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 1 BEFORE THE

 2 FLORIDA PUBLIC SERVICE COMMISSION

 3

 DOCKET NO. 060255-SU

 4 In the Matter of:

 5 APPLICATION FOR INCREASE IN

 WASTEWATER RATES IN PINELLAS

 6 COUNTY BY TIERRA VERDE

 UTILITIES, INC.

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 15 PROCEEDINGS: AGENDA CONFERENCE

 ITEM NO. 10

 16

 17 BEFORE: CHAIRMAN LISA POLAK EDGAR

 COMMISSIONER ISILIO ARRIAGA

 18 COMMISSIONER MATTHEW M. CARTER, II

 COMMISSIONER KATRINA J. TEW

 19 COMMISSIONER KENNETH W. LITTLEFIELD

 20

 DATE: Tuesday, January 9, 2007

 21

 22 PLACE: Betty Easley Conference Center

 Room 148

 23 4075 Esplanade Way

 Tallahassee, Florida

 24

 REPORTED BY: JANE FAUROT, RPR

 25 Official Commission Reporter

 (850)413-6732

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 PARTICIPATING:

 2 STEPHEN C. REILLY, ESQUIRE, representing the Citizens

 3 of the State of Florida.

 4 MARTIN FRIEDMAN, Esquire, FRANK SIEDMAN, and JOHN

 5 WILLIAMS, representing Tierra Verde Utilities, Inc.

 6 SHANNON HUDSON, TROY RENDELL, BART FLETCHER,

 7 representing the Florida Public Service Commission Staff.

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 FLORIDA PUBLIC SERVICE COMMISSION

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

 2 CHAIRMAN EDGAR: That will bring us to Item 10.

 3 MS. HUDSON: Commissioners, Shannon Hudson on behalf

 4 of staff.

 5 Item Number 10 is a request for a rate increase by

 6 Tierra Verde Utilities, Inc. in Pinellas County. Subsequent to

 7 filing of staff's recommendation, an error was discovered. The

 8 error was in Issue 2 concerning staff's adjustment to purchased

 9 wastewater expense for excessive infiltration and inflow. In

 10 its calculation, staff did not included the 25 percent

 11 surcharge on the purchased wastewater that is assessed by the

 12 City of St. Petersburg when a customer is located outside the

 13 city limits.

 14 To correct the error, purchased wastewater should be

 15 $88,420 instead of $69,721 as included in staff's original

 16 recommendation. As a result of this correction, staff's

 17 revised revenue requirement is $731,965, which is $19,856 lower

 18 than staff's original recommended revenue requirement of

 19 $751,821. Based on the revised revenue requirement, Tierra

 20 Verde is entitled to an increase of $114,428, or 18.34 percent.

 21 Staff is also recommending an interim refund of 3.26

 22 percent, or $26,236 of annual revenues. The specific revisions

 23 to issues were previously distributed to the Commissioner's

 24 offices. Staff has discussed these changes with both the

 25 utility and the Office of Public Counsel, and both parties have

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 agreed to these revisions. Staff is prepared to answer any

 2 questions you may have at this time.

 3 CHAIRMAN EDGAR: Thank you. You are recognized.

 4 MR. FRIEDMAN: Thank you, Commissioners. My name is

 5 Martin Friedman. Our law firm, Rose, Sundstrom and Bentley,

 6 represents the utility. With me also is Frank Siedman, and

 7 also with me, sitting in the back here, you may recognize John

 8 Williams, who is the new director of governmental affairs for

 9 Utilities, Inc. and its subsidiaries, primarily working in the

 10 Southeastern United States, so you will be seeing a lot more of

 11 John in the future.

 12 We accept this recommendation, the mistake that was

 13 made in that. We do have a couple of comments about the staff

 14 recommendation, and these are some issues that are going to

 15 resonate. And while we've got -- Utilities, Inc. subsidiaries

 16 have pending eight or ten rate cases now and these are the

 17 first two to hit the agenda, I would expect that some of the

 18 modifications that the staff made in this one they are going to

 19 make in the future recommendations, also. And so while it will

 20 sound like I'm really nit-picking about some of these issues

 21 being small, as it relates to each of these utilities the

 22 impact may be small, if you look at the same adjustments made

 23 over all eight or ten rate cases, you have got a significant

 24 amount of money.

 25 And I want to address, first, there is a salary

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 1 issue. The staff has recommended a pro forma adjustment of

 2 4.51 percent to the test year salaries. That does not take

 3 into consideration that the utility has added two integral

 4 employees since the test year that we think will obviously help

 5 to improve our quality of service and our regulatory compliance

 6 requirements. And the staff's recommendation just takes

 7 whatever the salaries were in the test year and added

 8 4.51 percent to it. It doesn't consider the fact that there is

 9 a new, or two new employees in this case that are necessary and

 10 add to that.

 11 And they are the primary reason of the increase,

 12 which in this case for this utility is a little under $19,000 a

 13 year. And we would suggest to you that the staff's

 14 determination that there should only be a 4.51 percent increase

 15 ignores the fact that there are new employees. It also ignores

 16 the fact that the natural turnover that you have in a year,

 17 sometimes when you hire new employees you may have to pay them

 18 a higher salary than the employees who left. The company

 19 endeavors to keep its employees, all of its employees all year

 20 and not to have the turnover, not to have gaps in service, and

 21 that is why we are requesting that the adjustment of $18,823

 22 that the staff has recommended, that it be reversed by the

 23 Commission.

 24 The second area is rate case expense. This case is a

 25 little unusual --

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 CHAIRMAN EDGAR: Mr. Friedman, I'm sorry, can you

 2 identify by number for us the issues as you are addressing

 3 them? That would be helpful to me.

 4 MR. FRIEDMAN: I apologize.

 5 CHAIRMAN EDGAR: That's okay.

 6 MR. FRIEDMAN: Okay. That is issue -- Tierra Verde,

 7 it's Issue 14.

 8 CHAIRMAN EDGAR: Okay. Thank you. And then --

 9 MR. FRIEDMAN: Then Issue 17 is rate case expense,

 10 and it involves a lot of different elements; the legal fees,

 11 consultant fees, in-house fees. As I was saying, this case is

 12 a little unusual in that the Public Counsel got involved in it

 13 before the PAA order has been entered, which I have not seen

 14 them do in any other PAA type case. And when they intervened,

 15 they began sending out discovery. And so as a result, we had

 16 not only data requests from the staff to answer, but we also

 17 had discovery requests from the Office of Public Counsel to

 18 answer.

 19 One of the ways that the company dealt with that was

 20 to hire some temporary employees to handle just the mechanics

 21 of getting that data from the staff people up in Northbrook or

 22 the staff people for the utility getting it into a format to

 23 get it back to the staff of the PSC. And the staff

 24 recommendation does include some of that, but it cuts it off

 25 before we finished responding. I think they cut it off at the

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 1 end of September, and the utility had temporary employees and

 2 staff after that time, which they paid to respond mostly at

 3 that point probably to OPC's discovery, that the Commission --

 4 that the staff has not recommended any rate case expense for.

 5 And we think that that was -- we think that they should

 6 recognize that temporary help. Number one, it's at a less rate

 7 that if we had -- we don't want to have accounting people

 8 standing at a copier or doing ministerial work, and they hired

 9 these temporary people to do the ministerial work.

 10 And then last there was a minor adjustment to rate

 11 case expense for Federal Express charges, which the staff

 12 believes is because the company keeps its records and has its

 13 employees up in Northbrook. And I would suggest to you that

 14 just -- that is not related to whether they are in Northbrook.

 15 They could be in Miami, and they would have had the same Fed Ex

 16 charges to Fed Ex than if they were in Northbrook.

 17 And, you know, individually that's a minor

 18 adjustment, but when we look at all ten of these cases, it is

 19 more substantial. And so we would suggest that on those two

 20 issues that the staff recommendation be modified to reflect

 21 reasonable expenses that were incurred by the utility.

 22 Thank you.

 23 CHAIRMAN EDGAR: Thank you.

 24 Mr. Reilly.

 25 MR. REILLY: Thank you. We were the party that

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 1 pointed out the adjustment on the $20,000. We did understand

 2 this was move staff, so I wasn't going to comment on this

 3 particular case, but since certain comments have been made, I

 4 will try to respond.

 5 Public Counsel went ahead and hired consultants to

 6 begin looking at all of these Utilities, Inc. cases because of

 7 the frequency and the number of them, the complexity of them,

 8 and the fact that they would be hitting with such repetition

 9 that we couldn't do our normal procedure to get on top of the

 10 case and to try to understand the issues in the case, we would

 11 have such a limited time to look at a PAA, a recommendation and

 12 to get ready for agenda and then to have the time within which

 13 to decide whether to protest or not. So we felt we needed,

 14 given the number of cases, to become more engaged, more

 15 involved and begin looking at the MFRs at a sooner point in

 16 time.

 17 As a result of that earlier engagement in these

 18 multiple Utilities, Inc. cases, we did send out one set of

 19 discovery. I would represent that it was not onerous and,

 20 certainly, should not result in a large expenditure of rate

 21 case expense. And, frankly, that was one of the reasons why we

 22 restrained ourselves from engaging in too much discovery. I

 23 believe there are a lot of economies involved in this,

 24 attorneys and the various consultants and getting all of these

 25 cases ready. We do not believe -- we think rate case expense

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 1 will, obviously, be very much a big issue in any of these cases

 2 that end up getting protested.

 3 You look at this case. It's a hundred -- it ends up

 4 being perhaps a $114,000 revenue increase. The company was

 5 suggesting to spend -- now, that's on an annual basis, but to

 6 spend $190,000 worth of rate case expense to pursue its right

 7 to this increase. Obviously, this figure is amortized over

 8 four years, but we think that, really, rate case expense has

 9 just gotten so incredibly high, and it does work a great

 10 difficulty -- it really is a great burden on the customers.

 11 And so I think staff has done a fairly good job. I

 12 think in some of this rate case expense that staff disallowed

 13 it was, frankly, because of lack of documentation and support.

 14 And I think staff will be able to support its own

 15 recommendation in that regard. But we, basically, wouldn't

 16 offer any more other than to say that's why we got involved.

 17 The involvement was very minimal, and certainly doesn't justify

 18 this very, very high request.

 19 CHAIRMAN EDGAR: And I would like to look to our

 20 staff to speak to the questions and comments that were raised

 21 on Items 14 and 17. But, first, let me look to Commissioner

 22 Carter.

 23 COMMISSIONER CARTER: Excuse me, Madam Chairman. I

 24 know it may be out of the ordinary, but I would just like to

 25 ask Public Counsel a question. Are you saying in this case

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 1 that you support staff recommendations? Is that what you are

 2 saying?

 3 MR. REILLY: Actually, I appreciate the

 4 clarification. We are still studying these, and we are

 5 involved, and we are further along than we would normally be in

 6 the PAA process. I was not prepared -- I can't say that I

 7 support everything in here, no. I think if I critique this

 8 request, we would have more additional adjustments. But I do

 9 believe that with the change that has been made, there is a

 10 very strong possibility that when we meet with the customers

 11 this will not be protested. But I can't make that decision for

 12 them. That is their decision. But I think that that is the

 13 way Tierra Verde is positioned at this time. That is why you

 14 are not hearing more comments from me.

 15 Now, when we get to Pennbrooke, the next case,

 16 Pennbrooke, we have a number of serious concerns with the

 17 staff's recommendation. If they do not get resolved in a way

 18 that we think we can recommend to our clients, the Utilities,

 19 Inc. of Pennbrooke looks like a case that much more likely

 20 could be protested.

 21 But to answer your question, no, I don't agree with a

 22 lot of this, but I'm not going to nitpick it and tell you all

 23 the ways that I would have done it differently. But I do

 24 believe we have a recommendation that could past muster with

 25 the customers, but I won't know that until I talk to my

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 clients.

 2 COMMISSIONER CARTER: Thank you, Madam Chairman.

 3 CHAIRMAN EDGAR: Thank you.

 4 To our staff.

 5 MR. FLETCHER: Commissioners, with regard to Issue

 6 14, which deals with the pro forma salaries, staff sent out two

 7 data requests. In the first data request the utility's

 8 response as far as justification for the increases was, the new

 9 employees and it was to reflect a full year of cost of living.

 10 However, we didn't have the sufficient detail to get the number

 11 of employees, and because of that lack of support there, we

 12 sent out another data request of the total employees for the

 13 Florida office, both managerial and nonmanagerial, and the

 14 Florida operators, managerial and nonmanagerial, and then also

 15 for the employees up in Northbrook that gets allocated down.

 16 And based on that response, there was actually a net

 17 reduction of employees from 2005, which is the test year in

 18 this case, and 2006. And I will note that on 2006 we received

 19 that data request response in November, but that was only

 20 through -- the company only provided the employee changes,

 21 number of employees and the salary information through June.

 22 We annualized that salary, because that is the only information

 23 we had at the time, and, again, there was a net reduction in

 24 the number of employees across all of those categories.

 25 And there was -- in the information we could not

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 attribute the increases in the changes in employees to any of

 2 the UI's subsidiaries, specifically. You know, the Florida

 3 office, it may increase managerial by one or two employees,

 4 but, you know, that's direct -- excuse me. The operator may --

 5 nonmanagerial operators may decrease, but we can't attribute

 6 any of those 17 that decreased to, like for this company,

 7 Tierra Verde, or to the other UI subsidiaries. That

 8 information was not provided.

 9 So based on that net reduction and looking at the

 10 data that they provided, all we had is that over that period of

 11 time from 2001 to 2005 the increase in salaries were

 12 4.51 percent. So based on their information, we thought that

 13 that was a reasonable pro forma adjustment to make for the

 14 salaries in these respective UI cases, especially given the

 15 fact that the Commission's 2006 price index was 2.74 percent.

 16 That was representative of -- the 4.51 percent historical

 17 increase was 177 basis points greater than the Commission's

 18 2006 index, and in light of that net reduction of eight

 19 employees, we felt that it was reasonable to limit the

 20 pro forma salary increases to that historical salary increase.

 21 CHAIRMAN EDGAR: Commissioners, any questions?

 22 Commissioner Arriaga.

 23 COMMISSIONER ARRIAGA: In listening to Mr. Friedman,

 24 I was led to understand that some of the expenses that you

 25 question for rate case expense may not have been proper. And

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 what I understood was that there are about ten utilities that

 2 belong to UI, and if you impose these penalties to one and then

 3 multiply that by ten, it's going to be a huge number. Do you

 4 agree with that?

 5 MR. RENDELL: Commissioners, what is unprecedented is

 6 Utilities, Inc. filed ten rate cases. They also filed five or

 7 six in North Carolina and several in South Carolina. We

 8 believe in this instance these temporary helps are the result

 9 of that. There were so many rate cases filed by this company

 10 that they had to go out and hire outside help. The burden of

 11 proof is on them to provide the justification for all expenses.

 12 As Mr. Fletcher indicated, the salary adjustment was based on

 13 data requests, which is our normal procedure in any rate case.

 14 We ask questions; they justify it.

 15 We did a very thorough analysis of all employees, of

 16 all the new positions, of all the people who had left. And in

 17 Issue 14, the salary adjustment recommended is based on that

 18 analysis that they actually had a net decrease. Mr. Friedman

 19 alluded to two new positions. I was just informed of that this

 20 morning. So that's outside the normal data request that we

 21 have. We filed this recommendation in December, so that's even

 22 outside when we filed the recommendation.

 23 As far as the rate case expense, we are actually

 24 allowing the actual costs for the temporary help, which is

 25 approximately $3,000. Based on our analysis, at the point we

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 got the update for rate case expense, there was no other

 2 outstanding data request that they had to respond to. So they

 3 wanted another $16,000 to respond to data requests that didn't

 4 exist. So that is why we believe that was unreasonable.

 5 As our recommendation in Issue 17 indicates, we did

 6 do an analysis of each and every aspect of the rate case

 7 expense, and we determined what different items remained to

 8 process the case and what actually occurred. We allowed -- we

 9 made some adjustments to the actual costs, but we allowed the

 10 majority of the actual costs and disallowed what we believe was

 11 unreasonable estimates to complete the case in this case. So

 12 we believe the utility did not meet its burden of proof on

 13 either the salary or the rate case expense, and so we are

 14 recommending appropriate adjustments to account for that.

 15 COMMISSIONER ARRIAGA: And I appreciate the answer.

 16 I think it is very informative. But, again, if those

 17 disallowances are placed on this one utility, I understand, but

 18 if this is going to be repeated over the next 10 or 15 or

 19 whatever, I don't know how many, isn't that going to amount to

 20 a huge amount of disallowances for that same company?

 21 MR. RENDELL: Possibly. We are filing

 22 three recommendations tomorrow, and we're filing

 23 three recommendations on February 1st. Some of them are large

 24 adjustments; some of them are not. Also, the amount of

 25 customers that it is being spread over varies. There may be

 FLORIDA PUBLIC SERVICE COMMISSION

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 1 thousands of customers to spread it over or just a few. Some

 2 of the cases -- you know, I can't get into specifics since we

 3 haven't filed a recommendation, each one of them varies. But

 4 the analysis itself is consistent. We followed -- which we

 5 have to be consistent with past rate cases, and in this case

 6 how we treated each one of their requested amounts. But each

 7 one of them have similar issues and each one of them have

 8 different ones, so I can't give you a quantifiable yes or no to

 9 that. I mean, yes, there is going to be similar adjustments in

 10 each one of these nine rate cases, but I can't give you the

 11 dollar amount.

 12 COMMISSIONER ARRIAGA: Thank you.

 13 CHAIRMAN EDGAR: Commissioner Carter.

 14 COMMISSIONER CARTER: Just one itty-bitty question,

 15 Madam Chairman, just for staff. And I think I heard you

 16 correctly, that you said that the utility chose to file these

 17 rate cases together. That was their option, was it not?

 18 MR. RENDELL: That's correct.

 19 COMMISSIONER CARTER: Okay. Thank you.

 20 CHAIRMAN EDGAR: Commissioner Tew.

 21 COMMISSIONER TEW: I have a question for staff, and

 22 it goes more to process. At what point in time do you cut off

 23 the information flow as far as what -- you said that you had

 24 two sets of data requests, and that lead you to the

 25 recommendation on Issues 14 and 17. And you said that you got

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 1 some more information this morning about the two additional

 2 employees, and I'm assuming that you may get similar

 3 information in these other cases. I don't want to delve too

 4 far into that, but at what point -- at some point you have to

 5 say this is what the utility has proven up so far, and we have

 6 got to go with this. I mean, what generally is the process for

 7 that?

 8 MR. RENDELL: We have to have the -- I mean, the

 9 review process at the Commission, the recommendation is filed

 10 14 days before the agenda. The agenda typically is five months

 11 in the PAA process. We typically have the revenue requirement

 12 done probably four months -- three to four months after it's

 13 filed, because we have to get those revenue requirements to the

 14 rate analysts to calculate the rates, and we have to begin

 15 writing the rate case itself.

 16 In these particular cases, we were asking some

 17 last-minute questions, just some clarification while we were

 18 writing the recommendation. But you're right, there has to be

 19 a cutoff point. If there are subsequent items that they fail

 20 to provide staff in their data request, the answers, then those

 21 are issues that can be addressed in the next rate case, or if

 22 it is significant, they can come in for a limited proceeding.

 23 But, we have to follow our normal procedures, ask the

 24 questions, and then it's their burden of proof to respond. And

 25 we have to have the time to analyze their answer. So a couple

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 1 of days before agenda is just not enough time to follow up on

 2 any type of information.

 3 COMMISSIONER TEW: One other follow-up. If you

 4 believe the two additional employees were hired specifically to

 5 litigate this case, would your recommendation be different?

 6 MR. RENDELL: In this particular recommendation, no.

 7 CHAIRMAN EDGAR: Commissioners, further questions,

 8 discussion?

 9 Commissioner Carter.

 10 COMMISSIONER CARTER: Madam Chairman, if there is no

 11 further discussion, I would move staff.

 12 COMMISSIONER TEW: Second.

 13 CHAIRMAN EDGAR: Okay. We have a motion and a second

 14 in favor of the staff recommendation, which I believe includes

 15 Issues 1 through 26. Is there further discussion?

 16 Seeing none, all in favor say aye.

 17 (Unanimous affirmative vote.)

 18 CHAIRMAN EDGAR: Opposed?

 19 Show it adopted.

 20 Thank you.

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 2 STATE OF FLORIDA )

 3 : CERTIFICATE OF REPORTER

 4 COUNTY OF LEON )

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 I, JANE FAUROT, RPR, Chief, Office of Hearing

 6 Reporter Services, FPSC Division of Commission Clerk and

 Administrative Services, do hereby certify that the foregoing

 7 proceeding was heard at the time and place herein stated.

 8 IT IS FURTHER CERTIFIED that I stenographically

 reported the said proceedings; that the same has been

 9 transcribed under my direct supervision; and that this

 transcript constitutes a true transcription of my notes of said

 10 proceedings.

 11 I FURTHER CERTIFY that I am not a relative, employee,

 attorney or counsel of any of the parties, nor am I a relative

 12 or employee of any of the parties' attorney or counsel

 connected with the action, nor am I financially interested in

 13 the action.

 14 DATED THIS 16th DAY OF JANUARY, 2007.

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 18 Administrative Services

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