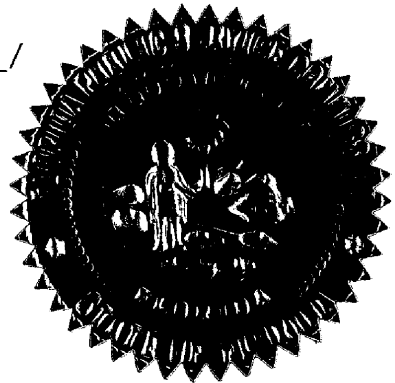


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050281-WS

In the Matter of:

APPLICATION FOR INCREASE IN WATER AND  
WASTEWATER RATES IN VOLUSIA COUNTY BY  
PLANTATION BAY UTILITY COMPANY.



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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 11

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

DATE:                    Tuesday, February 7, 2006

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

REPORTED BY:           LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

1 PARTICIPATING:

2 MARTIN S. FRIEDMAN, ESQUIRE, and FRANK SEIDMAN,  
3 representing Plantation Bay Utility Co.

4 STEPHEN C. REILLY, ASSOCIATE PUBLIC COUNSEL, and  
5 TRICIA MERCHANT, representing the Office of Public Counsel.

6 RICHARD FERGUS and CAROL SANKER, representing (via  
7 telephone) the utility customers.

8 CHARLES HILL, DEPUTY EXECUTIVE DIRECTOR, RICHARD  
9 MELSON, GENERAL COUNSEL, ROSANNE GERVASI, ESQUIRE, BART  
10 FLETCHER, MARSHALL WILLIS, TROY RENDELL, MAHNAZ MASSOUDI and  
11 PAUL STALLCUP, representing the Commission staff.

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

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2 CHAIRMAN EDGAR: Okay. Commissioners, that brings us  
3 to Item 11. Our clock shows 10:04, so we're right on schedule.  
4 I am going to ask that we go into just a very brief informal  
5 recess for a couple of minutes to make sure that we've got  
6 everything set up for those that are participating with us by  
7 phone. So I'm going to say about four to five minutes. Those  
8 of you who are participating, please don't go far. Thank you.

9 (Recess taken.)

10 CHAIRMAN EDGAR: Okay. So we are on Item 11 now.

11 And --

12 MR. FERGUS: Is this one of the Commissioners  
13 speaking?

14 CHAIRMAN EDGAR: Yes, sir. This is Chairman Edgar.

15 MR. FERGUS: Good morning. This is Dick Fergus here.  
16 I'm having a little trouble hearing you. We've got apparently  
17 a pretty serious problem here with the communication. If you  
18 could speak louder into the phone or microphone or whatever the  
19 telecommunications process is that you have there, we would  
20 appreciate it.

21 CHAIRMAN EDGAR: Okay. Mr. Fergus, we will see what  
22 we can do to accommodate that.

23 MR. FERGUS: Okay.

24 CHAIRMAN EDGAR: Mr. Fergus, if you'll hold on just a  
25 moment, okay? There are a couple of things we need to do

1 first.

2 MR. FERGUS: Okay. I'll be happy to do that. Thank  
3 you.

4 CHAIRMAN EDGAR: Okay. Staff, if you will start us  
5 off and present the item, please.

6 MR. FLETCHER: Commissioners, I am Bart Fletcher with  
7 the Commission staff. Item 11 is staff's recommendation to  
8 approve a 3.62 water revenue decrease and an 88.15 percent  
9 wastewater revenue increase for Plantation Bay Utility Company.

10 After the filing of staff's recommendation on  
11 January 26th, 2006, staff determined there were computational  
12 errors in its recommended rate base for water and sewer. Staff  
13 filed a revised recommendation on February 1st, 2006, with the  
14 specific pages marked "Revised." Further, staff attorney  
15 Ms. Rosanne Gervasi has an oral clarification to Issue 24.

16 MS. GERVASI: Commissioners, if I may. This is  
17 Rosanne Gervasi. I have a minor clarification that I'd like to  
18 make to Page 60 of the recommendation, and that is to the first  
19 full paragraph on Page 60, starting with the second sentence on  
20 that, of that paragraph. The clarification is as follows. The  
21 sentence would begin the way it starts, "See Order Number  
22 10465, issued December 21st, 1981, in Docket Number 800641-W,  
23 In re: Application of Keystone Water Company, Inc. for an  
24 increase in water rates to its customers in Clay County,  
25 Florida," and this is the new language, "in which the

1 Commission used the average cost per ERC of prior approved rate  
2 case expense amounts to determine an allowable amount for the  
3 utility."

4 And then the second sentence to be clarified as  
5 followed. "On June 29th, 1982, the First District Court of  
6 Appeal per curiam affirmed the Commission's order." And then  
7 the remainder of that sentence to be deleted. Thank you.

8 MR. FLETCHER: Staff would also like to mention that  
9 the Commission received a letter in opposition of the rate  
10 increase from Anthony Reitano, president of the Plantation Bay  
11 Community Association, which staff has already distributed  
12 copies to the Commission. That letter also indicates a request  
13 for consideration of a conservation rate structure.

14 Further, staff received an email last night from  
15 Ms. Peg O'Grady, a utility customer, who requested that she be  
16 put on record in support of a conservation rate structure.

17 Mr. Marty Friedman from -- the utility's attorney is  
18 here to address the Commission. Also, Mr. Steve Reilly and  
19 Ms. Tricia Merchant from the Office of Public Counsel are here  
20 to address the Commission. Further, Mr. Dick Fergus, the  
21 customer who's standing by telephonically, also wishes to  
22 address the Commission.

23 Staff is prepared to go issue by issue and answer any  
24 questions the Commission may have.

25 CHAIRMAN EDGAR: Thank you, Mr. Fletcher.

1           Commissioners, I believe each of you was given a copy  
2 of the letter and the email that Mr. Fletcher referenced a  
3 moment ago. Okay. Mr. Fergus, are you still with us?

4           MR. FERGUS: Are you there?

5           CHAIRMAN EDGAR: We are here.

6           MR. FERGUS: Okay.

7           CHAIRMAN EDGAR: Mr. Fergus, this, again, is Chairman  
8 Edgar. Commissioner Carter, Commissioner Deason, Commissioner  
9 Arriaga and Commissioner Tew are here with me at the bench. We  
10 will be going through this item issue by issue. But before we  
11 do that, I'd like to give you the opportunity to make whatever  
12 comments to this body that you would like, and you now have the  
13 floor.

14           MR. FERGUS: Okay. Thank you very much to all of the  
15 Commissioners. Excuse me. I regret we've had the problem with  
16 getting various people hooked in. I hope that the listen-in  
17 line is available to those in the community here that can, can  
18 hear this proceeding.

19           CHAIRMAN EDGAR: Mr. Fergus, that is our  
20 understanding that that is available.

21           MR. FERGUS: Okay. I -- Ms. Commissioner, I guess my  
22 first comment is I'd like to discuss just briefly the rate  
23 increase as it pertains to the customer process. We became  
24 involved as customers on November the 2nd, '05, in a customer  
25 meeting. The staff came out and put on the meeting and

1 certainly they did a good job and performed their assigned  
2 role. However, I have to tell you that speaking for myself and  
3 a few others in the community, we were disappointed that none  
4 of the Commissioners were present at the meeting, and we were  
5 hoping that at least one or two of you could make yourself  
6 available for that meeting. We had about 120 customers that  
7 were in attendance, several spoke. One made a slide  
8 presentation. And, again, we would have very much appreciated  
9 the presence. The meeting was taped, but quite frankly we  
10 don't know how broadly the tape was listened to or any reaction  
11 to it. And we also thought it would be beneficial for the  
12 Commissioners to be here to understand the rate of growth  
13 that's going on in our community and to see the community in  
14 total and take a tour, which certainly some of the staff did,  
15 as well as members of the Office of Public Counsel.

16 I also would like to, to say on a constructive basis,  
17 it would have been helpful at the customer meeting if we would  
18 have had available to us prior to the customer meeting the  
19 audit report and the engineer report, both of which, I think,  
20 would have provoked some meaningful questions to the staff.  
21 And I think it would also be appropriate to have the auditor  
22 and engineer available to answer whatever questions that may  
23 came up -- come up.

24 I guess the overall value of the meeting, it  
25 certainly did give the customers an opportunity to vent their

1 frustration. But following the meeting I think many people,  
2 since they're, you know, they're not familiar with how the rate  
3 increase process works, it's kind of like where do we go from  
4 here?

5 The PSC, Commissioners, I guess I'm asking, should  
6 make some changes to the procedure where possibly a couple of  
7 you could, could come out and attend all rate meetings to get a  
8 real hands-on feel for what the customers are saying.

9 There's, quite frankly, I guess from, from the  
10 meeting on from a customer standpoint there's been kind of a  
11 void of information and communication. The only thing that we  
12 have really received is notification of the interim rate  
13 increase that went into effect in, in December, and then the  
14 next communication that was available, and by the way, it was  
15 made available on your website, which was the recommendation of  
16 the staff. And that report is very long, very technical,  
17 filled with acronyms and difficult for the average person out  
18 here to, to really understand and get their arms around.

19 And then to compound the situation, on February the  
20 1st the report was then amended with a number of strike-outs,  
21 with a number of changes to the calculations, which ultimately  
22 affected the, the final rate that was being recommended.

23 I guess another issue that is bothersome to us is  
24 what we're experiencing right now in trying to make your  
25 conference broadly available to the customers. We had a choice



1 of either taking a four- to five-hour drive to Tallahassee or  
2 call in a listen-in line or make a long distance call to, to  
3 make a statement to the Commissioners as I'm doing now. And I  
4 guess the bottom line of all of it is that the process doesn't  
5 seem to be very friendly to the customers. Certainly the  
6 process is set up for the Commissioners, the staff, the utility  
7 companies and, and all the forms and applications and legal  
8 language in between, but it's all very difficult for the  
9 customer to be able to participate in.

10 I guess that's all on the process, and I guess that  
11 I'd please ask that you'd consider my remarks.

12 The next thing I'd like to talk about is, and you  
13 will be getting to this later on in your conference, is Issue  
14 36. And Issue 36, which is "What are the appropriate service  
15 availability charges and/or policy for the utility?" To me,  
16 being a resident and a novice when it comes to reading all of  
17 the information that's been, been published and knowing what  
18 the background of the community is, it appears that the, the  
19 genesis of this 186 percent water rate increase that the  
20 utility company had requested and the 30 percent water rate  
21 increase really was the result of the PSC order that was issued  
22 in 2002, and that was apparently done because of an overearning  
23 situation by Plantation Bay Utility. So the order was then  
24 issued to discontinue property donations to correct any  
25 overearning situation. And as a result of the order,

1 Plantation Bay Utility has had to pay the water, wastewater  
2 infrastructure from 2002 through 2005 of, my calculation is,  
3 \$4.3 million. And now they'll have to pay an additional  
4 \$1.8 million in 2006 unless the orders change. There's many  
5 questions, I think, that need to be answered as to why this  
6 strict order was imposed. I guess one would be was this the  
7 correct order and were there other options rather than  
8 discontinuing donated property? And, two, did the PSC staff  
9 follow up on this order to measure its effect? And if yes,  
10 what were their findings? And, three, was the utility  
11 required, other than submitting an annual report to alert the  
12 PSC that this order was creating an underearning situation?  
13 And I'm talking about a year or two years back.

14           So it appears that the treatment by the PSC has  
15 created a windfall profit and, I might also add, a competitive  
16 advantage or both for the developer. Additionally, the  
17 developer has a 75 percent ownership of the utility since late  
18 2003. Now customers buying property within Plantation Bay,  
19 like any other community, would assume that impact fees are  
20 properly levied and included in their purchase price to protect  
21 existing residents as well as themselves from major increases.  
22 And I think it's fair to expect that once they make a purchase  
23 and they move in, they expect the rates to be relatively stable  
24 except for modest increases that you would expect for operating  
25 costs, cost of living, that type of thing. But it appears that

1 the issuing of this order and the result it's brought, and the  
2 result it has brought has created an unfair burden on the  
3 utility company, and the cost is now being passed on to the  
4 customers with unreasonable rates for water and wastewater.  
5 And I guess we're asking that the Commissioners consider  
6 rescinding this order immediately rather than waiting for  
7 January 2007 that the staff is recommending.

8           Now the customers of Plantation Bay Utility feel let  
9 down by the Public Service Commission not considering their  
10 interests and having allowed this order to exist far beyond the  
11 point of its original intent back in 2002. Residents of  
12 Plantation Bay are currently paying much higher rates than  
13 surrounding communities, and this gap will be even greater if  
14 the recommendation of the PSC staff is accepted. It is unfair  
15 for the Commissioners to allow this to continue. And our only  
16 appeal apparently is to the Commissioners, that you understand  
17 this position and take some immediate action.

18           Any questions of me before I turn over the phone to  
19 Ms. Carol Sanker? Hello?

20           CHAIRMAN EDGAR: Mr. Fergus, I think that we will go  
21 ahead and hear from Ms. Sanker, if she is with us.

22           MR. FERGUS: She is here. Thank you very much.

23           CHAIRMAN EDGAR: Thank you.

24           MS. SANKER: This is Carol Sanker. I wanted to talk  
25 about the idea that we need to encourage water conservation.

1 As we know, water is a very good commodity that we need in  
2 Florida. And so I think that we need to consider having a  
3 lower base rate and then using a higher escalating gallon usage  
4 rate in order to encourage conservation.

5 There's two new residential areas being planned in  
6 this area, Dixie Commons and the Reserve of Flagler. I was  
7 wondering what effect that this will have on the rates if they  
8 use Plantation Bay Utility.

9 The other item that I wanted to speak on is we have  
10 done a cost comparison of communities in the area. They're  
11 significantly lower than Plantation Bay's proposed rates. Why  
12 aren't these nearby areas considered when applying for rate  
13 increases? Without competition there is no incentive to be  
14 cost-effective.

15 Those are my comments. Thank you.

16 CHAIRMAN EDGAR: Thank you, Ms. Sanker. Do we have  
17 any other customers with us by phone today?

18 MR. FERGUS: Not on the line that I've been patched  
19 in on.

20 I guess I have a procedural question. Do we hang up  
21 and call in on the listen-in line or can we continue to listen  
22 in on this line?

23 CHAIRMAN EDGAR: Mr. Fergus, if you will stay on this  
24 line, you will be able to listen along as we go through our  
25 proceedings.

1 MR. FERGUS: Great. Thank you very much for your  
2 help.

3 CHAIRMAN EDGAR: Thank you. Mr. Fergus, thank you  
4 for your comments. Thank you for your participation. I know I  
5 can speak for my colleagues by saying that we are always  
6 looking for ways to make our process more customer friendly.  
7 We certainly recognize that the material on this item and on  
8 many of the other items that we deal with is very long, is very  
9 technical and is filled with acronyms. So all of your comments  
10 we take to heart. And I know that the Office of Public Counsel  
11 will continue to work with us to find ways that we can make our  
12 processes more accessible and amenable to everybody who's  
13 interested in the work that we do here.

14 At this point then I think what I'd like to do is, is  
15 move along. Commissioners, I think probably the best way to  
16 proceed is to take this item by item. That will take us a  
17 while, but I think that's probably the best way to move through  
18 all of the information that we have. We will -- because we  
19 will be going item by item, there will be an opportunity,  
20 Mr. Friedman, for you and your client and Mr. Reilly for the  
21 Office of Public Counsel to speak on each item. Do you feel  
22 the need to make some general comments before we move to Item  
23 1?

24 MR. FRIEDMAN: Yes.

25 CHAIRMAN EDGAR: Mr. Friedman.

1 MR. FRIEDMAN: Thank you. This is Marty Friedman of  
2 the law firm of Rose, Sundstrom & Bentley. We represent  
3 Plantation Bay Utility Company, and with me is Mr. Seidman,  
4 who's one of the consultants.

5 And just as a brief prefatory comment, in spite of  
6 the numerous errors in the staff recommendation, Plantation Bay  
7 can live with the results of it and avoid the timely expense of  
8 a final hearing with three exceptions. And so I only expect to  
9 address Issues 4, 24 and 26, but I would like to -- I'm  
10 sorry -- 4, 24 and 36. But I would want to reserve the  
11 opportunity to comment, should, should I want to comment on  
12 anything that the Public Counsel's representatives comment  
13 upon. Thank you.

14 CHAIRMAN EDGAR: Thank you, Mr. Friedman.  
15 Mr. Reilly.

16 MR. REILLY: We will attempt to respond, of course,  
17 to comments made by the utility. We share the customers'  
18 concerns, especially about Issue 36 and this whole service  
19 availability issue. We believe that that issue and that  
20 decision back in 2002 has driven this entire process, that we  
21 are, in fact, here today considering this rate increase because  
22 of that decision to change the service availability policy. So  
23 as that issue emerges in Issue 10 and Issue 36, we'll  
24 particularly pipe in and talk about that, and at that point  
25 we'll just take it issue by issue.

1           And Issue 14, I think Tricia Merchant is also here to  
2 address some concerns about the methodology staff employed in  
3 developing some of its numbers, so we'll touch on that as well.  
4 Thank you.

5           CHAIRMAN EDGAR: Okay. Okay. Then, Mr. Fletcher, if  
6 you will kick us off by presenting Item 1.

7           COMMISSIONER ARRIAGA: Madam Chairman.

8           CHAIRMAN EDGAR: Excuse me, Mr. Fletcher.

9           Commissioner Arriaga.

10          COMMISSIONER ARRIAGA: I'm sorry for the  
11 interruption. I'm sorry. I wanted to point to the information  
12 that --

13                   (Simultaneous conversation.)

14          COMMISSIONER ARRIAGA: A question for staff. There  
15 was a --

16          CHAIRMAN EDGAR: Commissioner Arriaga, just a moment.  
17 For those of us who are on the phone, we can hear everything  
18 that you say, so if there is a desire to make a comment at some  
19 point through the proceedings, please do let me know that and  
20 we will recognize you. But if I could ask you to keep the  
21 background noise down, that would be very helpful to us as  
22 well. Thank you.

23          Commissioner Arriaga.

24          COMMISSIONER ARRIAGA: Thank you, Madam Chairman. A  
25 question to staff as a clarifying point of view here. There

1 was a statement just made by a consumer representative that was  
2 over the phone indicating that this procedure, this whole  
3 process has been geared toward our own satisfaction here in the  
4 Commission and it is not done in a way that the consumer  
5 representatives or the consumer groups had any say-so or at  
6 least very minimal say-so in the whole process. I want to ask  
7 you if you took the necessary precautions and if there was  
8 sufficient hearings held before you came to us today.

9 MR. FLETCHER: Yes, Commissioner. On November 2nd we  
10 had a customer meeting where a presentation was given, a  
11 PowerPoint presentation, trying to explain the process. That  
12 customer meeting was noticed. I know Mr. Fergus mentioned the  
13 audit report was not available. It usually takes some time for  
14 that audit report to be -- for the auditors to go into the  
15 field and audit the utility's books and records. And that  
16 report was issued the afternoon before we left for the customer  
17 meeting. But that audit report is available on the website as  
18 well as all the discovery sent. They can be accessible for the  
19 customers.

20 COMMISSIONER ARRIAGA: So it is, it is my  
21 understanding that you're saying that consumers had a fair  
22 share of participation in this process up to today?

23 MR. FLETCHER: Yes, sir.

24 COMMISSIONER ARRIAGA: Thank you.

25 COMMISSIONER CARTER: Madam Chair.



1 CHAIRMAN EDGAR: Commissioner Carter.

2 COMMISSIONER CARTER: Just one, one brief question of  
3 staff. Just one brief question of staff. The audit report and  
4 whatever else from a documentary standpoint that was missing  
5 when you met with the consumers, were they of such significance  
6 to where it would cause them not to be able to ascertain an  
7 informed decision on the process? When I say they, I mean the  
8 consumers.

9 MR. FLETCHER: They did not have access before. But,  
10 again, it is on -- when the notice is sent out, we get an  
11 estimated schedule when the audit report is due, and that's  
12 available online. And they could call up and we could provide  
13 them that, as well as the utility's response to that audit.  
14 And, yes, sir, the -- yes, Commissioner, the audit adjustments  
15 were significant as far as adjustments to rate base and  
16 adjustments to NOI. But they definitely -- it was noticed, it  
17 was put in the notice those scheduled dates when they were  
18 going to be completed, and also it's available on the website,  
19 the report and the utility's response to that report.

20 COMMISSIONER CARTER: Madam Chair, a possible  
21 follow-up.

22 CHAIRMAN EDGAR: Commissioner Carter.

23 COMMISSIONER CARTER: Are there emergency situations  
24 such that we didn't, and staff go back and touch bases with the  
25 consumers to explain these reports that they didn't get in the

1 presentations? Obviously some people are auditory listeners,  
2 some are visual. But was there an opportunity for staff to go  
3 back and explain to them the perspective on this audit report  
4 and those dockets that were missing when you actually had the  
5 public meeting?

6 CHAIRMAN EDGAR: Mr. Willis?

7 MR. WILLIS: Commissioner Carter, staff, staff goes  
8 out of its way at these customer meetings to be very, very  
9 informative to consumers. One of our processes is to ask any  
10 of the customers to sign up to get a copy of a recommendation  
11 so that they'll be able to review that recommendation. They're  
12 encouraged to call the Commission staff. They're encouraged to  
13 share the recommendation. We actually want that document out  
14 there at any facility in the area where all the customers can  
15 view it if they need to. We go out of our way at these  
16 customer meetings to inform customers of our website, how user  
17 friendly it is, how to negotiate the website, how to find the  
18 documents that Mr. Fletcher was talking about. We try and make  
19 these customer meetings very, very informative to customers  
20 about the situation and how to go through one of these  
21 recommendations itself. So I don't know if I've helped you,  
22 but we've been revamping this process as we go along to make it  
23 as informative as possible to consumers.

24 COMMISSIONER CARTER: Madam Chair, the nature of my  
25 question is in view of the fact that complete documentation was

1 not there at the time that you met with the consumers, is what  
2 we're doing now, does it rise to the level of an emergency such  
3 that we need to take an action now rather than going and seeing  
4 if the consumers have any questions regarding that report? Do  
5 you follow what I'm asking you?

6 MR. WILLIS: I understand your question, Commissioner  
7 Carter.

8 CHAIRMAN EDGAR: Mr. Willis, if you can maybe -- if I  
9 may, Commissioner Carter.

10 COMMISSIONER CARTER: Yes, ma'am.

11 CHAIRMAN EDGAR: Thank you. Very briefly, give us an  
12 understanding of the time frame, where the meeting was, what  
13 information, if any, became available after that. And also,  
14 Ms. Gervasi, if you could maybe speak to us about the statutory  
15 time frame that we are working within as well.

16 MR. WILLIS: Okay. Well, at this point then I'll ask  
17 Mr. Fletcher to go through that process of what's happened here  
18 because he knows exactly what was done at the customer meeting.

19 MR. FLETCHER: At the customer meeting, again, the  
20 customers, my supervisor, Troy Rendell, gave a PowerPoint  
21 presentation explaining the process of a proposed agency action  
22 proceeding, explained the time lines and also the proposed  
23 schedule for this case, including all dates like the interim,  
24 when an interim was going to be taken to agenda, also the audit  
25 report, the PAA agenda when staff was going to file its

1 recommendation. And they were also encouraged to request a  
2 copy of the recommendation if they desired one, if they  
3 expressed interest. And they felt free -- we definitely made  
4 it clear that at any time they have any questions as the  
5 documents are filed on the website through data requests or any  
6 kind of correspondence put on the docket file, if they have any  
7 questions. We have received emails and letters from customers  
8 and addressing their questions through this process.

9           Now the audit report definitely, it was issued the  
10 afternoon before the customer meeting, and we didn't -- had not  
11 had the time to analyze, staff did not have time to analyze the  
12 audit report or the findings enclosed in it for the  
13 presentation at the customer meeting. But we definitely  
14 relayed that, it was issued, and definitely made the  
15 opportunity to the customers to address any concerns that they  
16 had with that. Or if they wanted a copy, they could definitely  
17 have asked for it at the customer meeting and we definitely  
18 would have worked with them in that regard.

19           MS. GERVASI: And, Commissioners, I might add that  
20 also at the customer meeting the staff advises the customers of  
21 the existence of the Office of Public Counsel and that they  
22 have an 800 number, and encourages the customers to get in  
23 touch with the Office of Public Counsel which represents the  
24 consumers. And Public Counsel was also present at that  
25 customer meeting and has been very helpful along the way in

1 this case.

2           With respect to Chairman Edgar's question about the  
3 statutory deadline, we are under a five-month time clock  
4 pursuant to Chapter 367.081(8), which allows a utility to  
5 specifically request the Commission to process its petition for  
6 rate relief using the agency's proposed agency action  
7 procedure, and it requires that the Commission enter its vote  
8 on the proposed agency action within five months of the filing  
9 date. Then if there's a protest, the Commission after that  
10 time has eight months from the date of the protest to issue a  
11 final decision. But at the expiration of the five-month time  
12 period, if the Commission has not taken action or if the  
13 Commission's action is protested by a party other than the  
14 utility, the utility has the option to place its requested  
15 rates into effect under bond, escrow or corporate undertaking  
16 subject to refund upon notice.

17           CHAIRMAN EDGAR: Just to follow up on the comments of  
18 Ms. Gervasi, that five-month time frame brings us to the 18th  
19 as a critical date, which is, I believe, a week from Saturday.  
20 Next week, I think.

21           Commissioner Deason.

22           COMMISSIONER DEASON: Yes. Thank you, Madam  
23 Chairman. I'm glad that we're having this discussion on the  
24 nature and the intent behind the customer meetings. Just let  
25 me say that over the years I've had the opportunity to attend

1 probably dozens of these customer meetings. And the schedule  
2 does not permit Commissioners to attend these, but I have had  
3 the opportunity to attend numerous ones over the years. And  
4 I'd like to take this opportunity to commend staff on an  
5 outstanding job that they do at these customer meetings. The  
6 very first step is to put customers at ease and to stress the  
7 informal nature of it. I think staff goes way beyond the call  
8 of duty to make customers feel welcome, to listen to their  
9 concerns, to give, make themselves available as resources, to  
10 provide a meaningful discussion of the PAA process, try to put  
11 it in laymen's terms, put it in terms that customers can  
12 understand what their role is, what rights they have, and what  
13 the entire process involves. Staff is always -- and normally  
14 Public Counsel is also in attendance at these customer  
15 meetings, they have an opportunity to make their services  
16 available, and staff always makes customers aware of the, of  
17 the Public Counsel's office and the services that they provide.

18           Mr. Melson, you may correct me on this, but it's my  
19 understanding that under the APA the Commission is under no  
20 obligation to have these customer meetings. This is kind of a  
21 step beyond the call of duty, that we want to get customers  
22 more involved on the front end of the PAA process, have them  
23 informed before actually a PAA order is issued and they're  
24 under a 20-day clock to make a decision as to whether to  
25 protest further. So I think that the Commission historically

1 has seen the importance of involving customers and how this is  
2 an aid to customers. I think Public Counsel's office probably  
3 would reiterate much that I'm saying as well, that this is a  
4 big benefit to customers and that our staff in their  
5 presentations, I think, do an extraordinary job in trying to  
6 reach out to customers.

7 Mr. Melson, is it correct that this is not absolutely  
8 required but it is an extra step that the Commission does?

9 MR. MELSON: That's correct. Chapter 120 would not  
10 require any sort of customer meeting prior to the time you take  
11 the proposed agency action. After you've taken the action, if  
12 it's protested, the Commission's rules then provide for a  
13 customer hearing at that point that would be attended by  
14 Commissioners and additional -- in addition to the technical  
15 hearing on the technical issues.

16 MR. HILL: Madam Chairman, if I may.

17 CHAIRMAN EDGAR: Mr. Hill.

18 MR. HILL: Just to add some history to it as well.  
19 And thank you, Commissioner Deason. This process was worked  
20 out with the Office of Public Counsel many years ago and it was  
21 done informally. This agency sought the statutory change to  
22 come up with the proposed agency action process that set the  
23 statutory time frames in conjunction, hand in hand with the  
24 Office of Public Counsel and the industry in an effort to  
25 involve the customers early on but yet to keep the Commission

1 on a time frame and to reduce expense as much as we could.  
2 After this process, as has been said, an interested party may  
3 protest this action and then we start that long formal process.  
4 But it probably started back in the mid '80s developing this  
5 and then working it out with the Office of Public Counsel and  
6 then going and this agency actually seeking a statutory change  
7 to formalize this process.

8 CHAIRMAN EDGAR: Thank you, Mr. Hill. And  
9 Mr. Reilly.

10 MR. REILLY: Just briefly. I would like to agree  
11 with Commissioner Deason. I share the views that he's  
12 indicated about the public customer meeting. I would only add  
13 that these customers have suggested in this case that with the  
14 timing of the audit report being so close to the customer  
15 hearing, that it would be extremely helpful for all parties if  
16 the time schedule could be structured such that they had a few  
17 days to look at that audit report because they bring -- then  
18 they would be able to bring more informed contribution to staff  
19 at that customer meeting. Because they have unique knowledge,  
20 the people in the field have unique knowledge about the  
21 utility, about circumstances. And if the staff has perhaps  
22 gone down the wrong road or has not responded correctly to the  
23 utility, the customers will be poised to share that information  
24 with staff at the customer meeting.

25 So I agree with everything you said, Commissioner



1 Deason. I think it's just a matter of tweaking or perhaps  
2 improving already a good system by somehow structuring our  
3 times by just a few days so that that audit report could come  
4 out just with enough few days for the customers to look at it  
5 so they could then share their view of the company's responses  
6 to the audit and staff's responses to that, and the whole  
7 process will benefit. So I think that's a very tangible thing  
8 that's come out of this PAA, and I hope the Commissioners will  
9 consider directing its staff to try to do that when at all  
10 possible. Thank you.

11 CHAIRMAN EDGAR: Okay. Mr. Reilly, thank you. As we  
12 all know, the, the bane of the existence of all of us, I think,  
13 sometimes is scheduling and trying to coordinate multiple  
14 pieces and multiple facets of multiple processes within a  
15 limited time frame. But comments absolutely taken to heart and  
16 we will do whatever we can, I know, each of us and our staff,  
17 to continue to improve those process requirements that we're  
18 under. And with that, Mr. Fletcher, Item 1.

19 MR. FLETCHER: Commissioners, Item 1 is staff's  
20 recommendation to approve a December, a simple average  
21 projected December 31st, 2006, test year for this utility in  
22 this case.

23 COMMISSIONER DEASON: I move staff's --

24 MR. REILLY: No comment.

25 COMMISSIONER DEASON: I move staff's recommendation.

1 CHAIRMAN EDGAR: We have a motion. Do we have a  
2 second?

3 COMMISSIONER CARTER: Second.

4 CHAIRMAN EDGAR: Motion and a second. All in favor,  
5 say aye.

6 (Unanimous affirmative vote.)

7 Opposed? Item 1 approved.

8 Item 2, Mr. Fletcher.

9 MR. FLETCHER: Item 2, Commissioners, Madam Chairman,  
10 is staff's recommendation that the quality of service for water  
11 is satisfactory and that the quality of service for the  
12 wastewater system should be considered marginal.

13 CHAIRMAN EDGAR: Questions or discussion on Item 2?  
14 Seeing none, do I have a motion?

15 MR. REILLY: We do have a brief comment.

16 CHAIRMAN EDGAR: Oh, excuse me, Mr. Reilly. I didn't  
17 see you waving there. Go right ahead, please.

18 MR. REILLY: Well, on the quality of service, we do  
19 take exception with the conclusion on Page 7 of the PAA that  
20 the water product should be considered satisfactory. I mean,  
21 the text, the discussion goes on about how the company is  
22 clearly not meeting even minimum DEP standards on its  
23 disinfection of by-products issue. And it says, "Although  
24 they're conceding that they're out of compliance, they say it  
25 appears," and I quote, "the utility has begun to take necessary

1 steps towards resolving its disinfection by-products issue."  
2 So because it has begun to tackle its violation, you know, its  
3 failure to meet DEP standards, we shall consider the finished  
4 product should be considered satisfactory.

5           We would recommend an alternative of this language to  
6 find that the water product is the same as the wastewater  
7 product. We'll get to that in a minute. The wastewater  
8 product also has significant deficiencies. And there they say  
9 it should be -- "it should not be considered satisfactory at  
10 this time, but the utility should complete any and all  
11 improvements to the system that are necessary to satisfy the  
12 standards of DEP," including putting signs out at the golf  
13 courses that, you know, they're -- warning people that it's  
14 reused water. So I believe that really to make it consistent  
15 and fair that the Commission should issue an order saying,  
16 likewise, that the DEP standards are not being met, that it is  
17 not acceptable at this time, and that the changes should be  
18 made to bring them into compliance. And I would ask for even a  
19 step further, that the docket be kept open at least until staff  
20 has verified that, in fact, those changes have been made and  
21 that the DEP standards are being met, and we can check off that  
22 the by, that the water product is satisfactory. So we would  
23 recommend that water be treated the same as wastewater, but  
24 that both water and wastewater be kept open until staff can be  
25 satisfied that these minimum DEP standards are being met.

1 CHAIRMAN EDGAR: Okay. Mr. Friedman.

2 MR. FRIEDMAN: Yes. Thank you. I would like to  
3 comment, since Mr. Reilly did. It is often, especially on  
4 these issues of TTHMs about not meeting the, the standards of  
5 DEP -- I'm sure you're aware, DEP changed those standards last  
6 year to both reduce the level of TTHMs necessary to exceed the  
7 MCL and also the location of the point of the distribution  
8 system where that test is done. And as a result of that, a  
9 large number of water utility systems that were previously in  
10 compliance became out of compliance, not because of the water  
11 quality change but because of the regulatory requirements  
12 change. And I would suggest to you -- and that's what they  
13 pointed out as a problem here. And what the utilities have  
14 been doing is meeting with DEP on ways to remedy that, and DEP,  
15 as in this case, is satisfied that the steps the utility is  
16 taking are reasonable in light of the changes in DEP  
17 requirements and not necessarily changes in the water quality.  
18 And so I would suggest to you that in spite of the fact that  
19 the water quality may exceed the MCLs and TTHMs, that  
20 nonetheless the water quality should be determined to be  
21 satisfactory.

22 In the wastewater area where the staff has  
23 recommended that it be marginal, you know, they base that on an  
24 inspection report that was done December 15th. And at the time  
25 the staff wrote this recommendation, the utility's response to

1 that inspection report wasn't even due yet. We have since  
2 filed at the end of January, filed a timely response to that  
3 inspection report, which I have provided a copy to the staff,  
4 and there were many errors in the inspection report. The most  
5 obvious one is the fact that they -- because it's mentioned in  
6 your staff recommendation -- is the reuse signs. They just  
7 sprayed reuse on this golf course, and the DEP inspector said,  
8 you got to put reuse signs out there. The reuse signs are  
9 there. We pointed that out. And apparently in some exchange  
10 of emails that have gone between DEP and your staff, apparently  
11 the DEP has backed off of the fact that those signs are there.

12           And one of the recommendations y'all are making is  
13 that the utility be forced to comply with that requirement. We  
14 already have. It's not appropriate to put a requirement in  
15 there that we've already complied with. So I would suggest to  
16 you that the quality of wastewater service is, in fact,  
17 satisfactory, notwithstanding this last inspection report, and  
18 that the, the staff is correct that the water quality is  
19 satisfactory because of the exceedence involved (phonetic) with  
20 TTHMs, which are being resolved satisfactory to DEP.

21           Thank you.

22           CHAIRMAN EDGAR: Mr. Reilly.

23           MR. REILLY: Very briefly. The signs may have been  
24 taken care of. There's no evidence that we have seen that  
25 these many other deficiencies of the wastewater treatment plant

1 have been addressed. However, the problem is easily resolved.  
2 If the signs have been taken care of and the wastewater  
3 treatment plant has been brought up to DEP standards, this is  
4 no obstruction to the utility at all. It's just sending a  
5 signal that when a utility does not meet even minimum DEP  
6 standards, that they must meet those before they are given the  
7 Good Housekeeping Seal of satisfactory by this Commission. I  
8 think that that kind of relationship between DEP and PSC would  
9 be very healthy in protecting the public interest.

10 COMMISSIONER ARRIAGA: May I?

11 CHAIRMAN EDGAR: Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Madam Chairman, when staff and  
13 I were going through the briefing process this question came  
14 up, and I asked specifically, well, if you're stating that it  
15 doesn't meet DEP standards, how could you give it the Good  
16 Housekeeping Seal as Mr. Reilly's pointed out? Would you  
17 clarify that for me again? What led you to say that they are  
18 meeting reasonable standards and that the water quality is  
19 okay, if DEP is saying, no, it is not?

20 MS. MASSOUDI: Well, first of all, the water, since  
21 they are cooperating with DEP, and I talked with the DEP  
22 inspector, they said they are cooperating very hard, they're  
23 trying to solve the problem, for PSC is enough and that's why  
24 we give them satisfactory for the water because they're trying  
25 hard, they went to some expenses to solve the problem. And at

1 the end, if the result is not good, then probably we have to  
2 mention that problem later or ask the utility to come into  
3 compliance.

4 COMMISSIONER ARRIAGA: Madam Chairman, follow-up.

5 CHAIRMAN EDGAR: Yes.

6 COMMISSIONER ARRIAGA: So the problem is not solved.  
7 They're in the process of solving it. It's not solved.

8 MS. MASSOUDI: Yes.

9 COMMISSIONER ARRIAGA: So Mr. Reilly has a point.

10 MS. GERVASI: And, Commissioner, if I might add, we  
11 are aware of a -- this problem is more global in scope in that  
12 there's a new disinfection by-products rule that has been  
13 promulgated by the federal EPA and being administered by the  
14 state DEP which has required a lot of water companies to change  
15 their chlorination process or their disinfection process,  
16 rather, from chlorines to chloramines, and that's what this  
17 company is faced with doing and is in the process of doing it  
18 at this time. So we took that into consideration.

19 CHAIRMAN EDGAR: Mr. Rendell, additional --

20 MR. RENDELL: Just that we do agree with the  
21 utility's attorney that this is more of a global statewide  
22 problem and that this particular company did begin working with  
23 DEP, they initiated the project in October of 2005, which was a  
24 three-month project which should be completing its end, and  
25 we'll continue to monitor it with DEP to make sure that they

1 remain in compliance.

2 CHAIRMAN EDGAR: Thank you. Commissioners, further  
3 questions? Seeing none, do I have a motion on Item 2?

4 COMMISSIONER DEASON: Let me -- I'm sorry. May I ask  
5 a question?

6 CHAIRMAN EDGAR: Commissioner Deason for a question.

7 COMMISSIONER DEASON: What's the significance of  
8 finding satisfactory or unsatisfactory? I think even in  
9 Mr. Reilly's recommendation of an unsatisfactory, I don't think  
10 he was recommending that there be a, a penalty on return on  
11 equity or anything of that nature. Why can't we just explain  
12 in the order that it doesn't meet DEP standards and that we  
13 expect there to be compliance and movement in that regard, and  
14 what's wrong with having staff continue to monitor that  
15 situation, leave the, either leave the docket open for that or  
16 else just outside the docket require some type of a monitoring  
17 and reporting on the, on the accomplishments or the progress  
18 being made towards meeting the, the DEP requirements?

19 MR. RENDELL: That's one of the discussions we had.  
20 We could either say it was unsatisfactory and they need to do  
21 X, Y and Z over the next period of time to get in compliance or  
22 that they were in compliance but there are some minor  
23 deficiencies. So there is absolutely nothing wrong with  
24 saying, you know, they're not in compliance at this point in  
25 time and continue to monitor it. I would prefer from staff's



1 standpoint to not keeping the docket open but require some  
2 progress reports. And if it rises to that level, we could  
3 always open another docket at a later date to address those  
4 concerns.

5 COMMISSIONER DEASON: Could we require those progress  
6 reports to be, to be, a copy be sent to Public Counsel's office  
7 as well when they're filed with the Commission?

8 MR. RENDELL: Absolutely.

9 COMMISSIONER DEASON: Okay.

10 COMMISSIONER ARRIAGA: Madam Chairman.

11 CHAIRMAN EDGAR: Just a moment. Just an aside  
12 comment, Commissioners. I know -- I don't know if this term  
13 was used for this item at our sister Environmental Protection  
14 Agency, but a few years back when I used to work there, we  
15 would use the term "FONSI" in instances like this, which was  
16 finding of no significant impact. If there were some minor  
17 findings, an inspector would note it was, you know, significant  
18 impact or finding of no significant impact. And I do not know  
19 if those terms were used with it, but that's just an aside  
20 comment.

21 Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: Just a brief comment on  
23 satisfaction. The first day I met Commissioner Deason, I said  
24 to him that I was looking forward to learning that capacity  
25 that he has to balance things and put them in perspective, and

1 you've just done that and I thank you. I think your  
2 recommendation works fine.

3 COMMISSIONER CARTER: Madam Chairman.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: I don't remember the exact  
6 verbiage, but I would move that we accept Commissioner Deason's  
7 recommendation on this issue.

8 CHAIRMAN EDGAR: Commissioner Deason --

9 MR. FERGUS: Madam Chairman, we can't hear the  
10 speakers.

11 CHAIRMAN EDGAR: All right. We will try to speak up.  
12 Those of you participating and Commissioners, let's be mindful  
13 of our companions that are joining us by telephone.

14 And, Commissioner Deason, do you have a motion?

15 COMMISSIONER DEASON: Yes. I'll try to put it in the  
16 form of a motion.

17 And, Mr. Melson, if we have the ability to do this, I  
18 would just simply -- that the Commission not make a finding of  
19 its service being satisfactory or unsatisfactory, but the order  
20 simply indicate that there are deficiencies meeting DEP  
21 requirements, and that we expect those deficiencies to be  
22 corrected, and that we want a, a monitoring and reporting  
23 requirement, not within this docket, but that it be set up  
24 outside this docket, and that there be an obligation for the  
25 company to work with staff on that reporting requirement, and

1 that the water reports that are generated be shared with the  
2 Public Counsel's office.

3 COMMISSIONER ARRIAGA: Second.

4 CHAIRMAN EDGAR: Commissioners, we have a motion and  
5 a second on Item 2. All in favor, say aye.

6 (Unanimous affirmative vote.)

7 Opposed? Show Item 2 approved per the motion.

8 Mr. Fletcher, Item 3, please.

9 MR. FLETCHER: Commissioners, Item 3 represents audit  
10 adjustments, rate base audit adjustments that the staff and the  
11 utility agrees with.

12 COMMISSIONER DEASON: Move staff.

13 COMMISSIONER TEW: Second.

14 MR. REILLY: Very brief comment.

15 CHAIRMAN EDGAR: Motion and a -- excuse me. Mr.  
16 Reilly.

17 MR. REILLY: I'm sorry. It's very brief, but it's  
18 this -- if there are any stipulated rate base adjustments. If  
19 we could, if we could have it read, you know, that any  
20 adjustments agreed to by staff and the utility. Because we  
21 certainly, you know, we haven't involved ourselves in that  
22 stipulation. That would be issue -- just language of Issues  
23 3 and 18, rate base adjustments agreed to by the utility.

24 COMMISSIONER DEASON: Madam Chairman, I would move  
25 staff's recommendation with striking the word "stipulated" from

1 the -- I guess, I don't know if we can really restate the  
2 issue. I guess the issue is what it is. But the nature of the  
3 motion would simply be to approve these adjustments that staff  
4 and the company agree should be made, and recognize that they  
5 are not necessarily being stipulated to by Public Counsel's  
6 office.

7 MS. GERVASI: Yes, sir. We can make that change to  
8 the order. Thank you.

9 COMMISSIONER CARTER: Second the motion.

10 CHAIRMAN EDGAR: Okay. Commissioners, we have a  
11 clarification on the motion and we have a second. Thank you.  
12 All in favor, say aye.

13 (Unanimous affirmative vote.)

14 Opposed? Show Item 3 approved per our discussion.

15 That brings us to Item 4. Mr. Friedman, I know that  
16 you wanted to make some comments on this, so if you'll hold  
17 just a moment. Mr. Fletcher, if you'll open us up on Item 4.

18 MR. FLETCHER: Commissioners, Item 4 is staff's  
19 recommendation of the appropriate used and useful percentages  
20 for the water treatment plant, the water distribution plant,  
21 the wastewater treatment plant, the collection system for the  
22 wastewater and the reuse system of Plantation.

23 CHAIRMAN EDGAR: Thank you. Mr. Friedman.

24 MR. FRIEDMAN: Thank you, Chairman, Commissioners.  
25 For the purposes of this PAA, the utility could live with the

1 recommendation that the components of the system be evaluated  
2 as a whole and that the use of the average of five peak days  
3 instead of a single peak day be used, even though both of those  
4 conclusions or recommendations are erroneous. However, what  
5 the utility cannot accept is the characterization of capacity  
6 of the system as being the sum of well capacity and storage  
7 capacity. There's no precedence for including storage capacity  
8 as the utility's capacity of its system in determining used and  
9 useful.

10           This Commission's been regulating water utilities for  
11 47 years or so; it began in the mid '70s for developing an  
12 engineering approach to used and usefulness. And over that 30  
13 plus years there have been hundreds of cases in which used and  
14 useful has been evaluated and ruled upon. In addition, there  
15 have been two major technical Commission workshops held for the  
16 purpose of reaching some agreement as to a method of evaluating  
17 used and useful under various circumstances. The first took  
18 place in the early '70s and the early, and again in the early  
19 '80s. Never throughout that period has anyone suggested that  
20 used and useful for a water system is determined by using the  
21 maximum day demand to the well capacity plus storage capacity.  
22 It is correctly recognized that well capacity and storage serve  
23 two separate functions to meet the maximum day demand is -- to  
24 meet a maximum day demand is not a function of storage.  
25 There's no indication that the hydraulics of the water systems

1 have changed over the years.

2           Now the wells, I mentioned earlier, the well capacity  
3 and storage capacity serve different functions for the system  
4 and are therefore sized differently. It's well recognized and  
5 spelled out in the several American Water Works Association  
6 manuals, M31 and M32 specifically, that a primary function of  
7 storage is to provide overflow to meet demand above the maximum  
8 day demand rate. This is typically referred to as peak hour  
9 demand and is typically estimated at twice the maximum day  
10 demand. The function of storage is used to equalization of  
11 flows and take the stress off the wells by making up for the  
12 short-term daily differences when instantaneous peak flow  
13 exceeds the maximum day flow.

14           For instance, the used and useful of the wells is  
15 determined on an average flow for the day. Now we all know  
16 that water is not demanded from the system at the same rate all  
17 day long. Typically there's a peak in the morning and a peak  
18 in the afternoon and at halftime in Super Bowl. And in order  
19 to meet that demand, you've got to do one of two things:  
20 You've either got to have your pumps sized so that you can meet  
21 that peak demand, not average, but the peak demand, peak hour  
22 demand, or you can have storage. And what this Commission has  
23 typically done and what the American Water Works Association  
24 has recognized is what you do is you, you use your storage for  
25 those peaks. And that's exactly the way, the methodology that

1 the Commission has used in the past is you use the average day  
2 for the pumping and you meet those peak demands by storage. By  
3 including storage in capacity, it makes absolutely no sense at  
4 all.

5           The function of the wells is to meet the continuous  
6 average daily demand of the system. They must be sized to meet  
7 the maximum daily flows, and also to replenish the storage tank  
8 on a daily basis. When you add the capacities of the wells and  
9 storage together and measure that combined capacity against the  
10 maximum day demand, you're combining apples and oranges because  
11 storage has nothing to do with maximum day demand. You're  
12 double counting because it takes both storage and demand.  
13 Filling a storage tank is a demand capacity on the system.  
14 It's not capacity. It's a demand on the system. The storage  
15 tank has got to be filled somehow. It's not a cistern that  
16 gets filled by rainfall. It's an enclosed structure and has  
17 got to be filled. It doesn't just fill up with water  
18 automatically. So it's got to be filled from the wells. It's  
19 a demand from the wells. It makes absolutely no sense at all  
20 to include storage as capacity, and that's obvious in this  
21 case. The capacity of the wells should be sufficient to meet  
22 the maximum day demand with one well out of service. Nobody, I  
23 think, at this table disagrees with that.

24           The capacity of the wells for this system with one  
25 well out of service is 342,000 gallons per day. The staff

1 found that the average of five maximum days demand to be  
2 321,877 gallons per day. So without any consideration for  
3 growth or the ability of the wells to replenish on a daily  
4 basis, the storage required for peak hours, the maximum day  
5 demand is 94 percent of the reliable capacity of the wells. So  
6 you're using those; it's 94 percent without any growth. Yet  
7 the approach that the staff does, they throw in 400,000 gallons  
8 and says that's capacity, and all of the sudden, obviously, it  
9 reduces the used and useful of the water system. Now just  
10 because the capacity of the storage tank isn't included in the  
11 formula to evaluate used and useful doesn't mean that it's  
12 ignored. If there's, as I've mentioned, if there's no storage  
13 available, then you would need to size your wells to meet that  
14 peak hour demand, resulting in doubling of your capacity  
15 because AWWA and the other standards presume that your peak  
16 hour capacity is about twice what your average is.

17           The Commission has previously recognized that in its  
18 prior orders, including the Utilities, Inc. of Florida water  
19 that staff has referred to when they stated, "For systems with  
20 adequate storage, customer demand is based on the single peak  
21 day during the test year if it can be determined that no  
22 anomaly occurred on that day, and the capacity shall be based  
23 upon 12 hours of pumping." That's what we've got in this case,  
24 a system with adequate storage.

25           In that order you went on to say, "For systems with



1 little or no storage, the customer demand shall be based upon  
2 the estimated gallons per minute of demand in a peak hour and  
3 the capacity shall be the firm, reliable capacity of the wells  
4 expressed in gallons per minute."

5 So what we're asking the Commission to determine is  
6 that the demand of the water system, as you did in the UIF case  
7 and many, many others, is the maximum day demand plus fire flow  
8 plus growth based upon 12 hours of pumping rate with one well  
9 out of service.

10 And that it is -- it just defies logic to include in  
11 capacity a storage tank that, in fact, needs to be filled by  
12 the capacity. And we would suggest to you that you reject the  
13 staff's recommendation on used and useful of the water system  
14 to the extent that it includes that 400,000 gallon storage tank  
15 as capacity and that the used and useful calculation be  
16 recalculated accordingly. Thank you.

17 CHAIRMAN EDGAR: Mr. Reilly.

18 MR. REILLY: Public Counsel has not hired an engineer  
19 to really look at these used and useful numbers as yet.  
20 Obviously the company has said that they will live with this  
21 PAA and don't intend to protest it. If it is protested, I can  
22 assure you that OPC has a lot of concerns about the used and  
23 useful numbers as well.

24 Addressing his comment about the wells being demand  
25 rather than capacity, that is clearly not the case. In no case

1 and in no way should wells ever be considered demand. Wells --  
2 it is true that we have historically recommended and our  
3 engineers have evaluated separate used and useful percentages  
4 for these various components. We've always taken the position  
5 that the correct way to evaluate used and useful is to look at  
6 wells, high service pumps, treatment, storage, and then  
7 separately look at your distribution and collection. But wells  
8 have always been evaluated as a component of capacity. You  
9 have a certain capacity of wells. And demand always comes from  
10 your service territory. Demand always is expressed in how many  
11 gallons per, per whatever unit per day, per average or peak,  
12 what kind of demand is being placed. So it always comes --  
13 demand you have to think of in terms of customer demand on the  
14 system. And on the other part of the used and useful formula,  
15 it's clearly storage is not demand. Storage is capacity.

16 But where we also differ with staff is we think it's  
17 appropriate to consider storage as, as a separate used and  
18 useful component. And there are separate, different formulas.  
19 They have different formulas to apply what is the proper used  
20 and useful percentage looking at these various components.

21 So we, we also disagree with staff, and if this PAA  
22 is protested either by the customers or the utility, we will,  
23 of course, pursue these issues, but did take exception with the  
24 company's position on wells.

25 Further, we would state that we believe that the well

1 capacity, speaking of the well capacity, we believe that that  
2 is probably understated by a factor of one-half. The staff is  
3 recommending just to cut in half basically the capacity of the  
4 pumps after taking the highest one out of service. We agreed  
5 to take the highest pump out of service. But of the remaining  
6 pumps you take that pumping capacity times the normal 24-hour  
7 period because, according to our engineering experts, these  
8 pumps work beautifully, they work continuously. They don't  
9 just shut off half the day. They -- and so the only correct  
10 way to determine correct capacity is to, is to not cut that in  
11 half.

12 Further, if this does go to hearing, you only have to  
13 drive around the service territory to see hundreds of lots  
14 being built, hundreds of empty lots being built. And we  
15 believe even factoring in the minimum 5 percent per year times  
16 five years and programming in that margin reserve, that this  
17 93 percent is just, is overstated and that we do believe the  
18 used and useful figure, if we go to hearing, will show, the  
19 evidence will show that the mains and collection lines are not  
20 as used and useful as represented in this recommendation.

21 So like the company, we have problems with this used  
22 and useful recommendation. It will be something that we will  
23 or will not pursue depending on the very important resolution  
24 of a couple of other issues. The one that's looming over us  
25 is, the 10,000-pound gorilla is the service availability issue

1 which is driving the entire process. If we can get a  
2 reasonable decision out of the Commission today on that one, it  
3 could potentially avoid a protest in this, in this case. But  
4 we'll face that at the right time. But that's all our comments  
5 on used and useful.

6 CHAIRMAN EDGAR: Okay. For those who are joining us  
7 on the phone, I'd point out that the item that Mr. Reilly  
8 refers to is Item 36, which we will be coming to at some point  
9 here in a little while.

10 If I may, staff, could you speak to the point that  
11 has been raised regarding capacity versus demand.

12 MS. MASSOUDI: Staff disagrees with a calculation of  
13 used and useful with the utilities because staff believes that  
14 all of the utility's water system --

15 MR. FERGUS: I can't hear the speaker.

16 CHAIRMAN EDGAR: Could you speak up just a little  
17 bit? Thank you.

18 MS. MASSOUDI: Staff believes that all of the  
19 utility's water system components should be evaluated on the  
20 total system. Except if the utility's well or storage or  
21 pumping are oversized, then we can calculate separately. This  
22 is the way the Commission has practiced for many, many years.  
23 I'm here for four years, I have many cases. I had utilities  
24 with the same facilities, and always we add the capacity of the  
25 storage to the well capacity with removing one well. It came

1 as a formula for us.

2 And also I look at the other two cases that utility  
3 had with us, and they went through the same calculation, never  
4 was a problem. Therefore, I didn't see any reason that we  
5 should have, you know, the calculation differently because they  
6 did not have any components oversized.

7 MR. RENDELL: Commissioners, I would like to point  
8 out that we believe that we're being consistent with not only  
9 the Utilities, Inc. case that Mr. Seidman, I mean, Mr. Friedman  
10 had mentioned. There was extensive testimony both from staff  
11 and the Utilities, Inc. witness, which is also the consultant  
12 in this case, referring to if the different components should  
13 be looked at on a, on a component basis or a systemwide. We  
14 believe we're consistent not only with Utilities, Inc. but, as  
15 Ms. Massoudi had mentioned, we're consistent with how this  
16 utility has been treated in its past cases, more specifically  
17 in the 2002 overearnings, which this same methodology was used.

18 MR. FRIEDMAN: I would like to point out that that  
19 2002 case was a staff rate investigation, a PAA, and that the  
20 purpose of a rate investigation, at least from the utility's  
21 perspective, is to get to the point where you don't have to  
22 make a refund or a reduction in your rates. You can't take a  
23 PAA order in a rate investigation and assume, and assume that  
24 the utility agrees with everything that you have found in that  
25 case. It defies logic. And as, as, as Mr. Rendell points out,

1 the Utilities, Inc. case very clear, very succinct that  
2 storage, if you've got adequate storage, you don't include it  
3 in there. You use the average peak day flow -- I mean, you use  
4 the average flow. And if there's no storage, you use, you use  
5 peak flow in gallons per minute. This system has got a storage  
6 tank that has got to be filled somehow. And if staff can show  
7 me how to fill that without using your wells, then, you know,  
8 I'll stand corrected. But until somebody shows me how that  
9 miraculously can happen, it just defies logic to include  
10 storage capacity as being well capacity.

11 MR. SEIDMAN: May I speak, Commissioner?

12 CHAIRMAN EDGAR: Yes, sir.

13 MR. SEIDMAN: My name is Frank Seidman. I am a  
14 consultant to the utility in this case with Management &  
15 Regulatory Consultants.

16 I'd like to respond a little to Ms. Massoudi's  
17 remarks. I'm afraid I'm going to have to trump her on  
18 knowledge of how long the Commission has been using storage as  
19 part of capacity in evaluating systems.

20 I was with the Commission for nine years. I've been  
21 consulting before this Commission for some 30 years. I've been  
22 involved with regard to determination of used and useful for  
23 much of that time. The first time I ever heard of demand -- of  
24 storage capacity being included as part of capacity in  
25 determining the total water treatment plant used and useful was

1 in 2001 in the Wedgefield Utilities, Inc. case in which I took  
2 part. That case did not go to hearing. It was settled. But  
3 testimony was filed by Mr. Crouch for the Commission and myself  
4 for the utility. And that's -- Mr. Crouch brought it up in  
5 that case, and that's the first time I'd heard of it, and I  
6 took issue with it at that time. The second time I heard of it  
7 was with regard to the rate investigation for this utility,  
8 which, again, did not go to hearing. It was, it was  
9 something -- it was imposed by staff. The utility did not take  
10 issue with it because it didn't affect the results. And the  
11 third time is this case here. So I don't think there's any  
12 long-standing history behind this, nor really any test of it.

13 With regard to the Utilities, Inc. of Florida case,  
14 yes, staff did bring it up in that case and we did not address  
15 it. I have no testimony on it in that case. And the reason  
16 was because the systems in that case were so simple and there  
17 was really no, no argument with the fact that all of the  
18 systems in that case we used were 100 percent used and useful.  
19 In that particular utility there was some, I believe, some 14  
20 separate systems that were evaluated. Out of those systems,  
21 none of them had stand-alone storage in their systems. Most of  
22 them had hydro-pneumatic tanks which provided pressure relief  
23 for the systems. And those couple of systems that had any  
24 storage at all were part of the Cascade Aeration System, which  
25 was basically treatment storage and not storage for the purpose

1 of providing additional capacity over and above the maximum day  
2 demand.

3           With regard to Mr. Reilly's comments, I don't know if  
4 he heard us wrong or whether we misstated it by accident, but I  
5 think we're in agreement with Mr. Reilly. We took the position  
6 that capacity of the wells is the capacity that's to be  
7 evaluated. We also took the position in this case that storage  
8 should be separately evaluated, as Mr. Reilly has said, and  
9 that's what we did. And that is consistent with positions I've  
10 taken in other cases, including Utilities, Inc. of Florida. In  
11 that case, Mr. Rendell said that I agreed that we should be  
12 looking at the systems on a total system basis, and that was  
13 true for Utilities, Inc. of Florida because there was no  
14 storage consideration to be looked at in that case. But in  
15 other cases I have said that it's how you look at the system,  
16 whether it's on a component-by-component basis or on a total  
17 system basis, it's a case-by-case study. You have to look at  
18 the functions of the plant and how it operates and make that  
19 determination.

20           In the Utilities, Inc. of Florida case we made the  
21 determination that each of them should be looked at on a total  
22 system basis. In the Wedgefield case I talked about before, I  
23 made the conclusion that it should be looked at on a component  
24 basis. That case is similar to this one in that there was  
25 stand-alone storage involved, that there was a sophisticated



1 treatment system involved. That was not the case in Utilities,  
2 Inc. of Florida.

3 I think the, the staff's position is incorrect in  
4 this, that you cannot double up, you cannot take the demand,  
5 the maximum day demand and measure that against wells plus  
6 storage when the purpose of storage is clearly to meet the  
7 demand above maximum day demand that you look at as peak hour.  
8 They just don't have the same function.

9 CHAIRMAN EDGAR: I'm going to start to my right.  
10 Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam Chairman. I  
12 just would like to make a statement based upon my read of this  
13 issue, and I'm glad that we have consumers listening out there.

14 First of all, we have an outstanding staff here at  
15 the Commission. Our Commission does -- our Commission staff  
16 does not have a vested interest in the outcome of any issue.  
17 And this makes totally common sense to me. I mean, call me  
18 crazy, but this makes sense to me. And I'm saying that what  
19 our staff is doing is making the best recommendation for all  
20 parties involved. That's how I read this issue.

21 CHAIRMAN EDGAR: Thank you, Commissioner Carter.  
22 Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: Mr. Seidman, on Page 15 of  
24 what's in front of us, staff has pointed out you made specific  
25 statements. And I'm going to read, it says, "Witness Seidman

1 and Redemann testified that all," I'm talking about the third  
2 paragraph, "all components of the utility's water facilities  
3 should be included in a single evaluation." You just stated  
4 that was specific to Utilities, Inc. And then staff goes on to  
5 say, "Mr. Seidman testified that systems with storage and high  
6 service pumping should be evaluated as integrated systems in  
7 order to recognize the interrelationship of the component."

8 So kindly explain to me why in one case it's A and  
9 the other case is B, even though it should be a full system.

10 MR. SEIDMAN: Okay. First of all, those quotes, of  
11 course, are correct. They're taken right from the order. What  
12 it did not have was the beginning portion of my testimony in  
13 which I said that for each of these cases I evaluated on a  
14 case-by-case basis whether the component, whether it should be  
15 viewed as a component-by-component evaluation or a total  
16 evaluation, and came to a conclusion that for these they should  
17 be as a total system. So, therefore, I'm in agreement that for  
18 that system, for that particular utility that was the right  
19 conclusion.

20 And as I said before, in the Utilities, Inc. of  
21 Florida cases there was no standing storage to evaluate.  
22 That's why the storage that was available, which is very  
23 little, could not provide any capacity for purposes of meeting  
24 anything above maximum day. It was proper to evaluate those as  
25 a total system water system.

1 COMMISSIONER ARRIAGA: Mr. Seidman -- may I, Madam  
2 Chairman?

3 CHAIRMAN EDGAR: Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: Thank you.

5 Just to follow up, Mr. Seidman, are you an engineer?

6 MR. SEIDMAN: Yes.

7 COMMISSIONER ARRIAGA: Okay. Good. When I was a  
8 young engineer at the oil companies, and let me see if I can  
9 equate pumping oil to pumping water, I can clearly remember  
10 that whenever we designed a well, plus the transportation, plus  
11 the storage, we never took that as individual -- I mean, one  
12 depended -- their interrelation was absolutely clear. The size  
13 of the pump, the size of the pipe, the size of storage are  
14 absolutely interrelated in an engineering calculation. Would  
15 you agree with that?

16 MR. SEIDMAN: Yes.

17 COMMISSIONER ARRIAGA: Then why would you want to  
18 separate this?

19 MR. SEIDMAN: Let me ask you a question. In any of  
20 those things did you do a used and useful analysis?

21 COMMISSIONER ARRIAGA: Not in the oil industry, no.

22 MR. SEIDMAN: Used and useful is something that's  
23 peculiar to regulation of public utilities and it's looked at  
24 in a little different way. If I, if I were to evaluate these  
25 systems the same way you're talking about you evaluated, I

1 would come to the conclusion on an overall basis whether or not  
2 that, that whole system was used and useful. I wouldn't be  
3 doing it on a formula basis of percentages here and percentages  
4 there. I'd be looking at exactly what you're saying: Are the  
5 parts integrated; do they provide at least the minimum  
6 requirements to get the job done; do they provide enough  
7 capacity for safety purposes; for emergency purposes on top of  
8 that; is that sufficient? And I would come to the conclusion,  
9 say, yes, it's used and useful or, no, perhaps there's some  
10 excess capacity that's not required at this particular time.  
11 But I wouldn't go through all of this that we do for this  
12 Commission. And I think that that colors the way we look at  
13 used and useful. And that's why over the years we've tried to  
14 develop some approach that kind of fits what we're trying to  
15 get at as an end result here. And the way that's been done is  
16 to settle on a sort of simplified formula that can be used  
17 either on a total basis, on a component basis.

18           When Mr. Friedman was talking, he talked about the  
19 fact that we went through some technical workshops over the  
20 years. We had technical workshops in the early '90s, late '80s  
21 to early '90s that lasted nearly six years where formulas were  
22 discussed with staff, where it finally went to the, it was  
23 proposed to the Commission as a rulemaking in the -- in that we  
24 had formulas for every portion of the plant. There was nothing  
25 in there that anyone ever brought up that said in evaluating a

1 system, you look at these particular components, that is  
2 storage plus well capacity, to look at anything.

3 COMMISSIONER ARRIAGA: Thank you.

4 CHAIRMAN EDGAR: Commissioner Deason.

5 COMMISSIONER DEASON: Yes. Mr. Seidman, as a  
6 nonengineer, it seems to me that demand has to be met, and it's  
7 a question of configuring the system to meet the demand in the  
8 most efficient way possible. And for this particular system it  
9 was designed so there was going to be a certain amount of  
10 pumping capacity and that there was going to be storage  
11 utilized as part of the efficient way of providing service to  
12 meet that demand. Is that generally correct?

13 MR. SEIDMAN: Yes.

14 COMMISSIONER DEASON: Okay. Now it seems to me that  
15 if there is to be storage, then you do not need as much pumping  
16 capacity to meet whatever demand is there. Is that also  
17 correct?

18 MR. SEIDMAN: That's correct.

19 COMMISSIONER DEASON: Okay. But there needs to be an  
20 evaluation some way of whether the amount of storage which is  
21 part of the overall system, if that is sized correctly. How do  
22 we make that determination?

23 MR. SEIDMAN: Well, we did that separately in this  
24 case. We evaluated the well capacity and we evaluated the  
25 storage capacity separately. And basically we looked at the

1 evaluation of the storage capacity looking at what basic design  
2 criteria is, which is that the storage should be sufficient to  
3 be able to meet fire flow and to meet at least a quarter of the  
4 maximum day demand. And we looked at it that way in a separate  
5 basis.

6 COMMISSIONER DEASON: Okay. You mentioned fire flow  
7 then. So is -- storage is designed to meet fire flow demand?

8 MR. SEIDMAN: Yes.

9 COMMISSIONER DEASON: All right. Then so the pump is  
10 not designed to meet fire flow demand?

11 MR. SEIDMAN: The well pumps?

12 COMMISSIONER DEASON: Yes, sir. The well pump is not  
13 designed to meet well flow demand?

14 MR. SEIDMAN: Well, the well pump should be able to  
15 refill the tank and meet maximum day demand. So it really, it  
16 goes all the way through the system.

17 COMMISSIONER DEASON: So under your, your component  
18 basis then, are you -- fire flow demand, you're also, you're  
19 placing upon the pump and the storage in determining your used  
20 and useful?

21 MR. SEIDMAN: That's correct. Exactly.

22 COMMISSIONER DEASON: Is that a double count?

23 MR. SEIDMAN: And that was, that was precedent that  
24 was set in the Palm Coast Utility case several years back.

25 COMMISSIONER DEASON: Do you agree with that

1 precedent?

2 MR. SEIDMAN: Huh?

3 COMMISSIONER DEASON: Do you agree with that  
4 precedent?

5 MR. SEIDMAN: Yes, I do. I do because I think the  
6 wells have to be, have sufficient capacity to be able to flow  
7 through to the tank so that -- because the tank has to be  
8 refilled on a daily basis.

9 COMMISSIONER DEASON: It does. But normally isn't  
10 that done during off peak times, say, you know, the middle of  
11 the night?

12 MR. SEIDMAN: Yes. Yes, it is. In this particular  
13 case we're kind of limited in how much pumping we can use these  
14 wells for because of the, the water; there's water quality  
15 issues where this particular utility is located. And we can't  
16 pump 'round the clock from these wells. It causes some excess  
17 drawdown in that aquifer. But in general, yes, you, obviously  
18 you pump during the offpeak hours. So you've got to look at  
19 what the capacity of the wells is to be able to, on its  
20 gallon-per-minute basis, be able to put enough water into the  
21 system, meet maximum day and to get enough water back into the  
22 tank.

23 COMMISSIONER DEASON: So what is the formula you used  
24 to determine the used and useful of the storage tank? How do  
25 you make that evaluation?

1 MR. SEIDMAN: We took the fire flow plus, I believe  
2 it's a quarter of the maximum day demand plus growth.

3 COMMISSIONER DEASON: I'm sorry. Fire flow plus  
4 what?

5 MR. SEIDMAN: A quarter of the maximum day demand.

6 COMMISSIONER DEASON: Now is this the way a tank, a  
7 storage tank is designed from an engineering perspective when  
8 it is designed and constructed? Is this the criteria that go  
9 into that?

10 MR. SEIDMAN: In the AWWA standards of practices and  
11 policies, that's a typical minimum that you try to build into  
12 the tank capacity.

13 COMMISSIONER DEASON: So it's fire flow, one-fourth  
14 of max day demand, and what else did you say?

15 MR. SEIDMAN: In this particular case I put in fire  
16 flow, I put in one quarter of the maximum day demand, I put in  
17 allowance for growth. And I also put in a minimum daily  
18 backwash requirement which staff took issue with, this is on  
19 backwashing in the treatment process, because they said that  
20 could be included in the minimum amount. And I won't take  
21 issue with that.

22 COMMISSIONER DEASON: I just -- to me, Mr. Seidman,  
23 it boils down to whether this system was designed and  
24 constructed in a prudent manner such that there are not  
25 excessive costs that are going to be borne by ratepayers by the



1 design. I mean, that's the ultimate outcome of a used and  
2 useful analysis, isn't it?

3 MR. SEIDMAN: Yes.

4 COMMISSIONER DEASON: It's your opinion that this  
5 system was designed and constructed in an efficient and prudent  
6 manner and that there's not any excess capacity in the wells  
7 and the storage?

8 MR. SEIDMAN: Well, considering when it was designed  
9 and put into service, I wasn't involved with it then. Right  
10 now I do believe that the system itself is, yes, sized properly  
11 to provide service in a prudent manner.

12 COMMISSIONER DEASON: So to meet the current demands  
13 plus an allowance for growth, if you had to design this system  
14 from the ground up, this is the way you would design it as it  
15 is currently configured with the amount of pumping --

16 MR. SEIDMAN: I don't know, I don't know that. You  
17 know, I can't go back and, and reestablish what was done  
18 before.

19 COMMISSIONER DEASON: I'm saying, if you had, if you  
20 knew what the demands were on this system as they are now plus  
21 an allowance for growth, how would you design this system in  
22 terms of pumping capacity and storage to meet that demand plus  
23 a margin for growth?

24 MR. SEIDMAN: I think all things considered for this  
25 particular utility and the type of service area, not the type

1 of service area, but the, the problems with the aquifer in that  
2 particular location, I would probably put it in like this and  
3 make room for adding more wells in the future to be able to  
4 distribute the sources of water so that we'd have limited  
5 drawdown from each well.

6 COMMISSIONER DEASON: Staff -- I would ask the same  
7 question to staff. Given the current demands plus a growth  
8 allowance, is this system oversized as it is currently  
9 configured?

10 MS. MASSOUDI: Would you please repeat again?

11 COMMISSIONER DEASON: Yes. Given the current demands  
12 on this system plus a reasonable growth allowance, is this  
13 system, as it, as it is currently in place, is it oversized?

14 MS. MASSOUDI: It's not oversized.

15 COMMISSIONER DEASON: But we are recommending a  
16 disallowance in terms of used and useful; correct?

17 MS. MASSOUDI: Yes.

18 CHAIRMAN EDGAR: Commissioners and parties, I will  
19 just note that we are on Item 4. I intend to be here all day,  
20 so that's fine. But we do have over 30 items to go through,  
21 and I'll note that there are a few of us who have another item  
22 on the agenda today that also has over 30 items. So just a  
23 comment.

24 We are on Item 4. We've had some good discussion.

25 COMMISSIONER CARTER: Madam Chair.

1 CHAIRMAN EDGAR: Commissioner Carter.

2 COMMISSIONER CARTER: I would move staff's  
3 recommendation on Issue 4.

4 CHAIRMAN EDGAR: Commissioner Carter has made a  
5 motion for the staff recommendation on Item 4. Commissioner  
6 Carter, I'll note that for you and I as the two nonaccountant,  
7 nonengineer, but the two attorneys on the board, that your  
8 earlier comments, it makes sense to me. Commissioners, do I  
9 have a second?

10 COMMISSIONER TEW: Second.

11 CHAIRMAN EDGAR: I have a motion and a second for the  
12 staff recommendation on Item 4. All in favor, say aye.

13 COMMISSIONER ARRIAGA: Aye.

14 COMMISSIONER CARTER: Aye.

15 COMMISSIONER TEW: Aye.

16 CHAIRMAN EDGAR: Aye.

17 Opposed?

18 COMMISSIONER DEASON: Nay.

19 CHAIRMAN EDGAR: Please show Item 4 approved on a  
20 vote of four to one.

21 Okay. We're going to keep moving a little bit and  
22 see how far we get. So with that, Mr. Fletcher, Item 5.

23 MR. FLETCHER: Commissioners, Item 5 recommends the  
24 appropriate value for land acquired through an easement from a  
25 related party in 2002.

1 COMMISSIONER DEASON: Move staff.

2 COMMISSIONER CARTER: Second.

3 CHAIRMAN EDGAR: I have a motion and a second for  
4 Item 5. All in favor, say aye.

5 (Unanimous affirmative vote.)

6 Opposed? Show Item 5 approved.

7 Item 6.

8 MR. FLETCHER: Commissioners, Item 6, staff  
9 recommends what the appropriate 2004 year-end balance should be  
10 for accumulated depreciation.

11 COMMISSIONER DEASON: Move staff.

12 COMMISSIONER CARTER: Second.

13 CHAIRMAN EDGAR: Motion and a second on Issue 6. All  
14 in favor, say aye.

15 (Unanimous affirmative vote.)

16 Opposed? Show Item 6 approved. Issue 6.

17 Issue 7.

18 MR. FLETCHER: Issue 7, Commissioners, staff  
19 recommends the appropriate 2004 year-end balances for  
20 contributions in aid of construction and the accumulated  
21 amortization of CIAC.

22 COMMISSIONER DEASON: Move staff.

23 COMMISSIONER CARTER: Second.

24 CHAIRMAN EDGAR: Motion and a second. All in favor,  
25 say aye.

1 (Unanimous affirmative vote.)

2 Opposed? Show Item -- excuse me. That was Issue 7;  
3 is that correct? Thank you. Issue 7 approved.

4 Which brings us to Issue 8.

5 MR. FLETCHER: Issue 8, Commissioners, staff  
6 recommends that the deferred tax debit on net loss  
7 carryforwards should not be allowed in rate base and that a  
8 deferred income tax credit of 213 -- \$233,737 should be  
9 included in the capital structure at a zero cost rate.

10 COMMISSIONER DEASON: Move staff.

11 COMMISSIONER CARTER: Second.

12 CHAIRMAN EDGAR: There is a motion on Issue 8. All  
13 in favor, say aye.

14 (Unanimous affirmative vote.)

15 Opposed? Show Issue 8 approved.

16 Issue 9.

17 MR. FLETCHER: Issue 9, Commissioners, is staff's  
18 recommended working capital allowance for water and wastewater.

19 COMMISSIONER DEASON: Move staff.

20 COMMISSIONER TEW: Second.

21 CHAIRMAN EDGAR: Motion and a second on Issue 9. All  
22 in favor, say aye.

23 (Unanimous affirmative vote.)

24 Opposed? Show Item, excuse me, Issue 9 approved.

25 That brings us to Issue 10.

1 MR. FLETCHER: Issue 10, Commissioners, is staff's  
2 recommended appropriate rate base for the projected  
3 December 31st, 2006, test year.

4 CHAIRMAN EDGAR: And this is a fallout issue from one  
5 of the earlier items that we discussed, is it not?

6 MR. FLETCHER: Yes, Commissioner.

7 CHAIRMAN EDGAR: Do I have a motion?

8 COMMISSIONER DEASON: I think Mr. Reilly indicated  
9 that he wanted to speak to this earlier, did he not?

10 CHAIRMAN EDGAR: Mr. Reilly.

11 MR. REILLY: To the extent that we understand this is  
12 a fallout from Issue 36, I can hold, hold our fire on that  
13 until we get to 36, understanding that if it gets resolved  
14 differently, these numbers drastically change on Page 36 of the  
15 PAA order where they're dumping in millions of dollars of  
16 additional investment, quote, investment in water mains that we  
17 are arguing that at least from a prospective basis should be  
18 discontinued. So with that in mind, we can proceed.

19 COMMISSIONER DEASON: With that understanding, I can  
20 move staff.

21 CHAIRMAN EDGAR: Okay.

22 COMMISSIONER CARTER: Second.

23 CHAIRMAN EDGAR: Fine. We have a motion and a second  
24 on Issue 10. All in favor, say aye.

25 (Unanimous affirmative vote.)

1           Opposed? Show Issue 10 approved.

2           Issue 11.

3           MR. FLETCHER: Issue 11, Commissioners, is staff's  
4 recommendation to treat \$3.5 million of nonservice debt as  
5 common equity as the utility reflected in its minimum filing  
6 requirements, and then also the remaining \$3.6 million,  
7 recommend a cost rate of 10 percent.

8           COMMISSIONER DEASON: Move staff.

9           COMMISSIONER CARTER: Second.

10          CHAIRMAN EDGAR: Motion and a second. All in favor,  
11 say aye.

12          (Unanimous affirmative vote.)

13          Opposed? Show Issue 11 approved.

14          Issue 12.

15          MR. FLETCHER: Commissioners, Issue 12 is staff's  
16 recommendation of the appropriate return on equity of 11.78  
17 percent using the Commission-approved leverage formula.

18          COMMISSIONER DEASON: Move staff.

19          COMMISSIONER CARTER: Second.

20          CHAIRMAN EDGAR: Motion and a second. All in favor,  
21 say aye.

22          (Unanimous affirmative vote.)

23          Opposed? Show Issue 12 approved.

24          Issue 13.

25          MR. FLETCHER: Issue 13, Commissioners, is staff's

1 recommendation of the weighted average cost of capital of  
2 10.01 percent.

3 COMMISSIONER DEASON: Move staff.

4 COMMISSIONER CARTER: Second.

5 CHAIRMAN EDGAR: Motion and a second. All in favor,  
6 say aye.

7 (Unanimous affirmative vote.)

8 Opposed? Show Issue 13 approved.

9 Issue 14.

10 MR. FLETCHER: Issue 14 is staff's recommendation of  
11 the appropriate projection methodologies, methodologies of  
12 projecting customer growth and consumption for residential and  
13 general service customers.

14 CHAIRMAN EDGAR: Okay. Thank you. And, Mr. Reilly,  
15 I believe you wanted to comment on this.

16 MR. REILLY: OPC does have considerable concerns  
17 about this methodology to the extent that we've been able to  
18 evaluate it and understand it. We believe the effect of this  
19 staff methodology is, from what we can determine, is, results  
20 in understating test year revenues, which, therefore, drives a  
21 higher revenue requirement. I will yield to Tricia Merchant at  
22 this time to try to delve into this issue.

23 CHAIRMAN EDGAR: Ms. Merchant.

24 MS. MERCHANT: Commissioners, our concern is with the  
25 way the water and wastewater growth factors were calculated



1 from 2004 through 2005 to 2006. This is a system that has --  
2 for every water customer there's a wastewater customer. They  
3 don't have irrigation wells where they would have more water  
4 customers than wastewaters. They don't have new customers  
5 coming online that will have septic tanks. So eventually down  
6 the road we will have a water and a wastewater customer for  
7 every connection that's made.

8 In 2004 they had more water customers at the end of  
9 the year than they had wastewater customers. I'm thinking it  
10 was 195 ERCs difference between the two. When you get through  
11 with the staff's projection methodology, at the end of 2006  
12 there are, there's a difference of 406. And I might not be  
13 sure about the right number there, but there's quite a lot of  
14 difference. The spread between water and wastewater has  
15 increased dramatically.

16 My understanding of the staff's methodology is that  
17 they use one method to project water growth in customers, in  
18 ERCs, and another method to measure wastewater. But common  
19 sense would tell you that in this utility system there will be  
20 a pattern of growth that will remain the same. It won't be  
21 dollar for dollar or customer equal for both water and  
22 wastewater, but the rate of growth will be rather equal.  
23 There's a timing difference because some of these customers,  
24 the water customers will have temporary construction permits at  
25 some point in time while they're constructing the house and

1 before a customer moves into the house. So that's why there  
2 might be some more water customers at any given time than  
3 wastewater customers. But as time marches on, that will equal  
4 out. So our request would be not necessarily that the  
5 percentage rate of growth be equal because there's fewer  
6 wastewater customers than there are water customers, but the  
7 number of ERCs for 2005 and 2006 remain consistent.

8           And we've been discussing this with staff over the  
9 past several days, and I believe that Mr. Stallcup has an  
10 alternative to this. This -- understating the wastewater  
11 customers has an impact in this rate case in numerous ways.  
12 One is in the CIAC collected, one is in the revenues, another  
13 is in the projection of the O&M expenses, and the other is in  
14 the billing determinant. So it's a very important concept to  
15 get right to be consistent in the whole case and changing the  
16 projected test year. So with that analysis, I believe the  
17 methodology that they used in the recommendation is not  
18 consistent. And I believe Mr., Mr. Stallcup has an alternative  
19 methodology that he would like to propose that would track the  
20 water and wastewater growth in ERCs at the same pace.

21           MR. STALLCUP: Commissioners, I'm Paul Stallcup. I'm  
22 standing in for Ms. Jennie Lingo who actually wrote this issue.  
23 She's not feeling well today, so I'm pinch hitting for her.

24           The methodologies used to forecast both water and  
25 wastewater residential ERCs are actually consistent. I would

1 beg to differ on that. The same functional form, the same  
2 statistical criteria used to evaluate growth for both water and  
3 wastewater customers were identical. There were separate  
4 regression equations because there were separate data sets, and  
5 they would grow customers out for both water and wastewater in  
6 accordance with the historical growth rates observed for those  
7 two customer classes. Based on the analysis of the historical  
8 customer data, staff projected residential water customers to  
9 grow at a compound average monthly rate of 1.5 percent. That's  
10 an extrapolation out of the growth patterns observed since  
11 2001. Wastewater customers were grown out at a compound  
12 average monthly rate of 1.1 percent. Historically, wastewater  
13 customers have grown more slowly than water customers.

14           At the end of the historical data staff had available  
15 to it there was a difference, as Ms. Merchant pointed out,  
16 between the number of water customers and the number of  
17 wastewater customers. A couple of things can account for that.  
18 One is that a water customer may have a meter size larger than  
19 the typical five-eighths meter. In such a case, that  
20 particular customer would count as perhaps two, maybe even five  
21 equivalent customers simply because the pipes going into his  
22 house are larger and, therefore, he consumes more water.

23           For this particular utility, that cause is not  
24 significant. If I remember the data correctly, there are only  
25 two, maybe three customers with meters larger than the typical

1 five-eighths meter.

2           The other cause why there can be a difference between  
3 the two growth rates is, as Ms. Merchant points out, during the  
4 construction process of a new home, temporary water service is  
5 provided to that home while the house is being constructed and  
6 possibly even while it's even on the market for sale but not  
7 yet occupied. So there's a natural timing lag between the  
8 number of new water customers coming online and the number of  
9 new water, wastewater customers.

10           For this particular utility that timing lag is  
11 important because this is a very rapidly growing utility. As I  
12 mentioned, these growth rates I mentioned of the 1.5 and the  
13 1.1 percent are monthly growth rates. Every month they're  
14 growing by a considerable number.

15           Staff feels confident that the projections and its  
16 recommendations are not unreasonable estimates of what we could  
17 expect by the end of 2006. However, Ms. Merchant's observation  
18 that by the end of 2006 there would be approximately 400 --  
19 400 difference between the number of water customers and  
20 wastewater customers is a large amount. This utility has  
21 currently approximately 1,400 water customers, and at the  
22 latest available historical data 1,100 wastewater customers.  
23 If we go out 15 months, that's the last point of historical  
24 data we have available for us to the end of 2006, that  
25 differential would grow up to 400. Now that is a lot of

1 unoccupied houses. And maybe it's not realistic to presume  
2 that builders would continue to build at that kind of rate if  
3 they're not selling as quickly as they're building.

4           As a compromise, if you will, as Ms. Merchant  
5 indicated, staff believes it would not be unreasonable and  
6 perhaps appropriate in this case to recalculate projected  
7 billing determinants along the following line. Staff  
8 originally estimated water ERCs to grow at a compound rate of  
9 1.5 percent per month and wastewater ERCs to grow at  
10 1.1 percent. Staff would propose in its compromise that we  
11 grow water ERCs at an average of those two, or 1.3 percent per  
12 month. This would perhaps recognize the fact that at current  
13 rates there are more houses being built and people are buying  
14 them. So it's probably reasonable to presume that there would  
15 be a slowdown somewhat in new construction. So staff would  
16 propose to grow ERCs at a rate of 1.3 percent per month from  
17 September '05, that's our last available data, through the end  
18 of the 2006 test year.

19           Furthermore, staff would also agree with Ms. Merchant  
20 that it would probably be appropriate to attempt to maintain  
21 that current differential we're observing between water and  
22 wastewater customers so that there's not -- so there's not an  
23 unreasonably large differential between the two. And,  
24 therefore, staff would recommend that the number of wastewater  
25 ERCs be maintained at a difference of 195 less than the number

1 of water ERCs. This difference of 195 is the difference that  
2 was actually observed in December 2004. I would note that the  
3 audited billing determinants were for the test year ended 2004,  
4 and at that point in time there was a difference of 195 ERCs.  
5 And staff believes that that modification to staff  
6 recommendation would be a reasonable accommodation to  
7 Ms. Merchant's concerns.

8 CHAIRMAN EDGAR: Commissioner Deason.

9 COMMISSIONER DEASON: Well, I was just going to  
10 inquire of Mr. Friedman or Mr. Seidman what their reaction to  
11 that compromised position is.

12 MR. FRIEDMAN: Well, I'm speechless because that's  
13 the first I've heard of it. The staff certainly gave us no  
14 indication, other than the changes that were filed with, with  
15 the clerk, gave us no indication that they were going to change  
16 their position on any other issue. So, you know, we can't tell  
17 what the revenue impact of that is, so it's impossible really  
18 to make an analysis of that other than to say if you're going  
19 to increase the number of wastewater customers in the 2006 test  
20 year, as I think Ms. Merchant suggested, you've got to go back  
21 now and look at used and useful for the wastewater plant and  
22 wastewater system and do that and reevaluate that also because  
23 you're saying now there's more customers.

24 The other thing that I find inconsistent is that for  
25 growth the utility is limited in determining used and useful,

1 we're limited to 5 percent. That's all we can get when we're  
2 adding what, how much capacity we need in each year over the  
3 next several years, we're limited to 5 percent. And yet when  
4 you do this projected test year, you've got an increase of  
5 10 or 12 percent. So you're not, the capacity that you're,  
6 that you're allowing us in used and useful is not keeping up  
7 with what you're saying is actually going to occur during that  
8 year. So we're getting theoretically in a, in a worse position  
9 because the, because our projections are not keeping up with  
10 what actually, the actual growth is. But as far as -- I don't  
11 know what the net revenue effect of this is, so I can't tell  
12 you, I don't know whether it's \$100, \$1,000, \$100,000 a year,  
13 and so it's impossible really for me to make an intelligent  
14 argument in response to that. But I am a little disappointed  
15 that, that it kind of came at us cold like this without any  
16 indication that the staff was going to change their position.  
17 I had assumed that the relationship was a little bit better.

18 CHAIRMAN EDGAR: Commissioner Deason.

19 COMMISSIONER DEASON: Mr. Friedman, I understand that  
20 you would, you may be caught off guard to some extent by this  
21 proposal and that you would like a better understanding of the  
22 full impact of this change in growth rates and the impact on  
23 billing determinants, revenue requirements and used and useful.  
24 I don't know what that outcome is either. But the question  
25 that I have is strictly from the confines of this issue, is

1 this a reasonable compromise to address Ms. Merchant's concern  
2 that staff's original recommendation was escalating or  
3 increasing the differential between water and wastewater ERCs  
4 when, according to Ms. Merchant, that it's, it is a better  
5 assumption that that 195 ERC differential should remain fairly  
6 constant? Do you have a position on that?

7 MS. MERCHANT: If I may, I do -- this issue came up  
8 late yesterday afternoon and early this morning. So for, for  
9 your understanding, that's -- I was analyzing this up until the  
10 very last minute, so that's why staff -- we just had this  
11 conversation first thing this morning. I went through and did  
12 some rough checks. It would -- this would change the O&M  
13 expenses because it's based on growth, it would change the  
14 revenues, test year revenues based on growth. It changes  
15 several other components. It does not change CIAC because CIAC  
16 was based on water growth already. So there are already  
17 several impacts that will flow from this.

18 COMMISSIONER DEASON: Let me interrupt. You said  
19 you're proposing -- the, the modified position is to change  
20 water growth from 1.5 to 1.3 percent.

21 MS. MERCHANT: That's correct. It will flow through  
22 many aspects of this rate case.

23 COMMISSIONER DEASON: Well, I thought you said, just  
24 said that it would not have an impact on the growth rate of  
25 water because it's already set, so I didn't follow.



1 MS. MERCHANT: I beg your pardon. In the -- the  
2 method that the staff used to project CIAC, and notwithstanding  
3 his change to the water growth rate, this was before any  
4 change, but staff used the water growth rate, not the  
5 wastewater growth rate, in projecting water and wastewater CIAC  
6 in the recommendation.

7 COMMISSIONER DEASON: So changing it from 1.5 to  
8 1.3 percent would not change that calculation?

9 MS. MERCHANT: Yes, it would.

10 COMMISSIONER DEASON: Okay.

11 MS. MERCHANT: But that's another change. What I'm  
12 saying is that originally the staff recommendation used the  
13 water to escalate CIAC for water and wastewater; whereas, all  
14 the other components were water specific. Water O&M was based  
15 on water, wastewater O&M was based on wastewater. So there's a  
16 little bit of a difference there. So there won't be a very  
17 material change to the CIAC number because of the recommended  
18 change by Mr. Paul -- Mr. Stallcup. But there are a lot of  
19 changes that would fall out because of this because of the way  
20 that they based their projection methodology.

21 CHAIRMAN EDGAR: Okay. Commissioners, it is 12:10.  
22 I, for one, could use a stretch. I'm thinking that maybe  
23 there's somebody else here who might as well. So I am going to  
24 put us on very short break until 12:15. When we come back, we  
25 will pick this item up right where we are. And while we're on

1 break, I'm going to ask you to think about what your pleasure  
2 is as far as lunch break here in a little bit as well. And  
3 then we'll be able to share that with those who are  
4 participating. So we are on break until 12:15.

5 (Recess taken.)

6 CHAIRMAN EDGAR: Okay. We're going to pick up where  
7 we left off, which was on discussion on Issue 14. I'm going to  
8 ask --

9 MR. FERGUS: Please speak up. Thank you.

10 CHAIRMAN EDGAR: Yes, sir. I'm going to ask our  
11 staff to give us a clarification, and after that I believe,  
12 Commissioner Arriaga, you had a question.

13 So, Mr. Stallcup.

14 MR. STALLCUP: Thank you, Commissioner. Yes, just to  
15 reiterate and summarize the rather long monologue I went  
16 through a while ago, it's staff's position that the original  
17 projections contained in the recommendation are reasonable  
18 projections. This is a very quickly growing area, and to see  
19 the differential grow is not unrealistic.

20 In an attempt to reach an accommodation for the  
21 concerns that Public Counsel has, staff offered a compromise,  
22 should the Commission believe that a growth in that  
23 differential is not appropriate? Again, the compromise would  
24 be to grow water ERCs at 1.3 percent per month and have  
25 wastewater residential ERCs be 195 less than the calculated

1 water ERCs. This would maintain the differential observed at  
2 the end of 2004.

3 CHAIRMAN EDGAR: Okay. Mr. Stallcup, am I to  
4 understand that the staff recommendation remains as it is in  
5 the document before us. However, as you have discussed, there  
6 would be more than one way of looking at this?

7 MR. STALLCUP: Yes, ma'am. My recommendation remains  
8 the same.

9 CHAIRMAN EDGAR: Okay. Thank you. And, Commissioner  
10 Arriaga.

11 COMMISSIONER ARRIAGA: Just a brief comment about our  
12 duties here as Commissioners. And I'm a little worried,  
13 because I do believe and understand that part of our job is to  
14 make sure that we level the playing field to promote investment  
15 and to give clear rules of the game to those companies that are  
16 investing while at the same time caring for the needs of the  
17 consumer.

18 So at the beginning of this hearing I made it a clear  
19 point to make sure that the consumer has been appropriately  
20 represented and has participated appropriately in this  
21 proceeding. But what I'm hearing is that now the utility has  
22 not had a fair chance to present its case.

23 I personally don't feel comfortable with learning  
24 that you came to an agreement or changed the proposal without  
25 the utility knowing what was happening. So we need to be fair

1 to both sides and balance ourselves in this arena. So I'm a  
2 little uncomfortable with your agreements with OPC without  
3 knowledge from the utility.

4 MR. STALLCUP: Commissioner, I can understand your  
5 concern. A brief history of how this evolved. Late yesterday  
6 afternoon I had a conversation with Ms. Merchant from OPC about  
7 her concerns about this differential growing. Last night I  
8 took the work papers home with me and worked with the data, if  
9 you will, in an attempt to find some method that would  
10 accommodate Ms. Merchant's concerns while not compromising the  
11 fundamental projections that staff had prepared in its  
12 recommendation.

13 I guess it's my fault that I didn't talk to the  
14 utility's counsel prior to the agenda, but, quite frankly, I  
15 just didn't have the time in preparation to getting ready to  
16 come here today. Now, it certainly was not my intent to cut  
17 the utility out of a presentation of what this data is, and I'm  
18 certainly available to show them what the compromise, if you  
19 will, would do to the projections.

20 I don't believe it makes a very large change to  
21 staff's original forecast. I can assure them of that.  
22 However, again, I would like to reiterate that I believe the  
23 forecast contained in the original recommendation is  
24 appropriate.

25 CHAIRMAN EDGAR: Mr. Stallcup, thank you. It sounds

1 like you and I, and I'm sure many others in this room, were  
2 working late into the night pouring over this item.

3 Commissioner Deason, did you have a comment?

4 COMMISSIONER DEASON: No. And I'm prepared to make a  
5 motion, if there are no other questions.

6 CHAIRMAN EDGAR: Commissioner Deason for a motion.

7 COMMISSIONER DEASON: I would move staff's original  
8 recommendation on Issue 14.

9 COMMISSIONER CARTER: Second.

10 CHAIRMAN EDGAR: We have a motion and a second on  
11 Issue 14. All in favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN EDGAR: Opposed?

14 Show Issue 14 approved.

15 And before we go on to Issue 15, let me just say  
16 briefly that it is our intention right now, I believe, to go  
17 through and finish this item, all of the issues that are before  
18 us for Item 11, then to take a lunch break and then to come  
19 back for Item 12A and then Item 13.

20 So Issue 15.

21 MR. FLETCHER: Commissioners, Item 15 is staff's  
22 recommendation of the appropriate projected water and  
23 wastewater revenues to take it from 2004 to 2006 test year, and  
24 that includes the miscellaneous service revenues.

25 COMMISSIONER DEASON: Move staff.

1 COMMISSIONER CARTER: Second.

2 CHAIRMAN EDGAR: A motion and a second on Issue 15.

3 All in favor say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN EDGAR: Opposed? Show Issue 15 approved.

6 Issue 16.

7 MR. FLETCHER: Commissioners, Item 16 is staff's  
8 recommendation to impute \$2,811 associated with a related party  
9 developer's sod watering usage, and that is \$2,800 in the test  
10 year.

11 COMMISSIONER DEASON: Move staff.

12 COMMISSIONER CARTER: Second.

13 CHAIRMAN EDGAR: A motion and a second on Issue 16.

14 All in favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN EDGAR: Opposed?

17 Show Issue 16 approved.

18 Issue 17.

19 MR. FLETCHER: Commissioners, Item 17 is staff's  
20 recommendation to impute \$1,034 of reuse revenues based on  
21 staff's recommendation in Issue 32 of the reuse rate of 7 cents  
22 per thousand gallons.

23 COMMISSIONER DEASON: Move staff.

24 COMMISSIONER CARTER: Second.

25 CHAIRMAN EDGAR: A motion and a second. All in favor

1 of Issue 17, please say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN EDGAR: Opposed?

4 Show Issue 17 approved.

5 Issue 18, Mr. Fletcher.

6 MR. FLETCHER: Commissioners, Issue 18 is staff's  
7 recommendation recommending uncontested adjustments by the  
8 utility. Audit adjustments, NOI audit adjustments.

9 COMMISSIONER DEASON: Move staff.

10 COMMISSIONER CARTER: Second.

11 CHAIRMAN EDGAR: Before we take up that motion, Mr.  
12 Reilly, did you have a comment on this one?

13 MR. REILLY: On 18? Yes, just briefly the language  
14 about it being an agreement between staff and the utility. It  
15 is not stipulated. That is the only comment.

16 CHAIRMAN EDGAR: Staff.

17 MS. GERVASI: Duly noted.

18 CHAIRMAN EDGAR: Thank you.

19 We have a motion and a second on Issue 18. All in  
20 favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN EDGAR: Opposed?

23 Show Issue 18 approved.

24 Issue 19, Mr. Fletcher.

25 MR. FLETCHER: Issue 19, Commissioners, is staff's

1 recommendation on three historical O&M expenses for 2004.

2 COMMISSIONER DEASON: Move staff.

3 COMMISSIONER CARTER: Second.

4 CHAIRMAN EDGAR: A motion and a second on Issue 19.

5 All in favor say aye.

6 Opposed?

7 Show Issue 19 approved.

8 Issue 20.

9 MR. FLETCHER: Issue 20, Commissioners, is staff's  
10 recommendation of nongrowth related adjustments on certain O&M  
11 expense accounts.

12 COMMISSIONER DEASON: Move staff.

13 COMMISSIONER CARTER: Second.

14 CHAIRMAN EDGAR: A motion and a second on Issue 20.

15 All in favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN EDGAR: Opposed? Show Issue 20 approved.

18 Issue 21.

19 MR. FLETCHER: Issue 21, Commissioners, is staff's  
20 recommended 2006 projected purchased power expense.

21 COMMISSIONER DEASON: Move staff.

22 COMMISSIONER CARTER: Second.

23 CHAIRMAN EDGAR: A motion and a second on Issue 21.

24 All in favor say aye.

25 (Unanimous affirmative vote.)



1 CHAIRMAN EDGAR: Opposed?

2 Issue 21 is approved.

3 Issue 22.

4 MR. FLETCHER: Issue 22, Commissioners, is staff's  
5 recommended chemical expenses for the 2006 projected test year.

6 COMMISSIONER DEASON: Move staff.

7 COMMISSIONER CARTER: Second.

8 CHAIRMAN EDGAR: A motion and a second on Issue 22.

9 All in favor say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN EDGAR: Opposed?

12 Show Issue 22 approved.

13 Issue 23.

14 MR. FLETCHER: Issue 23, Commissioners, is staff's  
15 recommended adjustments to the remaining O&M expenses based on  
16 the projected billing determinants in Issue 14.

17 COMMISSIONER DEASON: Move staff.

18 COMMISSIONER CARTER: Second.

19 CHAIRMAN EDGAR: A motion and a second on Issue 23.

20 All in favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN EDGAR: Opposed?

23 Show Issue 23 approved.

24 Issue 24.

25 MR. FLETCHER: Issue 24, Commissioners, is staff's

1 recommended appropriate amount for rate case expense for this  
2 utility in this proceeding.

3 MR. FRIEDMAN: Yes.

4 CHAIRMAN EDGAR: I believe you indicated earlier that  
5 you may want to speak on this?

6 MR. FRIEDMAN: That's correct, Madam Chairman, I do  
7 want to speak on this issue.

8 What the staff has done is the staff has done two  
9 things. This recommendation on rate case expense has got  
10 absolutely no support in any regulatory principles that this  
11 Commission has ever utilized, with one exception, in the 25  
12 years I have been practicing here.

13 The recommendation has got two fatal flaws. First,  
14 it sets rate case expense based upon recent cases using an  
15 average based upon a number of ERCs, and there are two fatal  
16 flaws in that position. The first is using an average, and the  
17 second is basing an average on ERCs. And I will discuss each  
18 of those in more detail later.

19 The second flaw is that since the staff is not  
20 recommending an increase in the water revenues, the staff has  
21 made an adjustment to cut the rate case expense in half. Now,  
22 utilizing an average, such as the staff is recommending without  
23 any additional analysis, just a pure mathematical average,  
24 abdicates the Commission's responsibilities to that of a  
25 calculator. Anybody can take a calculator and calculate what

1 an average is. It takes absolutely no regulatory thought,  
2 policy, or principles involved. It's just a mathematical  
3 calculation, and is just wrong and bad regulatory policy.

4 I always try to look at things from both sides. I  
5 try to be fair. I look at this and I said, if they would have  
6 done the average, and the average would have come out less than  
7 the average of the cases that the staff determined, would the  
8 staff be saying, okay, they did a good job, it's less than the  
9 average, we think you should increase it up to the average.

10 You know, if they're going to say -- if I thought  
11 they would do that, you would say, well, that's fair, you do it  
12 one way, you know, what is good for the goose is good for the  
13 gander kind of thing. Do you think they would do that? I  
14 don't think there is a chance in a million they would do that.  
15 And if they did, Mr. Reilly would be sitting over here where I  
16 am making these exact arguments of how unfair using an average  
17 is.

18 Now, you think of the effect of an average,  
19 especially in a case where you do an average where it only goes  
20 down and not up, ultimately what you are going to have is rate  
21 case expense being reduced to a single number. And it's always  
22 going to do down. You take these averages every time, and your  
23 next rate case you are going to average it in, but they are  
24 never going to come up. If you have got a rate case expense  
25 that is below the average, it is going to stay down there.

1 Ultimately, you are going to have rate case expense reduced to  
2 a mere mathematical calculation which ignores, which ignores  
3 the variances in rate cases.

4           They are different. Every rate case is different.  
5 Some have simple case -- what you think is a simple case may  
6 have very complex issues involved. And you can't just take a  
7 case and say they are all the same, they are all going to have  
8 the same issues. They are all variable.

9           There is apparently one case decided by this  
10 Commission about 25 years ago in which average rate case  
11 expense was used. As Ms. Gervasi pointed out, the appellate  
12 court did what's called a PCA without opinion. And for you  
13 that may not understand that, what it meant was that the court  
14 didn't write an order, all they said was per curiam affirmed.

15           And the law in Florida is that a per curiam affirmed  
16 opinion does not stand for any proposition, does not stand for  
17 any proposition of law. So you cannot imply that because the  
18 appellate court PCA affirmed that Keystone Water case order,  
19 that that meant that the appellate court agreed that using  
20 average rate case expense based on ERCs is appropriate.

21           So you've got that single case among hundreds that  
22 have followed that decision that have ignored averaging of rate  
23 case expense and for good reason. And this Commission  
24 shouldn't resurrect that anomalous decision. It is one of  
25 those anomalies that happened. I don't know if any us were

1 around when it did. There may have been a good reason for  
2 doing it back then, but it hasn't been followed in any  
3 subsequent cases and for good cause.

4           When you establish rates, you don't establish the  
5 rates by averaging what other rate cases have -- other  
6 utilities have gotten in rate increases, because there are  
7 variables in companies. Every company is a little different.  
8 It's why you don't compare what utilities are asking for to  
9 other governments, to government utilities and to other private  
10 utilities. Each company stands on its own. You look at each  
11 company and the variables included and make a determination as  
12 to what the rates are. That's no different than rate case  
13 expense. You look at the rate case expense and you evaluate  
14 whether it is reasonable, and the staff actually did that.  
15 They came through and did an analysis and they cut back like  
16 they always do for having to redo some of the deficiencies and  
17 duplicating, and they did a good job of making that kind of  
18 analysis, and then they came up with this averaging.

19           And to add poor regulatory policy on top of poor  
20 regulatory policy, the staff recommends that this average be  
21 based upon the number of ERCs, and that makes absolutely no  
22 sense at all. The effort of the company, the effort of the  
23 consultants, of the attorneys have little to do with the number  
24 of ERCs.

25           The MFRs are going to be the MFRs, assuming they're

1 Class B, which could be in the large range, as this company is.  
2 Whether it is a small B or a large B, you have got the same  
3 amount of effort to put together the MFRs. You have got the  
4 noticing. The noticing that send out to customers, except for  
5 maybe the postage, which is minor, isn't reflective by ERCs,  
6 doesn't guide that.

7           Go to a customer meeting. The attendance at a  
8 customer meeting, whether the company has got lots of ERCs or a  
9 few, you have got to spend the same amount of time at the  
10 meeting. And I can tell you, whether they are big or little  
11 doesn't mean that you are going to have a lot of customers be  
12 there. I have been to very small utilities that had a lot of  
13 customers, and I have been to big utilities that had very few  
14 people show up. So the number of customers has got nothing to  
15 do with the number of customers that are going to show up at  
16 customer meetings, and certainly not the length of time that  
17 the company and the lawyers have to be at a customer meeting.

18           Also at this agenda, you know, coming up with this  
19 agenda conference, ERCs has got nothing to do with it. Whether  
20 it's a large or a small company, we have got the same amount of  
21 time to prepare for this agenda. So, you know, averaging based  
22 on ERCs makes no regulatory sense, and it certainly isn't good  
23 regulatory policy, as should be evident by the fact that it has  
24 only been used one time about 25 years ago.

25           And if that reduction in rate case expense wasn't

1 egregious enough, the staff arbitrarily recommends cutting the  
2 rate case expense by 50 percent since it recommends that the  
3 utility is not entitled to a water rate increase. At first  
4 blush you say, well, they have got a water system, a sewer  
5 system, you know, they got it in half of theirs, it makes sense  
6 to cut half the rate case expense. Well, that ignores a couple  
7 of important factors.

8 First, it's contrary to this Commission's decision in  
9 the Aloha Seven Springs water rate case which recognized that  
10 there are economies in filing water and wastewater rate cases  
11 simultaneously. In that Aloha case, Aloha Utilities had filed  
12 a wastewater rate increase in 2001, and then -- a wastewater  
13 rate case in 2001, then subsequently a water rate case in 2002.  
14 And the question was should they have filed the water rate case  
15 at the same time they filed the wastewater rate case.

16 And in analyzing rate case expense, actually, Public  
17 Counsel's witness testified that had Aloha filed the water rate  
18 case simultaneously with the wastewater rate case, there would  
19 have been no additional rate case expense. In other words, it  
20 takes no additional time to file water and wastewater rate case  
21 together than it does to file one.

22 If you follow the Public Counsel's position in that  
23 case to this current case, then there would be no reduction in  
24 rate case expense by virtue of the fact that the staff has not  
25 recommended that the utility get a water rate increase. Now,

1 granted this Commission didn't follow the Public Counsel's  
2 position in that case. What the Commission did state in that  
3 case was that while a combined filing would have greatly  
4 reduced the cost, we acknowledge that there have been  
5 incremental costs. And in that case what the Commission ended  
6 up doing was it recognized that they thought that the utility  
7 should have filed them both at the same time. The Commission  
8 in the Aloha case reduced the rate case expense in the water  
9 case by 50 percent.

10           And even if you followed that theory, if you didn't  
11 follow the Public Counsel's theory it shouldn't be reduced at  
12 all, even if you followed that theory and through to the  
13 instant case, then Plantation Bay Utilities would be entitled  
14 to 75 percent of the rate case expense, even if it doesn't get  
15 an increase in the water system.

16           Now, when Plantation Bay filed this rate case it was  
17 not unmindful of what happened to Aloha back in 2001 and 2002  
18 in deciding to file the water and wastewater cases together.  
19 If it had not, it could have easily have found itself in the  
20 shoes of Aloha if it would have waited until another year or so  
21 to file a water rate case and be subject to being criticized  
22 for not having filed them simultaneously.

23           The benefit of filing cases simultaneously in this  
24 case is that it provides the data necessary for analyzing those  
25 expenses that need to be allocated between the water and



1 wastewater system. Management expense, management fee was one  
2 of those, and there are a great many others. So even in the  
3 wastewater system, in order to evaluate the wastewater rate  
4 increase, you need to make some evaluation on the water side.  
5 And so the data that the utility has provided in this rate case  
6 for the water rate case, even though none was provided, does  
7 provide a benefit to the Commission in analyzing whether a  
8 wastewater rate increase is appropriate.

9           The staff recommendation on rate case expense ignores  
10 the regulatory principles and logic and must be rejected.  
11 There is a sufficient analysis in the staff's recommendation to  
12 grant rate case expense using the traditional principles which  
13 this Commission has followed for the past 25 years with that  
14 one exception.

15           Thank you.

16           CHAIRMAN EDGAR: Thank you, Mr. Friedman.

17           Commissioner Carter.

18           COMMISSIONER CARTER: Madam Chairman, may I be  
19 recognized to ask three questions?

20           CHAIRMAN EDGAR: Yes, sir.

21           COMMISSIONER CARTER: Mr. Friedman, I appreciate your  
22 eloquence and your arguments, but I'm going to ask you three  
23 questions and just give me the facts, okay?

24           MR. FRIEDMAN: Yes, sir.

25           COMMISSIONER CARTER: One is what is the basis of the

1 rates in terms of the cost to prosecute the case? What is the  
2 basis, what went into the basis of your rates?

3 Then I am going to ask you what are the components;  
4 then I am going to ask you the amount. Do you follow my train  
5 of thought there?

6 MR. FRIEDMAN: Are you talking about for the rate  
7 case in total or for the rate case --

8 COMMISSIONER CARTER: No, I'm talking about the rate  
9 case expense. The components, and then how we arrived at the  
10 amount. You are saying that the staff arose at an average  
11 amount and they discounted that. So I am asking you, give me  
12 the components of yours. Just the facts, you know.

13 MR. FRIEDMAN: And I will, I will try to start at the  
14 beginning. And obviously there are lots of meetings among the  
15 consultants in getting together before you file the rate case.

16 COMMISSIONER CARTER: So they are basically hourly  
17 rates for the consultants, right?

18 MR. FRIEDMAN: And company time, too, Commissioner.

19 COMMISSIONER CARTER: The company time?

20 MR. FRIEDMAN: Yes.

21 COMMISSIONER CARTER: Okay. So there is a cost  
22 associated with that.

23 MR. FRIEDMAN: Yes. It's getting the team together,  
24 deciding what the test year ought to be, filing a test year  
25 letter with the Commission, with the consultants. And I'm the

1 lawyer, so I'm the quarterback. I don't get involved in the  
2 nuts and bolts of what the consultants do. But the  
3 consultants, the financial consultant puts together the minimum  
4 filing requirements. The engineering consultant visits the  
5 utility system and analyzes the utility system from a used and  
6 useful component. In almost every case the staff has data  
7 requests. In this case I think we had three or maybe even four  
8 data requests.

9 COMMISSIONER CARTER: Now, the costs for data  
10 requests is a separate cost from the staff of the consultants,  
11 the attorneys, the staff of the company?

12 MR. FRIEDMAN: It is another function. It is  
13 something that all the consultants and the lawyers and the  
14 company have to get together to address, and that is responding  
15 to the staff's data requests. Then we have got -- we have to  
16 respond to the audit when it comes out. We review the  
17 engineering report when it comes out. There is a customer  
18 meeting that is attended, you know, a lot of communications  
19 back and forth with the staff informally. An analysis of the  
20 staff's recommendation. Attending this agenda conference and  
21 discussing the outcome with the utility. And, you know, as far  
22 as to the PAA action, that pretty much covers it.

23 COMMISSIONER CARTER: Okay. I was just saying --  
24 Madam Chairman, I know that has been more than three, but --

25 CHAIRMAN EDGAR: Commissioner Carter, you have the

1 floor.

2           COMMISSIONER CARTER: -- but I'm trying to ascertain  
3 that if the staff's recommendation is so unreasonable, then,  
4 okay, let's look at what is reasonable. In my mind, I'm trying  
5 to get that around -- I know as an attorney I prosecute a case,  
6 I have costs, I have consultant fees, I have professional  
7 consultant fees. If you want to bring in an expert witness,  
8 you have got that. You have got travel time, you have got  
9 hotel time. I'm trying it get what are the components that  
10 are -- so you are saying that there are -- and I'm not putting  
11 words in your mouth, but you are saying that staff discounted  
12 your actual costs that you expended in prosecuting this case.  
13 Am I reading you correctly on that?

14           MR. FRIEDMAN: Absolutely. What they did was they  
15 looked at some cases, and, incidentally, I was involved in all  
16 but maybe one of the ones they used as an average, and they  
17 just looked at the last six or seven rate cases and came up  
18 with an average. And, like I say, I was involved in those.  
19 And some cases were very low and some cases were higher, and  
20 that is why you have averages. There's some high and some low.

21           But, yes, I mean, what the staff ought to do -- and  
22 that is what they really in a lot of that analysis, they looked  
23 at it and said, okay, is the amount of time that the consultant  
24 spent reasonable? Look at everybody, is the amount of time  
25 reasonable? Is the rate that the consultants charges

1 reasonable? They always do that. They did in it this case.  
2 Then they look at it and say, okay, how much time did it take  
3 you to correct deficiencies, because we are not going to let  
4 you collect that amount. And so they did that in this case.  
5 They made an analysis of all the consultants' time, and they  
6 reduced the rate case expense by what they thought was  
7 necessary to correct deficiencies, as well as duplicative time,  
8 and maybe some other expenses. But that's the way you do it.  
9 It every case is judged on its own.

10           And the staff, because they were the ones involved in  
11 the case, they know how complex it was, they know how many data  
12 requests were sent, they know how complex the data requests  
13 are, they know how the customer meeting went, what issues were  
14 brought about by the customer meeting. And so, all of those  
15 variations have to come into play in determining, you know,  
16 whether the amount of time that the consultants spent is  
17 reasonable in light of all of this work that they saw was done.

18           And they typically discount it if they think that  
19 some work was done that needn't be done or if it was  
20 duplicative. And they did that in this case. They went  
21 through and did a good analysis of what it ought to be, and  
22 then they get a couple of pages later and say, however, we are  
23 going to look at these last rate cases and do an average and  
24 just ignore all of that evaluation that we did based upon the  
25 uniqueness of that case. We are just going to throw that out

1 the window and we are just going to look at an average.

2 COMMISSIONER CARTER: Thank you, Madam Chair.

3 MR. REILLY: OPC would like to have a few comments,  
4 if possible, on this issue.

5 CHAIRMAN EDGAR: Mr. Reilly.

6 MR. REILLY: Briefly, we don't, of course, concur  
7 with the utility's criticism of the staff in this. It's a very  
8 serious problem. Escalating, escalating rate case expense in  
9 the 20 years I have been doing this, it has become a greater  
10 and greater problem to ratepayers to even be able to enter into  
11 the arena and even criticize or even protest. Because they are  
12 faced not only with -- their case is put on for free with the  
13 Office of Public Counsel, but they are faced with having to pay  
14 for the utility to respond to their objections. So it becomes  
15 a dollar impediment to even be able to have an opportunity to  
16 be heard.

17 So, the Commission and staff have a statutory duty to  
18 try to really only approve prudent and reasonable rate case  
19 expense. When the utility first made its presentation and made  
20 a statement, staff just made mathematical calculations with no  
21 detailed analysis. As the discussion continued on, I think I  
22 heard him concede that the staff did do a very detailed  
23 analysis in disallowing expenses associated with deficiencies,  
24 inappropriate amount of time spent on certain items, expenses  
25 associated with pursuing issues without any merit that they

1 shouldn't expect the ratepayers to pay for just chasing wind  
2 mills. And, fourthly, failure to adequately even document rate  
3 case expense. So, I think staff did work very hard, a detailed  
4 look at all of these rate case expenses and threw out which  
5 they felt was not prudent and reasonable.

6           Likewise, staff applied a sanity check. And there  
7 was a quote in here, what has ERCs got to do with it. I mean,  
8 in the utility's view, ERCs shouldn't even factor in. Pay us  
9 whatever we feel we need to do. And I think that the  
10 Commission's obligation to do reasonable rate case expense, it  
11 is a factor, it's not the deciding, totally determinative  
12 factor, but it has got to be a factor in considering what is  
13 reasonable rate case expense. How much reasonable rate case  
14 expense should be borne by the ratepayers by knowing how many  
15 ratepayers to divide that cost by. That policy that has been  
16 followed through has gone up in the courts, has been found to  
17 be absolutely legitimate and has been upheld. And so we feel  
18 that exercise was reasonable, what portion of the rate case  
19 expense should be borne by ratepayers.

20           And lastly, I think staff correctly looked at the  
21 reality that this company had just come back, had been in an  
22 overearnings situation, even looking at the numbers leading  
23 into this case they were in an overearnings situation. It was  
24 not reasonable and proper to come for a rate increase faced  
25 with this reality that ratepayers -- now if they want to go out

1 and pay consultants and pay attorneys, they can pay them  
2 anything they want to and go for whatever they want. But it  
3 wasn't reasonable to seek a water rate increase at this point  
4 in time given the numbers that the staff was looking at.

5 The ratepayers should not be made to pay for such an  
6 exercise. And we agree 100 percent with staff on that point.  
7 So it did leave us with the recommendation that we have, which  
8 we think is totally reasonable. And I believe it helps meet  
9 the Commission's obligations to try to keep some sanity and  
10 reasonableness to rate case expense.

11 Thank you.

12 CHAIRMAN EDGAR: Thank you, Mr. Reilly.

13 Commissioner Tew.

14 COMMISSIONER TEW: Thank you, Chairman.

15 If you all agree that it would help, I was thinking  
16 that it might be good for Mr. Fletcher to walk us through his  
17 Attachment B on Page 88, and show us how he calculated the  
18 number that is in the staff recommendation.

19 CHAIRMAN EDGAR: Mr. Fletcher, Attachment B.

20 MR. FLETCHER: It's on Page 88, Commissioners, in the  
21 staff's revised recommendation. If you look at the box that  
22 starts with Plantation 2006 before adjustments, and you look at  
23 total rate case expense, that's the utility's requested rate  
24 case expense of 215,894. Staff's initial, we initially had  
25 five adjustments that totalled \$27,000, and that brings you to



1 the line below that of 188,869.

2           Okay. If we go to the next line on the average, it  
3 is 78,713. Now, that is based on, if you look down, go to  
4 column annual rate case expense per ERCs wastewater, and there  
5 is a box enclosed, \$25.30. That is based on the average ERC  
6 rate case expense cost for the rate cases listed as Indiantown,  
7 Eagle Ridge, Labrador, Mid-County, Cypress Lakes, Alafaya, and  
8 Florida Public Utilities Company. And the dates of those rate  
9 cases are listed in parentheses.

10           So that is taking an average of all those approved  
11 rate case expenses, approved rate case expense in those cases  
12 to come up with that \$25.30 average per ERC cost. And we  
13 applied that average ERC cost to the water, the ERCs for  
14 Plantation in order to come up with the 78,713. That's on the  
15 total rate case expense column and the third figure listed.

16           And for informational purposes, the 89,114, that was  
17 just an adjustment to Indiantown's per ERC cost of \$29 per ERC.

18           CHAIRMAN EDGAR: Thank you, Mr. Fletcher.

19           COMMISSIONER CARTER: Madam Chair.

20           CHAIRMAN EDGAR: Commissioner Carter.

21           COMMISSIONER CARTER: Thank you. I read this on Page  
22 88, and what my concern was was that you are going all the way  
23 back to '01 and all the way up to '03, and in one case all the  
24 way back to 2000. Has there been any change? I mean, has the  
25 cost of living gone up, do you know what I'm saying? I'm

1 trying to get my arms around this thing. But when you are  
2 talking about costs, and I'm saying costs in the generic sense  
3 of the word now, that what you bought in 2000 and what you are  
4 buying in '06, it seems like, to me, there is some difference  
5 there. Do you know what I'm saying to you?

6 MR. FLETCHER: Yes, Commissioner. There could be  
7 some -- the consultants in that case, like Mr. Friedman  
8 mentioned, that he was the attorney in all of these cases,  
9 except perhaps one, his rate could have increased. Yes, there  
10 might have been some inflation there. And this is the date  
11 that -- I want to point out that this I was also the date that  
12 they came in and filed it. It's usually about five months  
13 after that date. So some them, like for Indiantown, I know  
14 that the final order on that case came out in the beginning of  
15 2005. The time clock was extended, and that did reflect the  
16 current rates in that case. And I believe Mr. Friedman --  
17 excuse me, that was one of the cases he was not on, I'm sorry.

18 CHAIRMAN EDGAR: Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: Madam Chairman, I'm prepared  
20 to make a motion, if you will allow me to make a comment  
21 before.

22 CHAIRMAN EDGAR: Are there further questions at this  
23 point?

24 Seeing none, Commissioner Arriaga, a comment and a  
25 motion.

1           COMMISSIONER ARRIAGA: I will make a comment, and it  
2 is addressed to you, Mr. Friedman. You are a good attorney,  
3 there is no question about that. And the consultant might be a  
4 good consultant. I have seen you working. And if I ever went  
5 into the water business, I would have no doubt about hiring you  
6 to represent me. You are a good attorney. And you have the  
7 right, absolutely you have the right to charge your stipend as  
8 you deem fit. I used to be a consultant. I would not allow  
9 anybody to tell me how much I should charge per hour. If you  
10 want to hire me at the rate of \$500 an hour or \$100 an hour,  
11 you hire me. If you don't, fine, I will walk away. And you  
12 have the right to do that.

13           Now, to ask us at the same time to pass on that cost  
14 of your well-deserved stipend to the consumer, 100 percent to  
15 the consumer, seems to me imprudent. So if the company wanted  
16 to hire you and pay you and the rest of the people of the  
17 company wanted to spend, fine, the company has the right to do  
18 that, but the consumer cannot carry 100 percent of that cost.

19           Now, having said that, Madam Chairman, I am moving  
20 staff on this recommendation.

21           CHAIRMAN EDGAR: We have a motion for the staff  
22 recommendation. Do we have a second.

23           COMMISSIONER TEW: I'll second.

24           CHAIRMAN EDGAR: We have a motion and a second on  
25 Item 24.

1 COMMISSIONER CARTER: Madam Chairman.

2 CHAIRMAN EDGAR: Commissioner Carter for a comment.

3 COMMISSIONER CARTER: I just want to make a comment.

4 I believe that somewhere, somewhere between where staff is and  
5 where the utility is is where we should be. And this  
6 recommendation doesn't give us an opportunity to get there. I  
7 mean, you are going all the way back to 2000, and you are  
8 making a decision about fees in 2006. We want to be prudent,  
9 we want to be reasonable, and we also should be logical, and we  
10 should be consistent. Because the next time this comes up, we  
11 are going to have to make the same decision. I just wanted to  
12 say that.

13 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

14 MR. FERGUS: Can you speak up, please.

15 CHAIRMAN EDGAR: We have a motion. We have a second.

16 Before we call it for a vote, is there further  
17 discussion or comment? Okay. All those in favor of the motion  
18 say aye.

19 COMMISSIONER ARRIAGA: Aye.

20 COMMISSIONER TEW: Aye.

21 CHAIRMAN EDGAR: Aye.

22 Opposed?

23 COMMISSIONER DEASON: Nay.

24 COMMISSIONER CARTER: Nay.

25 CHAIRMAN EDGAR: Show Item 24, staff recommendation

1 approved by a vote of three to two.

2 And that brings us to Issue 25.

3 MR. FLETCHER: Issue 25, Commissioners, is staff's  
4 recommendation of the appropriate real estate and intangible  
5 personal property taxes for the projected 2006 test year.

6 COMMISSIONER DEASON: I can move staff.

7 CHAIRMAN EDGAR: We have a motion. Do I have a  
8 second?

9 COMMISSIONER CARTER: Second.

10 CHAIRMAN EDGAR: A motion and a second on Issue 25.  
11 All in favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN EDGAR: Opposed?

14 Show Issue 25 approved.

15 Issue 26.

16 MR. FLETCHER: Issue 26, Commissioners, is staff's  
17 recommendation that no allowance be provided to the utility for  
18 income tax provisions.

19 COMMISSIONER DEASON: Move staff.

20 COMMISSIONER CARTER: Second.

21 CHAIRMAN EDGAR: A motion and a second on Issue 26.

22 All in favor say aye.

23 (Unanimous affirmative vote.)

24 CHAIRMAN EDGAR: Opposed?

25 Show Issue 26 approved.

1 Issue 27.

2 MR. FLETCHER: Issue 27, Commissioners, is staff's  
3 recommended operating income and loss before any revenue  
4 increase or decrease.

5 COMMISSIONER DEASON: Move staff.

6 COMMISSIONER CARTER: Second.

7 CHAIRMAN EDGAR: A motion and a second on Issue 27.

8 All in favor say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN EDGAR: Opposed?

11 Show Issue 27 approved.

12 Issue 28.

13 MR. FLETCHER: Issue 28, Commissioners, is staff's  
14 recommended revenue requirements for water and wastewater for  
15 the projected test year.

16 COMMISSIONER DEASON: Move staff.

17 COMMISSIONER CARTER: Second.

18 CHAIRMAN EDGAR: A motion and a second on Issue 28.

19 All in favor say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN EDGAR: Opposed?

22 Show Issue 28 approved.

23 This brings us to Issue 27, Mr. Fletcher.

24 MR. FLETCHER: Issue 29?

25 CHAIRMAN EDGAR: Excuse me. I'm sorry. Yes, Issue

1 29. Thank you.

2 MR. FLETCHER: Is staff's recommendation of the  
3 appropriate water and wastewater rate structures. We recommend  
4 the continuation of the base facility and gallonage charge rate  
5 structure.

6 COMMISSIONER DEASON: I have a question.

7 CHAIRMAN EDGAR: Commissioner Deason.

8 COMMISSIONER DEASON: What is the allocation that's  
9 being used between fixed and variable costs in determining the  
10 base charge versus the gallonage charge?

11 MR. FLETCHER: Presently for water, we're  
12 recommending later that the revenue decrease for water be taken  
13 out of the base facility. The company is currently recovering  
14 about 71 percent, approximately 71 percent from the BFC for  
15 water and the remaining for the gallonage charge. What staff  
16 is recommending later is recovery of 56 percent of BFC through  
17 the wastewater and about 44 for the gallonage is what we are  
18 recommending in Issue 31.

19 COMMISSIONER DEASON: So with your recommendation,  
20 you're taking the decrease away from the base charge,  
21 correct --

22 MR. FLETCHER: Correct.

23 COMMISSIONER DEASON: -- in a later recommendation?

24 MR. FLETCHER: In a later issue, Issue 31.

25 COMMISSIONER DEASON: That has the effect of having

1 44 percent of costs being recovered through the base charge, is  
2 that correct?

3 MR. FLETCHER: No, Commissioner, not for water. Just  
4 for the wastewater we had that split. For water they are  
5 currently recovering 71 percent through the base facility  
6 charge. And we were applying all the recommended revenue  
7 decrease, applying that as a reduction to their BFC charge. So  
8 it should have an effect of reducing the current recovery of 71  
9 percent to the BFC.

10 COMMISSIONER DEASON: But we don't know what the 71  
11 percent goes down to as a result of that modification?

12 MR. FLETCHER: I did a rough calculation, it only  
13 brings it around 70 percent.

14 COMMISSIONER DEASON: Madam Chairman, the reason I  
15 asked the question, is that I know that I have gotten  
16 correspondence, e-mails, and maybe otherwise, I think a letter  
17 from customers indicating that they were wanting the Commission  
18 to pursue more of a conservation-oriented structure. I had  
19 this discussion with staff when we had previous meetings on  
20 this matter. And the consumption levels just do not justify a  
21 traditional conservation rate like an inverted structure.

22 It seems to me, though, that we may have some  
23 latitude in shifting more of the cost to a gallonage charge  
24 which does send more of a price signal when it comes to  
25 consumption. And if we're recovering approximately between 60



1 and 70 percent of cost in the base -- can you repeat that  
2 again, what is the --

3 MR. FLETCHER: Approximately 71 percent for the  
4 water.

5 COMMISSIONER DEASON: Is in what component?

6 MR. FLETCHER: In BFC, recovery of BFC.

7 COMMISSIONER DEASON: It seems like that is already a  
8 high number. I just don't know how much flexibility we have in  
9 designing -- I know that a base facility charge, in my opinion,  
10 is a conservation structure. It may not be an aggressive  
11 conservation structure, but it is nonetheless a conservation  
12 structure. I just don't know what latitude or flexibility we  
13 have to make it more conservation oriented, given the specific  
14 facts of this case. And maybe I'm jumping the gun here when we  
15 are talking about actual rate design, I don't know.

16 But I want staff to reiterate if they still feel  
17 there is not any room here to make the design of the rate more  
18 conservation oriented or not. Because if it is the desire of  
19 the customers, I think it is something we should pursue. I  
20 just don't know if the facts of this case justify it. And I  
21 guess that is my roundabout way of asking staff to give more  
22 information on the possibility of a conservation rate structure  
23 for this company.

24 MR. STALLCUP: Yes, Commissioner. Paul Stallcup from  
25 the staff here. As you properly noted, there is not very much

1 discretionary usage being billed by the utility. And so a  
2 traditional conservation rate would not be effective in this  
3 particular case. Therefore, staff recommends a continuation of  
4 the BFC gallonage charge.

5           Staff recommended the reduction in the BFC as an  
6 expedient way to accommodate the reduction in revenue  
7 requirements. There is not excessive seasonality for this  
8 particular utility. There is some, however. And I think there  
9 is latitude to accommodate a more conservation-oriented rate  
10 structure by probably a 50/50 split. I would be hesitant to go  
11 too much more below that, because there is some seasonality.  
12 And I didn't personally handle the revenue stability and  
13 sufficiency analysis to feel confident going lower than that.  
14 But I think we probably could accommodate a 50/50 split between  
15 the BFC and gallonage.

16           COMMISSIONER DEASON: So that would add more to the  
17 gallonage charge and further reduce the base facility charge,  
18 and you would be comfortable going to a 50/50 split?

19           MR. STALLCUP: Yes, sir.

20           COMMISSIONER DEASON: Is that something we need to  
21 consider here or is that a subsequent issue?

22           MR. STALLCUP: That is actually in the subsequent  
23 issue of what are the appropriate rates.

24           COMMISSIONER DEASON: Okay. But for Issue 29 we are  
25 just approving the BFC rate structure as a proper rate

1 structure. The actual rates themselves we will decide later?

2 MR. STALLCUP: Yes, sir.

3 COMMISSIONER DEASON: I can move staff on Issue 29.

4 COMMISSIONER TEW: Second.

5 CHAIRMAN EDGAR: I have a motion and a second.

6 Mr. Reilly, you were waving at me earlier, do you  
7 need to make a comment?

8 MR. REILLY: No.

9 CHAIRMAN EDGAR: Okay. Thank you.

10 MR. REILLY: I was just going to say we don't, of  
11 course, speak on rate design, but we just want to bring about  
12 the customer's concerns, and Commissioner Deason took care of  
13 that fine.

14 CHAIRMAN EDGAR: Commissioner Deason has done so.  
15 Thank you.

16 Okay. We have a mention and a second on Issue 29.  
17 All in favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN EDGAR: Opposed?

20 Issue 29 is approved.

21 And that brings us to Issue 30.

22 MR. FLETCHER: On Issue 30, Commissioners, staff is  
23 recommending no repression adjustment for water or wastewater.

24 COMMISSIONER DEASON: Move staff.

25 COMMISSIONER CARTER: Second.

1 CHAIRMAN EDGAR: A motion and a second on Issue 30.  
2 All in favor say aye.

3 (Unanimous affirmative vote.)

4 CHAIRMAN EDGAR: Opposed?

5 Show Issue 30 approved.

6 Issue 31.

7 MR. FLETCHER: On Issue 31, staff is recommending the  
8 appropriate water and wastewater rates. And this would be  
9 where we could reflect a 50/50 split between base facility and  
10 gallonage charge as you mentioned earlier, Commissioner Deason.

11 COMMISSIONER DEASON: Madam Chairman, I would move  
12 staff's recommendation with the modification of a 50/50 split  
13 between gallonage and base change.

14 COMMISSIONER CARTER: Second.

15 CHAIRMAN EDGAR: We have a motion and a second on  
16 Issue 31. All in favor say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN EDGAR: Opposed?

19 Show Issue 31 approved per the motion that  
20 Commissioner Deason made.

21 COMMISSIONER DEASON: And I would just request that  
22 in the order that it state that it was for conservation  
23 purposes we are making the change.

24 MR. FLETCHER: Yes, Commissioner.

25 MR. STALLCUP: Just a clarification, Commissioner.

1 That issue applies to both water and wastewater. Your  
2 recommendation for the 50/50 split applies just to water?

3 COMMISSIONER DEASON: My motion was just for water.  
4 Now that was the intent. If I'm overlooking something staff  
5 thinks we need to do with wastewater, I'm open to whatever  
6 input --

7 MR. STALLCUP: No, Commissioner, I was just  
8 clarifying.

9 COMMISSIONER DEASON: Yes, the motion was just for  
10 water.

11 CHAIRMAN EDGAR: All clear. Thank you.  
12 Issue 32.

13 MR. FLETCHER: Issue 32, Commissioners, is staff's  
14 recommendation of a reuse rate of 7 cents per thousand gallons.

15 COMMISSIONER DEASON: Move staff.

16 COMMISSIONER CARTER: Second.

17 CHAIRMAN EDGAR: A motion and a second for Issue 32.  
18 All in favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN EDGAR: Opposed?

21 Show Issue 32 approved.

22 Issue 33.

23 MR. FLETCHER: Issue 33, Commissioners, is staff's  
24 recommendation to implement -- for the utility to implement a  
25 \$5 late payment fee.

1 COMMISSIONER DEASON: Move staff.

2 COMMISSIONER CARTER: Second.

3 CHAIRMAN EDGAR: I have a motion and a second on

4 Issue 33. All in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN EDGAR: Show Issue 33 approved.

7 Issue 34.

8 MR. FLETCHER: Issue 34 staff is recommending no

9 wastewater interim refund is required.

10 COMMISSIONER DEASON: Move staff.

11 COMMISSIONER CARTER: Second.

12 CHAIRMAN EDGAR: I have a motion and a second on

13 Issue 34. All in favor say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN EDGAR: Opposed? Show Issue 34 approved.

16 Issue 35.

17 MR. FLETCHER: Issue 35 staff was recommending a

18 four-year rate reduction pursuant to the statute.

19 COMMISSIONER DEASON: Move staff.

20 COMMISSIONER CARTER: Second.

21 CHAIRMAN EDGAR: A motion and a second on Issue 35.

22 All in favor say aye.

23 (Unanimous affirmative vote.)

24 CHAIRMAN EDGAR: Opposed?

25 Show Issue 35 approved.

1           That brings us to Issue 36, Mr. Fletcher.

2           MR. FLETCHER: Issue 36, Commissioners, staff is  
3 recommending that the utility's current system capacity charges  
4 be discontinued and the implementation of a plant capacity  
5 charge of \$400 for water and \$358 for wastewater should be  
6 approved, and that the utility should be allowed to collect  
7 donated property beginning January 1st, 2007.

8           CHAIRMAN EDGAR: Mr. Friedman, did you want to make a  
9 comment on this?

10          MR. FRIEDMAN: I do. Thank you very much.

11          CHAIRMAN EDGAR: You're recognized.

12          MR. FRIEDMAN: As was mentioned previously, when  
13 Plantation Bay Utility Company was in a possible overearnings  
14 situation several years ago, it was because it did not have  
15 significant investment. The Commission then ordered Plantation  
16 Bay Utility Company to stop accepting contributed lines and  
17 begin installing those lines at its own expense. That worked  
18 too well, and Plantation Bay Utility Company now finds itself  
19 becoming overinvested and undercontributed.

20                 To remedy this, the staff is recommending that cash  
21 CIAC be reduced and that Plantation Bay Utility Company begin  
22 accepting contributed lines beginning in 2007. This will  
23 result in a CIAC of about 75 percent in 2012, which is within  
24 the range of what this Commission's rules and policies are on  
25 where you want to be as far as contributed property versus

1 invested property at the end of the day.

2           Plantation Bay Utility Company prefers to delay  
3 accepting contributed lines until 2008. We've provided the  
4 staff with an analysis showing that under Plantation Bay's  
5 scenario, that in 2012 the CIAC would be about 70 percent,  
6 which is still within the acceptable range that this Commission  
7 has approved in the past.

8           All other things being equal, the utility should be  
9 able to implement the service availability policy that it  
10 prefers. And since the result of the Plantation Bay Utility  
11 Company suggested service availability policy comes within the  
12 guidelines of this Commission, we believe that the staff should  
13 not second-guess the utility and that the utility should have  
14 the discretion to implement the policy that it desires to  
15 implement, so long as it is within the guidelines of this  
16 Commission, which the one that has been recommended by  
17 Plantation Bay falls within. Thank you.

18           CHAIRMAN EDGAR: Mr. Reilly.

19           MR. REILLY: Yes. It says with all things being  
20 equal, this Commission should not second-guess the utility's  
21 request to continue this practice of not accepting contributed  
22 lines. And we respectfully suggest that things are by no means  
23 equal, and that there are very special circumstances to this  
24 particular utility that this practice must be stopped, and  
25 stopped as quickly as possible, because we are dealing with a



1 developer-owned utility.

2           Now, the history of this situation goes back to 2001  
3 when the staff reviewed this company's 2000 annual report. As  
4 a result of this analysis, it appeared that the company was  
5 overearning. And they continued to do an analysis during 2001,  
6 and it ultimately resulted in this Commission issuing an order  
7 at the end of 2001, December 20, '01, opening up and initiating  
8 an overearnings investigation.

9           Now, this investigation continued on in 2002 looking  
10 at two year-end test periods, the 12/31/2000 and 12/31/01. As  
11 a result of this overearnings investigation all the way through  
12 2002, the staff determined that the company was, in fact,  
13 overearning on the water side by about \$36,000 and on the  
14 wastewater side by about \$14,000 for the test year ending 2000.  
15 By the time you get to the test year ending 2001, it had  
16 dropped down to 16,000, approximately, overearning on water,  
17 8,600 on the wastewater.

18           But as this continued on -- they also, though,  
19 determined by the time they -- when the record was issued, the  
20 order on the overearnings was issued, I believe, in October of  
21 2002. By the time that order on the overearnings investigation  
22 got issued, it was really not that great a problem. They  
23 determined that really in the interim collection period there  
24 wouldn't even be any refund on interim collection period.

25           By the time they analyzed the interim collection

1 period based on an average test year, and adding in some  
2 pro forma plant on the chlorination, it basically said there  
3 will be no refunds as a result of the overearnings  
4 investigation.

5           But for the fact that the company had gone ahead  
6 during this time period and implemented some indexes and  
7 pass-throughs there wouldn't have been any refund at all. But  
8 because of the index and pass-through rules allowing the  
9 Commission to revisit those increases within the 15-month  
10 period, and the staff ran its calculations on that, it did, in  
11 fact, result -- that's the only refund that was made as a  
12 result of the overearnings investigation was a \$23,900 refund  
13 on water and \$7,700 on wastewater. But you get to the final  
14 conclusion in October of '02, and the final order on  
15 overearnings basically finds no overearnings on a going-forward  
16 basis, and they propose -- and the order proposed and did not  
17 order any change in rates.

18           And if that is the way it ended, the customers would  
19 have been okay, but, unfortunately, a fateful intervening event  
20 occurs. A letter is received by staff in July of '02  
21 requesting, but while you are looking at all of this, why don't  
22 we -- that's when the utility requested, let's change this  
23 service availability policy. Let's no longer accept  
24 contributed lines, and we're going to go ahead and make the  
25 investment. And this was done on the basis of the fact that

1 the staff's analysis is that the company was exceeding the  
2 guideline, the guideline on contributed property. I think it  
3 was, according to 2000 numbers, 80 percent, on wastewater 84  
4 percent. In 2001 it was 82.72 percent and 84 percent, so it  
5 was exceeding the contributed. Even though it wasn't  
6 overearnings, there was a little more CIAC contributed than as  
7 prescribed by the guidelines. Although this Commission  
8 certainly knows there are utilities out there that don't meet  
9 the guidelines, and they are not brought in to change their  
10 service availability policy.

11           Why it's particularly a problem in this case is that  
12 we are talking about a developer-owned utility. But for this  
13 change in the service availability policy at the end of 2002,  
14 we would not be here today. We would not be having this rate  
15 case. This change in policy has created a windfall to the  
16 developer utility at the expense of the ratepayers.

17           By allowing the developer to put all of his costs of  
18 water and wastewater main construction for his improved lots in  
19 rate base, he has been able to increase his profit on the sale  
20 of his lots dollar for every dollar he was able to put in rate  
21 base as utility plant investment instead of his cost of  
22 developing those lots.

23           This change in service availability policy has caused  
24 Plantation ratepayers to pay twice for the cost of water and  
25 wastewater infrastructure. They pay the first time when they

1 come in and purchase their lots, and they pay a second time by  
2 giving the developer/utility a return on, quote, unquote,  
3 investment in the PSC-allowed rate base.

4 This service availability change made at the end of  
5 2002 must be stopped immediately. Staff is recommending that  
6 this just continue on until 2007. And just to go over some of  
7 the numbers, since the end of 2002 through 2005, as a result of  
8 this change in service availability policy, the utility wearing  
9 the hat -- I mean, the developer wearing the hat of the  
10 utility, instead of putting it as cost of development of lots,  
11 have put \$2.3 million worth of water and wastewater mains in  
12 rate base.

13 And according to staff's recommendation on Page 36,  
14 this serious problem, which is driving all of these rate  
15 increases, is going to really hit hard in 2006. Because my  
16 reading on page -- I think it is on Page 36 of the PAA order  
17 documents -- if we can go there real quickly -- I think it  
18 documents that this really kicks in in 2006. I mean, my  
19 reading of this schedule indicates \$2.66 million worth of water  
20 and wastewater infrastructure on mains will be dumped into rate  
21 base instead of properly accounted for as a cost of building  
22 these lots.

23 COMMISSIONER DEASON: Where are you referring to, Mr.  
24 Reilly?

25 MR. REILLY: I'm referring to Page 36 of the PAA

1 order.

2 COMMISSIONER DEASON: Which PAA order?

3 MR. REILLY: The revised order. I'm reading right  
4 from the revised PAA.

5 MR. FLETCHER: Revised recommendation, Commissioner.

6 CHAIRMAN EDGAR: Commissioner Deason, the information  
7 before us, and I believe it is contained in Issue 10.

8 MR. REILLY: The Commissioners do not have a copy of  
9 the recommendation?

10 COMMISSIONER DEASON: No, you said PAA order.

11 MR. REILLY: I'm sorry, I misspoke. The  
12 recommendation, the PAA recommended order. I misspoke.

13 COMMISSIONER DEASON: I'm with you.

14 MR. REILLY: So I suggest the Commission cannot  
15 engage in retroactive ratemaking. The damage has already been  
16 done in years 2003, 2004, and 2005. But we strongly suggest  
17 that the Commission can and should require this  
18 developer/utility on a prospective basis to immediately begin  
19 accepting these contributed lines and accounting for them as  
20 they should be.

21 It should do this immediately, and it is only fair  
22 and proper to do it this way. Growth should pay for growth. A  
23 current customer should not be forced to pay higher rates to  
24 provide infrastructure to serve future customers, especially  
25 when we have that this developer/utility situation. The

1 results are unfair. It results in a windfall to the  
2 developer/utility at the dollar-for-dollar cost to the  
3 ratepayers.

4           And so we strongly suggest that you do it on a  
5 prospective basis, that out of this proposed order that you  
6 authorize an interim tariff that allows the immediate  
7 collection of receipt of these donated properties instead of  
8 accounting for them as investment. And that you do so -- and  
9 if, in fact, this order is ultimately protested, that such  
10 contributed property could be collected subject to refund.

11           But if we don't protect it -- I mean, whether you  
12 agree with me or disagree with me on this issue, please protect  
13 the customers and issue at least an interim order so that we  
14 hold it subject to refund. So that if this is protested, and  
15 we don't meet our burden, and we don't ultimately win that  
16 issue, you can go ahead and say, no, Public Counsel didn't meet  
17 its burden, we are going to go ahead and allow this all to be  
18 included as, you know, as contributed -- as investment as  
19 opposed to contributed property.

20           But if we don't today protect that money, we'll lose  
21 it. By the time we go through a rate case, it's all  
22 retroactive, you know, it will be 2007. And all of this  
23 several million dollars worth of rate base coming in in 2006,  
24 you won't even give us an opportunity to make our case. So  
25 minimally, hopefully you will agree with us, but even if you

1 don't, allow Public Counsel to make the case that it is  
2 improper to continue this practice and hold these monies  
3 subject to refund so that we can litigate it. It is such a  
4 huge issue, we will pursue the issue, because it's driving the  
5 whole rate case.

6 CHAIRMAN EDGAR: Mr. Reilly, I think you have  
7 generated some questions. We'll start with Commissioner Tew.

8 COMMISSIONER TEW: Mr. Reilly, what are the amounts  
9 you are proposing for the plant capacity charges, are they the  
10 same as --

11 MR. REILLY: I have not addressed that issue. I  
12 didn't address the issue. I was addressing only the issue of  
13 not letting this developer/utility to continue to call his lot  
14 costs investment. Because he just changed his hats. He's  
15 borrowing the money whether he does it under the hat of the  
16 utility or he does it under the hat of the developer. The  
17 money is being borrowed. The question is does he get to  
18 collect it twice or does he get to collect it once.

19 COMMISSIONER TEW: So your position is to begin  
20 January 1, 2006? Was it to begin this year on those charges,  
21 immediately?

22 MR. REILLY: The effective date of this PAA order. I  
23 don't think -- from a retroactive ratemaking standpoint, I  
24 think I want to say it should be from this point forward. Stop  
25 what has already gone on now for these several years.

1 CHAIRMAN EDGAR: Commissioner Arriaga.

2 COMMISSIONER ARRIAGA: Mr. Fletcher, is this  
3 retroactive ratemaking as indicated by Public Counsel?

4 MR. FLETCHER: It wouldn't be retroactive ratemaking  
5 if the Commission were to vote it now because the estimated  
6 completion dates are scheduled to -- the plan is supposed to  
7 come on line in June of this year, so it wouldn't be. If the  
8 Commission decided to vote with OPC's position, then it  
9 wouldn't be, then.

10 COMMISSIONER ARRIAGA: No, I meant if we vote with  
11 your recommendation. Is that retroactive ratemaking?

12 MR. FLETCHER: No, Commissioner. Starting January  
13 7th it would not be retroactive.

14 COMMISSIONER ARRIAGA: Then why would OPC make that  
15 very serious statement? In your consideration, why would you  
16 not -- without putting any words in his mouth, why would you  
17 think they would make that statement, such a very powerful  
18 assertion?

19 MR. FLETCHER: I don't see the reinstatement of  
20 authorization for them to collect donated property, it's going  
21 to be on a prospective basis, I can't see where that would  
22 constitute retroactive ratemaking. It is going to be set on  
23 a -- rates are set on a prospective basis. We're setting it to  
24 begin January 7th -- or January 1st, 2007, I don't see where it  
25 would be retroactive ratemaking.



1 COMMISSIONER ARRIAGA: Okay. Thank you.

2 MS. MERCHANT: Commissioners, if I may, Mr. Reilly's  
3 comment dealt with before today, between 2002 and today. We  
4 can't go back. That would be retroactive. But prospectively  
5 forward, that is just prospective and it is not retroactive  
6 ratemaking.

7 CHAIRMAN EDGAR: Commissioners, do we have further  
8 questions?

9 MR. FRIEDMAN: Madam Chairman, may I make one very  
10 brief response to Mr. Reilly's comment?

11 CHAIRMAN EDGAR: Mr. Friedman.

12 MR. FRIEDMAN: What Mr. Reilly has done is he has  
13 addressed one issue, which is one issue of CIAC. CIAC has two  
14 components; one contributed lines, one contributed cash.  
15 Either plant capacity charge, main extension charge. And Mr.  
16 Reilly is trying to isolate one aspect of that without  
17 considering two things. One, the big picture, what is the  
18 total amount of contributions; and, number two, not look at  
19 where we are today, but look at where we want to be when this  
20 plant is at build-out. And that is where I think Mr. Reilly's  
21 analysis is incorrect.

22 And the company's analysis, which has it starting to  
23 accept contributed lines in 2008, but has higher cash  
24 contributions, that's how you make up. At the end of the day  
25 you are going to come out with 70 or 75 percent, and it has got

1 to be made up of either contributed property or cash. And Mr.  
2 Reilly wants you to look at one aspect of it and you can't do  
3 that. You have got to look at both aspects and look at it at  
4 the end of the day, and that is why the suggestion of the  
5 company, which is actually delay accepting contributed lines  
6 until 2008, but the cash component is higher. And so at the  
7 end of the day, it still balances out to the same amount of  
8 money basically that the staff is recommending.

9 CHAIRMAN EDGAR: Commissioners, further questions,  
10 comments.

11 COMMISSIONER DEASON: I'm sorry, I do have a  
12 question.

13 CHAIRMAN EDGAR: Commissioner Deason for a question.

14 COMMISSIONER DEASON: What would be the revenue  
15 requirement impact of Public Counsel's suggested change?

16 MR. FLETCHER: The revenue impact, Commissioner, was  
17 presently the revised recommendation has a negative 17,000 for  
18 water, it would take it to 81,000.

19 COMMISSIONER DEASON: Negative 81.

20 MR. FLETCHER: Negative 81. Currently in staff's  
21 recommendation we are recommending 273,000, approximate,  
22 wastewater revenue increase, and that would bring it to an  
23 increase of 164,000. I will note, also, Commissioner, if you  
24 vote OPC's position, that you would not have any charges other  
25 than a meter installation fee of \$100. You could not have any

1 other impact fees. And then also, based on my calculations, it  
2 would put it above the max. I calculated that it would be  
3 estimated at 78.62 at design capacity at 2012 for water, and  
4 wastewater it would be 81.29 percent. And that would be above  
5 the maximum guideline that's in the rule.

6 MR. FRIEDMAN: And that, obviously, has a cash flow  
7 effect. You know, part of the advantage of balancing the  
8 contributed property with cash is that you get the cash flow.  
9 And under the Public Counsel's scenario, there would be no cash  
10 contributions. And I think that would have a devastating  
11 effect on the utility.

12 MR. REILLY: With all due respect, that is absolutely  
13 not true. Public Counsel is not suggesting today to do away  
14 with the treatment plant capacity charge that is being  
15 recommended. This stays. We are not recommending any deletion  
16 of the cash contribution to plant. All we are suggesting is --  
17 it's the distribution collection lines is driving all of this  
18 rate increase is what we are saying. Whether you agree or  
19 disagree with us, please protect this issue for the ratepayers.  
20 Give us our day in court, in effect.

21 Because if you don't at least protect that money,  
22 protect that issue out of this vote today, you have decided the  
23 issue, because we will be through the eight months and it will  
24 be retroactive ratemaking. We won't even be able to talk about  
25 2006, these additions, and why this Commission should not

1 continue this unfair practice. If you could just vote to  
2 protect the issue and hold it subject to refund, give us our  
3 chance to make our case. But the characterization that we are  
4 suggesting to do away with the cash contributions is not true.  
5 We have made no recommendation. Staff is saying not only  
6 continue doing contributed property up through 2007, they are  
7 recommending a plant capacity if I'm not mistaken of 400 --

8 CHAIRMAN EDGAR: Mr. Reilly, through the Chair,  
9 please.

10 MR. REILLY: Okay.

11 CHAIRMAN EDGAR: Thank you.

12 MR. REILLY: That would stay. The cash contribution,  
13 which would help the situation, would continue. It's only the  
14 donated lines that we need to get back in hand.

15 CHAIRMAN EDGAR: Obviously we have a difference of  
16 opinion on a few points.

17 Mr. Rendell.

18 MR. RENDELL: Commissioners, I believe what we looked  
19 at is if we went to OPC's position we would have to then  
20 recommend no cash contributions. It would cause, it would  
21 exacerbate the overcontribution level of this company, and that  
22 is what we tried to address back in 2002. What we stated in  
23 the order is in a few short years they would have a negative  
24 rate base. We believe that is a bad situation for the utility  
25 and the ratepayers. There is no incentive for the utility,

1 then, to invest money. They could potentially walk away. They  
2 have already got their earnings. We believe that is a bad  
3 situation, so that is what we addressed in 2002.

4           If we went with OPC's recommendation and didn't  
5 change the plant capacity charges, then we're going to be  
6 looking at a negative rate base again. I would like to point  
7 out that under both scenarios it is going to cause a reduction  
8 in the revenue requirement, under the utility's or under the  
9 OPC's. We are looking at balancing the interest of the utility  
10 and the ratepayers. We need to have the utility have some sort  
11 of investment and vested interest in the utility, but we also  
12 recognize that the customers should not have to pay for growth.

13           It is a balancing act and that is what we do in  
14 service availability. It is a moving target, there is  
15 inequities involved in any charge in any service availability  
16 policy where some customers pay more, some customers pay less.  
17 They also pay a rate of return on some donated property that  
18 was previously not donated. So, we believe staff's  
19 recommendation is a compromise between both positions, and we  
20 believe that the rates set forth do allow the utility an  
21 opportunity to make a rate of return as well as for growth to  
22 pay for itself.

23           CHAIRMAN EDGAR: Thank you. Commissioner Deason.

24           COMMISSIONER DEASON: I have a question concerning  
25 the 75 percent threshold requirement. Is that a guideline or

1 is that a requirement?

2 MR. RENDELL: It's a guideline. And when we look at  
3 service availability, we look at a minimum and a maximum. And  
4 if it falls within there, we will look at, you know, is that  
5 appropriate. We do give deference to the utility's choice, but  
6 we also have to look at the customers' interests, as well. So  
7 it is only a guideline.

8 COMMISSIONER DEASON: And under your recommendation,  
9 what is the CIAC level at build-out?

10 MR. FLETCHER: At the design capacity it would be  
11 74.88 percent for water and approximately 71 percent for  
12 wastewater at design capacity.

13 COMMISSIONER DEASON: And under Public Counsel's  
14 recommendation, you say that you would have to reduce the  
15 service availability charges, the cash charges to be able to  
16 maintain that?

17 MR. FLETCHER: No, Commissioner. Even when we only  
18 had a \$100 meter installation fee and set all the other impact  
19 fees at zero, under OPC it was still 78 percent over the max by  
20 almost approximately 79 percent for water and slightly over 81  
21 percent, and that was without any impact fees other than a  
22 meter installation fee. And it would significantly increase  
23 that if there was an impact fee other than the meter  
24 installation fee.

25 COMMISSIONER DEASON: Is there any latitude the

1 Commission has in determining the amount of contributed  
2 property? Does it have to be 100 percent, or can we allow a  
3 percentage of the property be contributed and a percentage to  
4 be included in rate base?

5 MR. RENDELL: I'm not sure how we do that, because it  
6 is --

7 COMMISSIONER DEASON: It is either contributed or it  
8 is not, correct?

9 MR. RENDELL: Because the developer installs it and  
10 then they would donate it over to the utility, so they are the  
11 ones investing the money. I don't know how you would tell -- I  
12 guess they could do a sharing of the costs, but I'm not quite  
13 sure how that would work.

14 COMMISSIONER DEASON: And under Public Counsel's  
15 recommendation, the result would be approximately 80 percent  
16 contribution level at build-out, and that would be with no  
17 service availability charges other than a meter installation  
18 charge?

19 MR. FLETCHER: Correct for wastewater, and about --  
20 well, about 80 percent for both, yes, Commissioner.

21 MR. RENDELL: And, Commissioners, we do know that  
22 they are going to have some extensive plant investment in the  
23 year 2012, so we're trying to get them to the next point in  
24 time where they are going to have to invest some more money to  
25 take care of growth. They have already told staff that. And

1 at that point in time we would have to reevaluate their service  
2 availability as well as their rates, so we are trying to get  
3 them to the next step in the existing plant.

4 COMMISSIONER DEASON: With all the growth that's  
5 taking place, when is the next increment investment going to be  
6 required in terms of wells, or treatment plant, things of that  
7 nature?

8 MR. RENDELL: I believe it's the wastewater treatment  
9 plant. Mr. Fletcher can --

10 MR. FLETCHER: It's actually both, Commissioner. The  
11 water treatment plant and the wastewater treatment plant, they  
12 are going to increase the capacity of those. Begin the  
13 permitting process estimated in 2010. So they will be coming  
14 in for a rate case around that time.

15 COMMISSIONER DEASON: So they will be adding  
16 investment that is not contributed at that point.

17 MR. FLETCHER: Yes, Commissioner.

18 COMMISSIONER DEASON: Which would have a downward  
19 effect, impact on the contribution level on overall rate base.

20 MR. FLETCHER: Yes, Commissioner.

21 MS. MERCHANT: Chairman, could I make two real quick  
22 comments?

23 CHAIRMAN EDGAR: Ms. Merchant, briefly.

24 MS. MERCHANT: One is that this is contributed plant.  
25 For every dollar of plant that goes in, there's a dollar of



1 contributions-in-aid-of-construction, so that should keep the  
2 relative ratio equal. It shouldn't increase the CIAC level.  
3 And the second point that I would make, and that is why I don't  
4 really see all the support behind staff's number, and I  
5 understand where they are going, but the second is if this was  
6 a utility only, a nondeveloper-related utility, they would  
7 never pay, they would never want any developer to not pay for  
8 the lines. That is so rare that you would see a utility-only  
9 company invest in utility lines. I don't think I have seen  
10 that in many, many years. A city or a county or a private  
11 utility without a developer associated, so it's very rare. I  
12 believe it's because we have a clear developer-related utility,  
13 and it benefits the developer right there. Thank you.

14 CHAIRMAN EDGAR: Commissioners, questions, further  
15 discussion?

16 Commissioner Deason.

17 COMMISSIONER DEASON: Madam Chairman, I'm prepared to  
18 make a motion. And maybe, if nothing else, it could stimulate  
19 some further discussion.

20 I'm persuaded by Public Counsel's argument. I think  
21 at the very least the customers need to be protected. If we  
22 need to do something on an interim basis, so be it. If it  
23 can't be done by just issuing this -- I assume if we issue this  
24 as a PAA and it gets protested, it goes away, so there is not  
25 protection for the customer. So, I think at the very least we

1 need to offer protection for the customers. If this is a  
2 litigated issue, let the litigants battle it out and whatever  
3 decision is made will be made. But I think that we need to be  
4 able to preserve the flexibility of the parties and this  
5 Commission at that point. So I will ask the lawyers, whatever  
6 it takes to get us there, I think that is what we need to do is  
7 preserve this issue on a going-forward basis. If that means  
8 issuing it with a change in policy with it being subject to  
9 refund, if that accomplishes that -- Mr. Melson, I guess I'm  
10 turning to you.

11 MR. MELSON: And I have been thinking about it since  
12 Mr. Reilly raised it. I am not familiar with a case where you  
13 have, in effect, imposed a service availability charge subject  
14 to refund. Mr. Reilly called it an interim rate. It certainly  
15 does not fit the mold of a true interim rate under the water  
16 and wastewater statute.

17 Having said that, I think Mr. Reilly is correct,  
18 unless you essentially take that action and do something to  
19 attempt to impose it immediately, simply the process of a  
20 protest and a hearing and eight months to a decision, the cat  
21 would be out of the bag. So if your intention is to preserve  
22 your ability, essentially, to have that decision retroactive  
23 until today, I think your motion would simply need to make that  
24 clear.

25 We will put the best legal analysis on it we can,

1 recognizing that it's an issue that I don't think has been  
2 litigated before, and, you know, the question of our authority  
3 to do that could be challenged down the road.

4 COMMISSIONER DEASON: You're willing to give it a  
5 shot, though, Mr. Melson, is that correct?

6 MR. MELSON: Yes, sir. The courts -- before we ever  
7 had interim statutes, the courts basically recognized the  
8 Commission's authority to do things on an interim basis. I  
9 know in the staff-assisted rate cases, you know, final rates  
10 will go into effect during a PAA type protest period. So I  
11 think there are some analogies. I can't come up with one that  
12 fits it four square, but I think more likely than not it's  
13 defensible.

14 COMMISSIONER DEASON: And you do agree that if we  
15 don't take some action, that basically the issue is moot  
16 because by the time the case is over, we would have already  
17 gone through the period of time and all of this property would  
18 have already been put into rate base.

19 MR. MELSON: Correct. And at that point retroactive  
20 ratemaking would preclude you from reaching back, unless you  
21 attempt to exert your control over those dollars beginning  
22 today.

23 COMMISSIONER DEASON: And then that brings us to the  
24 second question of what do we include in the PAA here on a  
25 going forward basis. And, Commissioners, I'm not uncomfortable

1 with approximately an 80 percent contribution level for this  
2 company. If that is the result we end up with at build-out,  
3 that isn't a problem with me. I know it slightly exceeds the  
4 guidelines, but that is what they are, guidelines. And  
5 obviously we should have latitude to address the specific facts  
6 on a case-by-case basis. So, that doesn't present a problem  
7 for me, either. I don't know if that is a motion. I guess my  
8 motion would be to approve Public Counsel's position on this  
9 issue.

10 COMMISSIONER CARTER: I would second that motion.

11 CHAIRMAN EDGAR: Okay. We have a motion and a  
12 second. Are there questions before we call the motion? No  
13 questions. Okay. We have a motion and a second. All in favor  
14 of the motion say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN EDGAR: Opposed?

17 Show the motion carries.

18 MR. RENDELL: Commissioner.

19 CHAIRMAN EDGAR: Mr. Rendell.

20 MR. RENDELL: I know it's getting late in the day,  
21 but I do want to point out that it is going to cause a  
22 recalculation of all the revenue requirements, which will cause  
23 a greater refund on the water or a reduction of the rates and  
24 possibly an interim refund on the wastewater.

25 COMMISSIONER DEASON: Can we give you the ability to

1 change that administratively? Because we voted on the policy  
2 issues, and we have even voted out the fallouts, but we  
3 understand that the fallout issues are now going to change  
4 based upon the calculations as a result of Issue 36.

5 MR. RENDELL: Yes, you may. I just wanted to bring  
6 that to your attention.

7 CHAIRMAN EDGAR: And, Mr. Rendell, thank you for  
8 raising that point.

9 Commissioner Deason, thank you for your  
10 clarification.

11 And so my understanding is that procedurally the  
12 staff can take this out to its natural conclusion from the  
13 action that we have taken. Okay.

14 That brings us to Issue 37, Mr. Fletcher.

15 MR. FLETCHER: Issue 37 is staff's recommendation  
16 that the utility should not be required to show cause why it  
17 should be fined for an apparent violation of Section 367.071?  
18 And it is basically for its failure to obtain Commission  
19 approval prior to transferring majority organizational control.

20 COMMISSIONER DEASON: Move staff.

21 COMMISSIONER TEW: Second.

22 CHAIRMAN EDGAR: I have a motion and a second for the  
23 staff recommendation on Issue 37. All in favor say aye.

24 COMMISSIONER ARRIAGA: Aye.

25 COMMISSIONER DEASON: Aye.

1 CHAIRMAN EDGAR: Aye.

2 COMMISSIONER TEW: Aye.

3 CHAIRMAN EDGAR: Opposed?

4 COMMISSIONER CARTER: Nay.

5 CHAIRMAN EDGAR: Show that on a four-to-one vote.

6 MR. RENDELL: Commissioners, if I might ask.

7 CHAIRMAN EDGAR: Mr. Rendell.

8 MR. RENDELL: On the service availability, was it  
9 Commissioner Deason's intent to leave the charges alone or  
10 reduce them to zero?

11 CHAIRMAN EDGAR: Commissioner Deason, could you  
12 clarify on Issue 36.

13 COMMISSIONER DEASON: It was to get us to  
14 approximately 80 percent at build-out, which I would assume  
15 would mean that you would have to eliminate service  
16 availability charges.

17 MR. RENDELL: Thank you, Commissioner.

18 MR. MELSON: Madam Chairman.

19 CHAIRMAN EDGAR: Mr. Melson.

20 MR. MELSON: Let me think through the implications of  
21 that. I think in order, in that event, to protect the company,  
22 the company would be entitled both to accept the contributed  
23 lines and to make the charge. And depending on which way the  
24 Commission's ultimate decision went, one or the other would be,  
25 quote, subject to refund, otherwise you leave the utility in an

1 unfair posture.

2 COMMISSIONER DEASON: Mr. Melson, I would agree with  
3 you. I think we want symmetry in both directions and  
4 protection in both directions, so whatever is necessary to  
5 accomplish that, that would be my intent. And I'm glad we are  
6 hashing it out.

7 MR. MELSON: I just want to make sure if we are  
8 carrying that charge to zero, that that portion -- we'll figure  
9 it out.

10 COMMISSIONER DEASON: It would need to be collected  
11 and then possibly refunded.

12 MR. MELSON: Exactly.

13 CHAIRMAN EDGAR: I also appreciate the opportunity  
14 for clarification while we are all here still in the room and  
15 still focused on it, so I'm glad to revisit it as we move  
16 through. Mr. Friedman, do you need to make a comment?

17 MR. FRIEDMAN: No. You've got to do that, if you are  
18 going to keep it equal, because otherwise we lose/lose.

19 CHAIRMAN EDGAR: I just wanted to give you the  
20 opportunity, if you felt compelled.

21 Commissioner Deason, do you think that we are where  
22 we need to be?

23 COMMISSIONER DEASON: I think with the clarification  
24 that we have gotten here, I think it's sufficient. I don't  
25 know that it needs another motion.

1 MR. MELSON: I think we have got adequate  
2 clarification.

3 CHAIRMAN EDGAR: Thank you, Mr. Melson.  
4 Commissioners, everybody comfortable? Okay.  
5 Issue 38.

6 MR. FLETCHER: Issue 38, staff is recommending that  
7 the utility within 90 days of the final order in this docket  
8 provide proof of the Commission-approved adjustments.

9 COMMISSIONER DEASON: Move staff.

10 COMMISSIONER CARTER: Second.

11 CHAIRMAN EDGAR: We have a motion and a second on  
12 Issue 38. All in favor say aye.

13 (Simultaneous affirmative vote.)

14 CHAIRMAN EDGAR: Show it approved.  
15 Issue 39.

16 MR. FLETCHER: Issue 39, staff recommends that the  
17 docket not be closed and should remain open for verification  
18 that the tariff sheets are filed and noticed consistent with  
19 the Commission's decision. And that's our recommendation.

20 CHAIRMAN EDGAR: Mr. Melson, do we need any further  
21 clarification in light of our recent discussion?

22 MR. MELSON: It sounds pretty likely somebody is  
23 going to protest. (Laughter.)

24 COMMISSIONER DEASON: Move staff.

25 COMMISSIONER CARTER: Second.



1           CHAIRMAN EDGAR: Okay. We have a motion and a second  
2 on Issue 39. All in favor say aye.

3           (Unanimous affirmative vote.)

4           CHAIRMAN EDGAR: Opposed?

5           Show Issue 39 approved.

6           I would like to say thank you to the customers who  
7 participated in this item. To Mr. Fergus and to Ms. Sanker,  
8 thank you for handing in there with us. And that concludes the  
9 Commission's actions and discussion on Item 11.

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1 STATE OF FLORIDA )  
2 :  
3 COUNTY OF LEON )

CERTIFICATE OF REPORTERS

4 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR,  
5 Official Commission Reporters, do hereby certify that the  
6 foregoing proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that we stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under our direct supervision; and that this  
11 transcript constitutes a true transcription of our notes of  
12 said proceedings.

13 WE FURTHER CERTIFY that we are not a relative,  
14 employee, attorney or counsel of any of the parties, nor are we  
15 a relative or employee of any of the parties' attorneys or  
16 counsel connected with the action, nor are we financially  
17 interested in the action.

DATED THIS 15th day of February, 2006.

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