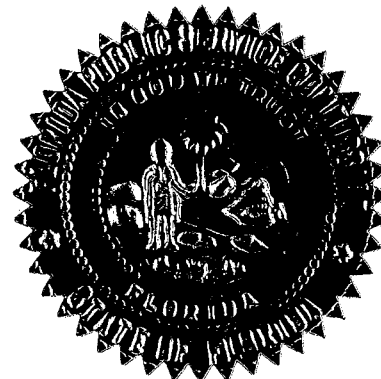


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060261-WS

In the Matter of:

APPLICATION FOR INCREASE IN WATER AND
WASTEWATER RATES IN LAKE COUNTY BY
UTILITIES, INC. OF PENNBROOKE.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 11

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW
COMMISSIONER KENNETH W. LITTLEFIELD

DATE: Tuesday, January 9, 2007

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

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

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 STEPHEN C. REILLY, ESQUIRE, representing the
3 Citizens of Florida.

4 MARTIN FRIEDMAN, Esquire, and FRANK SEIDMAN,
5 representing Utilities, Inc. of Pennbrooke.

6 CATHERINE WALKER, representing St. Johns River Water
7 Management District and Water Use Regulation.

8 MICHAEL COOKE, General Counsel, JENNIFER BRUBAKER,
9 ESQUIRE, JENNIE LINGO, SAM MERTA, STAN RIEGER, and MICHAEL
10 SPRINGER, Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We will be on Item 11.

3 MS. MERTA: Commissioners, Sam Merta with the
4 Commission staff. Item 11 is staff's recommendation on
5 Utilities, Inc., of Pennbrooke's application for an increase in
6 water and wastewater rates in Lake County.

7 Mr. Friedman, representing the utility is here to
8 answer questions. Ms. Catherine Walker, (phonetic) Assistant
9 Director of the Division of Water Use Regulation of St. Johns
10 River Water Management District is present to address the
11 Commission, and Mr. Reilly, representing the Office of Public
12 Counsel is here to address the Commission on his concerns. And
13 staff is available for questions.

14 CHAIRMAN EDGAR: Thank you.

15 Mr. Friedman.

16 MR. FRIEDMAN: Thank you, Madam Chairman. Martin
17 Friedman, the law firm of Rose, Sundstrom and Bentley, on
18 behalf of Utilities, Inc. of Pennbrooke. I have the same
19 basic -- except the issues are -- I think Issue 11 is the
20 salary issue and Issue 15 is the rate case expense, it is
21 basically the same issue and, fortunately, the magnitude isn't
22 even as great as on the last one. But, again, I would
23 reiterate the concerns that I expressed before to preserve
24 those issues.

25 I understand Public Counsel may have some issues, and

1 we'll wait until after we hear theirs, but we would like to
2 reserve an opportunity to respond to the OPC's concerns after
3 the staff does.

4 Thank you.

5 CHAIRMAN EDGAR: Thank you.

6 Mr. Reilly.

7 MR. REILLY: Yes. Today we would like to address
8 four issues in the staff's recommendation that we take
9 exception to, and we would like you to address before you issue
10 your PAA order. They are Issues Number 5, which relate to the
11 used and useful of the water treatment plant and the used and
12 useful of the wastewater treatment plant, Issue 15, which is
13 the amount of rate case expense. We are particularly focused
14 on the amount of rate case expense that the staff has
15 recommended be recovered from ratepayers with regard to the
16 water rate case.

17 And then, lastly, Issues 16 and 20, which can be
18 viewed together, and they relate to the staff's disposition of
19 the overearnings that they calculated and how it should be
20 disposed of in this case. We think it should be disposed of in
21 a different manner.

22 So it would be 5, 15, and 16 and 20. And we will
23 just talk about those whenever the appropriate time.

24 CHAIRMAN EDGAR: Okay. And did you tell me that
25 there was somebody else also who would like to speak,

1 Ms. Walker?

2 MS. WALKER: Yes. My name is Catherine Walker, and
3 I'm the Assistant Division Director at the St. Johns River
4 Water Management District and Water Use Regulation. And I
5 appreciate the opportunity to address you today.

6 What I wanted to talk to you a little bit about is a
7 memorandum of understanding that the Water Management District
8 has with the Public Service Commission in which we have
9 committed to work together on our mutual missions, and
10 particularly one of those is protection of the water resources.
11 And the issue that I am prepared to address has to do with the
12 water conservation recommendation on the overearnings. And we
13 fully support staff's recommendation to direct those
14 overearnings toward water conservation programs.

15 There are a number of reasons for that, one of which
16 is that in the area of Lake County, which is part of the
17 Central Florida Water Resource area within our district, we
18 have identified that future public supply uses are anticipated
19 to exceed the yield at which we consider to be acceptable to
20 prevent adverse impacts to wetlands and water resources in the
21 area. And Pennbrooke Utilities is located within that region
22 where we anticipate that the cumulative withdrawals are going
23 to yield to unacceptable impacts.

24 Water conservation is one of the measures that can be
25 used to defer those impacts, and we really encourage

1 conservation measures. Pennbrooke has also had a history of
2 exceeding their allocations on their permits with the Water
3 Management District. Five of the last six years their water
4 use records have indicated that they have exceeded their
5 allocation. So we feel like a conservation program would be
6 very beneficial in terms of helping them to comply with our
7 permit conditions.

8 And another reason has to do with the fact that
9 privately owned utilities are limited with respect to the type
10 of conservation programs they can implement compared to what we
11 would do with public utilities, which have ordinance authority
12 and can require landscape ordinances and plumbing retrofit
13 ordinances and things like that. So to the extent that we can
14 make recommendations for some programs that the utilities can
15 implement without having to have that ordinance authority, we
16 would certainly support that through the Commission's actions
17 today.

18 So if you have some questions of me, I will be happy
19 to do my best to answer them.

20 CHAIRMAN EDGAR: Thank you, Ms. Walker.

21 MS. WALKER: Thank you.

22 CHAIRMAN EDGAR: Any questions at this time? No?
23 Okay.

24 Then, I guess, Mr. Reilly, let's start with you, if
25 we can, and ask you to speak in a little more detail to the

1 four issues that you have identified for us that you have some
2 concerns about.

3 MR. REILLY: I handed out a little handout there on
4 Issue Number 5, the used and useful of the water and wastewater
5 treatment plants. The purpose of this little handout is to
6 describe the points of agreement and disagreement between
7 staff's recommendation and the Office of Public Counsel.

8 The first one is with regard to the used and useful
9 of the water treatment system. As you know, the used and
10 useful percentage of the water plant is basically a fraction
11 where you have in the numerator peak demand, minus unaccounted
12 for water, plus fire flow, and in our view fire flow if not
13 otherwise provided by storage, plus growth. And that is in the
14 numerator, with the denominator being the firm reliable
15 capacity.

16 When you look at this little handout, one of the most
17 important things to look at that effects the difference of the
18 used and useful we are recommending versus what the staff is
19 recommending is that first category up there, firm reliable
20 capacity. Basically, staff and Public Counsel agrees with the
21 American Waterworks Association requirement in their manual
22 that you evaluate firm reliable capacity by looking at the
23 pumping capacity and you take out the highest pumping capacity
24 out of the equation and leave the remaining pumps.

25 In this particular case there are two pumps both

1 equaling 900 gallons per minute. If you take out one of those
2 pumps, that leaves basically 900 gallons per minute times 60
3 for the 60 minutes times the 24 hours, gives you the total
4 gross capacity of that pumping capacity left. But staff has
5 done -- both Public Counsel and staff have taken out the
6 largest. What staff has done with the remaining single pump is
7 they then go a step further and say, well, we believe firm
8 reliable capacity should be -- you should cut that further in
9 half. So they said we are only going to give you credit on
10 the -- for the denominator on the capacity for one-half of what
11 that pump is capable of pumping.

12 Our engineers suggest that that is far too
13 restrictive. These pumps are designed to go 24 hours a day,
14 seven days a week, week after week, month after month. They
15 are very capable of continuous pumping. However, our engineers
16 in the conservatism of trying to arrive at a fair and correct
17 firm reliable capacity not only remove the highest pump, but
18 with the remaining pumps we suggest that you allow 20 hours of
19 flow out of those 24 hours. Staff is basically saying we are
20 going to cut it further to just 12 hours.

21 In this particular case the effect of this approach,
22 this methodology of arriving at firm reliable capacity is to
23 basically saddle the customers in the used and useful equation
24 with only 25 percent of the true gross capability that is
25 really in the field. Because you are basically taking away the

1 first pump and then cut the other pump in half, and it
2 produces -- and that is in that first column -- 648,000 gallons
3 per day. That is in the denominator of the staff's fraction
4 for used and useful. Ours is a higher number, 1,080,000. And
5 the difference is caused because we feel it is fair to the
6 customers to say that firm reliable capacity should be -- you
7 should count -- at least allow those pumps that remain after
8 the largest one has been taken out to be allowed to run 20
9 hours. They, in fact, run more than 20 hours. In fact, in
10 reality, you have two pumps running. But just for redundancy
11 and for firm reliable capacity purposes, we've taken out the
12 largest. So that is, I guess, one of the biggest differences
13 on the denominator.

14 If you go down further on the category, when you
15 evaluate demand, both staff and Public Counsel agree that the
16 max day, the single max day, is an anomaly and should not be
17 used. Staff then went on to use the facts -- the five day
18 average of the max month, which is 739,000 gallons per day. We
19 agree with staff on this number.

20 Excessive unaccounted for water, we are still looking
21 at this. We haven't signed off on it, but today I'm prepared
22 to say that we are not suggesting that there is unaccounted for
23 water that needs to be subtracted from that demand.

24 Then that leaves the only over point of disagreement
25 between Public Counsel and staff, and that is what do you do

1 about the company's requirement to meet the fire flow demand?

2 And the amount of that demand is agreed to. The company has

3 asked for 144,000 gallons per day fire flow requirement.

4 That's basically -- I believe it's 1,200 gallons per minute

5 times two hours. That is how they arrived at that. That is a

6 figure that staff, the company, and OPC agree on. The question

7 is how do you -- how does the company meet that requirement?

8 It is our view that this company has plenty of storage to meet

9 the instantaneous demands. This company has three

10 50,000-gallon storage tanks, and further another \$10,000 (sic)

11 hydropneumatic tank. It basically has 160,000 gallons of

12 storage that is ready to serve instantaneous demands.

13 One of those instantaneous demands, of course, is a

14 fire event which will require within a two-hour period this

15 144,000 gallons per day. We believe that storage is plenty

16 adequate to take care of that event, as well as with the

17 configuration of this plant, that there is sufficient pumps

18 behind those storage to replenish, to literally replenish those

19 storage tanks while those storage tanks are satisfying the fire

20 event.

21 When our engineers have looked at this plant,

22 basically, after such an event has occurred, there is,

23 according to their calculations, about -- I forget the exact

24 number, but there is -- there is like another hundred -- let me

25 see, get the exact number here. There are three 600 gallon per

1 minute pumps that also -- excuse me, there's a
2 900-gallon-per-minute pump that fills these tanks. And the
3 combination of the water going to those tanks there is about
4 100,000 gallons left over is what I'm trying to say.
5 Basically, that the storage can completely satisfy fire flow
6 and also the average of the max day of that system. So we
7 believe that storage is sufficient to meet fire flow and that
8 is why we have zero and why staff has the 144,000.

9 There is a typo on the growth figure, that is 1,390
10 ERCs, and there is basically no growth. Pennbrooke is
11 essentially built out in its current service territory. So
12 that's why the difference between Public Counsel and staff.

13 And we recommend that a much fairer figure -- as I
14 said, that our figure on firm reliable capacity represents
15 about 41 percent of the true capacity of the plant; whereas,
16 staff's firm reliable capacity basically cuts it down to about
17 25 percent, which we think does injury to the customer's
18 position.

19 CHAIRMAN EDGAR: Commissioner Arriaga, did you have a
20 question?

21 COMMISSIONER ARRIAGA: Madam Chairman, it's really
22 not a question. I got very confused with the explanation. I
23 don't know what the difference is. We are coming out from the
24 difference between staff and -- you just confused me. You
25 threw me off completely. And I don't want to, you know, bother

1 the Commissioners with all of this, because it is kind of
2 difficult.

3 Let it go. Let it go. Maybe staff later can help me
4 out.

5 MR. REILLY: Well, I was trying to explain that there
6 is sufficient storage to meet fire flow, and that it cannot
7 only have the capacity to meet the fire flow, but that the
8 pumps behind that storage is replenishing that storage so that
9 even simultaneously while it is meeting a fire that there is
10 sufficient capacity in the system to meet the average daily
11 flow of the max month. That is all I was trying to say.

12 But from our engineer's standpoint, it is very fair
13 to say don't make treatment -- don't put -- put it in used and
14 useful in treatment to meet fire flow, because the customers
15 have paid for and the investment is there for storage to fully
16 and adequately -- both meet fire flow as well as meet the needs
17 of the system. That's what we were trying to say.

18 CHAIRMAN EDGAR: Okay. Would our staff like to
19 respond?

20 MR. RIEGER: Yes, Commissioners. This is Stanley
21 Rieger with the Public Service Commission and the staff.

22 In reference to the facility explanation that has
23 been explained to you, we'll start off with the firm reliable
24 capacity part and the differences why staff is using a 12-hour
25 pumping day as opposed to OPC's 20 hours.

1 First off, staff is in the process of designing and
2 preparing for your upcoming consideration used and useful rules
3 for water treatment facilities. What staff has done in this
4 issue is reflecting staff's current philosophy of what it plans
5 to present to the Commission when rulemaking comes to pass with
6 the Commission for approval.

7 Concerning the 12-hour pumping day, the 12-hour
8 pumping day reflects what we believe as a normal operating day
9 at a facility where we have residential customers, and we
10 expect the demand, whatever the demand would occur, will occur
11 during the 12-hour pumping day. The rest of the hours of the
12 day, the customer base is primarily asleep. But there are
13 usages maybe going on in off hours, such as irrigation.

14 Speaking of irrigation, that's where we really have a
15 problem with Pennbrooke. As you recall, reading through the
16 quality of service issue in this record, you will see that the
17 customers have significant problems with the pressure being
18 provided to them by the utility. This facility is just barely
19 keeping up with the demands of the customer base. The primary
20 reason behind this is high irrigation usage at Pennbrooke.

21 Staff does not believe the use of a 20-hour pumping
22 day is realistic in this case because of the background history
23 that we have reviewed. This facility is providing as much as
24 it can to provide adequate service, however, it is a stretch
25 when we are talking about pressure.

1 We believe that the use of a 12-hour pumping day is
2 realistic, particularly for this case. It follows past
3 Commission practices in previous cases where we used 12-hour
4 pumping days. We see at this point there is no reason to
5 expand the 12-hour pumping day to anything more than that.

6 In reference to the fire flow, and the tie to what
7 OPC is claiming as adequate storage capacity behind that, here
8 again, the utility must provide adequate fire protection.
9 However, it's tied to where we consider storage and no storage.
10 The fact that we did not consider storage in this
11 recommendation, the used and useful capacity analysis, is
12 because of staff's thinking that to use a storage calculation
13 for a facility with less than a day's capacity of storage
14 available is unrealistic and should not be considered. Here
15 again, that pertains to what is the immediate demands of the
16 customer base requirement on the treatment plant?

17 This facility, as we are seeing, is adequate to
18 provide existing customer base flows. There are problems with
19 pressure which are being attended to, we believe. And the fact
20 the facility is built-out, the service area is built-out, does
21 have criteria that should be considered. I believe that's all
22 I can explain to you at this point in time.

23 CHAIRMAN EDGAR: Thank you.

24 Mr. Friedman, did you want to speak to some of those
25 points?

1 MR. FRIEDMAN: Madam Chairman, I'm going to let
2 Mr. Seidman speak to the technical issue, and then I do have
3 one or two non-technical points I want to raise.

4 MR. SEIDMAN: Thank you, Commissioners. My name is
5 Frank Seidman with Management and Regulatory Consultants. I
6 prepared the use and useful analysis for this case.

7 Mr. Rieger covered most of the issues with regard to
8 this in support for their position, with which we agree. I
9 would just like to add a couple of things.

10 First of all, to reiterate what he said with regard
11 to the issue of whether or not an analysis should be made on a
12 12-hour basis or some other basis. That is a generic issue
13 before this Commission now, and I would hate to see us
14 nitpicking it in each case as we go along before some decision
15 is made on whether or not the staff is going to be allowed to
16 continue with that approach.

17 With regard to the choice of the max day, the Public
18 Counsel and staff agreed on that, that it should be the average
19 of five days in the max month. We disagreed with that when we
20 presented the case. The Commission policy has basically been
21 that you use the max day unless there is some type of anomaly.
22 Well, yes, there was an anomaly in this case. The
23 887,000 gallons that you talked about was an anomaly. It
24 occurred in the month of May of the test year. The peak month
25 for this utility was November, and the max day in November was

1 756,000, which is what we proposed. You can see that the
2 average is 739,000. It doesn't differ very much from the max
3 of 756,000. So the 756,000 is not an anomaly in the max month.
4 We still consider that should be used.

5 With regard to fire flow, we agree with the staff's
6 analysis. And I would like to go one step further, which is
7 something that we pointed out with regard to responses to the
8 Office of Public Counsel; and that is, during the generic
9 workshop, the rulemaking workshop for water rules, DEP was
10 represented there, and did make a presentation. And one of the
11 things they said, and I quote is, even if a water system has
12 sufficient fire storage, source and treatment facilities must
13 be capable of replenishing the fire storage on a daily basis,
14 so that fire storage is available in any given day. Thus, the
15 max day demand must include fire flow. That is a direct quote
16 from a statement from a representative of the DEP, and we
17 believe that it should be considered here as the staff has done
18 so.

19 And, finally, I would like to just say something
20 about the wells themselves. This is a system that has two
21 wells. The DEP requirement is for a community's water system
22 of this size that you must have two wells, at least. So on
23 that basis the two wells themselves are used 100 percent used
24 and useful, regardless of anything else. The fact that they
25 deliver in this case 900 gallons per minute each versus some

1 other lower number or higher number is really a function not of
2 the wells themselves, but of the well pump.

3 In the last case before the Commission for this
4 utility -- it was a staff-assisted rate case in the year
5 2000 -- we had the same two wells, only they were delivering at
6 that time something like -- I believe it was 650 gallons for
7 one and 800 gallons a minute for the other. So nothing has
8 changed except that the pumps are now producing at a more
9 efficient rate or have been replaced. We are not in any
10 different position.

11 And with that, that is my comments with regard to
12 water.

13 MR. FRIEDMAN: And I would just simply add to that
14 three comments. One, as Mr. Seidman referred to at the end of
15 his comments, in the last rate case the water system was --
16 water plant was considered to be 100 percent used and useful,
17 and there hasn't been any material change since that time.

18 Number two is that the calculations made by the staff
19 of used and useful is consistent with prior rate cases that I
20 am familiar with, and so there is some precedent for what the
21 staff has recommended.

22 And, number three is that this system was reasonably
23 designed to meet the needs of its customers. Its customer base
24 is basically built-out. And as a result of that, the utility
25 system should be determined to be 100 percent used and useful.

1 If you accept the OPC's position, there is no growth in this
2 system, as Mr. Reilly recognized. And, thus, this system would
3 never have an opportunity to reach 100 percent used and useful.

4 Thank you.

5 CHAIRMAN EDGAR: Thank you.

6 Mr. Reilly.

7 MR. REILLY: A very quick comment. We do concur with
8 the DEP comments that the system needs to fill the storage at
9 the time that it is meeting fire flow demand. We do believe,
10 and we are not going to litigate this today, that the system
11 will be able to do that.

12 A very important comment that was made, however, is
13 that it seems imprudent for us to try to have to have a
14 tremendous amount of rate case expense and litigate each and
15 every one of these issues if, in fact, water treatment is going
16 to be contested in each one of these Utility, Inc. cases. We
17 agree with this opinion and, quite frankly, we will be in
18 conversations with staff as well as the utility to see if
19 something cannot be worked out prudently with regard to -- if
20 there is a case that can, in fact, be resolved except for the
21 used and useful of the water treatment plant, that we allow
22 that case to be resolved and go forward. Even the revenue
23 subject to those issues relating to the water treatment plant,
24 go ahead and be collected subject to refund and also subject to
25 adjustment in rates if Public Counsel should prevail on one or

1 more of these issues in the generic docket, which is, by the
2 way, going parallel.

3 We are going to be getting a recommendation from your
4 staff, I guess, in January or February in this water treatment
5 rule fairly soon, and it is my understanding that that docket
6 is going to be paralleling these Utility, Inc. cases. So I
7 think it is smart for all concerned to separate the water
8 treatment used and useful issues and resolve them in that
9 generic docket and not necessarily force a lot of cases to be
10 protested with all of the incumbent costs to both the company
11 as well as the ratepayers. So we are going to be pursuing that
12 in the days to come, and I think it makes perfect sense for all
13 parties for it to be done that way.

14 Thank you.

15 CHAIRMAN EDGAR: Thank you, Mr. Reilly. And I know
16 we appreciate your willingness to work with our staff and the
17 other interested parties, that we all have a desire for
18 administrative efficiency, and if there are ways that we can
19 achieve that, then we will certainly do so.

20 Commissioners? Commissioner Arriaga. Commissioner
21 Tew.

22 Commissioner Tew.

23 COMMISSIONER TEW: On that last point, first,
24 Mr. Reilly, have you already discussed that kind of a proposal
25 with the other party?

1 MR. REILLY: Actually, I thought of it this last
2 weekend. I discussed it with Harold McLean yesterday
3 afternoon, because I said I was going to be here today, and I
4 didn't want to speak unless he okayed it. He has specifically
5 okayed it, said it makes perfect sense to him that we proceed
6 in that way. So it's so new that I really haven't had a chance
7 to talk to anybody. But I believe that is the way we should
8 go.

9 Now, it may be in a case like Pennbrooke where we're
10 going to be discussing some other issues, it may not be
11 possible not to protest one or more of these cases. But if a
12 case can otherwise be resolved to the satisfaction of the
13 customers and we have this, I just don't want this precedent
14 hanging out there while we are still trying to make our point
15 on something that is going to have broad effects on customers
16 for years to come. So I think that is the way to go. And I
17 think that it makes so much sense that I hope everyone will
18 embrace it, but -- I hope I answered your question.

19 COMMISSIONER TEW: You did. And may I also ask
20 Mr. Friedman for his thoughts about that. I know he has just
21 heard this.

22 MR. FRIEDMAN: No. I was going to suggest that the
23 precedence that Mr. Reilly doesn't want to create by this case
24 is already there. I mean, this case follows prior Commission
25 practice. So the precedence is already there. This case

1 doesn't add anything new to the body of law that you all have
2 decided over years. So there is, you know, the proposed rule
3 coming about. It will go through a process. No telling how
4 long that is going to be to get that resolved. But this case
5 needs to stand on its on as the law exists today, based upon
6 the precedence that exists today, and I think that is
7 consistent with staff's recommendation.

8 We're always willing to talk to Public Counsel and
9 the staff to resolve cases efficiently. So we are always ready
10 to do that, it is just on this used and useful issue I don't
11 think that Mr. Reilly's suggestion is one that is practical.

12 CHAIRMAN EDGAR: We will have more discussion about
13 how we will discuss, I think.

14 COMMISSIONER TEW: So much for my attempt to get them
15 to hand hold, but that's okay.

16 I do have some other questions about some of the
17 points that were raised on the -- this is for staff. And I
18 can't remember if it was Mr. Seidman or Mr. Friedman, spoke
19 about the 887,000 gallons per day and how that both parties had
20 agreed to throw that out because it was an anomaly. And I
21 think it was Mr. Seidman that said that it was PSC policy to go
22 with the max day unless it was an anomaly. He agreed it was.
23 And I think he was maintaining that you would use the 756,000
24 from November if we were to stay with Commission policy. So in
25 this case, what is our basis for using the five max day average

1 as opposed to going with that next max day?

2 MR. RIEGER: We usually tend to go to the five-day
3 average if the peak day is an anomaly, and that is the
4 direction that we are taking with the proposed rule.

5 MR. RENDELL: If I might add. I'm Troy Rendell with
6 staff. To shed some light on this generic docket that everyone
7 is talking about, we represented to the Commission last year
8 that we would be bringing a rule by the end of last year on
9 water plant used and useful. However, due to the increased
10 workload, these rate cases, and for other rate cases, we were
11 unable to bring the recommendation. We have workshopped it.
12 We have received the comments. We are currently working with
13 staff to formulate a recommendation to bring forward.

14 Absent the rule, what we are trying -- what we are
15 attempting to do in these rate cases are two-fold. One, we are
16 making adjustments consistent with past Commission practice.
17 If we were to vary from that, the courts would look at the
18 Commission decision of why there is a variance.

19 The second one is that we are trying to make an
20 attempt in each of these cases to follow the same procedure
21 that we are going to be recommending in the rule. We do not
22 want a case to be contradictory to what we have already
23 workshopped, what all the parties know what we are looking at.
24 Obviously, there is some disagreements on the pumping rate of
25 the pumps, the max day. Typically what we do if there is an

1 anomaly on the max day, we go to the five max day average.
2 That is past Commission practice. The parties know that that
3 is what we are proposing in the rule that has been workshopped.

4 So I agree with Mr. Friedman that holding these cases
5 up pending the rule docket is going to serve no purpose,
6 because we are already following what staff is going to be
7 proposing in those rules. So we must go forward with the
8 statutory deadlines on these rate cases. We are trying to be
9 consistent with the rule and past Commission practice, and that
10 is what we are representing in each of our recommendations in
11 all of the Utilities, Inc. rate cases. We plan to bring that
12 recommendation in the early part of 2006 -- 2007.

13 CHAIRMAN EDGAR: I know the rule that we had thought
14 that we would see by December.

15 Commissioners, where would you like to go?

16 Commissioner Arriaga, I think you were next.

17 COMMISSIONER ARRIAGA: Madam Chairman, the comment I
18 want to make may change the course of the conversation. I
19 don't know if you want to exhaust --

20 CHAIRMAN EDGAR: I'm ready to move forward. Let's
21 go.

22 COMMISSIONER ARRIAGA: Okay. Just briefly on the
23 prior issues. I think it has been said that 100 percent used
24 and useful has been used in prior rate cases in this specific
25 company, I believe. Second, there is enough precedence to

1 consider it this way. And, third, the customer base rate is
2 built-out. So, I mean, there is no where to go, 100 percent.
3 So I think I agree with staff on those issues.

4 Now, changing the -- there is always something to be
5 learned from these water cases, you know. I'm starting to miss
6 Commissioner Deason already.

7 CHAIRMAN EDGAR: You and the Chair.

8 COMMISSIONER ARRIAGA: No reflection on Commissioner
9 Littlefield, please. It is just that he loved these cases.
10 You know, it was one of those things for him.

11 But in this learning process, let's look at Issue
12 Number 9 in this item and Issue Number 10 in the item before.
13 Is there any reason why the appropriate rate of return on
14 common equity is exactly the same in both utilities or is it
15 just a coincidence, or was it properly calculated that way?

16 MR. SPRINGER: Good afternoon. I'm Michael Springer
17 with the Commission staff.

18 We used the wastewater, water and wastewater leverage
19 formula, and in calculating those we used the parent company's
20 capital structure, so those are consistent.

21 COMMISSIONER ARRIAGA: So it's not a coincidence?

22 MR. SPRINGER: No. No.

23 COMMISSIONER ARRIAGA: How could they be exactly the
24 same on two different companies with different investments?

25 MR. SPRINGER: They are actually using the same

1 parent company's investment capital structure.

2 COMMISSIONER ARRIAGA: Okay. Now I understand.

3 Thank you.

4 MR. SPRINGER: Thank you, sir.

5 COMMISSIONER ARRIAGA: Okay. Next question. And I
6 don't mean to revive a dead horse, Madam Chairman, but the --
7 I'm sorry about that, but the issue of quality of service comes
8 right up to me again. And, staff, you mentioned that it should
9 be considered satisfactory. But at the same time you are
10 telling us there are some pending questions or some issues that
11 are there, and that we have pressure problems, and you are
12 going to continue monitoring these things. I just don't want
13 to see ourselves three years from now with continuous
14 violations, and we have declared this to be satisfactory and us
15 saying that we should fine them. And, you know, we just had a
16 very lengthy discussion a few minutes ago that I would not like
17 to repeat three years from now. Why are you finding that there
18 are problems with the service and at the same time you are
19 asking us to say that it is satisfactory?

20 MR. RIEGER: I understand, Commissioners. First of
21 all, as far as violations are concerned in relationship to the
22 DEP, they are in full compliance with DEP and the requirements
23 set forth by their office. So that is one difference between
24 this case and the previous case, where I heard a lot of DEP
25 being mentioned and there is no enforcement activity going on

1 as far as the criteria set forth by the DEP. The utility is
2 making them. They are borderline on some issues, one of which
3 is the pressure thing. But that is more of a customer
4 complaint that we picked up on. There are other concerns
5 concerning sediment in the water. And we heard all those
6 things during the customer meeting. The customers were, to say
7 the least, not happy with the quality of service provided to
8 them, primarily because of lack of adequate pressure and lack
9 of good drinking water minus sediment in the water.

10 We know that the utility is addressing these problems
11 through review of the complaint information that we received
12 and our own complaints file that we have here in the
13 Commission. We can see that the utility has been diligent in
14 taking care of customer complaints in reference to pressure and
15 in reference to sediment problems in the water.

16 Here again, this comes from a problem that the
17 customers may have created themselves through high irrigation
18 rates that we have there. And it's difficult for the utility
19 to keep up through high demand causing the pressure problems.
20 As far as the sediment problems, the utility has created a
21 flushing program of which we addressed that, and we are seeing
22 the utility doing a reasonable attempt to correct these
23 problems in reference to the customer concerns. All in all, we
24 believe the utility is addressing the situations. They are in
25 compliance with DEP, and they seem responsive to the customer

1 complaints as they roll in. And, therefore, that's the basis
2 of our determination in this issue.

3 COMMISSIONER ARRIAGA: You seem to be recognizing
4 pressure problems, sediment in the water, customer complaints?

5 MR. RIEGER: Yes.

6 COMMISSIONER ARRIAGA: Do you really think that I
7 feel comfortable saying that this is a satisfactory service?
8 With all due respect to your recommendation, of course, but --

9 MR. RIEGER: I understand. Well, obviously, it
10 was -- we had hesitation, too, writing it up, because we did
11 notice the problems, and we were there at the customer meeting
12 and we heard their concerns. But we also know in the same
13 respect, we know what the utility is trying to do to address
14 it. It is one thing if the utility is ignoring the situation.
15 But we know that the utility -- concerning the pressure
16 problems, they recently installed an additional trunk feeder
17 main which expanded their capability to get the water out to
18 the system. We know that they have recently addressed a
19 flushing situation in order to remove the sediment in the
20 water. So there is really -- well, it's just one thing if we
21 know that the utility is being derelict in their duties, but we
22 don't believe they are.

23 COMMISSIONER ARRIAGA: But that is not the point.

24 The point --

25 MR. RIEGER: Yes.

1 COMMISSIONER ARRIAGA: -- is they may be doing a lot
2 of things, and our obligation is to in the future, three months
3 from now, six months from now evaluate those things to see if
4 they have corrected the problems we had or not. The fact is
5 that right now you have pressure problems, you have sediment,
6 you have customer complaints. Okay. Let's say that
7 three months from now we could say they are satisfactory
8 because they acted diligently.

9 MR. RIEGER: I understand. I understand. But the
10 alternatives are what? If they have to expand capital expense,
11 for one thing, this might affect the rate structuring. And
12 that really is the only alternative that I can see. If they
13 have to go in and rework their distribution system to make the
14 lines bigger, to do more looping of the lines. All this is
15 costing money. And we are not seeing that they are in
16 violation of anything as far as with DEP is concerned, which is
17 our lead agency in that.

18 Now, of course, we are addressing the customer
19 concerns, and we take that seriously here at the Commission.
20 And I appreciate your concern, and it is enlightening to hear
21 you directing more concern towards that, which will give us
22 even more pause as we are writing up these recommendations as
23 to how should we direct the quality of service issue.

24 MR. RENDELL: Commissioners, there have been cases
25 where if they are in compliance with all of the requirements

1 except maybe one where -- the quality of service, customer
2 satisfaction, where the Commission has found that the quality
3 of service is marginal. So you do have that discretion. Not
4 to say -- not to admit, you know, that everything is perfect;
5 you can say that the quality of service is marginal, and it
6 still recognizes there are some problems and they should work
7 on it. But there is no adjustments in the rate case to take
8 that into consideration. So that is one alternative that you
9 do have before you.

10 CHAIRMAN EDGAR: Are we required to make a finding
11 regarding quality of service?

12 MR. RENDELL: I believe it is contemplated in the
13 statute that it must be taken into consideration in any rate
14 proceeding.

15 CHAIRMAN EDGAR: Taken into consideration I'm not
16 sure requires a finding of --

17 MS. BRUBAKER: Actually, if I may, I would point out
18 Rule 25-30.433, Sub 1, Florida Administrative Code, "In every
19 water and wastewater rate case the Commission shall determine
20 the overall quality of service provided by the utility by
21 evaluating three separate components: Quality of the product,
22 operational conditions, and customer satisfaction."

23 Customer satisfaction is, indeed, one of those
24 three components, but we do look at all three in making that
25 evaluation. Mr. Rendell is correct that quality of service,

1 customer satisfaction, these are moving targets. You always
2 strive for excellence in the quality of these things in
3 Florida, but problems do exist. And one of the things we do
4 need to focus on is what is being done to address it. Is the
5 utility being active? Is it addressing those concerns? And,
6 of course, we will always use our monitoring as staff both
7 through our complaint process and just as staff as we become
8 aware of problems to work with the utility. If there is a
9 problem identified, we don't want to let it slumber, we do want
10 to be proactive about it.

11 CHAIRMAN EDGAR: Okay. Thank you.

12 And along those same lines are the terms in this
13 context satisfactory and/or marginal defined?

14 MS. BRUBAKER: They are not defined. They are,
15 however, very standard usage.

16 CHAIRMAN EDGAR: Thank you.

17 Commissioner Arriaga, did you have other --

18 COMMISSIONER ARRIAGA: No, I just wanted to listen.

19 CHAIRMAN EDGAR: Commissioner Carter.

20 COMMISSIONER CARTER: Thank you, Madam Chairman. It
21 is quite refreshing to see that the St. Johns Water Management
22 District is supportive of our staff recommendation on this
23 issue.

24 Secondly, I just wanted to ask staff, based upon
25 where we are, and I think I heard you say this before, but I

1 just want to be sure for myself, that all of the
2 recommendations in this case follows -- is nothing out of the
3 ordinary. This is normally how we handle these cases. I know
4 we will have some rule out there in the future that we will be
5 dealing with, but based upon the history of how we handle these
6 cases, it is consistent with our prior rulings?

7 MR. RENDELL: Correct.

8 COMMISSIONER CARTER: Thank you, Madam Chair.

9 CHAIRMAN EDGAR: Commissioners, further questions at
10 this time?

11 Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: If you think it's appropriate,
13 I would like to make a motion.

14 MR. REILLY: Excuse me. Do I have an opportunity or
15 would you not hear our comments on some of these other issues?

16 COMMISSIONER ARRIAGA: Actually, no, but I would love
17 to hear your comments.

18 MR. REILLY: I will try to be brief, sensing the mood
19 of the Commission. But I feel absolutely -- the customers
20 really want me to speak on a couple of these issues, and I
21 really feel I must.

22 CHAIRMAN EDGAR: Mr. Reilly, please do. Go ahead and
23 address your other --

24 MR. REILLY: And I will be brief. But there is a
25 second page on -- we got away from Issue 5, and I'm going to

1 very briefly touch a matter that is a concern to the customers.
2 This is the one where we are talking about the wastewater used
3 and useful. And very briefly, this little second page reflects
4 that staff's analysis of used and useful of the wastewater
5 plant is basically the same as Public Counsel's, and it comes
6 to the same result. The only difference is you have a little
7 star by the staff and a double star by Public Counsel.

8 And, basically, staff -- the little single star
9 basically indicates that notwithstanding the 50 percent used
10 and useful applying, please understand the rule -- there is a
11 rule that the staff was applying, 25-30.432, and it's pursuant
12 to that rule that the analysis was performed. And this is a --
13 I think it was adopted in December of '02, which is after this
14 earlier, the first -- the rate case that preceded this rate
15 case, which I will get to.

16 But, essentially, after you do this analysis it is a
17 50 percent used and useful wastewater plant. And they say
18 notwithstanding that, though, for two reasons because it was
19 100 percent used and useful in the last rate case and the fact
20 that it is basically built-out, we are just going to consider
21 it 100 percent used and useful. And the arguments we would
22 make against that is that the 100 percent used and useful
23 relates to a 2001 test year, and at that time the circumstances
24 were completely different. The capacity of the wastewater
25 treatment back in the 2001 test year was 110,000 gallons, not

1 the 180,000 gallons that it is today. So it is apples and
2 oranges.

3 And in the flow that was compared to that 2001 test
4 year was around 95,000 gallons per day, so it is pretty darn
5 close to 100 percent used and useful in the last case. And
6 then if you look at that order, you will see where they made it
7 100 percent because they factored in some growth which is now
8 not really considered according to the rule. So I think
9 that -- I don't think that that last order is really
10 particularly relevant.

11 On the issue of build-out, I think we have -- from
12 our analysis we have pretty well conceded that Pennbrooke is
13 basically built-out on the four corners of the community, but
14 this is a concern we have. We don't believe that something
15 that is basically close to 100 percent used and useful, that a
16 utility can come in and make a substantial addition to that
17 plant and then say, well, we're built-out, and it has to be
18 100 percent used and useful.

19 The point that we are making is although it is
20 built-out within its current service territory, there is a
21 substantial amount of territory. There is vacant land, there
22 is developable property. It is not confined to its service
23 territory. It doesn't have -- I think there is a city -- there
24 are two cities nearby, the City of Leesburg and Fruitland Park,
25 neither one of these are that close to this development. And

1 the point is, if there is excess capacity, and we believe that
2 the flows indicate that, that rather than saddling the
3 customers with excess capacity in rate base perpetually, that
4 it would be more prudent to consider potential use of this
5 extra capacity.

6 So, anyway, we are still concerned about the used and
7 useful as to the wastewater plant, and the customers wanted me
8 to point that out. If you want me to go on to the other issues
9 or if you want to just dispose of that -- we are still
10 concerned about rate case expense, and then this other issue
11 that the Water Management District is concerned about, how to
12 dispose of the water overearnings.

13 CHAIRMAN EDGAR: Okay. I would say, Mr. Reilly, if
14 it works for you, I would like you to go ahead and kind of
15 address the -- you're on a roll, and I'm listening. Go ahead
16 and address your other points. And then, quite frankly, I may
17 exercise the Chairman's prerogative and give us a five-minute
18 break and get more coffee. And then we can come back and
19 proceed. So you are recognized to go forward.

20 MR. REILLY: Well, rate case expense, staff, I think,
21 worked pretty hard to critique the rate case expense, and they
22 basically cut it in half. And, of course, if we were doing
23 that same analysis, we would probably be a little more
24 restrictive than even staff. But I'm not here to criticize
25 that effort on the part of staff.

1 My sole purpose for coming here today on rate case
2 expense is the fact that -- by the way, the rate case expense
3 they cut down to 101,000, which they allocated. And when you
4 amortize that over four years, we're talking about \$25,304 of
5 an annual impact, which they allocated \$13,588 to water and
6 \$11,716 to wastewater.

7 What I'm here to criticize is taking that \$13,588 and
8 applying it to the water rate case. We really strongly believe
9 that the staff should not have allowed any rate case expense in
10 the water case. And the reason why we say that is Utilities,
11 Inc. should never have filed a water rate case for this
12 utility. In the final order of this case, of this same utility
13 back in June of '01, the final and last rate case found that
14 the company was overearning then, \$39,670, by 15.06 percent.
15 And staff in this case, five years later, once again finds that
16 the company is still overearning.

17 We respectfully argue that the Commission should not
18 make customers pay for rate case expense for utilities to prove
19 that they are not entitled to a rate increase. We think this
20 is unfair to customers. The recommendation goes on to say that
21 in three separate cases where the Commission completely
22 disallows all increase in rates for a particular utility rate
23 case, that they have disallowed all rate case expense. And we
24 think that is the proper thing to do in this case. That the
25 13,000 -- basically, the \$13,588 of rate case expense just had

1 a way of repressing the overearnings that the staff recognized.

2 So that, in fact, if you made no more adjustments and
3 didn't agree with OPC on any other issues, just the
4 overearnings that staff has determined to go with the rate case
5 that you are making the customers pay to seek a rate case that
6 they should never have sought in the first place would result
7 in about a total \$34,000 of overearnings, if you put the rate
8 case expense with the overearnings that staff has already
9 recognized.

10 So, essentially, we just feel that this is unfair to
11 the customers, that the company should not have even come in
12 for a rate case at all on the water side. On the wastewater
13 side that was worth looking at and pursuing. And so this
14 doesn't blindside the utility. They were aware of the history
15 of the utility overearning on the water side. They should not
16 have come in and put us through, you know, X hundred thousand
17 of dollars worth of rate case expense just to conclude at the
18 end that no rate case -- no increase was deserved. So that is
19 our biggest problem with the rate case expense. It just should
20 be disallowed on the water side.

21 Very briefly, the last two issues, 16 and 20. This
22 is where should an adjustment be made to this account to create
23 this water resource conservation expense. And then Issue 20,
24 what should we do with the overearnings on the water side.
25 Basically, your staff is recommending that the overearnings

1 that they calculate of \$20,845, should be given to the utility
2 as a conservation expense with the requirement that these
3 monies be used to enhance the utility's conservation program.
4 And it goes into all kinds of details about after 90 days of
5 the order we are going to get the plan approved by the
6 Commission, the South Florida Water Management District. At
7 minimum they are going to have to spend over these years the
8 \$20,845.

9 We are very much opposed to this recommendation. We
10 don't believe that history should repeat itself. In the very
11 last rate case, staff recommended and the Commission ordered
12 that the company implement an aggressive conservation program.
13 And they funded this program back in 2001 with \$25,000 a year,
14 and they took this \$25,000 a year out of the pockets of the
15 ratepayers. They took it out of overearnings. The
16 overearnings back in the 2001 docket of \$39,670.

17 Now, if you go to -- and we've looked at the record,
18 and it was never -- this money that was taken from the
19 ratepayers back in 2001, a total of \$125,000 paid to fund
20 conservation programs was never spent by the utility and never
21 monitored. Even though the same order -- if you go back to the
22 last rate case order, it has all the same language in it that
23 staff is recommending in this case. And I read from it, at the
24 old order, "The utility shall spend \$25,000 of the overearnings
25 to implement water conservation programs. The utility shall,

1 at minimum, spend the money for each of the first two years of
2 its conservation program and shall file quarterly reports with
3 this Commission on its program covering the same two-year
4 period. These reports shall list conservation measures" -- on
5 and on and on, and what they do. And then they said, "As
6 previously discussed, the remainder of the water system
7 overearnings that is not spent on this conservation shall be
8 used to offset the wastewater increase."

9 Now, you ask yourself, well, what happened to all of
10 that money? And I think you get an answer to that when you go
11 to the transfer order. There is a transfer order issued by
12 this Commission two years later. This is when Utilities, Inc.
13 bought the utility and took over its operation. And in this
14 order we find out what happened. Nothing happened. Here in
15 this order it says, and I quote from the transfer order, "The
16 utility has not obtained approval for its proposed water
17 conservation program from the Commission or the St. Johns River
18 Water Management District. According to the buyer, it will
19 continue to work to receive approval and is committed to
20 expending the funds which it committed to spend pursuant to the
21 referenced order."

22 The record reflects that the first utility never
23 spent the money. Utilities, Inc., also has not spent the
24 money. And you ask, well, what has Utilities, Inc. done since
25 it took over this utility? And we checked with the -- one of

1 the discovery requests was give us a copy of your consumptive
2 use permit and associated paperwork. And attached to that is;
3 in fact, Utilities, Inc.'s conservation program that is
4 currently in effect for this particular utility. And it has on
5 the front page this is general water conservation plan for the
6 Utilities, Inc. of Pennbrooke. This is a generic conservation
7 program that, in fact, the date of it was adopted back in 1998.
8 It's all standard language, generic conservation program. The
9 customers have paid since 2001, \$125,000 for conservation
10 programs that we cannot see documented have ever resulted in
11 any practical effect.

12 And, in fact, your staff is telling you today that it
13 is still so bad and the usage is so bad, and the Water
14 Management District is here telling you they are overpumping
15 their permit. And the ratio between the amount of water pumped
16 to customers and the amount of wastewater going back to the
17 wastewater plant is like 4.1 to 1. So I suggest to you that
18 the customers have paid for something they have never gotten.

19 And I'm not opposed to conservation programs. I
20 agree with everything that has been said by the Water
21 Management District. I would love to see a wonderful plan
22 adopted and approved by this Commission and paid for by the
23 utility. But I respectfully suggest that we have a pool of
24 money that these customers have paid for that they have never
25 gotten a benefit from. We have a pool of \$125,000 that should

1 be used for any kind of conservation program that this
2 Commission and this Water Management District feels would be
3 beneficial to the environment and to the community.

4 But to the extent this company has overearned, do not
5 repeat history, do not make these customers once again go
6 through this process, because it has never -- it's fine to see
7 these quarterly reports, but they are not followed up on. It
8 doesn't happen.

9 So we respectfully suggest that the overearnings
10 should be applied to the rate increase which the customers are
11 facing on the wastewater side and, in fact, the filing of the
12 water case in the first place was not prudent, and you
13 shouldn't make the customers pay for rate case expense to prove
14 that there is no increase owing in the first place. And we ask
15 you for that consideration.

16 CHAIRMAN EDGAR: Thank you, Mr. Reilly.

17 Mr. Friedman, before we take a break, do you feel
18 compelled to comment on any of the comments that we have heard
19 from Mr. Reilly?

20 MR. FRIEDMAN: Yes, ma'am, I am compelled.
21 Typically, the staff has been going first, and we have been
22 going after them if you want to keep that same process going,
23 but --

24 CHAIRMAN EDGAR: I'm not wed to it.

25 MR. FRIEDMAN: Okay. If you would like our

1 comments --

2 CHAIRMAN EDGAR: I would.

3 MR. FRIEDMAN: -- we do have some. Okay. I'm going
4 to let Mr. Seidman, again, address the technical parts of the
5 use and usefulness of the wastewater system. I would point out
6 that the rule that Mr. Reilly points out that was used to
7 calculate the used and usefulness is not strictly a mechanical
8 rule. There are other provisions of the rule that you can take
9 into consideration, such as the build-out of the service area,
10 such as reduction in per capita usage, which has been
11 experienced here. So it is not just a pure mathematical
12 calculation. You do have to use your brain a little bit and
13 apply some other policies to the mathematical calculations.
14 And I will let Mr. Seidman address that, and then I will come
15 back and address some of the other non-used and useful issues.

16 MR. SEIDMAN: Thank you, Commissioners. Where to
17 begin? First of all, we agree with the 50 percent --

18 CHAIRMAN EDGAR: Briefly, okay?

19 MR. SEIDMAN: Okay. We agree with the 50 percent
20 used and useful. We got the same calculation, that is what was
21 filed. The analysis didn't end there. This is a used and
22 useful analysis. It isn't just doing equations and printing
23 them and putting them in a MFR. There was a nice long note and
24 evaluation of why we stand where we are today at 50 percent
25 used and useful when, basically, we have grown 70 percent in

1 customers since the last case and, essentially, the capacity of
2 the plant really hasn't changed.

3 What happened is Mr. Reilly stated that the capacity
4 of the plant in the last case was 110,000 gallons per day, that
5 is what the staff used, that was the capacity of the plant as
6 it was restricted because of the lack of ability to discharge
7 all of its effluent. The capacity of the plant at that time
8 had just been increased to 180,000 gallons a day. That hasn't
9 changed. The reason it was increased -- it had been
10 90,000 gallons a day, and this is the -- all I'm talking about
11 is something that happened under the old owner, not under
12 Utilities, Inc. They were at 90,000 gallons a day.

13 Obviously, from other things you have heard, they
14 were at capacity or just above capacity with regard to their
15 demand. They did the economical thing. They added another
16 train to the wastewater plant, which was practically identical
17 to the train that was already there, increased it from 90,000
18 to 180,000 gallons a day. That was based on the historical
19 flows that the company was experiencing. They were at about
20 50 percent build-out of these 1,270-odd lots that they said
21 they were going to have to build-out. They were at 50 percent
22 of the development, and they were experiencing 90,000 gallons a
23 day. So it made sense to add another 90,000 gallons a day for
24 the additional 600-plus customers that they expected.

25 What happened was -- that brought us to this point

1 where we were at 50 percent used and useful -- is when
2 Utilities, Inc. took over in the fall of 2003, they noticed
3 that during rainfalls there was an extreme increase in the
4 effluent, in the treated flows to the wastewater plant. They
5 looked into that. They did an analysis. They found out that
6 there were leaks in the system. They corrected those leaks,
7 and lo and behold, the average use per customer dropped from
8 about 130 gallons per day to 72 gallons per day, which we are
9 experiencing today.

10 Now, they could have left that alone, and we would be
11 sitting here with 100 percent used useful and nobody would be
12 arguing. The 130 gallons a day they were experiencing already
13 is low in the world of how much effluent utilities usually
14 experience. So what we are saying is the fact of the matter is
15 the utility has improved the situation, and thus has released
16 capacity that at the time the capacity was planned was
17 prudently planned based on historical facts, the best
18 information known at the time. Just about the time that was
19 happening, the staff-assisted rate case was in progress. The
20 Commission noted in its order that they were concerned about
21 the ability of the plant to handle flows and they were
22 concerned about the ability of the plant to dispose of the
23 flows. So they took action which went along with the
24 Commission's observations.

25 In addition to that, in order to increase their

1 ability to discharge, they made an arrangement with the golf
2 course to dispose of the effluent through reuse. When they did
3 that, they increased the rating of the plant to a Type One
4 plant, which requires that you have the ability to treat at
5 least 50 percent of your flows with one train out of service.
6 So having the two identical plants in service met that
7 requirement, too.

8 So everything that happened, happened for a good
9 reason at the time. And the fact that their flows have dropped
10 shouldn't be something that the company should now be penalized
11 for for the rest of its existence, because there is not going
12 to be any additions to this area. And if we go along with what
13 Public Counsel was saying, we are going to be taking what was a
14 prudent action, knocking 50 percent off the ability to earn on
15 it, and say thank you for correcting the problem, give us some
16 money back.

17 Now, with regard to the water situation and
18 conservation, I'm not too sure -- I'm really not familiar with
19 what the company did or didn't do. I do know this. Back in
20 the last case, the average use for water, or water pumped, was
21 530 gallons per ERC. It's down to 319 gallons per ERC today.
22 Conservation happened. Whether it happened because of the
23 price increase that the customers got from the wastewater
24 increase and that affected their total bill and their
25 perception of costs, may be. If it happened for other reasons,

1 I don't know. But there has definitely been a drop in the
2 consumption per ERC at Pennbrooke for whatever reason. And if
3 the reason was because of the rate increase, giving back money
4 now certainly isn't going to help the situation.

5 Thank you.

6 CHAIRMAN EDGAR: Mr. Friedman, briefly.

7 MR. FRIEDMAN: I don't know, I don't think any of you
8 were on the Commission a number of years ago. Aloha Utilities
9 filed a rate case just for its sewer system and not for its
10 water system, proceeded with that rate case, then the next year
11 turned around and filed a rate case for its water system, and
12 was severely chastised by Public Counsel, chastised by this
13 Commission for not filing the water rate case when they filed
14 the wastewater rate case, even though the testimony in that
15 case was we didn't file the water rate case because we didn't
16 need a water rate increase then.

17 And this Commission, in fact, in that second water
18 rate case, reduced the rate case expense at the behest of
19 Public Counsel on the basis that they would have been more
20 prudent to file them together. And so it seems like to me that
21 the utility is put into a Catch-22. Gee, maybe we don't need a
22 full -- and then, of course, in this case, there are expenses
23 that are all, that go along together. The water and wastewater
24 systems are owned by the same company, have the same operating
25 people. So it makes sense to file them at the same time.

1 The utility is caught in the Catch-22 of, well, if we
2 don't file it now, and we file it next year or the year after
3 when we need it, we may be chastised by Public Counsel and lose
4 rate case expense. So the decision to file for the water
5 rate -- for the water side of this case was a prudent one and I
6 don't think they should be penalized for doing so.

7 And I would suggest to you that on the suggestion
8 about how to handle the overearnings, I think that the Water
9 Management District has got a -- is on board with the staff's
10 recommendation, that we also agree with. The per capita has
11 been reduced from in the 500s to the low 300s. That is still
12 more per capita than what is acceptable. So there has been a
13 reduction which is what the conservation program is intended to
14 do is to reduce the consumption. The consumption has been
15 substantially reduced. It has just still got ways to go.

16 Thank you.

17 CHAIRMAN EDGAR: Thank you. None of us look forward
18 to being chastised by Public Counsel.

19 We are going to take about ten minutes, and we will
20 come back at about 20 till and see if we can get to some
21 closure. We are on break.

22 (Recess.)

23 CHAIRMAN EDGAR: We are back on the record. Thank
24 you all. We'll look to our staff, of course, to see if there
25 is further comment.

1 Commissioners, we have, quite frankly, had some very,
2 very good discussion and have had a number of good points
3 raised. And, quite frankly, more discussion that I had
4 expected, but that's okay. That is what we are here for. I do
5 note that this is a PAA item, and so there is the opportunity,
6 perhaps, for additional discussion in more than one forum
7 probably. So I would say that I'm going to look to our staff
8 to see if you have some comment, and then I expect that
9 probably we have a couple of additional questions, and then we
10 will see where we are.

11 Ms. Lingo.

12 MS. LINGO: Thank you, Madam Chairman. Good
13 afternoon, Commissioners. Jennie Lingo with Commission staff.

14 First, I would like to address Mr. Reilly's comments
15 regarding the conservation program that was ordered as a result
16 of the 2001 staff-assisted rate case. First, I would like to
17 clear up the dollar amount that Mr. Reilly had been using as an
18 indicator that we were allowing the utility to keep extra money
19 all these years. He had used the number \$100,000, that the
20 utility has been allowed to keep \$100,000 that it should have
21 been using toward conservation programs.

22 Well, in fact, Commissioners, the order from that
23 last rate case required the utility to spend \$25,000 for a
24 period of two years and not four. So we had anticipated that
25 over the course of the two-year period, that being from

1 mid-2001 to mid-2003, the utility would spend \$50,000 toward
2 conservation efforts.

3 Mr. Reilly also indicated that our own analysis
4 indicates that the utility has not made progress toward
5 reducing their overpumping. Here, Commissioners, I would ask
6 you not to confuse the concept of total pumping versus per
7 capita usage. Total pumping has, in fact, gone up since 2001
8 because the utility was growing rapidly. In fact, in 2001 we
9 recognized that in the rate case because we used the projected
10 test year to recognize their rapid growth. However, per capita
11 usage, that is, usage per person, has, in fact, gone down from
12 the mid-500s to the mid-300s.

13 Mr. Reilly also pointed to the order that said the
14 prior owner had not obtained any sort of permission or plan
15 from the Water Management District, and the buyer, being
16 Utilities, Inc., would work to obtain and work on a program for
17 approval. And that no documents were filed, and that staff had
18 been really remiss in its obligation to carry out what we had
19 said we would do and what had been ordered to do.

20 Commissioners, I take exception to that, but I take
21 exception to that with a mea culpa. When this utility -- when
22 Utilities, Inc. filed this rate case, I thought I've got to go
23 and pull those documents so that I can have them ready.
24 Commissioners, I can't find them. But then, again, I
25 apologize, there's a lot of things that I can't find in my

1 office.

2 However, I will absolutely sit here and submit to you
3 that I reviewed documents, I calculated reductions in
4 consumption and they occurred. Probably early to mid-2004, I
5 looked at -- I remembered doing those calculations and putting
6 them aside because I was doing some other stuff regarding
7 looking at other utilities and what was going on regarding
8 consumption. And I seem to remember a reduction of
9 approximately 35 percent for residential consumption.

10 Commissioners, I would suggest to you that a
11 reduction of 35 percent or so would not have happened were
12 conservation programs of some sort not in place, because the
13 staff-assisted rate case from 2000 was a revenue neutral rate
14 restructuring case. And I would submit to you that the low
15 rates that Pennbrooke has would certainly predispose customers
16 to want to use more water. And just the fact that we went from
17 a base facility gallonage charge rate structure to an inclining
18 block rate structure would not have resulted in the 35 percent
19 consumption reduction. But, again, Commissioners, can I place
20 my hands on my analysis from then? No, I can't. But I will
21 absolutely sit here and tell you that I have done it, and that,
22 in fact, it did occur.

23 Commissioners, I would also like to move on. Now
24 that I've addressed the prior order, I would like to move on in
25 terms of what we are recommending in this case. And, first, I

1 would like to ask that my failure at record keeping in the last
2 case absolutely not cloud your mind as to what not only we
3 recommend is the appropriate thing to do in this case, but not
4 cloud your mind as to what the appropriate thing ultimately is
5 to do in this case.

6 Commissioners, the conservation programs and the
7 recommendations that we have made in Issue 16 and Issue 20, I
8 believe really can be distilled down into two real questions.
9 The first question is are the conservation programs needed?
10 Commissioners, if you would -- well, before I get to that, to
11 give you just a sense of magnitude, an order of magnitude as to
12 what's going on in Lake County right now, I looked up census
13 data, 2005 census data, in preparation for this recommendation
14 and for this agenda. And I looked at the growth of Florida
15 versus -- the rate of growth in Florida versus the rate of
16 growth in the United States.

17 Florida is growing at slightly greater than double
18 the rate that the United States is as a whole. What was very
19 eye-opening to me, Commissioners, was that Lake County is
20 growing at three times the rate that Florida is growing as a
21 whole. So when you look at how Lake County is growing relative
22 to the United States, Commissioners, it is beginning to bust at
23 the seams. You know, to put it in the vernacular, that is what
24 is happening.

25 Commissioners, I believe there are a couple of

1 attachments that I have in the recommendation that I believe
2 would be revealing to you to look at. If I may turn your
3 attention to Page 59, Attachment B. Commissioners, the result
4 of this analysis indicates that in five of the last six years,
5 the utility has exceeded its pumping allotment, and that is
6 consistent with the information that was also provided to you
7 by Ms. Walker. Certainly, Commissioners, a utility that has
8 experienced that sort of overpumping we should find some way to
9 address that problem. But again, Commissioners, I don't want
10 you to confuse the term of total pumping versus usage per
11 capita. They are different terms.

12 Commissioners, if you would also turn to Attachment C
13 on Page 60. It is the very next page. The result of this
14 analysis indicates that over the past four or five years, the
15 utility's discretionary usage as a relative percentage to its
16 total usage has increased, because the ratio of pumped water to
17 treated wastewater, that ratio has been increasing over the
18 years. The greater the ratio, the greater percentage of
19 discretionary usage compared to nondiscretionary usage. And as
20 that ratio narrows, you have a greater percentage of
21 nondiscretionary usage that is reflected in the water pumped.

22 Finally, Commissioners, I would ask you to turn to
23 Attachment E on Page 62 where the analysis indicates that the
24 number of water kgal sold per wastewater kgal treated is 4.3.
25 Commissioners, that means that for every 4.3 kgal of water

1 pumped only one kgal of that is returned to the wastewater
2 system. The remainder of that is irrigation. Again,
3 Commissioners, that disparity represents an area that can be,
4 we believe, very effectively targeted by conservation programs.

5 Commissioners, you also heard early discussion in the
6 quality of service issue about the customers had complaints
7 about low pressure. And staff member Rieger had indicated that
8 the pressure problems were certainly in part due to high
9 irrigation. Commissioners, conservation programs can serve to
10 reduce peak demand and improve pressure problems. So we have a
11 way here in this recommendation to not only address
12 conservation as a whole, but we also have a way to assist us in
13 helping quality of service concerns that have also been brought
14 up.

15 Commissioners, if you vote to deny staff on the
16 conservation expense issue, the rates would be reduced and the
17 consumption would increase. And that's really just the bottom
18 line. Mr. Reilly had said that this issue has very broad
19 effects on the customers. And, Commissioners, I would suggest
20 that there can be no more broad effect, no greater effect on
21 the customers than if the water supply in Lake County where
22 those customers are becomes insufficient. Because at that
23 point you then have to worry about where the next increment of
24 water is going to come from and how much that next increment of
25 water is going to cost. And as many or all of you know by now,

1 that next increment of water is going to be substantially
2 greater in price than what they are paying now in terms of how
3 to get that water out of the ground and to the customers.

4 Commissioners, bottom line is we have an opportunity
5 here to assist the utility and to assist the district in
6 designing conservation programs, again, that not only speak to
7 the conservation issues, but also would speak to quality of
8 service issues in that pressure -- there would be pressure
9 improvements.

10 Commissioners, I would ask that you approve staff's
11 recommendations in Issue 16 and Issue 20.

12 Thank you.

13 CHAIRMAN EDGAR: Thank you, Ms. Lingo.

14 Commissioners, questions?

15 Commissioner Arriaga.

16 COMMISSIONER ARRIAGA: Ms. Lingo, I want to thank you
17 so much for your candid revelation and your honesty. It's
18 important you are like that, and I appreciate that very much.
19 It takes courage to do what you just did, so my admiration goes
20 to you.

21 MS. LINGO: Thank you.

22 COMMISSIONER ARRIAGA: Nonetheless, Ms. Lingo, there
23 are some facts. The facts are that Public Counsel is claiming
24 that there are 125,000, not 100, \$125,000 -- I don't want to
25 use the word not accounted for, but that they don't understand

1 where they went. You're saying 50. So there is a difference
2 there, added to the fact that you don't have the proper
3 documents to show that the conservation program worked or not.
4 I'm a little bit concerned -- and as I said, I respect very
5 much what you just did -- but I'm a little bit concerned on
6 approving an additional expense in conservation programs if we
7 don't have the correct answers as to what happened to the rest
8 of the money, especially since it is a burden on the people
9 that are using the service. So I would like to first clarify
10 that before we move ahead.

11 And, the second issue that concerns me is the quality
12 of service. There is a problem out there. It has been stated,
13 and I think our attorney, Ms. Brubaker, indicated that customer
14 satisfaction is part of quality of service. So if that is one
15 of the factors, and the customers seem to be indicating
16 permanently that this has not been accounted for, or that we at
17 least do not know the results of the programs that have been
18 put in place by the company, then we should at least try to see
19 if we can hold on.

20 What I'm trying to get at, Madam Chairman, is I'm
21 okay with most of staff's recommendation, I'm ready to go ahead
22 and make a proposal, but I would like to see if we can hold on
23 to that Issue Number 1, which is quality of service, and Issue
24 16 and 20. I don't know, Mr. General Counsel, if that is
25 possible. I don't know what -- because I just -- I would like

1 to vote in a positive way here, but with my concerns clarified.

2 MR. COOKE: Commissioners, to the extent that they
3 impact the end result in terms of setting of rates, I think
4 that they need to be decided at this point. That is different
5 than the last case where there was essentially a separate show
6 cause issue that we could split out and deal with separately
7 that didn't impact the rate result. That would be my concern.

8 CHAIRMAN EDGAR: Ms. Lingo.

9 MS. LINGO: Thank you, Madam Chairman.

10 Commissioner Arriaga, to specifically address your
11 concern that -- I believe your concern that it might happen
12 again, you know, the monies that were ordered for conservation
13 programs might not be spent again, which they were. But, you
14 know, to the extent we cannot provide adequate documentation at
15 this time, we specifically built in what we believe are
16 safeguards in the recommendation statement of this issue. And
17 that is that within 90 days the utility and the district and
18 this agency, or a representative of this agency, sit down and a
19 plan is hammered out. And once a plan is hammered out, then we
20 actually have to bring that plan back to you for your vote.

21 We are holding the docket open so that we can come
22 back and show you not only that a program is in place, but that
23 the district believes it's going to be an efficacious way to
24 spend the money, and you would sign off on it. And,
25 Commissioner, we believe that those safeguards -- we would hope

1 that those safeguards would assuage any other concern you may
2 have.

3 The \$50,000 versus the \$125,000, again, I would point
4 out that we only ordered the utility to spend that money for
5 two years, which would have ceased by mid-2003. So we are long
6 since past the time when we should be totaling additional money
7 that should have been spent on a conservation program. And my
8 mind just went blank on what my other point was going to be,
9 and I apologize. It must be the same part of my brain that
10 misplaced those documents.

11 COMMISSIONER ARRIAGA: Was it quality of service by
12 any chance? No? Okay. That's fine.

13 CHAIRMAN EDGAR: Commissioner, you have raised a
14 question or a concern about, I think, the items in 16 and 20.
15 And I think what we heard from our general counsel, and my
16 understanding is that as it is wrapped up with many of the
17 other calculations, that if we can come to a disposition and,
18 again, realizing that it is a PAA, the staff has given us some
19 assurances, assurances that I find assuring, reassuring, as to
20 additional safeguards. And we have also heard from the Water
21 Management District about their desire to continue to work with
22 us on conservation programs, all of which, I think, are very
23 good points.

24 On some of the concerns that you and others have
25 raised regarding Issue 1, I do not have -- and I'm thinking

1 back to Ms. Brubaker's response to an earlier question that I
2 asked on that point. I don't have the rule in front of me, but
3 I am wondering if maybe -- and I'm just throwing this out
4 there -- there is another phraseology that might capture some
5 of what we have discussed. And I'm thinking instead of
6 satisfactory, unsatisfactory, marginal, maybe something along
7 the lines of concern -- you know, a finding of concern. I
8 don't know if that's an option. I certainly would open it up
9 to any of you or to our staff if there are better words that
10 are appropriate and that capture the concerns that have been
11 raised.

12 Ms. Brubaker.

13 MS. BRUBAKER: Are you specifically talking about the
14 terms that are typically used, satisfactory, marginal?

15 CHAIRMAN EDGAR: Yes.

16 MS. BRUBAKER: I welcome any thoughts from staff on
17 that. Certainly in terms when there are concerns about quality
18 of service, we can liberally make use of that in the order,
19 reflecting that there are some very serious concerns about
20 service. You know, if that is of any level of comfort to the
21 Commissioners, we are certainly happy to incorporate the level
22 of concern that has been shown by the Commission here today
23 regarding quality of service.

24 CHAIRMAN EDGAR: Okay. Mr. Reilly.

25 MR. REILLY: A very quick response. Two things to

1 clear up. This is not a revenue neutral situation with the
2 conservation. We are talking about overearnings. And I just
3 want to clear that point.

4 The other point was Ms. Lingo said, well, if you put
5 this extra money in there, you would be reducing the rates. We
6 are not proposing any reduction in water rates. We are
7 proposing that you take the overearnings and do just what did
8 you in the last rate case is apply it to reduce the increase on
9 the wastewater side. Virtually every single customer who is a
10 water customer is also a wastewater customer. It is what this
11 Commission did in the last rate case; it should do it in this
12 case. So don't reduce water rates, take the overearnings and
13 give them some relief on this 40 -- you know, whatever percent
14 that it turns out to be, increase on the wastewater side.

15 Real quickly, the issue of the 50,000 or the 125,000,
16 when you read this order it says very plainly, the last order
17 says the utility shall spend \$25,000 of the overearnings to
18 implement a water conservation program. Then it goes on to say
19 at minimum you will spend the money for these two years and
20 have these reports. So you don't tie the dollars. The dollars
21 were taken out of overearnings, and it went on for the full
22 five years. We are talking about \$125,000. There was no
23 reduction in the wastewater rates at the end of two years.

24 Now, maybe they just didn't even have to do anything
25 after two years, and they pocketed the money. But the

1 customers lost that money, \$25,000 year after year after year.
2 And I'm not here arguing against conservation, and I'm not
3 arguing against us having a plan. Let's come back, have the
4 company come up with a good conservation plan. We have got a
5 pool of money that this order here admits was never even
6 approved or ever adopted. And we have got plenty of money to
7 make brochures and to talk people into conserving.

8 But we need help with these ratepayers on this
9 wastewater increase. And if you just even do what staff said
10 on the overearnings together with not rewarding the utility on
11 rate case expense on filing this case in the first place, you
12 are talking about a \$34,000 reduction on wastewater increase.
13 So it is not revenue neutral, and we are not suggesting any
14 increase in water rates. We are asking you to give some help
15 to the people on the wastewater increase.

16 Thank you.

17 CHAIRMAN EDGAR: Mr. Friedman.

18 MR. FRIEDMAN: I will try to be brief. The issue of
19 quality of service -- and I sat through the last discussion
20 with the last utility that, obviously, was well-deserved of
21 that. You know, what you are -- quality of service is a
22 three-pronged issue. I don't think anybody has discussed the
23 first two prongs, which appear to be very satisfactory, whether
24 it complies with the government requirements and whether it has
25 been operating fine. So we are talking about the customer

1 satisfaction part of this. And what we are saying is the
2 service is satisfactory. Satisfactory. We are not saying it
3 is great. We are not saying it is super. We are saying it is
4 satisfactory.

5 I would suggest to you that every utility is going to
6 have some of these same problems that this company has got. It
7 is just something that is inherent in the utility business that
8 the utilities have to work through. Interestingly, as Ms.
9 Lingo points out, the biggest issue of complaint here appears
10 to be pressure, which seems to be a direct result of the
11 customers overirrigating. So you have the customers
12 complaining about the pressure while their overirrigating is
13 causing the problem about the pressure.

14 And I would suggest to you that if you really look at
15 the quality of service of this utility, in light of a normal
16 utility, that the quality of service is satisfactory. That's
17 what you're saying. It's satisfactory. It's not perfect. I
18 don't think you are going find any that are perfect, but it is
19 satisfactory. And I would suggest to you that the quality of
20 service in this utility is satisfactory, and that we don't need
21 to take any action to the contrary.

22 Thank you.

23 CHAIRMAN EDGAR: Thank you. Commissioners?

24 Commissioner Carter.

25 COMMISSIONER CARTER: Madam Chairman, it seems to me

1 that as I read the facts of the case and listen to the
2 discussion and the discourse, is that based upon the facts,
3 circumstances, the application of the law, it seems like staff
4 has reasonable recommendations, additionally with the
5 safeguards that have been applied here. I have no problems
6 with moving staff's recommendation on this issue.

7 CHAIRMAN EDGAR: Is that a motion?

8 COMMISSIONER CARTER: And I so move.

9 CHAIRMAN EDGAR: Thank you.

10 Commissioner Tew.

11 COMMISSIONER TEW: I can second that. And I note, as
12 you did earlier, that this is a PAA item. It looks as if there
13 are several things that may be on the table for a protest, and
14 I look forward to getting further information.

15 CHAIRMAN EDGAR: Thank you.

16 Commissioner Arriaga.

17 COMMISSIONER ARRIAGA: Commissioner Carter,
18 Commissioner Tew, in general terms I am okay with what you are
19 proposing, but I have serious concerns about Issues 1, 16, and
20 20. Even though our staff is recommending that we qualify this
21 as satisfactory, they themselves state several reasons that to
22 me means not totally satisfactory, or marginal satisfactory, or
23 something, but not satisfactory.

24 At the same time, we are hearing that there is an
25 order out there that says that \$125,000 should have been spent,

1 and our staff is telling us it is 50,000. That is enough
2 reason to doubt or to raise a question.

3 So how do I do this, Mr. Cooke? How can I vote on
4 all the issues except 1, 16, and 20? Is that possible? What
5 goes on here?

6 MR. COOKE: I will answer that last question first,
7 and then I have a possible suggestion that maybe staff can pick
8 up on.

9 One is I think the statute requires you to address
10 quality of service. We talked about finding versus
11 determination. The point is it needs to be part of the
12 consideration. So I would be uncomfortable with not voting on
13 Issue 1. I don't think necessarily a finding that something is
14 unsatisfactory or satisfactory necessarily drives a conclusion
15 regarding the rates at the end of the day. It may well be that
16 an unsatisfactory service requires that there be a rate
17 increase so that it can become satisfactory. So I think the
18 statute is really just directing attention to that issue so
19 that appropriate attention can be given to it without
20 forecasting how it has to come out. But I do think the statute
21 asks you to consider quality of service, so I would be
22 uncomfortable not voting on that issue.

23 Now, you know, perhaps we could come up with another
24 term in terms of marginally satisfactory, or marginal, or
25 whatever, but we may be placing too much emphasis on wording

1 there, particularly where the recommendation -- and it can be
2 incorporated into the order, discussion about what the details
3 are of what we are finding regarding quality of service.

4 With regard to the overearnings and conservation
5 program, one suggestion, and I'm speaking out of school, is in
6 order to keep tighter control on that, you could, perhaps,
7 recommend that it be used for conservation, but be held in
8 escrow pending this review, so that there is very tight control
9 over how that money gets spent. And I defer to staff as to
10 whether that is an appropriate thing to do or not.

11 MR. RENDELL: Commissioners, if I might, staff is
12 comfortable with a finding of marginal. It gets to the same
13 result. Mr. Cooke and I came to the same revelation at the
14 same time. I don't know if that is a good thing or a scary
15 thing. But at the same time he was asking about escrow, I
16 wanted to propose an additional safety net, that the
17 overearnings be held subject to refund and pending a
18 verification by staff that the money is spent, we can talk
19 about the period of time in the next recommendation when
20 Ms. Lingo comes forward to approve a program. But that would
21 provide an additional safety net to the customers, that if they
22 didn't spend it, then that money is still there to refund it or
23 to reduce the wastewater rates or do something with so that it
24 just doesn't disappear.

25 So I'm comfortable with holding that money subject to

1 refund. The appropriate security could be discussed, either
2 corporate undertaking or escrow. Traditionally, Utilities,
3 Inc. has offered corporate undertakings which have been
4 approved by the Commission and staff. So that would allow an
5 additional safety net in this instance.

6 MR. COOKE: Madam Chairman, just one more --

7 CHAIRMAN EDGAR: Mr. Cooke.

8 MR. COOKE: -- procedural response to Commissioner
9 Arriaga.

10 Commissioner, you can vote separately on the issues,
11 as well. So if you wanted to --

12 COMMISSIONER ARRIAGA: Are you talking to me?

13 MR. RENDELL: -- you can vote separately on each
14 issue.

15 CHAIRMAN EDGAR: Commissioner Arriaga, and fellow
16 Commissioners, as always, if there is a desire to take a vote
17 issue-by-issue, I almost always ask if that is a preference.
18 And I will always make every effort to grant that preference,
19 if, indeed, I'm aware of it. And, also, there is the
20 opportunity to elaborate, of course, if anybody has
21 qualifications that they would like to spread upon the record.

22 We have had -- we do have a motion and a second
23 before us. We have had some further discussion and possible
24 language options, I believe, and a little beyond that from our
25 staff.

1 And, Commissioner Carter, you are recognized.

2 COMMISSIONER CARTER: Thank you, Madam Chairman. I
3 would maintain my motion in the totality of the issues with the
4 language that is provided by General Counsel. When I see
5 quality of service, I don't see anything in the record where
6 the Department of Health said you have got to boil water. I
7 don't see anything in the record where it says people were ill.
8 When I think of, you know, satisfactory, I'm thinking of, you
9 now, it reaches to the level where people are being ill and,
10 you know. So I would say, Madam Chairman, that we should vote
11 on this, and my motion is that we vote on it in totality of the
12 issues with the recommendations as provided by General Counsel
13 about the -- help me with the -- the trust fund or escrow
14 account.

15 And if you want to use the term marginally
16 satisfactory, that is okay, too. But it seems to me that if
17 there were a situation where a person had gotten ill, this
18 record would have been -- I mean, we would have a stack of
19 petitions a mile high in here, and I don't see -- it is void,
20 it's void of any of that. So as such, that's the motion.

21 CHAIRMAN EDGAR: Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: I'm okay with that, Madam
23 Chairman. If we come up with the term marginally satisfactory
24 or something like that, I'm okay. And I'm okay with the escrow
25 account issue.

1 CHAIRMAN EDGAR: All right. Further discussion?

2 Okay. Commissioner Carter, because I know our staff
3 is going to ask me for clarification, so I'm going to give it a
4 whirl and, as always, jump right in if I am inaccurate.

5 My understanding is that we have a motion, and,
6 Commissioner Tew, I look to you as well with the second for the
7 staff recommendation, Items 1 through 29, with the additional
8 language of marginally or marginal, whichever is the
9 appropriate phraseology there, on Issue 1, and with additional
10 language on Issues 16 and 20 regarding overearnings being held
11 subject to refund and escrow pending review by our staff.

12 Are we all okay? We are all on the same page.

13 Mr. Cooke, does that meet what we need to meet?

14 MR. COOKE: I think we have enough clarity as to what
15 you are directing us to do regarding --

16 CHAIRMAN EDGAR: For the order.

17 MR. COOKE: Yes.

18 CHAIRMAN EDGAR: Okay. All right.

19 Commissioners, then we have a motion, and we have a
20 second. We've had discussion. All in favor of the motion say
21 aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN EDGAR: Opposed?

24 Show it adopted.

25 Thank you all.

MS. LINGO: Thank you, Commissioner.

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1 STATE OF FLORIDA)

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3 COUNTY OF LEON)

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5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

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

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 16TH DAY OF JANUARY, 2007.

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Linda Boles for

JANE FAUROT, RPR

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Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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