4 We'll come back to Mr. Friedman in a few.

5 **MR. SAYLER:** We weren't going to raise this
6 as an issue, and we didn't raise it. I do note that
7 from the last rate case OPC put on testimony that used
8 and useful for The Plantation should not be 60.9, but
9 right around 53/54 percent.

10 And I do disagree where it says consistent
11 with the methodology approved by the Commission in
12 Dockets 940109-WS and 100104. My understanding from
13 the 1994 docket, that was kind of a stipulated used and
14 useful percentage, it wasn't where the Commission
15 applied the used and useful rule. If the Commission
16 applies the used and useful rule, it would actually be
17 less. But that would be something that should this
18 hopefully -- whatever, you know, if we are in some
19 other posture down the road, that may be an issue that
20 we raise. But we think it should be lower, but we're
21 not making a big deal about it.

22 **CHAIRMAN BRISÉ:** Understood.

23 **COMMISSIONER BROWN:** Anything to add?

24 **MR. FRIEDMAN:** Mr. Brown will address the
25 used and useful on The Plantation lines.

1 **CHAIRMAN BRISÉ:** Sure. Mr. Brown.

2 **MR. GENE BROWN:** This is not a big dollar
3 issue, but we started building these lines in 1976, and
4 since then we have got about 600 houses in there and
5 they are all served by these water lines. We are not a
6 developer and haven't been for many, many years. We
7 are now compelled to provide fire protection. All of
8 the fire protection, the fire hydrants, and we have
9 hundreds down there, are on 6-inch lines.

10 And kind of a rhetorical silly question, I
11 guess, but if it is only partially used and useful,
12 what houses don't get the water when they catch on
13 fire? And if we have got lines running to every house
14 and there is no lines on any cul-de-sacs, or T roads
15 that don't have houses -- I mean, just common sense, it
16 has been used and useful for years. And if we don't
17 get it now in this case, then it will have been
18 depreciated out. So we will have put all these fire
19 hydrants and all these lines and never gotten recovery
20 on them.

21 In fact, we are only going to get a part of
22 it because it has been depreciated out all this time,
23 and now we have got a few years left. So this isn't a
24 big item, but maybe it's the principle of the thing.
25 But it's also the money; it is \$20,000, maybe. So --

1 **COMMISSIONER BROWN:** Thank you.

2 **CHAIRMAN BRISÉ:** Thank you, Mr. Brown.

3 Any further comments or questions on Issue
4 Number 6?

5 Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Yes. I just wanted to
7 here staff's comments on Ms. Brown's comments.

8 **MR. RIEGER:** Yes, Commissioner. Basically,
9 it all boils down to available lots that are being
10 served as opposed to occupied lots. And as far as the
11 indication about the fire hydrants or whatever, it's
12 not uncommon to have fire hydrants on utility systems
13 that do have used and useful applied to it. It doesn't
14 necessarily mean if there is a fire hydrant on there.
15 It indicates that that line should be fully considered
16 used and useful just primarily on the fire hydrant
17 consideration.

18 There is available lots left to be served,
19 and since there has been basically no growth between --
20 with this rate case consideration, and what was
21 considered in the last rate case, we saw no reason to
22 budge that number that was determined during the last
23 rate case.

24 **CHAIRMAN BRISÉ:** Thank you very much.

25 Commissioner Graham.

1 **COMMISSIONER GRAHAM:** No.

2 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you.

4 And I just want to say I agree with staff's
5 recommendation on this, and I appreciate the utility's
6 argument about, you know, the fire hydrants, but in
7 most cases, you know, the infrastructure is designed
8 and constructed and the cost of which to be shared upon
9 the ultimate development of the parcel. And in this
10 case if development has not continued, then this
11 Commission, I believe, in practice has not made the
12 existing customers shoulder the burden of the
13 infrastructure. So I think that I agree with staff's
14 recommendation on this issue, and would be prepared to
15 move forward with a motion.

16 **CHAIRMAN BRISÉ:** Okay. I think we are in the
17 proper posture for a motion.

18 **COMMISSIONER BALBIS:** Thank you, Mr.
19 Chairman. I move staff's recommendation on Issue 6.

20 **CHAIRMAN BRISÉ:** Okay. It has been moved and
21 seconded. All in favor say aye.

22 (Vote taken.)

23 **CHAIRMAN BRISÉ:** All right. Let the record
24 reflect that Issue 6 has been -- I mean, the
25 recommendation on Issue 6 by staff is supported by the

1 Commission.

2 Moving on to Issue 7.

3 **MR. FLETCHER:** Commissioners, Item 7 is
4 staff's recommendation regarding the appropriate amount
5 of unamortized rate case expense for not only the
6 instant case, but the prior case for inclusion in
7 working capital.

8 **CHAIRMAN BRISÉ:** Okay. Are there any
9 questions or comments on this issue? Okay. I'm ready
10 to entertain a motion.

11 **COMMISSIONER GRAHAM:** Move staff
12 recommendation on Issue 7.

13 **CHAIRMAN BRISÉ:** Okay. It has been moved and
14 seconded. All in favor says aye.

15 (Vote taken.)

16 **CHAIRMAN BRISÉ:** Okay. Issue 7 has been
17 approved by the Commission.

18 Moving on to Issue 8.

19 **MR. FLETCHER:** Commissioners, Issue 8 is
20 staff's recommendation regarding the appropriate
21 working capital. It's a fallout issue.

22 **CHAIRMAN BRISÉ:** Okay. Can I get a motion on
23 Issue 8?

24 **COMMISSIONER GRAHAM:** Mr. Chairman.

25 **CHAIRMAN BRISÉ:** Oh, Commissioner Graham.

1 Sorry.

2 **COMMISSIONER GRAHAM:** If there is no
3 objection from the board, I would move staff
4 recommendation on Issues 8 through 14.

5 **CHAIRMAN BRISÉ:** Okay. Are there any
6 objections from Commissioners?

7 **MR. FLETCHER:** I'm sorry, I just wanted to
8 point out because of the vote on Issue 5, there would
9 be a fallout. If staff would be given administrative
10 authority for Issues 9 and 11, that would make those
11 appropriate changes based on your vote on Issue 5.

12 **CHAIRMAN BRISÉ:** Okay. Understood.
13 So on Issues 9 through 14, understanding the
14 authority that would be delegated. Is there a second?

15 **COMMISSIONER EDGAR:** Second.

16 **CHAIRMAN BRISÉ:** Okay. It has been moved and
17 seconded.

18 Any discussion?

19 Okay. All in favor of supporting staff
20 recommendation on Issues 9, 10, 11, 12, 13, and 14, say
21 aye?

22 (Vote taken.)

23 **CHAIRMAN BRISÉ:** Okay. And 8, as well.

24 Okay. So that vote included Issues 8, 9, 10,
25 11, 12, 13, and 14. Okay.

1 So now moving on to Issue 15.

2 **MR. MAUREY:** Commissioners, Issue 15 is an
3 issue that has carried over from the last rate case and
4 deals with Account 123. Staff recommends that cash
5 advances through this account have impaired the
6 utility's ability to meet its financial and operating
7 responsibilities. Staff is recommending an adjustment
8 to the president's salary for management, managerial
9 imprudence. The adjustment included in the
10 recommendation totals \$44,441.

11 We're available for any questions.

12 **CHAIRMAN BRISÉ:** Okay. Any discussion from
13 the Commission?

14 Commissioner Graham.

15 **COMMISSIONER GRAHAM:** Yes, I would like to
16 hear from Mr. Friedman, I guess, to sum up this issue,
17 and your comments that were in the letter addressed it
18 yesterday.

19 **MR. FRIEDMAN:** Thank you, Mr. Chairman and
20 Commissioners. Again, Martin Friedman on behalf of
21 Water Management Services.

22 I'm just going to make a couple of brief
23 introductory comments, and then I'm going to let Mr.
24 Brown comment on the bulk of what we want to address.

25 But, you know, as was pointed out, this was a

1 really hotly contested issue in the last rate case. I
2 know that two of you were part of that proceeding.
3 And, you know, after consideration by the panel, some
4 number of recommendations were made. We would suggest
5 that there has been no change in the facts that would
6 lead for any basis to make any changes from what this
7 Commission did in the last case.

8 And as Mr. Saylor did earlier in quoting from
9 some prior orders, I've got a couple of comments I want
10 to quote from to remind you of some considerations and
11 decisions that this Commission made in that last rate
12 case. In regarding -- these same options that were
13 mentioned are the same options that, and one of which
14 was reduction of officer salary, was something that OPC
15 raised in that former case that went to formal hearing,
16 and this Commission declined to make that adjustment.
17 And we would suggest to you it is inappropriate to do
18 it at this time.

19 And obviously, as I mentioned earlier, any
20 finding of what may be termed managerial imprudence, I
21 think, would have a detrimental effect on the utility's
22 ability to secure funding at a reasonable interest
23 rate. And this is what the Commission observed in the
24 last rate case. "Upon close review, the advances of
25 funds to the utility's associated companies do not

1 appear to have negatively impacted the rates approved.
2 Finally, we note that we have declined to micromanage
3 business decisions of a utility." Not just this one,
4 any utility. "Based on all of the above, we do not
5 believe that the actions requested by OPC, one being
6 the reduction in the president's salary, are
7 appropriate. We note that there was no evidence
8 presented that documented Mr. Brown, or BMG, that's
9 Brown Management Group, have misappropriated funds from
10 the utility. We do not believe that customers are
11 being charged higher rates due to Ms. Brown's actions.

12 "While the recommendations proposed by OPC
13 regarding future treatment of Account 123 were
14 well-intended, we do not have the express statutory
15 authority to preclude a utility from making investments
16 in associated companies." And, in fact, there's a
17 NARUC account for investment in associated companies.
18 So obviously this is not the only company that does
19 that.

20 "In addition, our practice has been not to
21 micromanage the business decisions of regulated
22 utilities, but instead to focus on the end product
23 goal. Also, we note that the overall quality of
24 service provided by the utility is satisfactory. In
25 fact, despite the difficult financial position of WMSI,

1 as evidenced by their comments at the service hearing,
2 the customers continue to receive quality service and
3 are satisfied with the responsiveness of utility
4 employees."

5 And I think that you heard that same
6 testimony today, that they are providing a really good
7 quality of service. You know, something that you don't
8 generally hear a lot of times when -- at least the
9 testimony that I hear, of having this good quality of
10 service. And their being able to do that with the
11 financial constraints they have, I think that the
12 management ought to be lauded for doing that, not
13 reviled for it.

14 I will remind you that when the OPC wasn't
15 satisfied with that determination in the last rate
16 case, they filed for a rehearing. And in the rehearing
17 this Commission stated, "Having considered --" they
18 wanted the same thing. They wanted you to say that Mr.
19 Brown had misappropriated \$1.2 million and that they
20 ought to reduce his salary. "Having considered OPC's
21 arguments, we determined that there is no evidence
22 presented that documents Mr. Brown or BMG have
23 misappropriated funds from the utility. We found that
24 the adjustment to expenses and overall rate of return
25 of 3.85 percent, the customers were not being were

1 charged higher rates due to these advances, and the
2 customers continue to receive quality satisfy.
3 Further, we stated that we do not want to micromanage
4 this utility, and have declined to take the three
5 actions OPC requested.

6 "OPC also argues that if WMSI had used some
7 or all of the \$1.2 million in advances to reduce its
8 debt, the utility's interest expense would be lower.
9 However, the capital structure is reconciled to rate
10 base, and any interest on debt instruments to be
11 included in the rates would be limited to the amount
12 included in rate base. Therefore, the customers do not
13 pay any interest paid by the utility over and above the
14 amount associated with used and useful rate base. Even
15 if the full amount of the \$1.2 million was used to pay
16 down the utility's debt, the capital structure of WMSI
17 would still consist entirely of debt.

18 "Finally, we note that if the utility does
19 obtain equity investment, the current cost of equity is
20 set at 10.85 percent, which is almost triple the debt."
21 In other words, if you put 1.2 million in equity, the
22 customers would pay a lot more in rates because they
23 would be paying a rate of return of three times what
24 they are paying on the debt.

25 The Commission concluded, "In denying OPC's

1 request under the facts of this case as set forth in
2 the record, we merely disagree that we should not
3 impute an interest return on 1.2 million that may have
4 been advanced to related parties. Therefore, we found
5 and still find that the customers have not been
6 penalized by the utility's actions. Further, we have
7 historically avoided micromanaging."

8 You heard a couple of things in there many
9 times. It's not our job to micromanage. And the
10 second part is that this Account 112 -- this Account
11 123 does not have any impact on the rates of the
12 utility. Now, nothing has changed since then. The
13 interest is calculated, the capital structure is
14 calculated with the same methodology that it was back
15 then, and so there is no reason to say all of a sudden
16 we are going to reduce his salary. And they are
17 reducing his salary because they are saying there is
18 going to be more interest expense.

19 Now, y'all made a finding after a full
20 hearing there wasn't going to be any more interest
21 expenses. And now in a PAA case without any additional
22 testimony, the staff has all of a sudden made an
23 about-face and is saying, oh, yes, there is going to be
24 an interest expense and we are going to reduce the
25 president's salary by \$44,441 because we think that was

1 imprudent. And we think that -- I don't know what got
2 into the staff between last time and this time, but it
3 seems like that they are taking diametrically opposed
4 positions. And now I want to ask Mr. Brown to make a
5 couple of comments, as well.

6 **CHAIRMAN BRISÉ:** Before you go there, I think
7 Commissioner Graham has maybe a few questions on some
8 of your statements already.

9 **MR. FRIEDMAN:** Sure.

10 **COMMISSIONER GRAHAM:** Actually, I don't have
11 a few questions. I just have a comment. One thing,
12 the one major thing that has changed, and I'm not
13 saying that I agree or disagree with the position that
14 staff took, but the one thing that has changed is the
15 DEP loan has gone into default. I mean, you said
16 nothing has changed. In my opinion, and I don't know
17 if that's what staff went into, but that was a huge
18 difference.

19 **MR. FRIEDMAN:** But that hasn't increased the
20 cost, interest expense to the customers by one penny.
21 So that's what -- the whole determination that was
22 addressed there is is there going to be additional
23 interest paid because of the actions taken by the
24 company in Account 123. The answer was no.

25 **COMMISSIONER GRAHAM:** The staff said it was

1 managerial imprudence. And defaulting on a loan, in my
2 opinion, is managerial imprudence.

3 **MR. FRIEDMAN:** But that's not the basis they
4 used for cutting his salary. If you look at the
5 issue --

6 **COMMISSIONER GRAHAM:** I understand what
7 you're saying, but I'm going back from the previous
8 order, and you're saying we chose not to get involved.
9 We chose not to micromanage because you guys were
10 paying your loans. You're not paying your loans now.
11 So now the argument that we chose not to micromanage is
12 not the same argument anymore. It may not be exactly
13 the reason why staff decided to get into this, but I'm
14 just saying that, in my opinion, is something that is
15 major that has changed.

16 **MR. FRIEDMAN:** Okay. I don't think that
17 involved -- I mean, we have already dealt with that
18 issue, because we are now going to escrow that money.
19 So we don't have to worry about that. But the basis
20 for reducing his salary -- not the basis for saying
21 whether he didn't manage it correctly, but the basis
22 for reducing his salary was solely based upon the staff
23 saying there is going to be more interest expense, and
24 therefore we think he should reduce his salary to cover
25 that. Whereas, the Commission, including yourself,

1 after an evidentiary hearing last time said, no,
2 there's not going to be any more interest expense. How
3 do you reconcile those two positions? It can't be
4 done.

5 Now, whether you think that, you know, his
6 salary should be reduced because of the default in the
7 DEP loan, that's a whole another issue. That's not
8 what the staff has recommended. I'm dealing with what
9 the staff has recommended, and what staff has
10 recommended is diametrically opposed to what this
11 Commission determined a year ago.

12 **COMMISSIONER GRAHAM:** Well, I think what
13 we're dealing with is a comfort level, and staff
14 doesn't still have the same comfort level that it had
15 two years ago. I know I don't have the same comfort
16 level I had two years ago. Once again, I'm not saying
17 that I agree with the position that staff has taken,
18 but I'm looking at a comfort level.

19 **MR. FRIEDMAN:** I understand, and we have
20 taken care of that. In fact, the company has offered
21 to escrow that money for some years. But now that's
22 taken care of prospectively, we don't have to worry
23 about the DEP loan.

24 **COMMISSIONER GRAHAM:** Okay.

25 **MR. FRIEDMAN:** And Mr. Brown does have a

1 couple of comments he would like to make.

2 **CHAIRMAN BRISÉ:** Understood, but there are
3 some questions prior to that.

4 Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you.

6 And I do want to talk a little bit more about
7 that DEP loan. You know, calling a company -- saying
8 that a company has managerial imprudence is a grave
9 accusation, so I want to kind of get into that just a
10 little bit.

11 If the funds were available to the utility,
12 why did the utility default on the loan from DEP? In
13 addition, why were cash advances made to affiliated
14 companies instead of paying the DEP loan?

15 **MR. FRIEDMAN:** The fact is that no money has
16 been advanced to companies in years. So the DEP loan
17 just went into default in March or something. So there
18 is no money that was given to Mr. Brown or given to
19 affiliated companies in March instead of paying that
20 loan. So don't get confused with that issue, and then
21 I will let Mr. Brown address about why it's in default.

22 **COMMISSIONER BROWN:** Sure.

23 **CHAIRMAN BRISÉ:** Mr. Brown.

24 **MR. GENE BROWN:** Okay. I circulated a memo
25 yesterday to all of you. It was late, but I got one

1 for Mr. Sayler --

2 **COMMISSIONER BROWN:** Can you please speak
3 into the microphone.

4 **MR. GENE BROWN:** Okay. I don't know if any
5 of you have read my memorandum, but I would encourage
6 you, as I make my comments, to stop me and ask any
7 questions you have. I think a lot of your concerns are
8 answered in that memo. And I would like to make a
9 couple of preliminary comments.

10 Somebody said we have a colorful history,
11 WMSI at the Commission, and that is true. You and your
12 staff have made me a much better utility manager, and I
13 have learned two things, basically: You follow
14 Commission orders and you provide great service. And
15 we have been following the Commission orders to the
16 letter, and we have been providing outstanding
17 consistent service.

18 I'd also like to refer back to a question
19 before I get into the comments about 123, a question
20 Commissioner Graham had about what has the county done
21 to help us. Well, Commissioner Jackel made some
22 comments; I just feel I need to respond to those. Let
23 me give you a little history with the county. I have a
24 long history with them, too. But the first thing they
25 did --

1 **COMMISSIONER BROWN:** Mr. Brown, can you --

2 **CHAIRMAN BRISÉ:** Mr. Brown, if you could
3 answer Commissioner Brown's questions.

4 **MR. GENE BROWN:** Okay. Well, I'll focus on
5 DEP. The only payment I have missed, and it's late, it
6 was due in May. I've paid well over a million dollars.
7 I started working on this project in August of '09, and
8 since then I've spent half a million dollars, and I
9 have gone through another rate case with this
10 Commission, and I expected based on my consultants and
11 OPC's position that we were entitled to \$132,000 at
12 least, and instead in that case we got a rate decrease.

13 This Commission voted for whatever reason to
14 keep our rates exactly the same, but we had to pay all
15 our rate case expenses. My actual expenses are now
16 299,000, but that 229,000 had to dealt with. So after
17 20 years of struggling with this company with no
18 general rate relief, I come in with all the increased
19 cost of everything in the world and asked for a
20 reasonable increase, and I got what I considered about
21 a \$200,000 decrease. And that was in January of '11,
22 and I had been dealing and making every payment that
23 DEP required up to May 15 of this year. And prior to
24 that I went over and met with the people at DEP and
25 told them that I've got a choice. I've got to put you

1 at the bottom, because I've got to keep providing this
2 service and there is just not enough money. I thought
3 we were going to -- and I was dealing with him all
4 through the last case.

5 And so what I told him was the same thing I
6 told the staff in a letter here recently, that when
7 this case is over we were going to shift DEP from the
8 bottom of the priority list to the top, and we were
9 going to start escrowing all his payments. So he wrote
10 a letter and said you're in a technical default, but
11 we're not going to do anything until this case is over.
12 And our understanding with him is the same as you have
13 written into the order now is that we will escrow his
14 money off the top. And the letter to me, which we have
15 given to the staff, was that we will look at that and
16 consider a restructuring of your loan payments.

17 And this is not unusual when you're dealing
18 with lenders in situations where there's not enough
19 cash that you have to restructure payments. And so
20 that's what we are in the process of doing, and
21 hopefully we will get some relief in this case. And
22 when and if we do, it will all be escrowed off the top
23 so that part of that is paid directly to DEP.

24 And I think that's what he's talking about in
25 his letter of response that we will look at an

1 appropriate restructuring.

2 **COMMISSIONER BROWN:** Thank you.

3 **MR. GENE BROWN:** But I haven't been -- I have
4 missed one payment. I'm late about 90 days on one
5 payment out of a \$7 million project where I had to
6 borrow 6.3 and I have gotten no help from anybody,
7 including the county or anybody else to help pay for
8 that bridge project. I mean, they tore down our bridge
9 and tore down the water line, and yet this Commission
10 refused to increase tap fees. As I understood the
11 75/25 rule, we're entitled to 75 percent of plant.
12 Well, that needs to be adjusted. In the last case the
13 Commission refused to adjust it. We are at about
14 30 percent. The only other utility in Franklin County
15 is at 75 percent owned by St. Joe Paper Company so --

16 **COMMISSIONER BROWN:** Thank you. I have a
17 follow-up question with staff, if you don't mind.

18 Mr. Fletcher or Mr. Maurey, regarding the
19 extension of that loan and putting it out 20 years or
20 so, has that affected the overall principle amount,
21 though, of the DEP loan?

22 **MR. MAUREY:** There have been multiple
23 restructurings of this loan. One restructuring, the
24 third amendment did extend the maturity of the loan.
25 Other restructures of the loan capitalized interest

1 from missed payment. So technically he is in default
2 on one missed payment; however, as part of the cash
3 flow audit, we asked the auditors to look in the
4 history of the DEP loan, and there were missed
5 payments.

6 Now some of these amendments were designed to
7 capitalize that missed payment so it will be made
8 deferred, if you will, but it was missed on the due
9 date and that will increase the principle amount.
10 Whenever capitalized interest goes unpaid, it is rolled
11 into the principle amount. It will be paid someday.
12 And so that's what we were referring to when we said
13 multiple missed payments.

14 And the amount of interest that is referred
15 to in the recommendation, that was as of December 31,
16 2010. The initial cutoff date for the cash flow audit.
17 It has come to our attention from an e-mail from DEP
18 that that amount is higher now, which isn't surprising,
19 it's a year and a half later. But the adjustment was
20 quantified based on that interest amount, but the
21 finding of managerial imprudence wasn't because of that
22 higher interest.

23 **COMMISSIONER BROWN:** And can you please, I
24 guess, go into a little bit more of how staff
25 determined the managerial imprudence. I understand the

1 recommendation, and I know the long history of this
2 utility, and the 1.2 million that staff is saying was
3 taken out for nonutility purposes, I just want to make
4 sure staff is clear that that was used for nonutility
5 purposes. Because my understanding is that it's just
6 1.2 taken out. We're not sure whether the funds were
7 necessarily used for nonutility purposes.

8 **MR. MAUREY:** The purpose of the cash flow
9 audit was to see what was recorded on the company's
10 books. The cash that came in, the cash that went out,
11 and how it was utilized by the utility. We didn't
12 track it. Once it left the utility for a nonutility
13 purpose, we did not look at it past that. However, in
14 this instance we had multiple transactions in this
15 Account 123 over the seven-year period of the cash flow
16 audit. Over 1,300 transactions. That's quite a bit of
17 activity in that account. And money came back and
18 forth. Money was put in, money came out. And on a net
19 basis, 1.2 million more left the utility than came in
20 over that period, according to the cash flow audit.

21 **COMMISSIONER BROWN:** With regard to the 35
22 percent salary reduction, can you go into whether there
23 is Commission precedent to support that based on the
24 actions of the utility, the DEP loan, the 1.2 that
25 staff is saying, 1.2 came out of -- not necessarily for

1 utility purposes or nonutility purposes, but can you go
2 into whether the recommendation is defensible.

3 **MR. MAUREY:** Well, we believe the
4 recommendation is defensible. There have been
5 adjustments --

6 **COMMISSIONER BROWN:** Commission precedence.

7 **MR. MAUREY:** -- to the president's salary.
8 Yes, there are precedence. The president's salary has
9 been adjusted by up to 50 percent on some occasions.
10 In this instance we did tie the amount of the
11 adjustment to the extra interest, or the additional
12 interest that will have to be paid because of the
13 restructuring of the loan.

14 Now, we had to come up with an amount. We
15 could have gone up to as high as 50 percent based on
16 precedent, but we were more comfortable in this
17 instance not going that high. Because in those other
18 instances there was issues of quality of service, and
19 in this case we are in full agreement with the utility
20 that to date the quality of service at this utility is
21 very good. As we indicated in Issue 1, it's
22 satisfactory. That is a snapshot in time. Through
23 today it is satisfactory.

24 **COMMISSIONER BROWN:** Okay.

25 **CHAIRMAN BRISÉ:** Okay.

1 Commissioner Balbis. And after Commissioner
2 Balbis's question, then you will proceed with you --

3 **MR. GENE BROWN:** Okay.

4 **COMMISSIONER BALBIS:** Thank you. I have two
5 questions for Mr. Brown. You know, because what you
6 have stated is contradictory to what staff stated in
7 their recommendation. And I'm focusing on Page 36 of
8 the recommendation, the second paragraph, which states
9 that although -- you know, despite the availability of
10 these funds through rates, multiple payments on the
11 loan from DEP were not made by the utility. And during
12 the period when debt service payments were missed, cash
13 was being advanced to the president's associated
14 companies. And then on December 30th of 2009, the
15 utility entered into this Amendment 3. But you
16 indicated that the only payment you were late on was in
17 the beginning of this year.

18 **MR. GENE BROWN:** Right. The only payment
19 that is not in strict accord with the written documents
20 with DEP is the May payment, which is, what, 90 days
21 ago. Everything else is consistent with the written
22 loan agreement as amended several times with DEP.

23 **COMMISSIONER BALBIS:** So then why did you
24 enter into Amendment 3 of the loan agreement?

25 **MR. GENE BROWN:** Amendment 3 said what?

1 **COMMISSIONER BALBIS:** To extend restructure
2 of the 20-year loan because of a missed payment of
3 \$208,000 on November 15th, 2009.

4 **MR. GENE BROWN:** Well, that's just not true.
5 I mean, there were two misstatements of fact in the
6 sentence you read earlier which are just factually
7 incorrect, and the statement you just read is factually
8 incorrect. So I have lots of problems with the staff
9 recommendation.

10 The restructuring of the loan to go from
11 20 to 30 years had nothing to do with missed payments.
12 I have been trying to do that for sometime. I did it
13 for several reasons, all of which were very prudent.

14 Number one, it saved the ratepayers money.
15 It's just factually -- and as a matter of law and rate
16 structure, it's just not true that this cost the
17 ratepayers another nine-hundred-and-something-thousand.
18 As a matter of fact, it saved them money, because by
19 maintaining -- it's just like household debt. You've
20 got credit cards. If you have a 5 percent card and a
21 20 percent card, you pay off the 20 percent card. As
22 long as you could extend that DEP debt, if I could
23 extend it 100 years I would do it. And I did a little
24 chart, I don't know if y'all have looked at it, but --

25 **COMMISSIONER BALBIS:** Well, Mr. Brown, I'm

1 sorry to cut you off, I just have --

2 **MR. GENE BROWN:** Well, I mean, we saved a lot
3 of money by doing what I did, and it had nothing to do
4 with any missed payment.

5 **COMMISSIONER BALBIS:** Okay.

6 **MR. GENE BROWN:** And I'll explain that later.

7 **COMMISSIONER BALBIS:** Unfortunately, the
8 posture we're in -- this is a PAA process, it's not a
9 full evidentiary hearing, so I believe staff just
10 responds to your filing and then provides a
11 recommendation based on that. And I will turn over to
12 staff on that issue in a moment about the missed
13 payment of \$208,000 in 2009.

14 But my second question to you, Mr. Brown, is
15 you indicated that you decided earlier this year not
16 to -- to put DEP on the bottom of the list, or bottom
17 of the stack. I believe that was your analogy. But we
18 granted you on January 19th, 2012, interim rates which
19 are put in place for you to cover your costs while we
20 go through this rate process. Why didn't you include
21 enough money in the interim rates to pay the DEP, to
22 make the DEP payments?

23 **MR. GENE BROWN:** Well, that's just not the
24 way this process works. Maybe I'm misunderstanding
25 what's going on here, but I don't think the ratepayers

1 are responsible for any of those payments on any of my
2 debt. I have never understood it that way. I have
3 been doing this, what, 38 years. I wish it were true
4 that I could pass those payments along to the
5 ratepayers, but I just can't do it. It just doesn't
6 work that way.

7 And, you know, when I have a chance to go
8 through my memo or explain that I can, but you get a
9 return based on a weighted cost of debt, or pure debt,
10 or pure equity based on a rate base. And these
11 below-the-line items that we are off wandering into
12 now, I have always considered just that,
13 below-the-line. And I've got a chart here that I'd
14 like to -- maybe this is a good -- well, a lot of these
15 questions will be answered, and they are in the memo,
16 but that interest is not paid by ratepayers. I wish
17 they -- it's paid by me and my family and other
18 companies.

19 **COMMISSIONER BALBIS:** Okay, thank you. And
20 let me just -- a question for staff on that point.
21 Based on the utility's filing, did you find indications
22 that they missed a payment to DEP for \$208,000 in 2009?

23 **MR. MAUREY:** I'm relying on the cash flow
24 audit. In Finding 5 it talks about missed payments to
25 DEP on this loan. Now some of them are capitalized, so

1 they will be recovered eventually. I don't believe
2 this is semantics. I think it is probably an area for
3 evidentiary review. I will, until told otherwise, go
4 along with the cash flow audit that says payments were
5 missed, and the interest has increased as a result of
6 those missed payments because the interest itself will
7 be capitalized into the loan.

8 The e-mail we got from DEP indicates now that
9 the total interest on the loan is 1,123,000, not the
10 930,000 we estimated back in 2010. So that amount
11 grows. Now I will agree that the customers aren't
12 paying that higher interest -- aren't paying that
13 higher interest now because the loan has a long
14 maturity. They are paying that interest over time.
15 It's similar to the difference between a 15-year and a
16 30-year mortgage. Your payments are going to be lower
17 under a 30-year mortgage, but you are definitely going
18 to pay a lot more interest under that option than under
19 the 15-year mortgage, and that's the principle that we
20 were discussing. The interest went up as the maturity
21 got stretched out and also because the principle has
22 been growing from capitalized interest.

23 **COMMISSIONER BALBIS:** Okay. So then just to
24 follow up, staff is presenting that there is an
25 additional interest expense of 928,000-and-change based

1 upon the company entering into Amendment 3 to the DEP
2 loan.

3 **MR. MAUREY:** That's the way the math works,
4 yes.

5 **COMMISSIONER BALBIS:** Okay. And then the
6 recommended reduction in the president's salary of
7 33,688, that represents the additional portion of the
8 additional interest payment?

9 **MR. MAUREY:** A portion, because it's really
10 the 44,000 that equates to the 930 over time. In
11 addition to the salary, there is also the component for
12 payroll taxes and for pensions and benefits. So it's
13 the 44 that comes off of the 930,000, give or take, and
14 then we back into each of those numbers the three
15 components that make up the \$44,000 adjustment.

16 **COMMISSIONER BALBIS:** Okay. And I'm
17 finished, but I would just like to make the comment, I
18 mean, I understand where staff obtained the \$44,000
19 number of the additional, which represents the
20 additional interest expense. I'm uncomfortable of
21 jumping to the management imprudence at this point. I
22 think that relying on a cash flow audit and other
23 information presented and the information presented
24 from the utility. I think there is still some question
25 about that. And unfortunately we are not in an

1 evidentiary proceeding to really dive into that, so I'm
2 hesitant to stamp management imprudence at this point
3 on this issue. But I would like to hear from other
4 Commissioners.

5 **CHAIRMAN BRISÉ:** I think we are going to go
6 back to Mr. Brown. I mean, we were asking questions in
7 this space. I don't think that we are going to
8 complete this issue or the remaining issues prior to
9 1:00, so I think it would probably be a good time for
10 us to recess for our lunch break and return here at, I
11 guess, 1:15, and then we will continue from there.

12 Okay. So at this time we will recess until
13 1:15.

14 (Lunch recess.)

15 **CHAIRMAN BRISÉ:** Good afternoon. We are
16 reconvening now at 1:20, and we are on Docket Number
17 110200. And we were going to allow Mr. Brown to
18 continue with his comments at this time.

19 **MR. BROWN:** Thank you, Mr. Chairman. I hope
20 some of you have the memo that I delivered late
21 yesterday because I'm going to -- I know we don't have
22 time for me to go through that, which is the reason I
23 sent it over yesterday after I got Mr. Sayler's the day
24 before. So I'll just try to highlight some points I
25 made in that, and I would like to encourage you to stop

1 me and ask questions when you think something is
2 important or you're not following. I know this maybe
3 gets a little confusing and I'd like to clarify a few
4 things.

5 First of all, as I stated in my memo, I have
6 a bit of a problem with the way this issue is worded
7 because it refers to the utility's cash advances to the
8 president, which is me, and associated companies in the
9 amount of 1.2 represented by Account 123.

10 Well, let me just give you a little history
11 of this account. As some of the senior staff here
12 knows, I've always invested back and forth. A lot of
13 that's been done to keep the utility afloat, and it's
14 just been my nature. And some of the senior staff,
15 Marshall Willis and some others, will tell you that's
16 just the way we've always done business, and done it
17 through two companies, a water company and Brown
18 Management, which is a conglomerate, a Sub S
19 corporation.

20 But until 2003 over -- ever since the '70s
21 those were counted under accounts, accounted for under
22 Accounts 145 and 146, which are advances, are cash loan
23 accounts. But in 2004 we started looking a little
24 closer at NARUC, which we're mandated by order of this
25 Commission to follow, and we looked to the part that

1 said items which do not have a specified date but which
2 have been carried for more than 12 months and items
3 that are not paid within 12 months shall, not may, not
4 if you want to, but shall be transferred to Account
5 123, investments in associated companies.

6 So that's a whole different animal; that's an
7 equity investment. And that's the way it was treated,
8 that's the way we've always handled it on our tax
9 returns from that point forward. And it's a little
10 disingenuous, I think, in the staff recommendation to
11 say that this all built up the last few years. In
12 fact, at the end of '03 those dead accounts were
13 transferred as equity. And at this point Water
14 Management, because of these investments, owns 100% of
15 the stock and therefore the ownership, and part of that
16 involved a transfer back of a 10% ownership in Water
17 Management Services. So that became treasury stock and
18 went to the remaining shareholders in Water Management.

19 The other equity in Brown Management was a
20 series of houses, real estate, different things that
21 have been used over the years to keep this company
22 afloat. For example, in the 2010 test year when we
23 were litigating the last case and we came up \$705,000
24 short in cash, Brown Management sold two assets at a
25 fire sale for \$421,000, which helped fund the water

1 company deficit, and I'll talk a little bit more about
2 that in a minute.

3 And the whole, as one of the staff members
4 said earlier, the entire rationale for this
5 recommendation is the, apparently the PSC audit which
6 we cooperated in and it took seven months and we
7 provided thousands of pages and great detail. And as
8 part of that we documented to them that Water
9 Management Services does own all of the stock, all the
10 ownership in Brown Management, number one. And, number
11 two, that that ownership, that stock had a value
12 greater than the 1.2 million.

13 So to perpetuate what I refer to as an old
14 lawyer, the big lie theory, if you tell a lie, if
15 you're bold and you tell it over and over, after a
16 while people come to believe it and it becomes part of
17 the narrative. And that's what's happened here.

18 In the last case, Public Counsel stood up and
19 said, pointed at me and said this man took 1.2 million
20 of your money, pointing to the customers. So the next
21 day I get a call from a banker who read it in the
22 paper. I had to go down and explain that's not true.
23 I've had to put up with that being in the press, I've
24 had to put up with it being in these memos that are
25 circulating around. We've got this big issue. Gene

1 Brown took 1.2 million of our money.

2 And if Mr. Friedman, my lawyer, pointed to
3 that lady over there and said, you know, Gene, she
4 stole 1.2 million of your money, I probably wouldn't
5 think too kind -- I don't know her, these people don't
6 know me. They believed it. It became a narrative in
7 that case and, and it worked very well, because in the
8 final analysis of that case, even though Public Counsel
9 came in with their expert, Donna Ramos, and presented
10 prefiled testimony that we were entitled to \$132,000,
11 that was their position, and we were saying, no, we're
12 entitled to three or four hundred thousand dollars, the
13 final result after that narrative was set -- and the
14 narrative was this, and it works like a charm. I
15 practiced trial law for a long time. You set a
16 narrative, and if you can get the judge and jury to buy
17 into it, that dominates the proceeding. But here the
18 narrative was he's a bad man, he stole 1.2 million of
19 your money, he stole it from the ratepayers. So every
20 time we said, you know, we don't have enough money
21 because we need rates and we're having these shallow
22 wells and everything, everybody --

23 **MR. SAYLER:** Excuse me. Nobody ever said
24 that you stole any money. They said that it was taken
25 out of the utility for non-utility purposes.

1 **MR. BROWN:** Well, wait just a minute. I
2 don't think Mr. Saylor handled the appeal in this case.
3 But the, but J. R. Kelly stood up, pointed at me, and
4 said, he took a 1.2 million of your money, pointing at
5 me, and those are the quotes, and he doesn't need this
6 money, he doesn't need a rate increase. If he put that
7 back -- and then he filed in the rehearing -- he said,
8 if he'd just put that money back. And so we've never
9 been able to recover from that honestly because that's
10 a defense to anything that we say. You know, until you
11 settle that, it's the elephant in the room, you can't
12 deal with this. But I don't want to get sidetracked.
13 I just want to move through this.

14 The audit that was done by the staff was not,
15 and I repeat this, it was not an audit of ratepayer
16 money as compared to money that was used for operations
17 or not operations. They never said that this is
18 ratepayer money, that we had enough money. What they
19 did, and if you go back and read it, they divided it.
20 And the way they came up with their figures, they
21 divided activities on their cash flow statement,
22 utility activity and non-utility activity.

23 But in their utility activity, if you buy
24 into their narrative, you would be thinking utility
25 activity, that must mean money that came from the

1 ratepayers. But that is not true. Their utility
2 activity that they're charging me with, which came up
3 to a net of 900 and something thousand which we say is
4 200 and something thousand, all of which is less than
5 Brown Management, the investment is worth then and now.
6 But it included, for example, it included as utility
7 activity a sale of two lots down the street here in
8 Tallahassee owned by Water Management, true. It's
9 utility activity in the sense that those are owned by
10 the corporation, but it's not true that that's utility
11 activity in the sense of it came from these ratepayers.

12 So they sold that, those two lots to Brown
13 Management for 480,000. The profit to Water Management
14 was 234,000. I walked in to my controller, gave him a
15 check for 229,000 because we needed the cash in Water
16 Management. But to now use that as a predicate for
17 saying, oh, well, that's utility activity, well, that's
18 misleading and disingenuous. I mean, those are just
19 two examples. The 421,000.

20 So over the years -- and I'd like to, if
21 Marty could stand up here and show you this chart. I
22 don't know if you can read that from here. It's
23 included as Exhibit A, along with a detailed cash flow
24 audit. If you have your memo, you'll see Exhibit A is
25 that chart backed up by detail year to year, actual

1 cash in and cash out of this utility company for
2 11 years starting in 2000. That being the year that
3 DEP came, I mean DOT came in and said, we're tearing
4 down your bridge and you've got to pay for it,
5 \$7 million. Well, the ratepayers have never
6 acknowledged any responsibility in that. I've got to
7 pay for it. But, anyway, this shows year to year the
8 deficits.

9 And the chart which is here, the blue
10 starting in 2000 is the total cost of operations. The
11 green are funds from ratepayers. The red are funds
12 from Gene Brown affiliates and third parties, including
13 lenders that I've paid off and extended loans with and
14 worked with and still have to pay. It's about -- now
15 that we've gone through this, it's over \$8 million that
16 my wife and I have to pay, my family, my companies, but
17 no ratepayer is signed on that note and this rate
18 structure does not require any ratepayer to pay any
19 part of my interest. I just need to repeat that. It's
20 inconsistent with the staff recommendation. But
21 ratepayers are not charged, not only are they not
22 charged with any principal that I had to pay \$7 million
23 to get this bridge built, they're not charged with
24 interest. What they're charged with is a rate of
25 return on rate base.

1 Our rate base is 3.7 million. So you take a
2 weighted cost of debt and you apply it to that, that's
3 what -- that's embedded in rates but the entire
4 interest is not. But this cash flow which I provided
5 to the audit staff and everybody else, Public Counsel,
6 goes through in great detail, and we've got all the
7 backup for it year by year, and it shows, for example,
8 in this 2000 when we got up to less than a million
9 dollars, the green ran out. The red is what I had to
10 come up with through loans or through investments,
11 whatever. But this, this dream world of thinking, oh,
12 well, we said in an '03 order that you were going to
13 have plenty of money, and that's true, there was an
14 order in 2003 cited by the staff that said you're going
15 to have \$405,000 from these rates. Well, that order
16 was based on \$34 a thousand, which is our bread and
17 butter. I mean, \$34 is a base facility charge and a
18 steady rate for water service.

19 But -- and I don't want to accuse the staff
20 of intentionally not telling this Commission the rest
21 of the story, as Paul Harvey used to say, but they
22 didn't tell you that that was not really the order that
23 we have been traveling under. That order was a 2006
24 order which changed the whole ball game. It came in
25 and at the last minute staff said, oh, we've got to

1 deal now with the Water Management District and we're
2 going to cut your base facility charge back to \$27.
3 But don't worry, trust us, you're going to make a lot
4 of money because we're going to charge a 50% premium or
5 surcharge on all gallons over 15,000. And at that time
6 we had very few shallow wells. The Plantation, for
7 example, had a state DRI that prohibited it, because I
8 developed the Plantation and I made sure it was in
9 there. It also had, and this goes to Commissioner
10 Graham's order before, what has the county done to
11 help? Well, the county, then and now, as we sit here,
12 has an ordinance that prohibits shallow wells in the
13 Plantation with, with serious penalties. And we've
14 repeatedly asked them to enforce their own ordinance
15 with letters to their lawyers, to their city, county
16 planner. They've ignored it; they refused.

17 I tried to get on the agenda. I asked the
18 chairman could I, the next time you talk about the
19 water company, could you let me know so I can be there
20 to talk about this? I got a letter back about two
21 sentences, we don't do that. You can come to every
22 meeting, and if it comes up, you'll be there like any
23 member of the public.

24 They -- but those wells started going in in
25 2005 and '6.

1 **CHAIRMAN BRISÉ:** Mr. Brown, Mr. Brown, if you
2 could --

3 **MR. BROWN:** Okay. I'll move on. Here's what
4 happened to our revenue from those wells. We've now
5 got -- we had less than a hundred, I think. Now we've
6 got four or five hundred. Every one of them costs us
7 about \$100 because these are high-end users. I did
8 some little calculations in my memo that determined
9 that if these high users start getting free water and
10 they can put in a well for a couple hundred dollars,
11 then that is a direct hit to our revenue of \$128. And
12 if you multiply those out with the wells that started
13 coming into service after this Commission order of
14 2006, which is a different order than the order that
15 the staff represents to you as being the order, and
16 that's the sole support, that order cited said that we
17 would have a lot of money, we'd be fine. It said we'd
18 get 405,000.

19 Well, the DEP payment itself was 420,000. So
20 just off the top it wasn't adequate even if we'd gotten
21 that money, which we did for two or three years until
22 they changed it in '06. But it didn't include bridge
23 maintenance, insurance, storage of the bridge -- any of
24 that. So we've never had, and I repeat, we've never
25 had adequate rates to pay DEP or these other debts.

1 And so I want to jump to, again to
2 Commissioner Graham's concern about the DEP situation.
3 There's no threat of default now from DEP. I've met
4 with them on a monthly -- repeatedly over these
5 problems and explained how I was working with the
6 Commission. And the last meeting, he said, we can't
7 agree to subordinate, we can't agree to another payment
8 schedule. And then I got a letter a couple of days
9 later acknowledging that, saying you're in technical
10 default but we're not going to take any enforcement
11 action. We'll work with you when, when this case is
12 over.

13 And my agreement with him at DEP was that as
14 soon as I get the rates from this proceeding, that he
15 was going to be shifted from the bottom of the list to
16 the top of the list. So if we get \$1 million a year,
17 1.3 million, we're asking for about \$2 million in this
18 case, that we were going to provide an escrow that at
19 our bank he would have his money off the top. And
20 there's no doubt in my mind that he will accept that.
21 And if I thought that we were in threat of foreclosure,
22 I'd go sell another asset. I've got some more of the
23 same assets. I sold two of them when I didn't have
24 enough money -- when we were litigating in 2010, I sold
25 two in about a week for 421,000. And if I thought

1 there was a threat of foreclosure, I would go sell
2 another one tomorrow.

3 But, you know, I don't know how many of you
4 have been in business. And if you look at this chart,
5 which he doesn't have up there anymore, but the bottom
6 line is over this time -- I wanted him to hold it up
7 the whole time, but -- well, he said -- I said, Marty,
8 I got an easel. He said, oh, I can hold it up. That's
9 all right. (Laughter.) I wanted to, I was going to
10 put it on an easel right there where nobody could miss
11 it.

12 But you get my point. The point is the red
13 is the money I have had through hook or -- whatever you
14 want to call it. You just -- water companies struggle,
15 small private water companies in Florida. That's why
16 when I started 38 years ago there was a lot of us, and
17 now I think there's three or four in A class. And I do
18 have this one on the market and I've offered it for the
19 appraised value. And I think these customers have been
20 instrumental, they've killed the deal with Carrabelle
21 and now they've formed a corporation. And they're
22 trying to set a new narrative now. The new narrative
23 is -- they're expanding on the old narrative. The new
24 narrative is Gene Brown is a bad man, he stole
25 1.2 million of your money, and he didn't make his

1 payments, and, therefore, he's going into foreclosure
2 and we're going to be there to pick up the pieces. And
3 the county is right in with them. I mean, that's --
4 you know, there's a lot of people that are thinking
5 that's what's going to happen. But's it's going to be
6 a long, long way from here to there before that ever
7 happens.

8 And if I thought, Commissioner Graham and the
9 rest of you, if I thought there was any threat of DEP
10 foreclosing before this case is over, and I guess it's
11 going to be another eight months or so, they'd be paid
12 probably by next Monday. So I think that's not
13 imprudent to do what I've been doing.

14 I had to, frankly, I had to make a choice:
15 Do we cut service or do we work with these lenders?
16 And before I forget to give you the amounts, this
17 totals, including 123, this red, for 11 years is
18 \$16,235,000. That is the cash deficit that Gene Brown
19 and my family and my companies have had to -- I don't
20 want to say beg, borrow, and steal because I haven't
21 stole anything. We did invest 100 -- or 1.2 million
22 technically. Over, over 38 years we invested that much
23 in an investment company which is now owned 100% by
24 Water Management. And that is for value. That is
25 equity, not debt. There's a big difference. And for

1 the staff now to say, well, he just took the money and,
2 you know, he owes it back, and Public Counsel is
3 saying, well, he took 1.2 million of the ratepayers,
4 and you're going to hear them say in this case, you
5 know, you've got, you've got to pay that back, well,
6 they've already got it.

7 And there's this narrative going on. I mean,
8 I heard Fidelity Bank mentioned several times by a
9 couple of Commissioners and staff people. They know,
10 because I've filed all my confidential documents with
11 them, that we've been working with Fidelity Bank for
12 about a year and a half.

13 But about two weeks ago I got a call from a
14 banker in Orlando I've been working with and he says,
15 who is Erik Sayler? And I said, well, he's Public
16 Counsel. He said, well, why is he calling me? And I
17 said, well, I don't know. What did you tell him, I
18 said. He said, well, I told him we couldn't talk to
19 him, that we couldn't -- it's against bank policy. We
20 don't talk about customer loans.

21 And then we stayed on the phone, and it was
22 on my cell phone so I know it was about an hour and ten
23 minutes, we stayed on the phone for over an hour
24 talking about this loan, how to structure it to make it
25 work. And it was very positive, very upbeat. And I

1 told him we're within two weeks because July 20th we're
2 supposed to get the staff recommendation. I said,
3 they're probably going to recommend that we get three
4 or four hundred thousand dollars more in rates. And he
5 said, okay, well, give me that.

6 And so on that Friday afternoon I got the
7 staff recommendation. Monday morning I came in the
8 office to get ready to scan and e-mail the part of the
9 staff recommendation that I wanted him to see, and
10 instead I get a phone call and he says, totally
11 different tone, totally different everything, oh, your
12 loan is dead. We just can't do this deal.

13 I said, what are you talking about? He said,
14 well, Erik Sayler called me again aggressive,
15 demanding, and demanding after I'd already told him, he
16 wanted information. I said, well, did you give it to
17 him? No. I said, well, you're killing the loan? He
18 said, yeah, because then he called my boss in Atlanta
19 to talk about my loan.

20 And so what's happened is Public Counsel, and
21 I can't, I don't, I can't prove this, but I've been
22 doing this a long time, as you can tell from this gray
23 hair and these wrinkles and all, and I've dealt with a
24 lot of bankers. And they don't go from spending days
25 working on something and talking for hours to this deal

1 is dead.

2 When Erik Sayler called my banker in Atlanta
3 and made whatever comments he made, and I wouldn't be
4 surprised if the facts would show that he scanned and
5 sent or told them about this imprudence part. You're
6 dealing with a crook. Why would y'all want to do this?
7 And I've known bankers a long time. They don't deal
8 with crooks, they don't like trouble, they don't
9 like -- and I said, what office was he from? Some
10 Public Counsel, very official sounding office. So
11 you've got my banker is getting calls from Public
12 Counsel, aggressive lawyers calling. Banks don't like
13 that. They don't like to go after trouble.

14 And I said, what did Mr. Sayler say? He
15 said, well -- because I was pressing him -- and then
16 said, I don't know, but he was not positive. That was
17 his exact words, emphasizing "not."

18 So what's happened here, Mr. Sayler and
19 Public Counsel, I think J. R. Kelly who started all
20 this by telling this Commission and my customers that I
21 took -- and he said I never said stole, but that's the
22 implication. If you took it and not going to pay it
23 back, that's kind of like stealing. He doesn't tell
24 them it's an investment and they own Brown Management.

25 But now they've killed that loan and it may

1 delay -- and, you know, that's, they poisoned that
2 well. I'm going to have to start all over with a new
3 USDA lender, but they're one of the best. But it's
4 very difficult to fight through this process.

5 And my chart is not still up there, but I
6 would -- you talk about cutting salaries, I already cut
7 my salary.

8 **CHAIRMAN BRISÉ:** Mr. Brown.

9 **MR. BROWN:** When we got in trouble in '09, I
10 cut my salary \$40,000. You can see that in your
11 reports. Over the years I've put in -- even if you
12 take out 123, the investment through 123, if you net
13 that out of my cash flow schedule, the net, the net
14 deficit that I've had to make up in 11 years is
15 \$15 million. And you want to cut my salary back or the
16 staff does to less than three of my employees make, and
17 I've already cut one of them by 25%, my operator on the
18 island. So I'm supposed to run this company and be
19 liable for 8 million and come up with 15 million and do
20 it for less than, than my employees make? That just
21 doesn't seem fair.

22 And I'm sensitive. I mean, I know it sounds
23 bad, you're in default, but there's, there's technical
24 defaults, there's strategic bankruptcies, there's,
25 there's a lot of things you do in business that are

1 honest and proper and prudent when you have to make
2 choices. And if I thought that DEP was going to
3 foreclose or it was under threat, they would be paid.
4 But they've written me a letter, which I've gave, given
5 to staff that says they will look at the subordination,
6 they know the improvements need to be, need to be made,
7 and they'll look at restructuring it and all when this
8 case is over. And I've told them a year ago that when
9 this is over, you're going to be on top of the list.
10 We'll take your money off the top. Our rates are
11 1.3 million a year. That's more than enough to pay 200
12 and something thousand. So they can take theirs, we'll
13 live off the rest. So --

14 **CHAIRMAN BRISÉ:** Okay. Thank you, Mr. Brown.
15 I think we --

16 **MR. BROWN:** If you have any questions --

17 **CHAIRMAN BRISÉ:** Thank you.

18 **MR. BROWN:** -- I would like to hear them and
19 I -- because I want to clear this up. And let me say
20 this and -- we --

21 **CHAIRMAN BRISÉ:** Mr. Brown, Mr. Brown, thank
22 you.

23 **MR. BROWN:** Okay.

24 **CHAIRMAN BRISÉ:** All right. In fairness,
25 Office of Public Counsel.

1 **MR. SAYLER:** Thank you, Chairman Brisé.

2 With regard to the shallow wells that were
3 discussed, that was an item of significant import in
4 the last rate case. The Public Service Commission
5 sponsored a witness from the Water Management District
6 that explained the reason for the shallow wells,
7 explained that, yes, there's a DRI in the Plantation
8 that you can't do shallow wells, there is a county
9 ordinance, but there is a state law, and statute
10 supersedes county ordinance and DRIs, that allows for
11 shallow wells if you get a permit from the Water
12 Management District. And also that came out in the
13 last rate case. Mr. Brown litigated that right -- all
14 the way to the 1st DCA. And the 1st DCA held that, no,
15 the statute trumps the county ordinance and the DRI.
16 It's unfortunate that that has adversely impacted the,
17 you know, the flows and things of that nature and
18 income, but that's just where the shallow well issue
19 comes into the bottom line. I just wanted to make that
20 point.

21 But just stepping back, we're here today on
22 this issue on whether or not Mr. Gene Brown has
23 committed managerial imprudence as it relates to
24 running his utility.

25 I took a moment over the lunch break to kind

1 of look up the terms "imprudent" and things of that
2 nature.

3 Imprudent, according to the Macmillan
4 Dictionary, means not sensible, especially in
5 relation to the way that money is spent or invested.

6 I also looked up the word "dissipate" and
7 "dissipation," which if you return back to the order
8 that I provided to you at the very beginning of my
9 introduction. On page 1 it says, the purpose of
10 this agreement, meaning the proposed stipulation
11 between staff and the utility to avoid this
12 Commission revoking his certificate, is to determine
13 whether the utility funds are being used
14 appropriately for utility purposes, and to protect
15 the customers from any dissipation of utility
16 assets. And that's where we're essentially at here
17 today on this issue.

18 And dissipation, according to the American
19 Heritage Dictionary, is a noun that means the act of
20 dissipating or the condition of having been
21 dissipated. Very helpful definition. It means
22 wasteful expenditure or consumption.

23 So I looked up "dissipate," which is a
24 verb that means to scatter in various directions,
25 dispel, disperse, to spend or use wastefully or

1 extravagantly, to squander, to deplete. And the
2 example provided was to dissipate one's talents or
3 to dissipate a fortune on high living.

4 And the question is this. This utility
5 has been granted in rates various times throughout
6 the years funds to pay its loans. Whether the
7 amount set in rate was going to be designed to do
8 the entirety of the debt or the amount of debt
9 reconciled to rate base, that's a position of
10 ratemaking policy. But the fact of the matter is
11 from 2004 when this utility started putting money in
12 and out of Account 123, investment in other
13 companies, to this date there's been a net outflow
14 of \$1.2 million.

15 And earlier it was said that there's no
16 evidence in this docket. Well, in the last docket
17 there was testimony put on by OPC Witness Donna
18 Ramos where she looked at the general ledgers of
19 this utility and found that in fact \$1.2 million of
20 money had flown in and out and netted out of that
21 account. And that was evidence that was provided,
22 it was sworn to and applicable for that
23 administrative hearing.

24 And in that administrative hearing the
25 Commission decided, well, we want to verify those

1 assertions made by OPC, and so this Commission
2 ordered that cash flow audit. So if you turn to
3 page 56 of that order, PSC-11-0010-SE-WU, it says,
4 based on the record of this proceeding it cannot be
5 determined if the level of investment in associated
6 companies is appropriate. However, the amounts in
7 question are not included in the rate base and are
8 not considered in the determination of appropriate
9 rates. That said, based on the circumstances in
10 this case, our staff shall initiate a cash flow
11 audit of the utility as soon as possible. And if it
12 is determined that the activity in this account has
13 impaired the utility's ability to meet its financial
14 and operating responsibilities, our staff shall
15 recommend an appropriate adjustment for imprudence.

16 That cash flow audit came out last summer.
17 It was, for whatever reason staff didn't act on it.
18 OPC was concerned that it wouldn't be addressed in
19 this rate case, and that was one of the prime
20 reasons we asked for a full administrative hearing,
21 an unusual step for a PAA rate case.

22 Well, then the Commission staff updated
23 their cash flow audit as a part of this rate case
24 and then provided the information where we're at.
25 Much of the information, to my understanding as a

1 non-accountant, that was provided in this document
2 from Mr. Brown today or last night is similar to the
3 same response that he provided to the Commission
4 staff updated cash flow audit back in March. Or the
5 cash flow audit was in March; his response was in
6 late March, early April.

7 But the fact of the matter is we're here
8 today to determine whether or not managerial
9 imprudence occurred, if the actions related to the
10 financial ability of this utility to pay its debts.
11 I agree, if you can't pay your debts, there's maybe
12 a question of managerial imprudence.

13 So here we are. You have money flowing in
14 and out of Account 123, a greater amount of flowing
15 out of 123. And the question before you, did that
16 constitute managerial imprudence?

17 Well, here are the facts. The utility is
18 currently in default, technical or otherwise, of the
19 DEP loan. That's a fact. Starting in 2009 the
20 DEP -- well, probably actually I think a lit bit
21 before that filed various loan amendments to the DEP
22 loan. The third loan amendment was the one that was
23 negotiated in 2009 to allow this utility to miss a
24 scheduled payment.

25 Mr. Brown is absolutely correct, they have

1 never, quote, missed a payment and gone into
2 default. But at the time in 2009 when they missed
3 that payment, they negotiated the ability to miss
4 that payment and then took that interest portion of
5 that payment and put it on the back end of the loan,
6 and along -- I don't know if it was that time or
7 another time where they extended the term from 20 to
8 30 years. So you have that going on in 2009, but
9 yet you have all this money coming in and out of
10 Account 123.

11 So while Mr. Brown is going to DEP saying,
12 I believe, the economy is bad, I heard that's what
13 it was in the last rate case, the economy is bad,
14 global recession, this, that, and the other thing,
15 can you change the terms of my loan? But yet you
16 have this, a lot of activity in Account 123, real
17 cash coming out.

18 In addition, as noted in the last order
19 where it says, further, in 2008 WMSI received net
20 proceeds of \$719,337 in settlement for the failure
21 of the paint coating on the supply main bridge. The
22 Commission did not dispute how they adjusted it, but
23 the Commission said, we find that the utility's
24 treatment of the settlement was appropriate. Even
25 though we find that the proceeds were not for the

1 maintenance of the bridge, we are concerned with the
2 management's use of the funds, which was then later
3 on addressed and to be addressed through this
4 Commission's cash flow audit.

5 So here you have several negotiated
6 mispayments with DEP that were negotiated, but that
7 ended up capitalizing that interest on the back end
8 of the loan, which the incremental interest amount
9 on the life of the loan the customers will pay for.
10 Staff has said that in their recommendation. The
11 customers are responsible for that incremental
12 increase over the life of the loan, the 30-year
13 loan.

14 Let me ask you this. Is negotiating to
15 miss a payment, to miss a payment the same as just
16 not paying it? I would agree it's qualitatively
17 different, but still there should have been cash
18 there built into rates. He had a 700, over a
19 \$700,000 settlement the year before, so he -- I
20 think, as a, as an outsider who's looking at this,
21 that there should have been cash there to be able to
22 make that payment.

23 In addition to that --

24 **CHAIRMAN BRISÉ:** Mr. Sayler, if you would
25 stop for a second. There may be a question for you.

1 **MR. SAYLER:** Sure.

2 **CHAIRMAN BRISÉ:** Commissioner Edgar.

3 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

4 I don't have a question, but whenever you are open to
5 it, I'm prepared to make a motion on this issue.

6 **CHAIRMAN BRISÉ:** Okay.

7 **MR. SAYLER:** I'll wrap it up.

8 So at the time that he was making these
9 renegotiations with the DEP, was DEP aware of the fact
10 that this cash was flowing in and out? Was he
11 negotiating in good faith? I don't know. That's a
12 decision that is ultimately -- does that contribute to
13 a finding of managerial imprudence or not?

14 Also, as was noted in the cash flow, updated
15 cash flow audit that was provided to this Commission in
16 March, from all of 2011 an additional \$40,000 net
17 increased out of that Account 123. And you may
18 remember last year this utility came to this Commission
19 twice requesting a payment plan for the regulatory
20 assessment fees. And regulatory assessment fees are
21 automatically built into rates. That's just part and
22 parcel of ratemaking. However, the utility did not
23 have that money, came to the Commission saying, we
24 don't have the money. Can we get a payment plan? And
25 the Commission granted it and it probably is what the

1 Commission should do because the interest on that,
2 interest and penalties was paid for by the utility, not
3 by the customers. But still you have \$40,000 of cash
4 that went out of that Account 123 to non-utility
5 purposes. And there's no evidence in the record that,
6 you know, that cash that went through ultimately paid
7 down debt or did operations.

8 And so with that, I just leave it there. I
9 think there is plenty of evidence in the record. And,
10 remember, we're a PAA proceeding. You're talking about
11 competent substantial evidence, whatever you find in
12 the record in this docket file or things like that to
13 make your decision on is sufficient for making your
14 decision. If we disagree with it or if the utility
15 disagrees with it, we have the right to protest this
16 and require it to be set for formal administrative
17 hearing and have that evidence tested.

18 We have the Commission cash flow audit which
19 we believe is accurate and supports a finding of
20 managerial imprudence. You have the utility's response
21 to that. It's ultimately a question of who is more
22 credible, your staff or this utility? And we'll leave
23 it at that. Thank you very much.

24 **CHAIRMAN BRISE:** Thank you very much.

25 Commissioner Balbis.

1 **COMMISSIONER BALBIS:** Thank you, Mr.
2 Chairman. I just have two quick questions for staff.

3 As a result of the cash flow audit, the only
4 adjustment that you're recommending is due to the
5 additional interest payment for the amendment three at
6 the DEP loan, or is there another adjustment?

7 **MR. MAUREY:** I would like to clarify that.
8 The missed -- the increased interest was the basis for
9 calculating the adjustments, not the reason for the
10 finding of managerial imprudence.

11 The finding, the recommendation of managerial
12 imprudence was related to the -- well, the multiple
13 missed payments. And we, we believe that payments were
14 missed. Yes, amendment three negotiated to miss a
15 future payment, but it was predicated and it was
16 crafted after a missed payment already had occurred.
17 And that's similar with amendment four, and then the
18 payment that was missed in May of this year.

19 So it's, the reason for managerial imprudence
20 was tied to the missed payments, the financial
21 difficulty that the utility has been placed in. We
22 only used the interest cost as a basis for calculating
23 that adjustment, not the reason for the adjustment.

24 **COMMISSIONER BALBIS:** Okay. Then the cash
25 advances in the amount of \$1.2 million net and the

1 results of the cash flow audit, did it warrant any
2 additional adjustments other than those made in this
3 issue?

4 **MR. MAUREY:** That was the only adjustment we
5 made as a result of the cash flow audit.

6 **COMMISSIONER BALBIS:** Did -- as a result of
7 that audit was there anything that warranted additional
8 investigation into the cash advances or does it
9 adequately address that issue?

10 **MR. MAUREY:** There's been a lot of discussion
11 today that might warrant further investigation.
12 There's -- but for purposes of today this is what we
13 have. I don't know how to answer your question other
14 than that.

15 **COMMISSIONER BALBIS:** Well, and I think you
16 did. I think that's important. And that's personally
17 where I am. There's been a lot of discussion from all
18 sides and staff on questions regarding the cash
19 advances, whether or not there was a missed payment,
20 you know. So I still believe there are questions out
21 there, but unfortunately we have this process where
22 it's based upon the filing and this cash flow audit.

23 And one last question. Can we make the
24 adjustments that are recommended without finding,
25 making a finding of managerial imprudence?

1 **MR. MAUREY:** Well, I --

2 **MR. JAEGER:** Yes, Commissioner. I believe
3 what we're saying is we're trying to keep the customers
4 whole, not have them -- you know, if there's been an
5 increase in cost, and we think the increase amounted to
6 that about 44,000 that we're trying to adjust. So
7 whether it's managerial imprudence or just saying
8 there's been an increase in cost that the customers
9 should not be made to pay for, that's what we're
10 hanging our hat on.

11 **MR. MAUREY:** Well, our main goal is for this
12 utility to have sufficient cash flow to secure the
13 financing necessary to make these capital improvements.
14 That's what we want at the end of the day. We're,
15 we're not wed to the managerial imprudence necessary
16 finding here. If you believe further investigation is
17 necessary, you're not ready for that, we, we certainly
18 understand that.

19 It's -- we want the utility to be able to
20 make the improvements necessary to keep water quality
21 high and water on the island.

22 **COMMISSIONER BALBIS:** And as far as options
23 that we may have for additional investigation or
24 provide the company additional opportunities to provide
25 information, what options do we have?

1 **MR. MAUREY:** The Commission on its own motion
2 can launch an investigation. If this matter gets
3 protested, I'm sure additional discovery will occur in
4 this docket.

5 **COMMISSIONER BALBIS:** Okay. That's all I had
6 at this time.

7 **CHAIRMAN BRISÉ:** Commissioner Brown.

8 **COMMISSIONER BROWN:** Thank you.

9 And, Mr. Maurey, you just said exactly what
10 my concerns are, is the utility's ability to secure the
11 necessary financing to make the improvements that are
12 critical. And a finding of managerial imprudence, I do
13 believe, would be detrimental to the utility as well as
14 the customers because ultimately the financing will
15 most likely not be secured.

16 I don't know if -- my feelings are was this
17 an accounting error, are there accounting errors that
18 have been repeatedly occurring, or is it managerial
19 imprudence? I don't know if we have enough evidence at
20 this stage in the PAA process to support a clear
21 finding of managerial imprudence.

22 **CHAIRMAN BRISÉ:** Okay. Mr. Maurey, did you
23 have a comment?

24 **MR. MAUREY:** Oh, is there -- I didn't think
25 there was a question there.

1 **CHAIRMAN BRISÉ:** Okay. Okay. Okay. That
2 was a period there.

3 I think that we are in the proper posture for
4 a motion.

5 Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
7 I'll put this out there and see if it gets, gets legs.
8 Obviously we've had a lot of discussion on this item.
9 We had the staff recommendation before us, the
10 additional written information, and then further verbal
11 details supplied by both of the parties, much of which
12 focuses on the issues within Issue 15 and those related
13 to it.

14 As I read the information before us, my
15 understanding is that Issue 15, the way it is
16 presented, has primarily three pieces. The first is
17 looking at the staff recommendation on 15. The first
18 piece of, or what I'm dividing into three parts, the
19 first would be the escrow proposal. And I believe that
20 that was addressed in our decision on Issue 5; is that
21 correct?

22 **MR. MAUREY:** That's correct.

23 **COMMISSIONER EDGAR:** All right. Then I'm
24 going to consider that first part of the staff
25 recommendation disposed of by our earlier decision.

1 The second piece is the recommendation of a
2 salary reduction to the utility president with
3 accompanying reductions in benefits and pension related
4 expenses.

5 And then the third is a finding or a
6 recommendation of a finding of managerial imprudence.
7 I'm going to just take those backwards.

8 Regarding the finding of managerial
9 imprudence, speaking for myself I am uncomfortable
10 making a finding such as that in a non-evidentiary
11 hearing based on, again, the procedural posture that we
12 are in and the information that we have before us. I
13 do believe that the term "imprudence" in our
14 deliberations is often a term of art and does have
15 legal ramifications that may apply in other, other
16 legal forums, but I do believe has specific meaning in
17 our deliberations and under our statutes and our
18 precedential decisions. Therefore, I'm uncomfortable
19 using that term in the posture that we are now in.

20 I do, however, believe that there have, as
21 has been pointed out, there have been some missed
22 payments. We have had significant discussion about the
23 DEP loan and how that was handled and the posture that
24 it is in. And I also believe that there has been
25 additional workload on the utility, on many of the

1 customers who have engaged on this issue, certainly on
2 our staff, and potentially on the DEP staff as well.

3 And so to address that, I would make a motion
4 to have a 15% reduction in the salary of the utility
5 president, with the pensions and benefit reduction
6 prorated accordingly.

7 And I think that wraps up, would wrap up the
8 issues for 15. And I put that out there as a motion,
9 see if it gets a second, or see if there is discussion.

10 **CHAIRMAN BRISÉ:** All right. There's a
11 motion. Is there a second?

12 **COMMISSIONER BROWN:** I'll second it.

13 **CHAIRMAN BRISÉ:** Okay. It's been moved and
14 seconded.

15 I see a light. Commissioner Graham, for
16 discussion.

17 **COMMISSIONER GRAHAM:** For discussion, I guess
18 my question is, and this will go towards staff, can you
19 adjust the president's salary? Do you need the
20 managerial imprudence to adjust the president's salary
21 or can you just subjectively adjust the president's
22 salary?

23 **MR. JAEGER:** I think what we said is you can
24 adjust the salary based -- it's, it's almost like Gulf
25 Power got a 10% increase on their equity return because

1 of good management. And it may not be imprudent, but
2 he has caused, caused this additional interest expense
3 and additional ten-year extension. So it may not, you
4 may not say imprudent, but it may not have been as good
5 as it should have been. So there may be some idea that
6 there has been a minimum harm to the customers.

7 **COMMISSIONER GRAHAM:** Well, I'm trying to,
8 I'm trying to understand this. I completely agree with
9 taking out the managerial imprudence because that's
10 going to hurt everything moving forward. But I guess
11 I'm trying to figure out, you know, if you're looking
12 at another president of another company that's making
13 less money, I can see us saying, okay, well, you're
14 paying yourself too much; we need to bring that down.
15 Or you're not making enough; we'll allow for it to go
16 up.

17 But for us to, just to go in there and to cut
18 his salary -- and as you heard him say earlier about
19 making less money than some of his employees are
20 making. And I guess I feel, I feel a little
21 uncomfortable about that. I understand, I completely
22 understand why staff did it and I understand the
23 purpose behind it all, but I guess I'm looking more
24 towards -- and that's why I'm asking you more legally
25 is this something that we can do? Do we have enough

1 here to be able to do that? Because to me it feels, I
2 hate to use the word arbitrary, it just, it's not
3 specific enough. I don't see the facts to be able
4 to -- where does 15% come from, where does 12%, where
5 does 8% come from?

6 **MS. HELTON:** I agree with you that I think
7 there has to be a basis to do that. I don't know if
8 the basis could be, and I'm not as familiar with the
9 other folks on this table with the numbers, but if the
10 basis could be the additional interest that the
11 customers are going to have to pay, well, that needs to
12 come from somewhere.

13 If that's -- or if there's some other way or
14 some other number that the staff could look at to come
15 up with a basis for reducing it by 15% because of
16 Mr. Brown's actions in managing the company.

17 **MR. MAUREY:** Staff believes that you can, you
18 have a basis for making this adjustment. We, we tied
19 it to the amount of interest expense. But that's at
20 this point in time and this adjustment is now. The,
21 the premise that the cost structure of this company has
22 been increased because of certain actions, this
23 Commission can make an adjustment to the person
24 responsible for those actions, and that's what we
25 believe we've recommended. We don't believe a

1 declaration of managerial imprudence is necessary to
2 make that adjustment.

3 There are other cases where, as you alluded
4 to, where the salary might be too high or too low and
5 the Commission has made adjustments and not found
6 imprudence, just that the expense seems out of line
7 with other companies that have a similar situation and
8 compared to those expenses. So between zero and 50%,
9 the Commission has made adjustments to the president's
10 salary over that range and it does haven't to be tied
11 to a specific amount.

12 **COMMISSIONER GRAHAM:** Okay.

13 **CHAIRMAN BRISÉ:** I think that that clarified
14 my, my line of thought, line of questions. Because
15 originally it was attached to, you know, a particular
16 amount. We can make the decision that it's not
17 attached to an amount. We found that there is some
18 issue with the management, and so therefore we are
19 going to impact the salary by this amount and it -- I
20 mean, by this percentage. And it has nothing to do
21 with, with the actual, with a specific amount. I think
22 that that is probably the, the global perspective of
23 the motion as, as it was stated. I don't know if I'm
24 reading that right. Okay.

25 Mr. Brown, you've been chomping at the bit to

1 say something. You know, sometimes --

2 **MR. BROWN:** I want to make this one point. I
3 mean, because I'm --

4 **CHAIRMAN BRISÉ:** Go right ahead. Sometimes
5 words hurt us.

6 **MR. BROWN:** Understanding what Mr. Jaeger
7 says, he says this reduction in salary is based on
8 costing the customers more money. I did a little
9 example in the memo, and maybe I don't understand this
10 and somebody here, some of these rate analysts need to
11 explain it if I don't understand it, but the first
12 reason I extended the amortization, which did cost more
13 interest, is to match up the depreciable life with the
14 amortization on the loan. Because there's nothing in
15 these rates at all to get any capital back. The
16 depreciable rate is 40 years. My loan was 20 years. I
17 got it increased to 30 years so we would come closer to
18 covering some of the principal which was not in rates
19 at all. So that was very prudent, number one.

20 Number two, it saved the customers money.
21 And I won't go into great detail. It's in your memo if
22 you want to see the calculations. But by doing it my
23 way, the total pass-through cost would be 1,785,000 to
24 the customers embedded in rates from this increased
25 amortization.

1 If you do it the staff's way, it would either
2 be debt or equity or a combination of the two. But if
3 I paid off that low interest loan in 20 years and we
4 still had debt at our current level of 6.5%, then the
5 customers would pay that amount multiplied by the rate
6 base, assuming the rate base is the same. So doing it
7 the staff's way, which I'm getting ready to be, my
8 salary is going to be reduced for this I guess, but
9 that would cost the customers 2,443,000.

10 If, if I really double down on what the staff
11 is telling me to do, get your debt paid, you know, then
12 it would convert to equity at the current rate of
13 11.16, and that would cost the ratepayers \$4,195,000.
14 So by doing what I did, which was prudent utility
15 management, I saved the customers somewhere between
16 \$2 million and \$4 million over the life of the loan. I
17 mean, that's just -- somebody, you know, there are a
18 lot of experts here, a lot of lawyers, a lot of CPAs, a
19 lot of people, and if I'm, if I'm misunderstanding
20 this, then maybe I do need to be corrected.

21 **CHAIRMAN BRISÉ:** Okay.

22 **MR. BROWN:** But I think that by saving them
23 money it can hardly be argued that's imprudent.

24 **CHAIRMAN BRISÉ:** Thank you very much,
25 Mr. Brown. Point taken.

1 Commissioner Balbis.

2 **COMMISSIONER BALBIS:** Thank you. And I would
3 just like to have some discussion on the motion that's
4 before us. I somewhat agree with Commissioner Graham
5 on where the reduction should take place if we find
6 there's a reduction.

7 I just -- you know, what we have before us is
8 staff, based on an audit report that there's an
9 additional cost to the customers of \$208,695 due to the
10 amendment three to the DEP permit or DEP loan. So I
11 just want to make sure that the customers don't pay for
12 any of that additional interest.

13 And I appreciate the calculations that are
14 presented to us. But, you know, unfortunately in this
15 process I can't base my decisions on a
16 back-of-the-envelope calculation. And, you know,
17 perhaps an evidentiary hearing on this issue would have
18 been -- or can, is warranted. So I'm not that
19 concerned with what account or what person's salary is
20 reduced as long as the customers don't pay for these
21 additional costs. And I think the motion does that.
22 I'm not sure if a percentage of that amount -- you
23 know, my position is these are additional costs
24 identified by staff. The customers shouldn't pay for
25 any that, not a percentage of it. But, you know,

1 that's my position. I look forward to more discussion
2 on that.

3 **CHAIRMAN BRISÉ:** Thank you, Commissioner
4 Balbis.

5 Commissioner Graham.

6 (No comment made by Commissioner Graham.)

7 Okay. All right. So we have a motion and we
8 have a second. Further discussion on this motion. I
9 guess we're ready to vote.

10 **COMMISSIONER BALBIS:** Can I ask to clarify
11 that motion one more time?

12 **CHAIRMAN BRISÉ:** Sure. That would be
13 appropriate.

14 Commissioner Edgar.

15 **COMMISSIONER EDGAR:** I'll make the attempt.
16 And if there is a better way to approach it, I am, I am
17 open to it. This is simply my effort to try to pull
18 together the pieces that, that we have before us in
19 light of all of the information and all of the
20 discussion, and in recognition that this is not an
21 evidentiary proceeding.

22 So as I stated, I believe that the issue
23 before us has three pieces. I believe that the first
24 piece has already been disposed of by our decision in
25 Issue 5. I believe the third piece would be a finding

1 of managerial imprudence, which I am not comfortable
2 with making for the reasons that I described earlier.
3 Therefore, I would remove that portion from the staff
4 recommendation.

5 And, therefore, in light of that, I would
6 move that we reduce the salary of the utility president
7 by 15%, with the pension and other benefits to be
8 adjusted apportionately as appropriate, and that that
9 reduction be made on the basis of a history of some
10 missed payments, the current status of the payments on
11 the DEP loan, and, and this is my nontechnical word,
12 but lack of clarity or confusion regarding some of the
13 accounting practices.

14 **CHAIRMAN BRISÉ:** Okay. All right.
15 Commissioner Balbis.

16 **COMMISSIONER BALBIS:** Thank you. And that
17 sounds like one of my motions. (Laughter.)

18 But I do understand the motion and I agree
19 with most everything that's included in the motion.
20 However, I feel that making the full adjustment of the
21 44,441 is supported by some documentation, and I would
22 be able to support the motion if it involved a revenue
23 reduction regardless of where the reduction takes place
24 of that full amount so customers don't have to pay any
25 of the additional expense. But I understand the motion

1 and cannot support it at this time.

2 **CHAIRMAN BRISÉ:** Okay. Commissioner Graham.

3 **COMMISSIONER GRAHAM:** I think Commissioner
4 Balbis down there read my mind. I was going to speak
5 to staff about that. I don't have a problem with
6 making that dollar amount deduction, but I don't feel
7 comfortable going in there and saying we are going to
8 surgically cut it out of the, the president's salary,
9 you know. You can figure out where you want to cut
10 that dollar amount. I just think we should, we should
11 specify what the dollar amount is and then let him
12 figure out where he's going to get it. You know, going
13 back to what Commissioner Balbis was saying, just
14 making sure that the ratepayers aren't coming up with
15 that dollar amount. And I guess, staff, is that
16 something that's feasible?

17 **MR. FLETCHER:** Yes, it is. If you -- just
18 the -- locating the dollar amount so the customers
19 would not have to pay that, that is definitely feasible
20 and that can be definitely not tied to any particular
21 expense like the president's salary, just O&M expenses,
22 and wherever that fallout would be.

23 **COMMISSIONER GRAHAM:** It's kind of like where
24 we've in the past have, for lack of a better term,
25 dinked people a couple of basis points because, you

1 know, we're smacking the back of the hand or whatever
2 the case is. Here we are trying to cover a specific
3 cost, and so I guess I agree with Commissioner Balbis.
4 I don't want to specifically go and tell him where it's
5 going to cut from. It's just that you need to find out
6 where you need to cut it and run your business. That
7 wasn't an amendment. That was just my thoughts.

8 **CHAIRMAN BRISÉ:** Understood. Understood.
9 Commissioner Brown.

10 **COMMISSIONER BROWN:** I am supportive of the
11 motion. I think we do have the latitude to reduce it
12 by the 35%, the 15%, whatever we feel is appropriate.
13 Again, we're not tying it to a specific transaction
14 here like the DEP loan and the additional interest.
15 I'm supportive of it and comfortable that we have that
16 authority, so I would support the motion at the 15%
17 reduction.

18 **CHAIRMAN BRISÉ:** Okay. Any further comments
19 on the motion? Okay. We're still on your motion. We
20 are still on your motion.

21 I have one question in light of the comments
22 made by Commissioner Graham and Commissioner Balbis to
23 staff.

24 Mr. Fletcher, you mentioned O&M expenses. So
25 if we were to pursue the motion as it stands with 15%

1 and we were to back out what that 15% would mean in
2 terms of the dollar amount of that, of the reduction
3 for the president's salary and then allocate the
4 balance of the dollar amount that would be identified
5 that Commissioner Balbis and Commissioner Graham are
6 concerned about and allocate that somewhere in O&M
7 expenses, where would that fall into, do you think?

8 **MR. FLETCHER:** I'm not sure of the particular
9 account. I can tell you the difference of the 15%
10 would be roughly slightly less than \$20,000 grossed up.
11 And what we have in the recommendation now is about
12 46,000 grossed up at the 35%. And just basically
13 having the language in the order, not tying it to a
14 specific salary, not tying it to managerial imprudence,
15 just that the O&M expenses will be reduced in order to
16 have the effect of the ratepayers not bearing the
17 additional cost of interest.

18 **CHAIRMAN BRISÉ:** Okay.

19 **MR. FLETCHER:** And I would note at this time
20 that if, if there is a, if it is voted out, that the
21 15%, we would have to revisit one component of Issue 5,
22 I believe. It would slightly adjust the amount, that
23 percentage that I gave earlier, the 36, 36.25% that
24 needs to be escrowed. It would slightly lower that, I
25 believe, to 35, maybe a little bit less than 36. But

1 if we would be, if that is the decision, be given
2 administrative authority to revise that percentage of
3 monthly revenues that go into escrow.

4 **CHAIRMAN BRISÉ:** Okay. All right. So we're
5 ready to -- Commissioner Edgar.

6 **COMMISSIONER EDGAR:** I would just say, Mr.
7 Chairman, if appropriate procedurally, I would add to
8 my motion that staff have the administrative authority
9 to make whatever technical accounting adjustments are
10 in keeping with the decisions that we have made when
11 all wrapped up together.

12 **CHAIRMAN BRISÉ:** Okay. All right. So the
13 motion that is on the table right now is a 15%
14 reduction to the president's salary. The other
15 component of the motion recognizes that the decision
16 that we made earlier deals with the escrow component.
17 And I'm missing the third component.

18 **COMMISSIONER EDGAR:** No finding of managerial
19 imprudence.

20 **CHAIRMAN BRISÉ:** No finding of managerial
21 imprudence. All right. All in favor of the motion as
22 stated, say aye.

23 **COMMISSIONER EDGAR:** Aye.

24 **COMMISSIONER BROWN:** Aye.

25 **CHAIRMAN BRISÉ:** Aye.

1 Any opposed?

2 **COMMISSIONER BALBIS:** Aye.

3 **COMMISSIONER GRAHAM:** Aye.

4 **CHAIRMAN BRISÉ:** Okay. So you've got 3 to 2,
5 so the motion carries.

6 All right. Moving on to Issue Number 16.

7 **MR. FLETCHER:** Commissioners, Issue 16 is
8 staff's recommendation to recognize the net gain on
9 sale of land and other assets to the benefit of the
10 ratepayers that would be amortized over five years.
11 It's approximately \$1,100.

12 **CHAIRMAN BRISÉ:** All right. Commissioner
13 Graham.

14 **COMMISSIONER GRAHAM:** I'd like to move staff
15 recommendations on Issue 16 through 23, with any other
16 fallouts from other decisions we've already made that
17 changed the previous staff recommendation.

18 **CHAIRMAN BRISÉ:** Okay. Commissioner Edgar.
19 That's a motion?

20 **COMMISSIONER GRAHAM:** Yes.

21 **CHAIRMAN BRISÉ:** It's been moved.

22 **COMMISSIONER EDGAR:** And I would second that
23 with the addition that I think there was an oral
24 modification on Issue 17, and I'm not sure that that
25 was, was added in. Am I --

1 **MR. FLETCHER:** Right. With that modification
2 and with your other recommendations to be given
3 administrative authority.

4 **COMMISSIONER EDGAR:** Okay. Then I second.

5 **COMMISSIONER GRAHAM:** That's fine.

6 **CHAIRMAN BRISÉ:** Moved and seconded,
7 recognizing a modification. Any further discussion on
8 Issue 16, 16?

9 Seeing none, all in favor, say aye.

10 (Vote taken.)

11 All right. Let the record reflect that Issue
12 Number 16 has been approved by the Commission.

13 Moving on to Issue 17.

14 **COMMISSIONER GRAHAM:** Excuse me.

15 **CHAIRMAN BRISÉ:** I think we --

16 **COMMISSIONER GRAHAM:** The motion was 16
17 through 23.

18 **CHAIRMAN BRISÉ:** Oh, it was 16 to 23?

19 **COMMISSIONER GRAHAM:** Yes.

20 **CHAIRMAN BRISÉ:** Man, how did I miss that?

21 (Laughter.)

22 All right. So we are 17 through 23. So the
23 motion reflected --

24 **COMMISSIONER EDGAR:** 16 through 23.

25 **CHAIRMAN BRISÉ:** 16.

1 **COMMISSIONER EDGAR:** Including the oral mod
2 on 17 and any technical adjustments.

3 **CHAIRMAN BRISÉ:** On 17 and so forth. 17
4 through 23. So now we're on 24.

5 **COMMISSIONER GRAHAM:** I think we probably
6 need to take that vote again.

7 **CHAIRMAN BRISÉ:** We need to take that vote
8 again on -- okay. So we'll redo that just for clarity.

9 Issues 16 through 23, there's an oral
10 modification on 17, the motion was made by Commissioner
11 Graham, it was seconded by Commissioner Edgar. I don't
12 know if we need to go through that process again but,
13 just for clarity, is there a motion?

14 **COMMISSIONER GRAHAM:** That motion as you
15 stated, but we made sure that if there's any changes
16 that staff has got to make from decisions that we made
17 earlier to the staff recommendation, they have the free
18 authority to do that.

19 **CHAIRMAN BRISÉ:** Okay. Okay. So staff has
20 administrative authority to make the appropriate
21 adjustments.

22 Okay. It's been moved by Commissioner
23 Graham. Is there a second?

24 **COMMISSIONER EDGAR:** Second.

25 **CHAIRMAN BRISÉ:** Okay. It's been moved and

1 seconded, seconded by Commissioner Edgar. So all in
2 favor, say aye.

3 (Vote taken.)

4 Okay. Let the record reflect that the
5 Commission approves staff's recommendation on Issues 16
6 through 23, with the oral modification, and it gives
7 staff the appropriate administrative authority to make
8 the adjustments as necessary to reflect all of our
9 votes up to this point.

10 **COMMISSIONER EDGAR:** You got it.

11 **CHAIRMAN BRISÉ:** All right. Good deal.
12 That's a mouthful.

13 Moving on to Issue 24.

14 **MR. FLETCHER:** Commissioners, Issue 24 is
15 staff's recommendation regarding revised service
16 availability charges for WMSI, particularly with the
17 plant capacity charge, main extension, and meter
18 installation charges.

19 **CHAIRMAN BRISÉ:** All right. Is there a
20 motion, comments, questions? Oh, Mr. Friedman.

21 **MR. FRIEDMAN:** Thank you. If I might make --
22 this is, well, it's the last issue really that's on the
23 table, so I do have some comments about the service
24 availability charge issue. And obviously we think,
25 excuse me, we think the amount is inadequate and the

1 number ought to be the amount we asked for, which is
2 9,000 and some change, but, round numbers, \$10,000.

3 And the, what the staff is recommending and
4 what they've done is they backed into it by saying,
5 well, let's figure out what the least amount it is it
6 can be. And under your rule the least amount is the
7 cost of the collection -- not collection system. This
8 would be the distribution system. And the staff comes
9 up with a, with an amount that results in a CIAC ratio
10 of 24.9%.

11 Now your guidelines, as the staff points out,
12 say that you're looking at CIAC of, of not in excess of
13 75%. But in practice what this Commission has
14 typically done is to approve a service, requested
15 service availability charge up to the 75%. It's
16 interesting that the Public Counsel would dis, you
17 know, would disagree with this because the Public
18 Counsel typically is the one that comes in, at least in
19 my experience, and says, hey, we want those service
20 availability charges because it reduces the rate.
21 Having a 24, 24.9% CIAC ratio is going to result in
22 substantially higher rates than if you had a 75% ratio.
23 And I'll give you, I'll give you this, it's
24 discretionary. I mean, it can be anywhere in there.
25 But I think that it needs to have some justification to

1 why you're picking the lowest number.

2 And, again, this is an issue, I think, where
3 the, where the staff is, is trying to insert themselves
4 into the management of the company by saying this is
5 how much we think it ought to be.

6 The only justification for the staff is to
7 say we think it may stunt development out on the
8 island. Well, I can -- I don't know any of these
9 people that, that are qualified to make that
10 determination, frankly.

11 There's certainly no analysis in the staff's
12 recommendation about whether any amount of service
13 availability charge will, quote, stunt development.
14 It's just a, a, an unsubstantiated statement that
15 somebody at the staff made. And so as a result,
16 they're saying, well, they didn't say, you know, maybe
17 6,000 or 8,000 would do it. They're just saying we
18 think, we think five may stunt development. Well,
19 would it -- could six, could six be okay, would
20 seven be okay, 7.5? I mean, it's -- that's, that's
21 really a bogus reason to deviate from what this
22 Commission's typical practice is, which is to allow the
23 utility to request whatever service availability charge
24 they want up to the threshold amount in the rule, which
25 is not to exceed 75%. Because what that does is it

1 gives, it gives the utility 25% investment. They've
2 got some skin in the game. That's what y'all wanted.
3 But yet you want a lot of CIAC because you want to keep
4 the rates down. And so that rule was adopted to do
5 that balancing act between giving an incentive and,
6 and, and making sure that the customers' rates were
7 down.

8 And so I would suggest to you that the \$5,000
9 in round number rate is, is, is a wrong number for you
10 to use from a policy standpoint. And we would, we
11 would recommend and ask that you increase that to the,
12 to the \$10,000 we asked for in our, in our
13 recommendation -- in our MFRs. There's no reason, no
14 legitimate reason not to. And as, as a backup, I mean,
15 if, if you don't want to go all the way to 75%, then go
16 higher than 40 -- 24.9%.

17 And I would point out, as Mr. Brown mentioned
18 earlier in a different argument, is that there's one
19 other certified utility in, in Franklin County. And
20 for that utility this Commission approved water service
21 availability charges at 71% and wastewater at 75%. So
22 the only other utility in the county, y'all have said
23 71 to 75 is good, and this utility you're saying 24.9.
24 And I don't think that's appropriate and I think that's
25 inserting themselves into the management of the

1 company. And I would recommend that you go to some
2 number closer to the \$10,000 the utility has requested.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you, Mr.

6 Chairman.

7 And I agree with a lot of what Mr. Friedman
8 said concerning CIAC and the percentage. If I could
9 have staff walk through, walk me through how you
10 arrived at that number. Because, again, these are
11 going to apply to services that are after the
12 implementation of these rates, not existing customers.
13 So if you can walk me through the decision-making
14 process to come up with this recommendation, and then
15 any subsequent changes to that, if we increase that
16 amount, what would the effect be on the rates, if any,
17 so we can have an idea as to what, what that would be.

18 **MR. FLETCHER:** Okay. As a background, the
19 current charges with the plant capacity, main
20 extension, and meter installation, they're around
21 \$1,620. What was in the utility's petition was to
22 bring for those three charges a little over \$10,000.

23 How staff arrived at its recommendation is,
24 and distinguishing from the utility mentioned by
25 Mr. Friedman, I think it was St. James, is that is a

1 relatively new utility. And the customers, that's the
2 beginning and the genesis of the utility, not -- it
3 hadn't been too far along since that utility was in
4 operation. And that's to basically capture the
5 customers and set it at the design capacity at that
6 point.

7 And this situation is distinguished from that
8 one for those service availability up to 71 and 70-plus
9 percentage CIAC. In this case the company has been
10 around since the '70s. And I would note that the low
11 CIAC ratios began in the mid 2000s, and that would --
12 and particularly with the real estate boom, that would
13 probably have been a good time to come in for a service
14 availability in order to capture those customers that
15 were connected during that time period in the 2000s to
16 have them pay their hydraulic share.

17 At this point whenever you're getting the
18 service availability petition now in 2010 after the
19 real estate boom and growth is stagnant, you're
20 basically having a subsidy level there as I see it.
21 And I know in service rates there's always a subsidy
22 issue, but the amount of it is what staff was looking
23 at in this case. You're basically trying to play
24 catch-up with the remaining customers of the island.
25 And the amount of \$10,000, that seemed, that subsidy

1 level, if you would, was a bit steep given their
2 circumstances and not coming in when their CIAC ratio
3 was low and they didn't have -- where they could have
4 captured that growth in the past in the 2000s. So that
5 was one basis.

6 And also the order is a guideline. It's 75%.
7 As Mr. Friedman mentioned earlier, the 75% was put
8 there so that the 25%, as he mentioned, would be a
9 vested interest on the utility. Well, that is not the
10 case here because this utility has a negative equity.
11 There is no -- that rule doesn't -- the 75% would not
12 apply to this utility because they have a negative
13 equity position.

14 So given all of those factors and not having
15 the remaining customers play catch-up, if you will, and
16 pay that exorbitant subsidy, if you will, and realizing
17 that there are inherent intergenerational inequities
18 (phonetic) than there are, we decided to recommend the
19 average cost. Looking at the treatment plant and also
20 the transmission and distribution mains and dividing
21 them by the total number of ERCs to come up with an
22 average cost, and we've cited in the order on page
23 53 of the rec where the Commission has taken that
24 approach, it's the third paragraph, and we did that for
25 Wedgefield Utilities, Inc., back in the 2000,

1 '99 docket, where you take that average cost, basically
2 making sure that at least the remaining customers, they
3 will pay their fair share, and the guideline meeting
4 the minimum CIAC at design capacity, which is the CIAC
5 will be equal to the amount of the transmission
6 distribution lines, those are, that was the thought
7 pattern and process that we went to in our
8 recommendation. And we stand by it as far as it being
9 reasonable and not basically being exorbitant catch-up,
10 if you will, for the remaining customers.

11 **COMMISSIONER BALBIS:** And the second part of
12 my question, the effect on rates if --

13 (Simultaneous conversation.)

14 **MR. FLETCHER:** I apologize.

15 **COMMISSIONER BALBIS:** -- percentages.

16 **MR. FLETCHER:** There was no effect on rates
17 at this point because that's additional connections.
18 At the time of connection they'll have to pay that
19 service availability fee. So we have a test year in
20 this case. There's no effect on rates in this case
21 because you're talking about future payments of CIAC.
22 We have a test year with a rate base established that
23 would be CIAC collected beyond our test year and per --
24 for the purposes of rate setting in this case.

25 **COMMISSIONER BALBIS:** So then just to

1 confirm, if we were to go with the utility's proposal
2 of the \$10,000 connection fee, if you will, versus what
3 staff recommended, it would not be a reduction in the
4 revenue requirements.

5 **MR. FLETCHER:** That is correct.

6 **COMMISSIONER BALBIS:** Okay. Thank you. And
7 with that, I move staff's recommendation on this issue.

8 **CHAIRMAN BRISÉ:** Okay. I think OPC wanted to
9 interject something.

10 **MR. SAYLER:** Yes, sir. Thank you. And I
11 apologize for interrupting.

12 We don't normally get involved in the service
13 availability charge, but we had lots of customers who
14 thought that the \$10,000 amount would be detrimentally
15 adverse. Right now -- most of those customers have
16 already left today; otherwise, they could come up and
17 talk to you, especially those who are in development
18 and what not. \$10,000 would be not good. \$5,000 is
19 difficult because that is just the tap fee, as it's
20 called on the island. And on top of that, when you
21 build a house on the island, you have to spend almost
22 \$10,000 or more on an anaerobic digestion septic
23 system. So you're talking just for water and sewer
24 \$15,000 just out the gate. And a lot of the customers
25 say that during this time when there's a depressed

1 economy, that's just one more barrier to people
2 investing. Yes, often times that's either rolled into
3 the loan for the buyer or the developer has to carry
4 that cost until such time. So they were concerned and
5 we're just conveying that concern.

6 But the other concern we have is just
7 regulatory, consistency with the regulatory process.
8 Because this service availability fee is not based upon
9 current plant-in-service or been updated for current
10 plant-in-service. It is based upon some future
11 \$3.3 million plant-in-service that may, after true-up,
12 be less or more than \$3.3 million. So it doesn't seem
13 fair for customers who potentially will hook into the
14 system next year to be paying for a plant that may not
15 necessarily be in service at that \$3.3 million amount.
16 So that's why we believe that the amount is high. We
17 think the current status quo is adequate until such
18 time as the Commission staff have verified that the
19 plant has gone into service, and then set that service
20 availability charge appropriately.

21 And then finally, and I've repeated it over
22 and over and over again, it's escrow accounts. Service
23 availability charges are cash that comes into the
24 utility and they should -- they become CIAC and they
25 write down rate base. But if you're writing down rate

1 base with the CIAC charges, then that same amount of
2 cash should then be taken down and written down in
3 principal above and beyond what the actual debt service
4 is. And right now we're in a situation where this
5 utility is \$7.7 million in debt, \$3.7 million in rate
6 base. So if you were to require that this money go
7 into an escrow account and then go down and pay down
8 whether it's the Centennial Bank loan, the DEP loan, or
9 whatever future loan is to pay down that debt service,
10 then that will help bring this utility back to a more
11 sure financial foundation faster. So thank you for
12 your indulgence.

13 **CHAIRMAN BRISÉ:** Commissioner Brown.

14 **COMMISSIONER BROWN:** Thank you.

15 And I just wanted staff, Mr. Fletcher, can
16 you respond to the proposal to put those service
17 charges into an escrow account and whether that is a
18 prudent course of action?

19 **MR. FLETCHER:** Well, when staff was --
20 actually considered that because the Commission had did
21 that in the past for this utility for service
22 availability. But given the growth that has been
23 stagnant for the past several years and not any
24 substantial growth in the foreseeable future, I didn't
25 think the dollar amount would be material in order to

1 do any kind of escrow requirement.

2 **CHAIRMAN BRISÉ:** Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you, Mr.
4 Chairman.

5 I believe the staff's recommendation is a
6 good compromise between the present charges and the
7 proposed charges. There's not going to be an effect on
8 the rates in any case, and so I, I move staff's
9 recommendation on this issue.

10 **CHAIRMAN BRISÉ:** All right. Is there a
11 second?

12 **COMMISSIONER GRAHAM:** Second.

13 **CHAIRMAN BRISÉ:** Okay. It's been moved and
14 seconded. Any further discussion? Seeing none, all in
15 favor, say aye.

16 (Vote taken.)

17 All right. Moving on to item, Issue 25.

18 **MR. FLETCHER:** Issue 25 is a fallout issue.
19 It basically is our -- we stand by our recommendation.
20 There is no changes based on the Commission's previous
21 decision in other issues. There would still be no
22 refund required for interim rates.

23 **CHAIRMAN BRISÉ:** Thank you.

24 Commissioner Graham.

25 **COMMISSIONER GRAHAM:** Thank you,

1 Mr. Chairman. I move staff recommendation on Issues 25
2 through 28.

3 CHAIRMAN BRISÉ: Okay. Is -- Commissioner
4 Edgar.

5 COMMISSIONER EDGAR: I'll second that, with
6 the standard administrative delegation to our staff.

7 CHAIRMAN BRISÉ: Okay. It's been moved and
8 seconded on Issues 25 through 28. Any further
9 discussion or questions on Issues 25 through 28?

10 All right. Seeing none, all in favor, say
11 aye.

12 (Vote taken.)

13 Any opposed? Okay. Seeing none, let the record
14 reflect that Issues 25 through 28 are supported by the
15 Commission staff as per staff recommendation.

16 All right. Seeing that there are no further
17 issues before us, we will adjourn this agenda and --
18 this Agenda Conference.

19 (Agenda Conference adjourned.)
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In Re: Revocation by Florida Public Service Commission of Certificate No. 302-W Issued to St. George Island Utility Company, Ltd. in Franklin County.
Docket No. 920782-WU

Order No. PSC-93-0370-AS-WU

Florida Public Service Commission
March 9, 1993

Before J. Terry Deason, Chairman, Julia L. Johnson and Luis J. Lauredo, Commissioners.

ORDER APPROVING STIPULATION

BY THE COMMISSION:

St. George Island Utility Company, Ltd., (St. George or the utility) is a Class B utility providing water service to 959 customers in Franklin County. Docket No. 871177-WU was opened when the utility filed an application for a rate increase on June 30, 1987. During the pendency of this rate proceeding, St. George also entered into a consent order to address DER compliance violations. DER required corrective actions were incorporated into the Order Establishing Final Rates in Docket No. 871177-WU by Order No. 21122, issued April 24, 1989. The rate case docket remains open awaiting the completion of required improvements by the utility.

On June 10, 1992, as a result of the utility's history of noncompliance with orders, rules, and statutory requirements, we issued notice of our intention to initiate the revocation of Certificate No. 302-W for water service in Franklin County issued to St. George. We also approved the filing of a petition for injunctive relief in Circuit Court to prevent the disposition of assets and to insure continuous service during the pendency of the revocation proceeding. The Circuit Court denied injunctive relief.

On July 9, 1992, St. George filed a formal written objection to the notice of intent to initiate revocation, and the case was set for hearing. On October 20, 1992, this Commission received a letter from St. George offering to discuss an interim settlement, and on January 20, 1993, an executed Proposed Stipulation was

submitted by St. George.

Based upon our review of the Proposed Stipulation, which is appended to this Order as Attachment A, we find it appropriate to approve the Proposed Stipulation with the modified termination date of August 16, 1993, as agreed upon by the utility. The purpose of this agreement is to determine whether utility funds are being used appropriately for utility purposes and to protect the customers from any dissipation of utility assets.

It is, therefore,

ORDERED by the Florida Public Service Commission that St. George Island Utility Company, Ltd.'s proposed stipulation is hereby approved effective February 16, 1993, with a duration of six months. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 9th day of March, 1993.

STEVE TRIBBLE, Director Division of Records and Reporting

by: Chief, Bureau of Records

(SEAL)

Attachment A

Filed: January 20, 1993

PROPOSED STIPULATION

St. George Island Utility, Ltd., ("Utility") submits this Stipulation as settlement of the above-styled docket as follows:

1. **Co-manager.** The Utility shall retain at the rate of \$50.00 per hour Ms. Mary Labatt ("Co-manager"), an engineer selected by the Commission to serve as a Co-manager of the Utility with Mr. Gene Brown. The

Charles Staff Handout
Internal Affairs Agenda
on 8/2/92
Item No. 7

Co-manager shall devote such time and effort to the responsibilities of Co-manager as shall be necessary to carry out the purposes hereinafter set forth in this Stipulation. The co-manager shall be paid from the revenues of the Utility.

2. Collection of Funds. Any and all funds collected by the Utility shall be deposited into one (1) utility account, except for CIAC, which shall be placed into a separate escrow account for utility improvements. The escrow agreement governing the escrow account and all disbursements therefrom, shall be approved by the staff of the Commission and shall provide that any withdrawals from said escrow account shall require the signature of Steve Tribble.

3. Payment of Expenses and Debt Service. Approval by the Co-manager shall be required for any and all expenditures of Utility funds, and the Co-manager shall co-sign all Utility checks. No debt service or other payment shall be made from the funds of the Utility if the Co-manager or the Commission determines said payment or debt service payment to be non-utility related.

4. Resolution of Dispute Concerning Expenses. In the event that the Utility and the Co-manager shall not agree concerning the approval of a payment, the dispute shall be presented to the prehearing officer for final resolution. If the prehearing officer determines that the payment is related to Utility business, the payment shall be approved. In the event that the prehearing officer determines that the expense is non-utility related, the payment shall not be made from utility funds. The prehearing officer shall make such determinations within 30 days of the date that a written request to resolve a dispute is filed with the Division of Records and Reporting. If the prehearing officer determines that a debt service expense is non-utility related, and if the failure to pay such debt service expense would result in the immediate foreclosure or levy of the utility's operating assets by a non-affiliated creditor, the utility shall have the option to make the payment to avoid foreclosure or levy, thereby terminating this stipulation. In such event, the Commission may resume the hearing schedule in this docket.

5. Term. The Utility shall operate under the terms of this Stipulation for a period terminating on July 31, 1993, at which time said Stipulation may be extended

upon approval of the Commission. The failure to reach agreement concerning the extension of this Stipulation shall be grounds for the Commission to resume the hearing schedule in this docket. The docket shall remain open until final resolution of the issues are identified in this docket.

6. Suspension of Docket. The hearing schedule in this docket shall be suspended during the terms of this Stipulation or any extension hereof. No final hearing on revocation of the certificate of the Utility shall be held until at least ninety (90) days following the termination of this Stipulation.

7. Violation of the Stipulation. Any violation of this Stipulation by the Utility shall be grounds for the Commission to resume the hearing schedule in this docket. Any alleged violation of this Stipulation shall be addressed by the Commission. The Utility shall have an opportunity to present a response to any alleged violation prior to a determination by the Commission as to whether a violation of the Stipulation has occurred.

8. Approval by the Commission. This Stipulation shall be effective upon approval by the Commission. In the event the Commission rejects or modifies this Stipulation, in whole, the Utility may, at its option, consider the Stipulation void and shall not be otherwise bound to the terms of this Stipulation. The Utility agrees that if the Stipulation is rejected or modified by the Commission, in whole or in part, that it will attempt to reach a stipulation that will be acceptable to the Commission.

RESPECTFULLY SUBMITTED this 20th day of January, 1993.

GENE D. BROWN St. George Island Utility Company, Ltd. 3848 Killlearn Court Tallahassee, FL 32308 (904) 668-6103

CERTIFICATE OF SERVICE

DOCKET NO. 920782-WW

I HEREBY CERTIFY that a true and correct copy of the foregoing Proposed Stipulation has been furnished by Hand Delivery this 20th day of January, 1993, to the following parties of record:

Catherine Bedell, Senior Attorney Public Service
Commission Division of Legal Services Fletcher
Building 101 East Gaines Street Tallahassee, FL
32399-0862

Lee Ann Knowles, Esquire Public Service Commis-
sion Division of Legal Services Fletcher Building 101
East Gaines Street Tallahassee, FL 32399-0862

GENE D. BROWN

As printed in Florida Public Service Commission
Reporter

END OF DOCUMENT



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In Re: Revocation by Florida Public Service Commission of Certificate No. 302-W issued to St. George Island Utility Company, Ltd. in Franklin County.
Docket No. 920782-WU
Order No. PSC-93-0890-FOF-WU

Florida Public Service Commission
June 14, 1993

Before J. Terry Deason, Chairman, Susan F. Clark and Juila L. Johnson, Commissioners.

ORDER APPROVING MODIFICATION

BY THE COMMISSION:

*1 St. George Island Utility Company, Ltd., (St. George or the utility) is a Class B utility providing water service to approximately 959 customers in Franklin County. The utility has been the subject of several proceedings related to service, compliance, and customer complaints and has been fined by this Commission and DER for past violations. By **orders** issued by both agencies, the utility was required to perform corrective actions to alleviate utility problems.

Docket No. 871177-WU was opened when the utility filed an application for a rate increase on June 30, 1987. During the pendency of this rate proceeding, St. George also entered into a consent **order** to address DER compliance violations. DER corrective actions were incorporated into the Commission's **Order** Establishing Final Rates in this docket, **Order** No. 21122, issued April 24, 1989. The rate case docket has remained opened awaiting completion of required improvements by the utility.

On June 10, 1992, as a result of the utility's history of noncompliance, the Public Service Commission issued notice of its intention to initiate the revocation of Certificate No. 302-W for water service in Franklin

County issued to St. George. On July 9, 1992, St. George filed a formal written objection to the notice of intent to initiate revocation and the case was set for hearing. On October 20, 1992, the Commission received a letter from St. George offering to discuss an interim settlement, and on January 20, 1993, an executed Proposed Stipulation was submitted by St. George. The Commission approved this Proposed Stipulation in **Order** No. PSC-93-0370-AS-WU, issued March 9, 1993. The purpose of this agreement is to determine whether utility funds are being used appropriately for utility purposes and to protect the customers from any dissipation of utility assets.

On April 15, 1993, the utility submitted a Modification of Stipulation to the Commission for consideration, which is appended to this **Order** as Attachment A. The purpose of this modification is to establish a priority for the distribution of CIAC funds deposited into the escrow account required by the Stipulation. The priority set forth in the Modification is as follows:

1. The first \$75,000 to Sailfish Enterprises, Inc., for repayment of a loan for the third well,
2. Funds as needed to complete the DER mandated improvements as determined by the co-manager
3. \$51,425 for the altitude valve, 50 hp pump and other planned improvements as referenced in the Developer Agreement with Ken Gordon, and
4. \$40,000 to be paid for attorney and consulting fees to file and process a rate case on behalf of St. George. Further, the CIAC funds received from Ken Gordon, a developer, should be placed in the above referenced escrow account and separately identified so as not to go toward the repayment of the third well loan.

We find the priority for distribution set forth above to be reasonable. However, we also find that St. George has not complied with the terms of the previously approved stipulation in that the utility has not set up a separate escrow account for all CIAC funds with the PSC as a signatory as described in Paragraph 2 of that stipulation. Specifically, Paragraph 2 provides as follows:

*2 2. Any and all funds collected by the utility shall be deposited into one account, except for CIAC. CIAC shall be placed into a separate escrow account which shall be governed by an escrow agreement. The escrow agreement shall provide that any withdrawals

shall require the signature of the Director of Records and Reporting.

Based on the foregoing, we find it appropriate to condition our approval of the Modification on the utility's complying with the Stipulation and its proposed Modification of Stipulation by adding the Commission as a signatory (specifically), Mr. Tribble, Director of the Division of Records and Reporting, to the escrow account. The utility shall have five working days from the issuance of this **Order** within which to comply with Paragraph 2 of the stipulation as set forth in **Order** No. PSC-93-0370-AS-WU.

If the condition is not timely met, this matter shall be set directly for hearing based on the utility's failure to comply with the provision set out in Paragraph 2 of the Commission approved stipulation as set forth in **Order** No. PSC-93-0370-AS-WU.

On May 28, 1993, a subsequent Modification of Stipulation, was submitted by Sailfish Enterprises, Inc. (Sailfish) on its behalf and "at the specific request of Mr. Brown", owner of St. George Island Utility Company, Ltd. (St. George or utility). The Modification of Stipulation submitted by Sailfish on May 28, 1993, does not provide for Mr. Tribble's signature for disbursements of CIAC funds placed in the escrow account set up for the repayment of the Sailfish loan. This is the only substantive difference from the modification filed on April 15, 1993, and approved herein.

CIAC funds are virtually the only monies available for the utility to make the necessary improvements mandated by both DER and this Commission, therefore we find that it is necessary for the Commission to oversee any and all disbursements of these funds. Accordingly, we find the requirement of Mr. Tribble's signature for disbursement of CIAC funds is an integral part of the Stipulation and shall not be waived. For this reason, we deny the modification request submitted by Sailfish on May 28, 1993.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Stipulation approved in **Order** No. PSC-93-0370-AS-WU, issued March 9, 1993, is hereby modified as set forth in the body of this **Order** and in Attachment A. It is further

ORDERED that the modification request submitted by Sailfish Enterprises, Inc., May 28, 1993 is hereby denied. It is further

ORDERED that St. George Island Utility Company, Ltd., shall take all necessary action within five working days of the date of issuance of this **Order**, to insure that all withdrawals from the CIAC escrow account shall require the signature of the Director of Records and Reporting.

By **ORDER** of the Florida Public Service Commission this 14th day of June, 1993.

STEVE TRIBBLE, Director Division of Records and Reporting

*3 (S E A L)

NOTICE OF FURTHER PROCEEDINGS OR
JUDICIAL REVIEW

The Florida Public Service Commission is required by [Section 120.59\(4\), Florida Statutes](#), to notify parties of any administrative hearing or judicial review of Commission **orders** that is available under Sections 120.57 or [120.68, Florida Statutes](#), as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this **order**, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to [Rule 25-22.038\(2\), Florida Administrative Code](#), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to [Rule 25-22.060, Florida Administrative Code](#), if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by [Rule 25-22.060, Florida Administrative Code](#). Judicial review of a preliminary, procedural or intermediate ruling or **order** is available if review of the final action will not provide an adequate remedy. Such review may be

requested from the appropriate court, as described above, pursuant to [Rule 9.100, Florida Rules of Appellate Procedure](#).

ATTACHMENT A

In Re: Revocation by Florida Public Service Commission of Certificate No. 302-W issued to St. George Island Utility Company, Ltd. in Franklin County

DOCKET NO. 920782-WU

Filed April 15, 1993

MODIFICATION OF STIPULATION

St. George Island Utility Company (Utility) requests approval of the following modification of the stipulation approved in the above-styled docket by **Order** No. PSC-93-0370-AS-WU issued March 9, 1993.

Paragraph two of the stipulation shall be amended by adding the following thereto: All CIAC funds collected by the Utility shall be immediately deposited into escrow account no. 021816260I established at Capital City First National Bank. Any and all withdrawals from said escrow account shall require the signature of Steve Tribble, Director, Division of Records and Reporting. The CIAC funds deposited into said escrow account shall be distributed in the following **order**:

1. \$75,000 to Sailfish Enterprises, Inc. for repayment of third well loan;
2. Such funds as may be necessary for completion of the DER mandated improvements as determined by Mary LaBatt, co-manager;
3. \$51,425 for the altitude valve, 50 hp pump and other planned improvements permitted by FDER on January 27, 1993, as referenced in the Developer Agreement between the Utility and Ken Gordon dated February 25, 1993, approved by the Commission on March 12, 1993; and
4. \$40,000 to be paid to the attorney and consultant selected by the Utility to file and process a rate case on behalf of the Utility.

*4 All funds received from the developer, Ken Gordon, under the developer agreement approved by the Commission on March 12, 1993 shall be placed in the above-referenced escrow account at Capital City First National Bank. These funds from Ken Gordon shall be separately identified and shall be used exclusively for completion of the improvements set forth in the above-referenced developer agreement whether or not other CIAC funds have been received, notwithstanding the **order** of priority set forth herein.

Except as modified herein, the stipulation filed by the Utility and approved by the Commission under **Order** No. 93-0370 on March 9, 1993 shall remain in full force and effect.

RESPECTFULLY submitted this 14th day of April, 1993.
 GENE D. BROWN 3848 Killearn Court Tallahassee,
 FL 32308 (904) 668-6103
 Attorney for St. George Island Utility Company, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Hand Delivery this 15th day of April, 1993 to:
 Catherine Bedell, Esquire Public Service Commission
 101 East Gaines Street Tallahassee, FL 32399-0862
 Lee Ann Knowles, Esquire Public Service Commission
 101 East Gaines Street Tallahassee, FL 32399-0862
 GENE D. BROWN

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In Re: Revocation by Florida Public Service Commission of Certificate No. 302-W Issued to ST. GEORGE ISLAND UTILITY COMPANY, LTD. in Franklin County.
Docket No. 920782-WU

Order No. PSC-93-1494-PCO-WU

Florida Public Service Commission
October 13, 1993

ORDER POSTPONING HEARING

BY THE COMMISSION:

*1 This matter is currently scheduled for an administrative hearing on November 1 and 2, 1993. On August 2, 1993, the utility filed its test year letter for a petition for a rate increase. Minimum filing requirements were met on September 14, 1993, and that date has been established as the official date of filing. The hearing in the rate proceeding, Docket No. 930770-WU, is set for January 12, and 13, 1994.

As a result of the utility's filing for rate relief, this Commission is now faced with the task of processing a rate case as though the utility is viable on a going forward basis, while at the same time taking evidence and proceeding on the Commission's own motion to revoke the utility's certificate. Proceeding to hearing on these two dockets simultaneously places the Commission in an unusual and incongruous position. It would not be an efficient use of Commission resources to process these two dockets at the same time. At the present time, the Commission has not been informed of any exigent circumstances regarding the operation of the utility that constitute an immediate threat to the health and well being of the utility's customers. Therefore, it appears reasonable and prudent to postpone the hearing in this revocation proceeding during the pendency of the rate case. The need for continuing the revocation process shall be re-evaluated after the rate case is completed.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Luis J. Lauredo, as Prehearing Officer, that the administrative hearing and all other controlling dates in this proceeding are hereby postponed.

By **ORDER** of Commissioner Luis J. Lauredo, as Prehearing Officer, this 13th day of October, 1993.

LUIS J. LAUREDO, Commissioner and Prehearing Officer

(S E A L)

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Ap-

pellate Procedure.

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In Re: Revocation by Florida Public Service Commission of Certificate No. 302-W issued to ST. GEORGE ISLAND UTILITY COMPANY, LTD. in Franklin County
Docket No. 920782-WU
Order No. PSC-95-0044-FOF-WU

Florida Public Service Commission
January 10, 1995

Before Joe Garcia, Julia L. Johnson, Diane K. Kiesling, Commissioners.

***1 ORDER CLOSING DOCKET**

BY THE COMMISSION:

This proceeding was initiated on June 10, 1992, when this Commission issued notice of our intent to revoke Certificate No. 302-W, held by St. George Island Utility Company, Ltd. (St. George). On July 9, 1992, St. George filed an objection to the notice and the case was set for hearing.

During the pendency of this proceeding, this Commission and St. George engaged in settlement negotiations and, on January 20, 1993, St. George submitted a proposed stipulation. The purpose of the stipulation was to ensure that utility funds were being used for utility purposes and to protect against the dissipation of utility assets. We approved the proposed stipulation by Order No. PSC-93-0370-AS-WU, issued March 9, 1993.

On April 15, 1993, St. George submitted a proposed modification to the stipulation. The proposed modification established priorities for the disbursement of contributions in aid of construction (CIAC). We approved the proposed modification by Order No. PSC-93-0890-FOF-WU, issued June 14, 1993; however, we also found that St. George was not in full compliance with the original stipulation. Accordingly,

we gave St. George five working days to establish a separate escrow account for CIAC funds and to include the Director of the Division of Records and Reporting as a signatory to the account.

On June 21, 1993, this Commission received a letter from St. George in which it stated that it would not be able to comply with our orders. Accordingly, we set this matter for an administrative hearing.

While this matter remained pending, St. George filed an application for interim and permanent rate relief. Although we dismissed its original application, St. George filed a subsequent application, which we processed under Docket No. 940109-WU. By Order No. PSC-93-1494-PCO-WU, issued October 13, 1993, this Commission postponed this revocation docket pending the outcome of its rate proceeding. The rate case was concluded by Order No. PSC-94-1383-FOF-WU, issued November 14, 1994, by which we, among other things, revised St. George's rates and charges.

The record for Docket No. 940109-WU indicates that St. George has made significant strides towards bringing itself into compliance with the Commission's and the Department of Environmental Protection's requirements. In addition, although there are still a number of encumbrances on utility property, St. George does not appear to be in immediate danger of forfeiting any of its assets.

Since it appears that many of the concerns that led to this docket have been resolved to one extent or another, we find that this docket should be closed. Should circumstances warrant such action, we may reinstate revocation proceedings at a later date.

It is, therefore,

ORDERED by the Florida Public Service Commission that Docket No. 920782-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 10th day of January, 1995.

*2 BLANCA S. BAYÓ, Director Division of Records

and Reporting

by: Chief, Bureau of Records

(S E A L)

NOTICE OF FURTHER PROCEEDINGS OR
JUDICIAL REVIEW

The Florida Public Service Commission is required by [Section 120.59\(4\), Florida Statutes](#), to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or [120.68, Florida Statutes](#), as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by [Rule 25-22.060, Florida Administrative Code](#); or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to [Rule 9.110, Florida Rules of Appellate Procedure](#). The notice of appeal must be in the form specified in [Rule 9.900 \(a\), Florida Rules of Appellate Procedure](#).

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