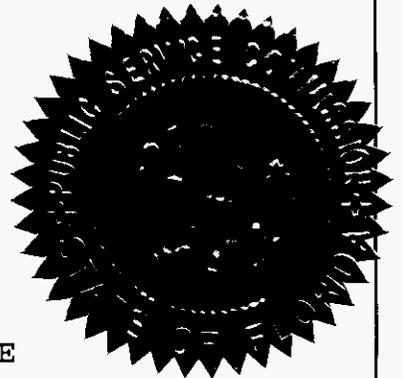


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 080597-WS

Application for general rate  
increase in water and wastewater  
systems in Lake County by  
Southlake Utilities, Inc.



PROCEEDINGS:

AGENDA CONFERENCE  
ITEM NO. 9

COMMISSIONERS  
PARTICIPATING:

CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:

Tuesday, August 18, 2009

TIME:

Commenced at 3:53 p.m.  
Concluded at 5:30 p.m.

PLACE:

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

REPORTED BY:

MARY ALLEN NEEL, RPR, FPR

DOCUMENT NUMBER-DATE

080597-WS

FLORIDA PUBLIC SERVICE COMMISSION

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

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CHAIRMAN CARTER: We are back on the record.  
And when we left, we were getting ready to go with  
Item 9. Staff, you're recognized.

MR. CASEY: Good afternoon, Commissioners.  
Bob Casey on behalf of staff.

Item 9, Number 9 addresses Southlake  
Utilities' application for an increase in water and  
wastewater rates. Staff is recommending a  
19.78 percent increase in water rates and a  
58.71 percent increase in wastewater rates.

Staff would like to make a correction to the  
recommendation. There was an error in the  
calculation of regulatory assessment fees which  
understated taxes other than income by \$4,962 for  
water and \$4,920 for wastewater for the test year.  
This correction will result in fallout changes to  
net operating income, revenue requirements, and  
rates. The issues that will require modification  
are Issues 13, 15, 16, 17, 18, 19, and 20. The  
schedules requiring revision are Schedules 3A, 3B,  
3C, 4A, and 4B.

With us this afternoon we have representatives  
of the Southlake Utilities and the Office of Public  
Counsel, both of which would like to address the

1 Commission on this item. A division director of  
2 the St. Johns Water Management District had planned  
3 on participating on this item this afternoon, but  
4 subsequently could not make to it Tallahassee. She  
5 has provided her comments regarding this item to  
6 Ms. Lingo, who will provide them to the  
7 Commissioners later on.

8 And with that, staff is prepared to answer any  
9 questions the Commissioners may have.

10 CHAIRMAN CARTER: Commissioners, here's the  
11 plan. We'll listen to the parties, and then we'll  
12 have Ms. Lingo to read in the record portions of  
13 the letter from the Water Management District.

14 With that, good afternoon, sir. You're  
15 recognized. You may proceed.

16 MR. ADE: Mr. Chairman and Commissioners, I'm  
17 James L. Ade. I'm an attorney from Jacksonville  
18 here representing Southlake Utilities. With me on  
19 my left I have Mr. John Guastella, who is the rate  
20 consultant for Southlake Utilities, and he will  
21 address Issue Number 9. Behind me is Mr. Bill  
22 Deas, who is the general counsel for Southlake  
23 Utilities, and next to him is Mr. Sam Munipalli,  
24 who is the consulting engineer for Southlake  
25 Utilities.

1           Mr. Chairman, there are 23 items in this  
2           recommendation, and we really only want to address  
3           two items, Item Number 3, which is the used and  
4           useful water treatment plant issue that's on pages  
5           6 and 7 of the staff recommendation, which I will  
6           address to start with, and Item Number 9, which is  
7           the return on the common equity, which  
8           Mr. Guastella will address, and those are on pages  
9           15 and 18 of the staff recommendation.

10           I do have a few pages of handout,  
11           Mr. Chairman, that I would like to pass out.

12           CHAIRMAN CARTER: You may do so at this time.

13           (Document distributed.)

14           CHAIRMAN CARTER: Do you have one, Mr. Reilly?

15           MR. REILLY: Yes, I do.

16           CHAIRMAN CARTER: You may proceed.

17           MR. ADE: Mr. Chairman, first I would like to  
18           give everybody a little insight into what I have  
19           just handed you, because it's relatively simple.  
20           The first page is simply a summary of this Issue 3  
21           presentation, and I'll come back to that in just a  
22           second.

23           The next thing that you have before you is  
24           Florida Statutes section 367.081 in its entirety.  
25           And I've handed you that and the next item, which

1 is Public Service Commission Rule 25-30.432, which  
2 has to do with wastewater treatment plant used and  
3 useful calculations, which is also in its entirety.  
4 And the last item is simply a letter from the  
5 Department of Environmental Protection, DEP,  
6 relating to the wastewater treatment plant that's  
7 involved in this issue.

8 I gave you the second item and the third item  
9 because I had excerpted from them on my little  
10 summary statement, and I thought you might want to  
11 look at the whole statute and see what I have done  
12 to it. Hopefully, I have a fair and complete  
13 representation of what it is.

14 I would like to start with Chapter 367.081,  
15 which, of course, is the governing statute for  
16 setting rates for water and wastewater utility  
17 companies that you all are very familiar with, and  
18 it just sets forth the procedure that will be done  
19 and how you will go about it and what a reasonable,  
20 compensatory, and not unfairly discriminatory rate  
21 is.

22 And the first quotation I have out of that  
23 statute is right at the bottom of the first page.  
24 It's section (2)(a)2.c, and it says,  
25 "Notwithstanding the provisions of this paragraph,

1 the Commission shall approve rates for service  
2 which allow a utility to recover from customers the  
3 full amount of environmental compliance costs."

4 That's fairly straightforward and fairly simple.

5 Down a couple of lines, starting a couple of  
6 lines below that, the statute defines environmental  
7 compliance costs, and it says "includes all  
8 reasonable expenses and fair return on any prudent  
9 investment incurred by a utility in complying with  
10 the requirements or conditions contained in any  
11 permitting or similar decisions of the Department  
12 of Environmental Protection."

13 So I think, in summary, the statutory words  
14 are very clear. The Commission is to allow  
15 recovery of reasonable expenses and a fair return  
16 on the prudent investments that a utility makes to  
17 comply with the DEP.

18 I then turn to Rule 25-30.432, which sets  
19 forth the way that you calculate used and useful  
20 for wastewater treatment plants, and I will say the  
21 staff has done that. They have done what that rule  
22 says.

23 The staff recommendation, however, does not  
24 address the last sentence of that rule, which says,  
25 again, very clearly, "This rule does not apply to

1 investment for environment compliance pursuant to  
2 section 367.081(2)(a)2.c, Florida Statutes." So by  
3 the very words of the rule itself, it says it  
4 doesn't apply to 366.081(2)(a)2.c, and that's  
5 really the issue here.

6 The staff has found that the investment that  
7 the utility made in the utility plant that was  
8 built back in 2004 and 2005 was not part of the  
9 used and useful calculation, and they have reduced  
10 the used and useful calculation from 100 percent  
11 to, I believe, 76 percent.

12 And I say they've done that in direct  
13 opposition to your own rule and to the statute that  
14 very clearly says that should be considered as part  
15 of used and useful and the utility should be  
16 allowed a fair return on any prudent investment  
17 incurred in complying with the DEP. And that  
18 really is Issue Number 3 as far as I'm concerned.

19 I'll be glad to answer any questions.

20 CHAIRMAN CARTER: Why don't we do this. Why  
21 don't we hear from your colleague on Issue 9, I  
22 think you said it was.

23 MR. ADE: All right, sir.

24 CHAIRMAN CARTER: And then we'll proceed --  
25 we'll hear from Mr. Reilly, and then we'll go to

1 Ms. Lingo, and she can do the letter from the Water  
2 Management District, and then, Commissioners, we'll  
3 go into our questions phase.

4 You may proceed.

5 MR. GUASTELLA: Thank you, Chairman.

6 Commissioner, Commissioners and Chairman, Issue 9  
7 is where staff is making a downward adjustment to  
8 the return on equity because of the company's  
9 involvement with the Water Management District,  
10 which spans a number of years where apparently  
11 there was correspondence and orders that went back  
12 and forth. The discussion of the issue doesn't  
13 really give a complete picture of what the utility  
14 has done.

15 Before I get there, though, I would like to  
16 just refer to page 17, which addresses Issue 9,  
17 where the staff refers to section 367.111(2),  
18 Florida Statutes, which says, "If the Commission  
19 finds a utility has failed to provide its customers  
20 with water or wastewater service that meets the  
21 standards promulgated by the Department of  
22 Environmental Protection or water management  
23 districts, the Commission may reduce the utility's  
24 return on equity."

25 Staff goes on in the bold paragraph below that

1 to refer to the decision by the Commission in the  
2 Aqua Florida Utilities case, where there were two  
3 out of about 80 systems in that case that did not  
4 -- where service was unacceptable by staff, and  
5 apparently the Commission made an adjustment to  
6 return on equity in those two instances. And  
7 finally, the staff refers to the court having  
8 affirmed reductions to return on equity for poor  
9 quality of service and mismanagement.

10 That is simply not the case with respect to  
11 this utility, and I would refer to Issue 1, where  
12 staff has found that the service has been adequate.

13 We had a hearing or a customer meeting with  
14 respect to the rates. One customer out of all the  
15 customers showed up and was confused about how to  
16 calculate a bill, but did not complain about either  
17 service or rates.

18 Staff indicates in Issue 1 that there were, I  
19 believe, three customers who resided in rental  
20 properties where the rental property owners did not  
21 flush out the interior plumbing, and therefore,  
22 they were concerned about the water there.

23 So the utility is sitting here before you with  
24 adequate service. No customer has complained about  
25 either the rate increase or the service provided by

1 the utility. Staff I don't think would have found  
2 that the service was adequate if the company was in  
3 violation of any drinking water standards  
4 promulgated by DEP or anyone else. So we're really  
5 dealing with an issue where the service is  
6 adequate, and the reasons for reducing return on  
7 equity really have been for inadequate service.

8 The problem is -- and that's part of the  
9 background that I don't think is contained in this  
10 issue. The water table in the company's service  
11 area has been declining, and it has been a problem  
12 that has been a problem due to a drawdown of the  
13 upper Floridian aquifer, as well as impacting the  
14 wetlands. The solutions that the Water Management  
15 District and the company have been grappling with,  
16 and it's a difficult problem, is, one, what is  
17 causing the drawdown is that all of the company's  
18 use is part of it because of dry periods of  
19 weather. And the solution that the Water  
20 Management District had suggested was to construct  
21 effluent reuse facilities and also to construct a  
22 well down to the Lower Floridan Aquifer.

23 The company did construct a well down to the  
24 Lower Floridan Aquifer at a cost of somewhere in  
25 excess of \$900,000 and found that the water quality

1 was not adequate, which means the company, in order  
2 to use the lower aquifer, would have to spend  
3 upwards of \$10 million for a water treatment plant.

4 With respect to the effluent reuse, there's no  
5 one to sell effluent reuse to to any significant  
6 amount. That would have cost another \$10 million,  
7 \$10.5 million.

8 So the company was facing expenditures of  
9 \$10.5 million on the wastewater side and  
10 \$10 million on the water side to try to solve a  
11 problem that the exact cause in proportion to  
12 weather and customer use is not known.

13 Over the last five years, the company has  
14 spent in excess of \$500,000 in engineering fees to  
15 examine this problem, monitor the wetlands, monitor  
16 the hydrology of the aquifers, do studies as to  
17 design and cost of constructing treatment  
18 facilities or reuse facilities. So the company has  
19 not been inactive in this. It has spent over  
20 500,000 in addition to the \$900,000 that it spent  
21 for a well.

22 None of these dollars are included in the  
23 current rate filing. The well is not in the rate  
24 base for the utility, and the engineering costs  
25 were over a span of years, and the level that's

1 included in staff's report is not covering any of  
2 those.

3 So you have a stockholder and a company that  
4 has been spending a lot of money over the years.  
5 This year alone it has spent \$82,000 so far and  
6 expects to spent another 100,000. The water rate  
7 base is a little over 3 million. The wastewater  
8 rate base is a little over \$500,000. You have  
9 before you a small company that's doing probably  
10 more than most small companies you regulate will  
11 do. Stockholders are willing to spend close to a  
12 million and a half dollars, not getting compensated  
13 yet, in order to solve a very difficult problem  
14 that's still not solved.

15 When we became involved in the rate case, we  
16 wanted to take a look at what would the impact on  
17 the customers be if the company indeed had to go  
18 out and spend \$20 million for water and wastewater  
19 facilities. The wastewater rates would have more  
20 than doubled. The water rates would have more than  
21 doubled. \$20 million on top of a rate base  
22 combined that's only about -- less than 4 million  
23 dollars. So this is a dramatic problem.

24 We asked and staff did join with the company  
25 in meeting with the Water Management District at

1 the end of May, and the Water Management District  
2 participated in earlier conference calls. And I  
3 thought the company and I and the company's  
4 engineer and staff recognized that the reuse  
5 facilities probably would not achieve any result,  
6 so I think that's off the table as far as the Water  
7 Management District is concerned. So I think the  
8 Water Management District is recognizing that it's  
9 a \$20 million expenditure that certainly should not  
10 be incurred around this time anyway. Maybe in the  
11 future, but not now. And if it's in the future,  
12 it's a long time in the future.

13 We're still trying to find a solution to using  
14 solely the lower aquifer, because the Water  
15 Management District wants the company to stop using  
16 the upper aquifer completely. If we do that,  
17 there's definitely going to be about a \$10 million  
18 expenditure for water, which is going to more than  
19 double the rates that you're looking at today after  
20 the increase.

21 So it's a tough problem for a small company  
22 that has been willing to spend hundreds and  
23 hundreds of thousands of dollars a year and  
24 \$900,000 for a well to satisfy Water Management  
25 District concerns for the well. And we have staff

1 at least participating so that the Water Management  
2 District is comfortable with what the rate impact  
3 of its decision is going to be. The company's  
4 engineers are continuing to look at this problem.  
5 We have stockholders that have been more than  
6 willing to go and spend a lot of money with no  
7 return to provide safe and adequate service.

8 And we're faced with another side of this,  
9 where not only do I think an adjustment to the  
10 return on equity would be unfair to this  
11 stockholder, for this company that has done what it  
12 has done. But if indeed the company has to go out  
13 and attract capital and more than double or triple  
14 or quadruple its rate base, potential lenders are  
15 going to look at this rate decision and see a  
16 company that has a rate base that's going to be  
17 one-fourth of what it's going to need and need to  
18 borrow, with a rate order that's penalizing a  
19 utility that has done what it did on its return on  
20 equity.

21 The last piece of staff's report says, "At  
22 such time as the utility is in compliance with all  
23 conditions listed in the current CUP, consumptive  
24 use permit, the utility may petition the Commission  
25 for removal of this 100 basis points deduction."

1 I guess what I'm doing is asking you to remove  
2 this now, because right now the company is working  
3 with the Water Management District, its engineers,  
4 the Public Service Commission staff, and me in  
5 terms of the rate impact, trying to find the most  
6 economical solution, trying to avoid \$10 million of  
7 expenditure, or at least reduce it significantly,  
8 and trying to minimize the impact on the customer's  
9 rates, and still find a solution to the water  
10 supply problem, maybe by mixing the upper and lower  
11 aquifer, or simply not taking the extreme step of  
12 going entirely to the lower aquifer. I think this  
13 kind of reduction is going to be counterproductive  
14 in terms of attracting new capital, if it could be  
15 attracted, or at the lowest cost possible. So  
16 really, this adjustment might save the customers  
17 money if you remove it.

18 I don't know if Mr. Ade has anything further.

19 MR. ADE: Just an item or two. Right at the  
20 bottom of page --

21 CHAIRMAN CARTER: Turn your microphone on.  
22 Just push the button. There you go.

23 MR. ADE: Is that better?

24 CHAIRMAN CARTER: That's much better.

25 MR. ADE: Thank you. Right at the bottom of

1 page 16 where the Water Management District talks  
2 about all the terrible things that the utility has  
3 done, I would like to say that this staff -- as it  
4 appears in the staff recommendation, this, I guess,  
5 all came from the Water Management District,  
6 because we have had no input into it. And when you  
7 read just this, it makes you think, My gosh, this  
8 utility is ignoring these people and the utility is  
9 not doing anything that the Water Management  
10 District is asking them to do, and that's just  
11 absolutely not true.

12 A couple of these items I have some personal  
13 knowledge about, and the first one is number 1  
14 right at the bottom of page 16, where it says that  
15 the utility is guilty of failing to keep the Water  
16 Management District apprised of the status of the  
17 construction programs and increased operating costs  
18 and how these activities contribute to favorable  
19 conditions for maintaining a rate case --  
20 initiating a rate case with the Commission to  
21 develop a water-conserving rate structure. Now,  
22 I've participated to some extent in this, so I have  
23 some personal knowledge about it.

24 Every year the utility is required to file an  
25 annual report with the Water Management District

1 just like we do with the Public Service Commission.  
2 Every year the utility has filed that report.  
3 Every year the utility has said in its annual  
4 report what the schedule for the facilities  
5 construction is.

6 To give you some idea of the magnitude, order  
7 of magnitude of these, the reuse treatment plant,  
8 they said the cost was going to be \$7.9 million.  
9 The reuse transmission lines, the cost was going to  
10 be \$2.5 million, the wastewater treatment plant  
11 expansion was going to be \$8.5 million, and the  
12 water treatment plant cost was going to be \$8.1  
13 million. And in each annual report in 2007, 2008,  
14 and 2009 -- those would have been the annual  
15 reports for the previous year. Those are the years  
16 that they were filed -- this information was all  
17 set forth in there. As far as the utility  
18 operating expenses, the status of the utility  
19 operating expense was set forth in each annual  
20 report, and they are in the records of the Water  
21 Management District. In addition to that, we filed  
22 with the Water Management District a copy of our  
23 annual report to the Public Service Commission. So  
24 all the information that your staff has on a  
25 year-by-year basis the Water Management District

1 got on a year-by-year basis.

2 Now, this didn't happen in 2009 because the  
3 rate case, this rate case, which has asked for an  
4 inclining rate block rate structure, was filed last  
5 year, so what I'm about to say doesn't apply to  
6 2009, but in 2007 and 2008, in each case, I wrote  
7 to the Public Service Commission staff and said,  
8 "Is Southlake Utilities in a position with its  
9 present rates and its present rate base to file a  
10 rate case to have an increasing rate block rate  
11 structure for water conservation purposes?"

12 In each case, I got a letter back from the  
13 staff that said, "No. There's not enough rate case  
14 here. Your rates are too low. There's nothing we  
15 can do at this point." That also was filed with  
16 the annual report.

17 So on my own personal knowledge, what they're  
18 saying in number 1 is -- maybe they don't read  
19 their own annual reports. I don't know what the  
20 problem is, but that's absolutely not true. The  
21 facts are not there. And I don't blame the  
22 Commission staff for this, because I know they  
23 didn't make this up. This is what they got from  
24 the Water Management District.

25 The third item, Item 3 on the top of the next

1 page says failure to submit periodic reports of  
2 weekly water level data taken from UFA, which is  
3 the Upper Floridan Aquifer, Well C. So they're  
4 saying we're not filing weekly water level data  
5 from Well C. That's correct, because on March the  
6 27th, 2007, the utility company got a permit to  
7 abandon Well C. Well C doesn't exist anymore, and  
8 we did it with a permit from the Water Management  
9 District.

10 I don't know how much more of this you want to  
11 hear, but --

12 CHAIRMAN CARTER: Not much.

13 MR. ADE: -- the purpose is -- I suspected  
14 that. The purpose is, these things are just not  
15 nearly as bad as they sound as you only read one  
16 side of the story.

17 And so I certainly agree with Mr. Guastella.  
18 The staff admits in the staff -- I say admits.  
19 Acknowledges in the staff recommendation that  
20 you've never used this procedure for issues  
21 involving a Water Management District. You use  
22 this procedure that they quote in the -- the cases  
23 that you quote in the staff report for problems  
24 with the DEP, and I think that's where it belongs.

25 So I just believe that this is just not a good

1 case. For the first time in the history of the  
2 Florida Public Service Commission to say we're  
3 going to penalize a utility by taking away 100  
4 basis points out of its rate base because of these  
5 events, which really aren't even very accurate.

6 CHAIRMAN CARTER: Thank you. Mr. Reilly.

7 MR. REILLY: Thank you very much. I will let  
8 staff make the arguments on Issues 3 and 9  
9 primarily, but I would like to make a few  
10 statements in support.

11 On Issue 3, I believe the staff has  
12 essentially correctly applied the environmental  
13 compliance cost provisions of 367.081. I believe  
14 that the staff really proposed a fairly reasonable  
15 compromise on the used and usefulness of the  
16 wastewater treatment plant by using the -- as you  
17 know, it's a comparison of the demand in the  
18 numerator and the capacity in the denominator. And  
19 the issue is, what is that capacity. And the staff  
20 used the 1.15 million gallons a day, which was the  
21 treatment capacity with this RIB, the rapid  
22 infiltration base limitation, that those facilities  
23 could only treat 1.15, so therefore, that limiting  
24 factor staff used to reduce or to depress that  
25 capacity, which, but for that limitation, actually

1           could be as high as 1.5, which would produce a 58  
2           percent used and useful. So I think staff's 76  
3           percent is a fairly reasonable proposal that takes  
4           into account some of the arguments the company made  
5           about economies of scale and some of the other  
6           arguments they make. So I support staff on Issue  
7           3, basically, on the used and useful.

8                        On Issue 9, of course, I have some mixed  
9           feelings on Issue 9. I'm very mindful and worried  
10          about vast sums of money being spent to solve this  
11          pretty serious environmental problem. I can't  
12          comment or respond to these many, many millions of  
13          dollars arguments, 20 million, 10 million, 7  
14          million, 6 million. I'm not prepared to comment on  
15          those things except, obviously, the citizens and  
16          the customers want to be at the table at such point  
17          in time down the future when we look at some  
18          reasonable cost solutions to this environmental  
19          problem. But at the same time, I am sensitive to  
20          what staff said. I mean, there's no question that  
21          the statute provides that if there's failure to  
22          meet these standards promulgated by these agencies,  
23          an adjustment can be made. And I am impressed by  
24          the extent and detail and the length of these  
25          violations over long periods of time. So I am

1 basically in support of it, but at the same time,  
2 knowing that on the back side of this reasonable  
3 encouragement -- this is sending another signal to  
4 the company to sit down and to begin the process of  
5 finding out, quote, reasonable cost solutions to  
6 this problem.

7 So with that guarded and guided qualification,  
8 I think the staff is on probably pretty solid  
9 ground to send this kind of a signal to the  
10 company.

11 What brings me here today in principle is  
12 another issue of great concern to us, and that is  
13 Issue 12, and that is the issue that determines  
14 what is a reasonable rate case expense in this  
15 case. And we do believe that the rate case expense  
16 that's currently recommended to you of \$249,131 for  
17 this uncontested -- now, we haven't gone to hearing  
18 yet -- uncontested Class B PAA case is excessive.  
19 We think it's an unreasonably high figure.

20 To test the reasonableness of this figure, we  
21 looked at five of some of the most recent water and  
22 wastewater cases that were disposed of with  
23 uncontested PAA orders, and I'll go over them very  
24 quickly. I know time is short. But these are just  
25 very recent orders that have come out by this

1 Commission on similar cases.

2 There was an order issued in April 27 from the  
3 Eagle Ridge Class B uncontested wastewater case.  
4 In this case, I'm going to give you the three  
5 important questions: What's the reasonable legal,  
6 what's the reasonable consulting fees, and then  
7 lastly, what is the bottom line, what is the total  
8 rate case expense that's determined reasonable. In  
9 this particular recent order, \$20,077 was  
10 considered reasonable legal, the combined in- and  
11 outside consulting fees of 58,911, for a total rate  
12 case expense of 84,373.

13 My second case of the five is the one that was  
14 issued May 27th, '09, Mid-County. This was a Class  
15 A. Again, this was a wastewater only system.  
16 42,000 legal, 62,000 consulting, combined total  
17 rate case expense 107,968.

18 Third case, Tierra Verde, Class B wastewater,  
19 legal, 26,000; consulting, 64,000; total rate case  
20 expense, 91,558.

21 Fourth case, a fairly controversial case,  
22 Labrador, and this is, of course, just through the  
23 PAA. This is currently scheduled for hearing, but  
24 there are still negotiations going on, so we'll  
25 keep you posted on that. But through the PAA,

1 again, uncontested, legal, 38,600; consulting,  
2 29,000; total rate case expense, 69,241.

3 Final case, it was before you today. It was  
4 on move staff. It was Placid Lakes Utilities,  
5 Class B water. It was voted out today. Legal,  
6 23,315; consulting in-house, 66,499; total rate  
7 case expense, 95,165.

8 Just averaging these recent cases together  
9 produces an average legal of 30,000; average  
10 consulting, 56,000; and average total rate case  
11 cost, 89,661. I mention these to just give us a  
12 sanity check. And comparing that to this  
13 uncontested PAA case, legal, 68,000, that's about  
14 two and a half times what all these other cases  
15 were. Consulting, 153,00, three times what all  
16 these other cases were.

17 The recommendation correctly points out the  
18 Florida Power Corporation vs. Cresse case, which  
19 speaks of the utility's burden to justify its  
20 requested costs, and the Meadowbrook Utility  
21 Systems case, which speaks of the broad discretion  
22 that the Commission has with respect to allowing  
23 rate case expense, and that in this case, it spoke  
24 that it would be an abuse of discretion to  
25 automatically award rate case expense without

1 reference to the prudence of the costs incurred in  
2 the rate case proceeding.

3 In this case, there were some adjustments made  
4 to what the company asked for. The most  
5 significant adjustment that staff made was to  
6 reduce the hourly rate of Guastella & Associates  
7 down to \$140 an hour, because it ranged from 195 to  
8 \$275 an hour. That was a fairly significant  
9 adjustment, and it reduced the rate case expense  
10 that was asked for by about \$79,000. Then there  
11 were only a few very minor adjustments after that.  
12 There was \$11,500 reduced for what the staff  
13 indicated the company claimed were the moneys they  
14 spent and the time they spent addressing  
15 deficiencies. They also reduced about \$10,000  
16 associated with a meeting that the utility and the  
17 staff attended with the Water Management District.  
18 And lastly, there were two little adjustments,  
19 \$1,800 off for a little meeting that was attended  
20 with the PSC. And they did allow 10,000 of  
21 in-house cost where there was absolutely no support  
22 given whatsoever. But other than those adjustments  
23 and that one big adjustment, every single bill,  
24 every hour, everything else was let in and is part  
25 of this very substantial amount.

1 I would now just quickly -- I know time is of  
2 the essence, but I would just try to point out what  
3 was put as -- what was given as documentation and  
4 why we believe it's very inadequate documentation.

5 The Guastella & Associates bills came in, and  
6 they're all right here. There's basically just a  
7 paragraph of the various work that was performed in  
8 that month. And then below all this generic  
9 paragraph, there are various positions and hours  
10 made. I would just -- throughout here, what I  
11 would point out, there's no connection. There's no  
12 way to trace these bills to find out how many hours  
13 or how much money was spent performing any of these  
14 tasks. There's no connection to the tasks and the  
15 bills. So you just have a paragraph with a bunch  
16 of bills with a bunch of hours and dollar amounts,  
17 so it becomes impossible to test or check, you  
18 know, how much of the time was spent on any of  
19 these different tasks.

20 I'm not going to go through them. I would  
21 point out a few things. Throughout this whole  
22 thing you'll see -- and I'll just go over a few of  
23 them. They're monthly bills. It says preparation  
24 of annual report to the Water Management District,  
25 review company's annual reports to the Florida

1 Public Service Commission, review drafts and final  
2 reports to the Water Management District, prepare  
3 review letter from the company for inclusion in the  
4 annual report to the Water Management District.  
5 This is the first bill. It just goes on and on,  
6 which red flags to me as to whether they really are  
7 truly specifically related to the rate case. The  
8 next bill, which is for February '08 --

9 CHAIRMAN CARTER: You want to summarize them  
10 so we can move on, because we do want to hear from  
11 the --

12 MR. REILLY: Very quickly, if you'll take my  
13 word that the three out here, I could read through  
14 numerous, in the narrative, things that did not  
15 relate specifically to putting on this rate case.

16 CHAIRMAN CARTER: I always take Steve Reilly's  
17 word.

18 MR. REILLY: Well, thank you. I'll move  
19 briskly here.

20 The problem with the attorney's bills, it's  
21 really even worse. There's one bill. They go over  
22 an entire six months, and it goes on with one -- it  
23 goes on several pages of one long sentence with  
24 colons in between, saying we did all these  
25 different things, no hours, no anything, just a

1           dollar figure. And I've underlined, and I'm not  
2           going to take up the time, but numerous, numerous  
3           times, they do not relate to the rate case. I  
4           can't tie that dollar figure at the bottom to all  
5           these paragraphs of unrelated material. All they  
6           did, at the end, he said, here's a summary of my  
7           work. And we're talking about \$80,000 worth of  
8           legal -- let me get the exact figure here. I mean,  
9           just a huge amount of money for an uncontested PAA,  
10          not even going to hearing, attorney's fees were --  
11          attorney's fees, asking 87,851, receiving from  
12          staff \$76,900. And in all -- it's just impossible.

13                 And what staff relied on was this one little  
14          sentence for attorney's fees, time and charges to  
15          respond to deficiency letter, 14.75 hours times  
16          \$260, and we would like you to take off just \$3,835  
17          out of the 80-something thousand we've got. And  
18          staff took that number, subtracted it off, and this  
19          is what we're left with, a rate case bill that's  
20          three times what it should be.

21                 And I will cut to the chase. Flipping all  
22          these arguments that I carefully said, it is the  
23          burden, it is the burden to make their case. This  
24          is not documentation. I think it's well within the  
25          Commission's discretion by these statutes, these

1 cases and all that I've said, to come up with a  
2 reasonable estimate. And to me, what is reasonable  
3 is what these cases have provided.

4 Now, I will concede one thing in my little  
5 scenario, that in the five cases I used as an  
6 approximation to take the place of this lack of  
7 documentation, one was a Class A wastewater only,  
8 one was a Class B water and wastewater, and the  
9 other two were strictly a water or wastewater  
10 system. So I'm suggesting that you could take the  
11 average which I've put out here and actually adjust  
12 it upward, adjust upward to consider in your  
13 judgment what additional time should have been  
14 applied to the fact that it's both a water and a  
15 wastewater rather than just one system.

16 And so to give you a reasonable fix to come up  
17 with a rate case expense that would be -- I mean,  
18 even if you gave them a 20 percent additional over  
19 the standard, it would still produce a \$107,000  
20 rate case expense instead of a quarter of a million  
21 dollar rate case expense on an uncontested Class B  
22 utility. I mean, that's what I'm proposing as a  
23 reasonable approximation instead of these bills  
24 which do not in any way connect or meet the burden  
25 that the statute and the case law says should be

1 the burden of a utility to establish its rate case  
2 expense.

3 CHAIRMAN CARTER: Thank you, Mr. Reilly. Hold  
4 tight. We may come back -- we'll probably come  
5 back to you.

6 Ms. Lingo, you were going to put in excerpts  
7 from the letter from the Water Management District.  
8 You are recognized.

9 MS. LINGO: Thank you, Chairman Carter. Good  
10 afternoon, Commissioners. I'm Jennie Lingo with  
11 the Commission staff. Catherine Walker, a division  
12 director with the St. Johns River Water Management  
13 District, had intended to be here today. However,  
14 due to circumstances beyond her control, she very  
15 regretfully was unable to attend this agenda  
16 conference. However, she did fax me some bullet  
17 points or some essential items that she believes  
18 that it's crucial that you hear not only in the  
19 staff recommendation, but hear again with me  
20 reading her bullet points.

21 First and foremost, Commissioners, she is in  
22 complete support. The District is in complete  
23 support of our Issue Number 9 regarding the ROE  
24 reduction. Mainly Commissioners, the District is  
25 in favor of it to send a strong signal and

1 incentive for the utility to get into compliance.  
2 The utility currently has a number of outstanding  
3 violations of its permitted conditions. The  
4 District is in the process of drafting a proposed  
5 consent order, and the District certainly hopes  
6 that the utility will enter into this consent order  
7 so that they can move forward to resolve all of the  
8 outstanding violations.

9 Among the more significant permit violations,  
10 Commissioners, the utility has been unable to  
11 demonstrate that continued withdrawal from the  
12 Upper Floridan Aquifer would not harm wetlands,  
13 waters, or adversely affect minimum flows and  
14 levels that have been established by rule. In  
15 fact, Commissioners, the utility's own modeling has  
16 predicted the potential for adverse impacts to  
17 water resources and related natural systems. The  
18 utility would be required to perform corrective  
19 actions to mitigate not only for existing harm, but  
20 efforts to prevent future harm.

21 And, Commissioners, finally, in the utility's  
22 current application for its renewal, the utility  
23 did not even propose a source of water withdrawal  
24 strategy that would help the utility meet the  
25 District's permitting criteria. So there have been

1 violations going along, and even when it has  
2 applied for its renewal, they still have items that  
3 they have failed to respond to in terms of meeting  
4 district criteria.

5 So those would be the bullet points from  
6 Ms. Walker, and again, I reiterate that the  
7 District is in full support of our recommendation  
8 on the issue.

9 CHAIRMAN CARTER: Thank you. Commissioners.

10 COMMISSIONER ARGENZIANO: Yes, Mr. Chair.

11 CHAIRMAN CARTER: Yes, Commissioner  
12 Argenziano, then Commissioner Skop. Commissioner  
13 Argenziano, you're recognized.

14 COMMISSIONER ARGENZIANO: Thank you. And to  
15 staff or to the company or to whoever, if I need  
16 correction, please give me so, because I'm having  
17 trouble with this, and I may not have grasped it  
18 fully. But let me say what I think is happening  
19 here, and do correct me if I'm wrong.

20 I see a company that is in violation of the  
21 CUP. First let me ask staff. Are they in  
22 violation of the CUP and have been in violation?  
23 Are they above, or is there some number that the  
24 Water Management District says is within the CUP,  
25 but they would like to see them reduce it, or are

1 they above the actual CUP?

2 MS. LINGO: Commissioner, let me apologize.  
3 Ms. Walker would be able to better speak to that  
4 than I am, but I would point out that I've  
5 identified -- beginning on the bottom of page 16,  
6 I've identified six areas that the utility remains  
7 in substantial noncompliance with its current  
8 permit.

9 COMMISSIONER ARGENZIANO: Okay. I got that.  
10 The reason I ask this -- let me tell you so -- it's  
11 only fair to you to understand what I'm asking.  
12 I've seen many times before -- and I'm never happy  
13 when we're, you know, using more than we should be  
14 using, and conservation is a goal I strive for all  
15 the time and wish everybody would.

16 But I see many times water management  
17 districts issuing a CUP -- and in my home county,  
18 Beverly Hills was one of the places where they  
19 issued a CUP for a certain number, and then when  
20 the community got halfway into that number, the  
21 Water Management District said, "Hey, we want you  
22 below that."

23 And why I asked were they within that CUP --  
24 and the company may be the best one to answer this.  
25 Was the CUP for a certain -- I remember reading it,

1 but I apologize. I've got a ton of paper in front  
2 of me, but before I get it, we would probably all  
3 be home eating dinner and spending time with our  
4 families.

5 But is there a certain number that they've  
6 actually gone above? If a CUP was issued for,  
7 let's say, 10,000 gallons a day, were they above  
8 the 10,000, or were they still below? That's one  
9 question I want to ask, and the reason I ask that  
10 is because I've seen the water management districts  
11 sometimes before they've even reached the full  
12 extent of the full CUP go in and say, "You're in  
13 violation. Reduce," so that means a lot to me.  
14 Can somebody answer that?

15 MS. LINGO: Commissioner Argenziano, I'm  
16 unaware that the utility has actually exceeded its  
17 permitted allowance. In the -- I can tell you that  
18 in their permit request, they've asked for an  
19 increased allotment, and maybe the utility can  
20 actually address whether or not they know  
21 definitively whether they've actually exceeded  
22 their permitted allotment. I'm unaware that they  
23 have.

24 COMMISSIONER ARGENZIANO: Okay. Thank you.  
25 Maybe the utility could do that.

1 CHAIRMAN CARTER: Let's hear from the company.

2 MR. ADE: There is some -- thank you, John.

3 There is some conversation in the staff report from  
4 the Water Management District about overusing the  
5 allocation. That happened early in the process.  
6 Right now and for the last two or three years,  
7 Southlake Utilities has been substantially below  
8 the amount of water it's supposed to be drawing  
9 out.

10 COMMISSIONER ARGENZIANO: Okay.

11 MR. ADE: And one of those reasons is that the  
12 Water Management District asked use to hire  
13 somebody to try to control the high usage  
14 customers, which the utility has done, and it has  
15 reduced our output -- our withdrawal of the water  
16 by a substantial amount.

17 COMMISSIONER ARGENZIANO: Okay. Thank you.  
18 Mr. Chair, my concern then is -- and again, help me  
19 out, somebody, if I'm on the wrong track. If a  
20 company is not in violation of the current CUP --  
21 first of all, let me take a step back. I'm sorry  
22 to do this. I don't even understand why we're  
23 involved in this issue in ratemaking. I think if  
24 it's a violation, then DEP and the water management  
25 districts have been fining companies and those

1 overusing forever, so I'm not sure why we're  
2 involved. I understand OPC's concern that it will  
3 cost the ratepayer, but I also believe that there's  
4 other -- I can't figure out why it's at the PSC  
5 regarding rates when there's an environmental  
6 violation.

7 But to the point of if the company is in  
8 compliance now -- and let's say even when they  
9 weren't in compliance, or if they're out of  
10 compliance, above the CUP, because, after all, why  
11 would the -- and I've said this to the water  
12 management districts before. Why do you give a CUP  
13 of this much if you only want them down here  
14 halfway and then expect it to be any different if  
15 they go above the midpoint, which makes no sense to  
16 me. But if they are out of compliance and they  
17 have made efforts to -- and I understand OPC says  
18 they don't think they've made enough, or the staff  
19 is saying they don't think they've done enough.

20 But if they have, how do you control every  
21 independent consumer? And if the consumer is  
22 asking for more water and the company has to supply  
23 more water and asking for a larger CUP, I don't  
24 know how the company is at fault if the consumer is  
25 the one that is using more of the water. And I

1 have a real problem here. Is that really what  
2 we're looking at? Can somebody pinpoint it without  
3 a lengthy legal scenario? Is that really the gist  
4 of what we're doing here?

5 MS. LINGO: Commissioner Argenziano, I think  
6 the main problem with the District is that the  
7 utility is continuing to withdraw from the Upper  
8 Floridan Aquifer, which the District has identified  
9 as --

10 COMMISSIONER ARGENZIANO: Caution. I  
11 understand.

12 MS. LINGO: Well, and there are measurable  
13 impacts to wetlands that are occurring because of  
14 continued withdrawal from the upper Floridan --

15 COMMISSIONER ARGENZIANO: And trust me, as the  
16 past known water lady, I understand those  
17 measurable impacts, but that is not my concern as a  
18 Public Service Commissioner rate regulator. That's  
19 what I'm trying to differentiate. I agree with you  
20 100 percent. Darn it, I understand the Water Use  
21 Caution Areas especially. I come from an area that  
22 was impacted by overpumping. I fought that, and  
23 believe me, I understand that. But I still have to  
24 separate the issues here. As a regulator here,  
25 what is the issue that we are to be involved with

1 when it comes to ratemaking? Because I'm of the  
2 opinion that those fines have always been handled  
3 by the water management districts quite  
4 appropriately, and sometimes a very large fine, and  
5 the DEP. So I don't understand.

6 If they're using the upper Floridian -- the  
7 Upper Floridan Aquifer. Floridian, now I'm doing  
8 what everybody else does. The Upper Floridan  
9 Aquifer versus the Water Management District  
10 wanting them to use the deeper aquifers, what does  
11 that have to do with us, and why can't they compel  
12 them to do that through the DEP or the Water  
13 Management District? I guess that's what I'm  
14 trying to figure out, what's --

15 MS. LINGO: And, Commissioner --

16 COMMISSIONER ARGENZIANO: -- the whole real  
17 regulatory purpose here.

18 MS. LINGO: I apologize for stepping on you,  
19 Commissioner Argenziano. We're involved, ma'am,  
20 because we have a statute that very explicitly  
21 addresses this problem. The statute gives the  
22 Commission explicit authority to address the ROE  
23 for service related issues. And very specifically,  
24 Commissioners, Chapter 367.111(2), the last  
25 sentence of that statute says if the Commission

1 finds that a utility has failed to provide its  
2 customers with water or wastewater service that  
3 meets standards promulgated by DEP or the water  
4 management districts, the Commission --

5 CHAIRMAN CARTER: The ROE can be adjusted. I  
6 do know that, and that's what I was waiting to  
7 hear.

8 MS. LINGO: Right. And --

9 COMMISSIONER ARGENZIANO: And -- I'm sorry.

10 MS. LINGO: I apologize, ma'am. We're  
11 stepping on -- I'll hush.

12 COMMISSIONER ARGENZIANO: I'm stepping on you,  
13 and I don't mean to do that. I just want to  
14 shorten it where -- I agree. That's 100 percent  
15 true, and that is what I wanted to hear. But I  
16 guess what I'm trying to get at also is, if a  
17 company has to sink a different well and we are to  
18 take into consideration the impact to the consumer,  
19 what happens then? I mean, where are we going with  
20 the amount of money it's going to cost the  
21 consumers and -- I guess I'm stuck in the middle  
22 between the statute you cite, because it's  
23 definitely there, and finding or reducing for the  
24 company something -- I think that ultimately we're  
25 going to wind up putting it all on the consumer of

1 the water, and I'm not sure where that point is.  
2 If we do this, what are we really getting at? What  
3 are we really doing? Are we really pushing the  
4 company to stop using the Upper Floridan Aquifer  
5 and to invest more money into supplying the water  
6 from a different source? And then coupled with  
7 that expense and the reduction expense, are we not  
8 putting it all on the user? I'm not sure what  
9 we're doing. I'm sorry to make it more muddied. I  
10 guess I just don't get the gist of what we're  
11 trying to do other than get them to comply and try  
12 to get less water used. I'm not sure if it's not  
13 going to impact the ratepayer more.

14 Maybe OPC can better answer that again. I  
15 apologize. Maybe I wasn't -- I didn't hear the  
16 argument well.

17 CHAIRMAN CARTER: We'll do that, Commissioner,  
18 and then we'll go to Commissioner Skop.

19 COMMISSIONER ARGENZIANO: Thank you.

20 CHAIRMAN CARTER: Mr. Reilly.

21 MR. REILLY: As I said on this issue, I had  
22 mixed feelings about it. Obviously, it could lead  
23 to much higher costs for my clients, and that  
24 always causes me pause. At the same time, you  
25 know, I understood what staff was doing. They were

1           trying to bring them in compliance, and I would not  
2           take exception with what they recommended.

3           I think I couldn't add any more than that  
4           without knowing really the dollar impacts. I know  
5           a lot of huge numbers were thrown out here today.  
6           It could be that there could be a mix of solutions  
7           that would be much, much less costly, but I just  
8           couldn't talk beyond that.

9           If you would give me 40 seconds, because I  
10          abbreviated my argument so much that there were two  
11          on rate case expense --

12          CHAIRMAN CARTER: Okay.

13          MR. REILLY: -- that I did not make because I  
14          abbreviated it so much, if I could briefly.

15          COMMISSIONER ARGENZIANO: And Mr. Chairman,  
16          while he's taking that 40 seconds, maybe staff  
17          could answer the second part to the question that  
18          the gentleman from the company had said, that they  
19          are now in compliance, substantially below the CUP,  
20          because they have put in place mechanisms to try to  
21          teach the consumer -- to have the consumer to use  
22          less. Has staff addressed that, and could they  
23          tell me if they see that to be the case, and if  
24          that is the case, why would we do that now when  
25          they've kind of gotten under the CUP or under the

1 violation.

2 CHAIRMAN CARTER: Okay. Mr. Reilly and then  
3 staff.

4 MR. REILLY: Very quickly, this critique of  
5 the company's request for rate case expense did not  
6 look enough at the number of hours that have been  
7 billed to the ratepayers on this case. The hours  
8 that are still in this recommendation on Guastella  
9 & Associates alone is 1,138 hours of work, which  
10 equals two -- I can translate it out into days and  
11 into workweeks, but the bottom line is that it's  
12 one full-time person working approximately seven  
13 months full time work based on a five-day,  
14 eight-hour workweek, and that's just an extreme  
15 amount of time as rate case expense to be borne by  
16 ratepayers.

17 On the legal side, representing \$32,000 of  
18 this entire legal rate case expense was all in  
19 e-mail. And there's no -- there's not even a  
20 paragraph saying what it represents. It just says,  
21 "For May I need 39.5 hours, in June, 34.5 hours.  
22 This comes out to \$19,240, and by the way, I think  
23 I'm going to devote 50 hours of additional time to  
24 finish the PAA, so that will be another \$13,000."  
25 So without any detail at all of what was performed

1 or what is going to be performed, please give me  
2 \$32,240 to be paid by ratepayers."

3 So we're just deeply concerned about this  
4 quarter of a million dollars worth of rate case  
5 expense.

6 COMMISSIONER ARGENZIANO: Got it. Thank you.

7 MR. REILLY: Okay. Thank you.

8 CHAIRMAN CARTER: Staff and then Commissioner  
9 Skop.

10 MS. LINGO: Thank you, Chairman Carter.  
11 Commissioners, and Commissioner Argenziano in  
12 particular, what makes this noncompliance with the  
13 Water Management District criteria even more  
14 compelling than it would be otherwise is the  
15 utility's location in the Central Florida  
16 Coordination Area. This area encompasses areas of  
17 three water management districts, the St. Johns,  
18 the South, and the South Florida Water Management  
19 Districts. These three districts jointly concluded  
20 in 2006 that the availability of sustainable  
21 quantities of potable water demands are  
22 insufficient for future demands.

23 And in addition, and even more importantly,  
24 these water management districts have concluded  
25 that alternative water supply sources must be

1 developed to meet the increased demands in Central  
2 Florida beyond the year 2013. Commissioners,  
3 that's right around the corner.

4 The Districts have recognized and concluded  
5 that water supplies in these areas are of such a  
6 critical nature that compliance and making sure the  
7 utilities are held to compliance standards are of  
8 the utmost importance.

9 COMMISSIONER ARGENZIANO: Could I interrupt?  
10 What you're describing -- and what I'm going to say  
11 here is not patting myself on the back. I wrote  
12 some of that language into law, alternative sources  
13 in Chapter 373, and worked on that for years. So I  
14 understand that. I was the proponent of that.  
15 That is not what I'm saying, and I'm not debating  
16 or calling into question the critical nature of the  
17 Floridan Aquifer and the need to conserve and to  
18 develop alternative sources. I was a huge  
19 proponent of desal and any other kind of  
20 alternative there is. So I understand that, and I  
21 want you to understand that that is not what I'm  
22 asking.

23 What I'm asking is, if the company -- because  
24 I'm looking for a rate impact. I'm looking toward  
25 a rate impact to the consumer, and I'm trying to

1 figure out, if the company is currently not in  
2 violation, as the gentleman said, or if they are  
3 below their CUP, why would we now that they're  
4 below, at a time when they indicate -- and that's  
5 why I'm asking staff to tell me if you found the  
6 same thing -- that they indicate that they have  
7 gotten to the consumer, the big user consumer, and  
8 said, "Hey, you guys have to conserve," and if  
9 that's working by, I guess, showing -- by the fact  
10 that they're below the CUP now, if that's working,  
11 why would we now punish them or say, "Here's what  
12 you deserve for being in violation," thus costing  
13 the consumer more money on top of what Mr. Reilly  
14 has indicated? That's my concern.

15 It's not that I'm questioning whether there  
16 are detrimental effects to the aquifer. I know  
17 that. I wrote the law, or part of it anyway. And  
18 I want our staff to understand I'm not questioning  
19 that. I agree with you there. I think what I'm  
20 saying, and I'll say it again, I'm concerned with  
21 if they are not out of violation now -- and that's  
22 what I heard the gentleman say, so this is where  
23 I'm turning to staff and saying, well, do you see  
24 it this way, and give me your opinion.

25 If they're not in violation now and they have

1           made efforts to reduce the consumers' use to what  
2           they can -- I mean, they can't do what's beyond the  
3           possible. You know, you can only lead a horse to  
4           water, so to speak, but you can't make them do what  
5           they've got to do. Now, if they have and it's  
6           proven by their reduction in use in the consumptive  
7           use, then why would we now do that?

8           If they were still out of compliance, I would  
9           say, "Yes. Okay. Obviously, it's not working.  
10          Let's do something." But why are we now -- my  
11          question is, isn't that going to impact the  
12          ratepayer more, that customer? That's my concern.

13          MS. BROWN: Commissioner Argenziano, this is  
14          Martha Brown. If I might just break in for a  
15          moment and refer you to page 16 of the staff  
16          recommendation, sort of in the middle. And I'll  
17          just quote some it.

18          COMMISSIONER ARGENZIANO: That would be so  
19          great. That would be so helpful, and it may  
20          clarify things perfectly. But you understand the  
21          point I'm making? I'm looking to you for answers.

22          MS. BROWN: Well, I guess the point I would  
23          like to make is that there are other ways to be out  
24          of compliance with the consumptive use permit.  
25          This consumptive use permit had many conditions put

1 on it because of a history of noncompliance.

2 COMMISSIONER ARGENZIANO: I understand.

3 MS. BROWN: So on page 16, staff says,  
4 "Currently, the utility is in substantial  
5 noncompliance with its CUP. Based on information  
6 obtained from the District, the utility has  
7 committed 22 violations and received seven  
8 citations from July 11, 2006, through January 1,  
9 2009."

10 And then there's a list of failures to comply  
11 below that that Mr. Ade spoke to two of, but he  
12 didn't mention failure to conduct hydrologic and  
13 photo monitoring of specified wetland areas;  
14 adversely impacting wetlands, lakes, or spring  
15 flows; and failure to identify viable potential  
16 water supply partners by January 2008; failure to  
17 maintain flow meter accuracy thresholds, along with  
18 similar violations.

19 COMMISSIONER ARGENZIANO: I remember seeing  
20 those. Let me ask you again -- and I understand  
21 that, and I've seen these time and time again, and  
22 sometimes they're very, very crucial, and sometimes  
23 they're a little different than maybe what's stated  
24 on the piece of paper.

25 But let me ask you this, and this is the point

1 I'm really trying to get to. And, yes, if they are  
2 still under the CUP, then I find it difficult for a  
3 water management district -- and that's my personal  
4 opinion -- to grant a CUP for a higher amount when  
5 you really don't want them to use that to begin  
6 with, and I have taken issue with water management  
7 districts over that all the time.

8 But to the point I'm trying to make, let me  
9 ask you this. Which staff member there can tell me  
10 now how much more this is going to cost the  
11 consumer there if we reduce -- do the reductions  
12 that are indicated today to try to force them into  
13 more of a compliance?

14 MR. CASEY: Commissioner Argenziano, this is  
15 Bob Casey. I have an estimate for you. The  
16 penalty to the ROE -- this is for the water side  
17 only -- would involve a little over 32,000. It's  
18 \$32,777.

19 CHAIRMAN CARTER: Commissioner, let's give the  
20 company an opportunity to be heard on this point.

21 COMMISSIONER ARGENZIANO: Absolutely. Thank  
22 you.

23 MR. GUASTELLA: Thank you. This is John  
24 Guastella, Commissioner Argenziano. Prior to our  
25 meeting with the Water Management District which

1 staff attended, I submitted to staff and to the  
2 Water Management District detailed analyses as to  
3 what the cost impact would be if the company were  
4 to spend over \$10 million for a water treatment  
5 plant and for the reuse facilities. I have a copy  
6 of it in my hand. It's in the staff's files.

7 For the water, the rate increase that you're  
8 now looking at proposed by staff is about a million  
9 dollars worth of revenue requirement for water.  
10 For the water treatment plant, the minimum amount  
11 would be \$1.6 million in addition to the million  
12 you're approving, and it could be as much as  
13 \$2 million, because the water rate base is  
14 3.3 million as allowed in this proposed  
15 recommendation, and there would be an additional  
16 \$10 million spent on treatment for the lower  
17 aquifer.

18 The company cannot stop using the upper  
19 aquifer, or customers are not going to have water.  
20 The company already drilled a well into the lower  
21 aquifer at \$900,000 and found that the water  
22 quality is not adequate to provide to the  
23 customers. It's going to cost another \$10 million  
24 to use it. If we blindly go ahead and follow the  
25 Water Management District's proposal to stop using

1 the upper level aquifer, the customers' rates are  
2 going to go up by another \$2 million in addition to  
3 the million now that they're going to be paying.  
4 That's a dramatic impact.

5 The company has spent over \$1.5 million to  
6 drain it into everyone who's involved that we have  
7 to do this based on what's most economical for the  
8 customers to meet requirements, but also not kill  
9 the customers with rate increases. The company has  
10 met its burden. We've provided studies for what  
11 these are, and we've presented them to the staff  
12 and to the Water Management District. It seems no  
13 one is listening. I hate to say it, but it seems  
14 no one is listening. I have copies of this I'll be  
15 happy to leave with the Commissioners to take a  
16 look at the estimates that were made. And it's not  
17 hard to do. If you have a 3.3 million rate base  
18 and you're adding \$10 million before adding  
19 operating expenses, there's going to be dramatic  
20 impact to the rates. You're quadrupling the rate  
21 base.

22 We're trying to avoid that and find a better  
23 solution than simply building a \$10 million  
24 treatment plant. And there may be a better  
25 solution, but the company needs a little bit of

1 time to spend \$182,000 a year for engineering to  
2 find that solution, which these stockholders have  
3 been willing to do.

4 If we have to go out and attract \$10 million  
5 and we've got a penalty on the return on equity,  
6 attracting \$10 million may become very impossible,  
7 and then I don't know what the solution is going to  
8 be.

9 CHAIRMAN CARTER: Thank you. Commissioner  
10 Skop.

11 COMMISSIONER SKOP: Just to not belabor the  
12 discussion, but to touch upon two points that  
13 Commissioner Argenziano raised, when I first came  
14 into this, I read it, a cursory review, and I was  
15 generally in favorite of the staff recommendation.  
16 But given the discussion that has been had, I guess  
17 I'm struggling to understand -- in most cases where  
18 this Commission, at least since I've been a part of  
19 it, has provided a reduction for ROE for quality of  
20 service, it has typically been related to water  
21 quality or something other than that. And  
22 Commissioner Argenziano touched upon a point that a  
23 consumptive use permit violation, typically, that's  
24 a DEP or water management district enforcement  
25 action, where they levy a penalty and fine upon the

1 company and work that out between themselves. If  
2 we are using consumptive permit violations as the  
3 basis for the ROE reduction, which I think may be a  
4 differing standard than the Commission has used  
5 historically -- and if I'm incorrect, I'll be the  
6 first person to say I'm incorrect if staff can  
7 bring that to my appropriate attention. But if  
8 not, it seems to be applying a different standard.

9 Secondly, the letter was read from the Water  
10 Management District spokesperson. She's not here  
11 today. But if the Commission were to use the  
12 recommendation from that entity as the basis for  
13 reducing its ROE, I'm of the belief that that would  
14 constitute reversible error by the Commission. It  
15 would be an impermissible delegation of authority,  
16 and I think that the Commission should be very  
17 careful. If we are going to do an ROE reduction,  
18 it should be based upon the facts before us, not  
19 what another agency encourages us to do. So again,  
20 I just want to make that point and have staff  
21 clarify.

22 But also, to Mr. Reilly's point that went on  
23 for quite a lengthy amount of time, and I was  
24 trying to get to the crux of what he wanted the  
25 number to be, but as I understand it, he's alleging

1 that the rate case expense is probably three times  
2 greater than a historical expense for a given  
3 company. But what concerns me with that for the  
4 most part would be -- I think that if I heard you  
5 correctly, you're alleging that the legal bills may  
6 not be accurate in terms of billing the matter to  
7 which the legal services were provided. Is that  
8 generally correct? And then I'll go back to  
9 Ms. Lingo briefly.

10 MR. REILLY: I think the subject matter is not  
11 correct, but also the just the number of hours and  
12 the magnitude of the rate case expense.

13 I would like to suggest a --

14 COMMISSIONER SKOP: Briefly, briefly.

15 MR. REILLY: -- compromise, that the  
16 Commission could stand down on this issue of the  
17 return on equity penalty. But if it addressed the  
18 rate case expense and just even got rate case  
19 expense, that money could be returned to the  
20 company. It's around 30-something thousand  
21 dollars. It just so happens if you figure getting  
22 this rate case expense back to where it should be,  
23 around 107, somewhere in that range, \$110,000, that  
24 helps the ratepayers by about \$30,000 of revenue  
25 requirements. So, I mean, the two, I hate to link

1           them, but it's possible you could stand down on  
2           issue of the -- on taking a statement on that. It  
3           still has the same effect.

4           COMMISSIONER SKOP: Mr. Reilly, I've heard  
5           that for about an hour now. I understand the  
6           argument. I understand that it's inconclusive as  
7           to that the reduction should be. I understand  
8           wholeheartedly the problem.

9           The problem I have with doing that  
10          indiscriminately is that I have seen the Commission  
11          be inconsistent in terms of disallowing an expense  
12          that was previously allowed in terms of consulting  
13          services. Here the fees seem high, so I tend to  
14          agree with you. Here the legal bills may have some  
15          problems; I tend to agree with you. But to  
16          unilaterally just make a capricious and arbitrary  
17          reduction I'm not so sure is the right way to go,  
18          so I'm looking for answers.

19          Let me go to Ms. Lingo, because, again, the  
20          hour is getting late. We have still have two more  
21          items and IA.

22          To Ms. Lingo, before you respond, is there a  
23          critical date associated with this?

24          MS. LINGO: Yes, sir, I believe there is.

25          MR. CASEY: The five-month effective date was

1           waived through today.

2           MS. BROWN: Commissioners, this is a PAA item.

3           CHAIRMAN CARTER: I got it. But the last  
4           thing I want to do is see Mr. Reilly protest the  
5           case and drive up the expenses more if we can work  
6           it out. Again, I'm concerned about the ratepayers.  
7           I'm concerned about addressing Commissioner  
8           Argenziano's concern. Again, her knowledge of  
9           water in Florida and the efforts that she's made in  
10          the legislative process are commendable. I mean,  
11          she has done a lot to save and preserve and enhance  
12          the water quality of our springs and the water  
13          quality particularly through her district in  
14          Central Florida, so I commend that.

15          I'm just trying to be consistent. I'm trying  
16          to get to the crux of the matter. It's five  
17          o'clock now. We have miles to go before we sleep,  
18          so let's just cut to the chase and get to the  
19          points.

20          MS. LINGO: Commissioner Skop, we would  
21          certainly argue that the utility's noncompliance  
22          with the District, and not just for a short period,  
23          but ongoing --

24          CHAIRMAN CARTER: I understand. A specific  
25          case where we've based it upon a consumptive use

1 permit, not -- and I'm not being critical, and I'm  
2 not being antagonistic. I just want to make sure  
3 that we're not departing from what the Commission  
4 has adopted in the past and there's a different  
5 standard, because I've never seen a consumptive use  
6 permit be the basis for an ROE reduction, and I  
7 don't see any cases cited in the footnotes  
8 indicating the same. I see Gulf Power. I see  
9 Aqua, but Aqua wasn't a CUP issue. Aqua was a  
10 water quality and customer service related  
11 reduction.

12 MR. WILLIS: Commissioner Skop, this is  
13 Marshall Willis with the Commission staff. If I  
14 could answer your question, on page 17, it's  
15 highlighted there that this is the very first case  
16 where the Commission would be considering that.  
17 We've never --

18 COMMISSIONER SKOP: I've read a -- I'm sorry.

19 MR. WILLIS: -- done that. And I would like  
20 to point out, it's not essential that the  
21 Commission does that. I think if you decide to  
22 back off on the ROE adjustment, I think the  
23 discussion here today has basically informed the  
24 company of your desires that they find a reasonable  
25 solution to come into compliance. It may not be

1 all of what Water Management wants, but as long as  
2 they continue forthwith trying to work with them to  
3 come up with a reasonable solution that's  
4 economical to the customers, I think that's what  
5 the Commission desires.

6 COMMISSIONER SKOP: Thank you for pointing me  
7 to that. I had read that previously. It's the  
8 first bold sentence in the mid page of 17. So in  
9 all of what I've what I've read, which has been a  
10 lengthy -- thousands of pages, again, I may have  
11 missed that, so I apologize.

12 But again, I want to adhere to Commissioner  
13 Argenziano's concerns. You know, if -- I'm not  
14 trying reverse the ROE reduction because I'm trying  
15 to look out for the company. I'm trying to make  
16 sure that we're being consistent and just not doing  
17 something that is better left in an enforcement  
18 action by a different regulatory agency. But  
19 again, if it's Commissioner Argenziano's desire to  
20 make that adjustment, I'll support it  
21 wholeheartedly.

22 But again, to base it upon what's contained in  
23 a Water Management District letter and adopting  
24 that as the basis for our reduction and  
25 recommendation I think is shaky, dangerous ground.

1 So again, I just want to point out that if we make  
2 a decision to do that, it should be on a separate  
3 and independent basis, not on the basis of that  
4 letter.

5 MS. LINGO: And we made to our recommendation  
6 based upon the record evidence in the District  
7 regarding compliance letters back and forth which  
8 we have very carefully sourced. The District's  
9 letter, Commissioner Skop and Commissioners, was  
10 mainly to reiterate the District's position that to  
11 the extent this Commission would look at one of its  
12 statutes and recognize that a utility is in  
13 violation of one of our statutes and we could  
14 reduce ROE really for mismanagement purposes,  
15 because we would contend that noncompliance over  
16 this period of time would certainly constitute  
17 mismanagement, and we have reduced it in the past  
18 for mismanagement. But the District would  
19 certainly support our recommendation.

20 COMMISSIONER SKOP: Two quick questions, and  
21 then I'm done. With respect to the consumptive use  
22 permit, couldn't they be able to -- again, as  
23 Commissioner Argenziano properly, I believe,  
24 alluded to, you know, to hold the company  
25 accountable for their consumers' egregious use of

1 water, quantities of water, you know, I don't know  
2 how you do that other than to adopt more stringent  
3 conservation rate structures that send the  
4 appropriate price signal, and that kind of helps  
5 the company out. So the question is, will that  
6 resolve the concern on the CUP thing? And if  
7 they're in compliance, as Commissioner Argenziano I  
8 think alluded to, is it appropriate at all to  
9 punish them on the ROE reduction?

10 And then the second part of my question is,  
11 what would staff recommend to do to address  
12 Mr. Reilly's concerns about legal bills that may  
13 not match up to services and consulting fees, just  
14 real quick?

15 MS. LINGO: Golly. I should have written that  
16 all down. Could you, please, sir, give me your  
17 first point again? I'm sorry.

18 COMMISSIONER SKOP: The first point --

19 COMMISSIONER EDGAR: Commissioner, I'm very  
20 sorry. Could I just -- I do apologize. I'm tried  
21 too. And I just wanted to ask why you're maybe  
22 thinking -- and we're pursuing the discussion, and  
23 I'm glad to be here as long as -- I'm tired, but  
24 I'm glad to be here as long as we need to take.  
25 Would it be possible to get a copy of that letter?

1 I mean, we keep referring to the letter, and I  
2 realize that you read it in, but --

3 MS. LINGO: I apologize. She just -- it's not  
4 even signed. She was faxing it to me, and it's a  
5 draft. But I can assure you that what I've --

6 COMMISSIONER EDGAR: If it's not available,  
7 it's not available.

8 MS. LINGO: Well, no, ma'am. I --

9 COMMISSIONER EDGAR: And again, I apologize,  
10 Commissioner. I was just hoping that if I had it  
11 in front of me, that would help while we were  
12 having the discussion. And that gives me pause  
13 right there, and I'll leave it at that. Thank you.

14 COMMISSIONER SKOP: Me too, because I was not  
15 aware that it was not signed, and entering it into  
16 the record or reading it into the record if it's  
17 not signed gives me some evidentiary pause also.

18 COMMISSIONER ARGENZIANO: And I feel the same  
19 way. Commissioner Edgar, that was a great  
20 question. I was wondering if I could get the  
21 letter too, and I was going to follow up by asking  
22 if it was a board decision, a Water Management  
23 District board decision or where it actually came  
24 from.

25 CHAIRMAN CARTER: Commissioners, let me do

1 this. Commissioner McMurrian has been very  
2 patient, so let me defer to Commissioner McMurrian  
3 and let her ask her questions, and then we'll come  
4 back. Commissioner McMurrian, you're recognized.

5 COMMISSIONER McMURRIAN: I was going to ask  
6 about -- more clarification about the statute and  
7 all, but I see here in the middle of page 17 what  
8 Ms. Lingo was reading before about that we have the  
9 authority to adjust ROE in accordance with DEP or  
10 Water Management District violations. And so I  
11 guess my opinion would be -- and I think the  
12 letter, whether it's -- anyway, that may change  
13 things.

14 I don't really feel that strongly about  
15 adjusting the ROE based on this issue, considering  
16 all the discussion we've had. But I guess I would  
17 disagree that if we were to take some kind of  
18 counsel of the water management districts or advice  
19 from them, considering this statute and considering  
20 our MOU with them, which I'm not sure about exactly  
21 the wording. But given the relationship that we  
22 have with them in partnering to try to work toward  
23 conservation issues in the same way that we partner  
24 with DEP on the quality issues, I don't believe it  
25 would be reversible error to take into account

1 things the Water Management District has worked  
2 with -- that we have a relationship with them on,  
3 and the statutes provide us that opportunity.

4 But again, having said that, I don't feel that  
5 strongly about this adjustment. And I realize it  
6 is a case of first impression for us with respect  
7 to water management districts. But I was going to  
8 ask about the statute and also about the MOU and  
9 how much latitude and all that gives us, but I  
10 think we're kind of past that now. So thank you,  
11 Mr. Chairman.

12 COMMISSIONER ARGENZIANO: Mr. Chair, I have a  
13 different question.

14 CHAIRMAN CARTER: Hang on one second,  
15 Commissioner. I think that the -- I forgot  
16 Commissioner Skop's other question. What was that  
17 other question you had, Commissioner?

18 COMMISSIONER SKOP: Basically, it was --  
19 there's three --

20 CHAIRMAN CARTER: I'm sorry.

21 COMMISSIONER SKOP: Two questions, one to  
22 staff. Would a more aggressive conservation rate  
23 structure address the issue related to the  
24 consumptive use permit and overpumping or  
25 overusage?

1                   CHAIRMAN CARTER: Excuse me for interrupting.  
2                   Now I remember. It was about the attorney's fees.

3                   COMMISSIONER SKOP: And the second question  
4                   would relate to Mr. Reilly's concerns about legal  
5                   fees being billed and whether they're substantially  
6                   related to the matter of the rate case before us or  
7                   whether they're related to other matters that are  
8                   unrelated, and also the excessive consulting fees.

9                   And just finally, briefly, in passing, to  
10                  clarify a previous point I made that Commissioner  
11                  McMurrian picked up on, I didn't mean to suggest  
12                  that considering the statute or all the other  
13                  things would constitute reversible error, not at  
14                  all. What I was concerned about was using the  
15                  letter, a now unsigned letter due to Commissioner  
16                  Edgar's inquiry, as the basis for rendering that  
17                  determination, I think that is shaky ground. If we  
18                  do it on our own, I think we're fine.

19                  COMMISSIONER ARGENZIANO: Mr. Chair?

20                  CHAIRMAN CARTER: Yes, ma'am, Commissioner.  
21                  I'm going to come back on the rate case expense.  
22                  Go ahead, Commissioner.

23                  COMMISSIONER ARGENZIANO: I would like to ask  
24                  the company if the Water Management District has  
25                  ever imposed a fine for being out of compliance on

1 the company.

2 MR. ADE: Yes, Commissioner. This is Jim Ade.  
3 I believe the year was 2006.

4 COMMISSIONER ARGENZIANO: Okay. So back in  
5 2006 when you were out of compliance with the CUP?

6 MR. ADE: And it had to do with  
7 overwithdrawing, and the situation was just exactly  
8 what you described early in your comments. We had  
9 an allocation. We were in a fast growing area, in  
10 the Orlando area, at that time. And we had a  
11 drought situation, and we did overdraw a little  
12 bit. We did enter into a consent order on that  
13 issue with several other issues -- I think maybe  
14 there were four or five issues there involved in  
15 that -- and a lot of conditions put into the  
16 consent order. The company did meet all those  
17 conditions.

18 And to show you the magnitude of the  
19 importance of all of that, the company paid the  
20 Water Management District about \$250 to cover its  
21 expenses of investigation. And that is a closed  
22 issue, and it is referred to in the staff's  
23 recommendation. It's been closed for at least two  
24 or three years.

25 COMMISSIONER ARGENZIANO: The reason I ask

1 is -- and you're indicating that you were fined  
2 back then when you were out of compliance. And the  
3 reason I ask that is because I was wondering if the  
4 Water Management District, of course, within its  
5 purview -- well, first of all, if they're not out  
6 of compliance now, I guess the Water Management  
7 District cannot impose a fine, but they want us to  
8 do that, in a sense, by reducing ROE. And --

9 MR. ADE: You know, I'm not -- excuse me. Go  
10 ahead.

11 COMMISSIONER ARGENZIANO: I'm sorry. And I  
12 guess what I'm trying to get at is, if they're out  
13 of compliance -- as Commissioner Skop had indicated  
14 before too, my concern was that if they're in  
15 compliance now with that CUP, then perhaps the  
16 water management districts should get some kind  
17 of -- I mean, they're pretty much completely  
18 autonomous, and they do levy heavy fines when they  
19 feel it necessary. But why, again, are we being  
20 asked -- and I understand there's a statute that  
21 says -- you know, I think we used it in another  
22 water case, with good reason.

23 But if they're in compliance with the CUP, and  
24 the Water Management District said, "Here's your  
25 CUP, but we really don't want you to use more than

1           what we've given you," first of all, my question  
2           always has been and will be again to the Water  
3           Management District: Why are you giving CUPS out  
4           with that amount of water, knowing that the area is  
5           under a caution or whatever?

6           And secondly, to us as the regulators, if  
7           they're in compliance with the CUP, I'm not sure  
8           that we have -- that we should be getting involved  
9           by doing this. And the reason I say that is  
10          because I believe that if we do that, if we reduce  
11          the ROE of the company, we're never going to get to  
12          a solution to this problem for the consumer as far  
13          as then getting out of using the Upper Floridan  
14          Aquifer.

15          MR. ADE: Commissioner, I think --

16          COMMISSIONER ARGENZIANO: So I'm not sure  
17          we're not defeating our own purpose. So I would  
18          suggest that we leave the ROE alone, but the  
19          company take note that we are seriously concerned  
20          with them moving towards alternatives.

21          And I would suggest that the Water Management  
22          District sign their letters from now on that they  
23          send to us and make it clear what they're really  
24          asking. I'm not sure we'll all supposed to go with  
25          that, Mr. Chair.

1           And I'm sorry. I think the gentleman wanted  
2           to respond.

3           MR. ADE: Commissioner, I think you're exactly  
4           right on what you ought to be doing. I think to  
5           reduce the ROE I think is taking the company in the  
6           wrong direction.

7           You know, if we back up and look at real life,  
8           the Water Management District has told the company  
9           to start using lower Floridian water. We dug the  
10          well like they asked us to, and the quality of the  
11          water was so bad, we found out it was going to cost  
12          \$10 million more to treat the water, even when we  
13          blended it with upper Floridian water, to be able  
14          to use it and meet the standards for the water. So  
15          we're faced with a \$10 million problem.

16          In real life, where does a company of this  
17          size raise \$10 million? Maybe the Water Management  
18          District thinks that you have some right to order  
19          our customers to pay us enough money to raise \$10  
20          million. I don't know what they expect you to do,  
21          but it doesn't seem to me that putting us in a  
22          worse position is the right answer to the solution  
23          to the problem.

24          And we are working with the Water Management  
25          District, and we have continued to be working with

1 the Water Management District. They asked to us  
2 dig the well. We spent 900-plus thousand dollars  
3 to dig it. And we did, and the water was terrible.

4 So I don't know what else this Commission  
5 should be able to do. If you would like to give us  
6 enough rates to cover \$10 million more of rate  
7 base, we would love to have the money, and we would  
8 flat use that water in a minute, you know.

9 CHAIRMAN CARTER: Commissioners, here's where  
10 I think we are. One is on the perspective that we  
11 have the discretion on whether or not to use the  
12 100 basis points, and I think from what I'm  
13 hearing, we choose not to use our discretion in  
14 this case. That's what I'm hearing. If I'm wrong,  
15 somebody stop me now.

16 Secondly is that there are some questions that  
17 Mr. Reilly raised in the context of the fees, the  
18 rate case expenses, particularly in terms of the  
19 legal fees and consulting fees and things of that  
20 nature. Now, he did say, in all fairness, that  
21 some were just wastewater cases and all like that,  
22 but he said that based upon the average, it would  
23 be -- in his estimation, from cases before us, it  
24 would be between 107 and \$110,000 as opposed to  
25 249,000. Staff, could you speak to that issue,

1 please, Mr. Casey?

2 MR. CASEY: I would be glad to. This is Bob  
3 Casey on behalf of staff.

4 As you know, each rate case is different. The  
5 costs, rate case costs for each case is going to be  
6 different. And far be it from me to be a proponent  
7 of rate case expense, believe me. We examine each  
8 and every invoice.

9 They may not be itemized exactly the way  
10 Mr. Reilly wants. Mr. Ade's invoice listed  
11 everything he did for the month and then a total at  
12 the bottom. He could have itemized each day or  
13 something. He could have done that. But it's  
14 staff's opinion there was enough documentation for  
15 it.

16 We did remove \$111,222 of rate case expense  
17 from what they asked for, so it's not like we're  
18 giving them everything they asked for. We did  
19 remove 111,000 of it.

20 And as far as justification for why it's so  
21 high, maybe Mr. Ade or Mr. Guastella could help us  
22 out.

23 CHAIRMAN CARTER: Okay, sir. Let's hear it.  
24 You're recognized, sir.

25 MR. GUASTELLA: Yes. Thank you. Mr. Reilly

1 mentioned the Placid Lakes Utility case. I was a  
2 consultant for Placid Lakes Utility. When it takes  
3 less time, it costs less money. In that case, we  
4 only to go back a couple of years to update a  
5 previous case. In this case, it was the company's  
6 first rate filing. We had to go back about 13 to  
7 15 years and re-create a rate filing to satisfy the  
8 minimum filing requirements, on top of which  
9 staff's audit took six weeks, and staff's auditors  
10 required us to provide reconciliations year by year  
11 for virtually every dollar that this utility has  
12 spent over the last 15 years since it began.

13 And the other cases Mr. Reilly acknowledges  
14 were either water or sewer, but not both. And  
15 there are a lot of complex issues for a small  
16 company of this size, including how to keep the  
17 customers' future from having to have quadruple the  
18 rates they now have. This was a complex case for a  
19 small company.

20 CHAIRMAN CARTER: Okay. Mr. Reilly.

21 MR. REILLY: There was a great deal in these  
22 narratives. By the way, on the legal bills, they  
23 were a narrative on six-month periods and  
24 everything.

25 But setting all that aside, I think there was

1 a lot of time in constructing and proving the books  
2 and records of this utility to make it ready for a  
3 case. And I think if books and records are truly  
4 kept current according to the NARUC system of  
5 accounts, you don't have to do all this extra work  
6 to get ready for a rate case. And I don't believe  
7 it's the ratepayers' responsibility to get the  
8 books and records up to speed for that 13, 14 years  
9 so that it's ready to file a rate case. All that  
10 extra cost should not be borne, you know, to have  
11 an uncontested PAA rate case. And there was a lot  
12 of that in there, and that's not appropriate for  
13 this specific case.

14 CHAIRMAN CARTER: Thank you. Commissioner  
15 Edgar.

16 COMMISSIONER EDGAR: Thank you, Mr. Chairman.  
17 I was just going to say, I would like to hear from  
18 Ms. Lingo one more time maybe on this point, and  
19 then -- Mr. Chairman, again, I can stay. I will  
20 stay. I've just make child care arrangements. But  
21 I'm close on this one whenever it is the will of  
22 the body.

23 CHAIRMAN CARTER: Okay. You may proceed.

24 COMMISSIONER EDGAR: Ms. Lingo, if you would.

25 MS. LINGO: Thank you, Commissioner Edgar.

1           Commissioners, I just -- two points, and we can  
2           call this a day, I think.

3           My first point really gets to Commissioner  
4           Skop. There was a question that I left unanswered,  
5           sir, and I apologize. You asked specifically if  
6           conservation rate structures would help address  
7           consumption concerns, and, yes, sir, they  
8           absolutely do. But they are driven first and  
9           foremost by the amount of revenue requirement or  
10          cost that you have to spread over the consumption  
11          and the customers. The greater the level of  
12          investment, it leads to a greater revenue  
13          requirement, leads to our ability to do a more  
14          conservation oriented rate. And it has been the  
15          District's frustration that there hasn't been that  
16          level of investment input in the utility.

17          We would again point out that they're in  
18          noncompliance with issues other than just the  
19          allocated, permitted withdrawal.

20          And finally, Commissioners, we still  
21          absolutely stand behind our recommendation. We  
22          believe that everything has been done not because  
23          of the District, but in conjunction with the  
24          District, and we absolutely support our  
25          recommendation. But, of course, it's your

1 pleasure.

2 CHAIRMAN CARTER: Commissioners, anything  
3 further? Commissioner Skop.

4 COMMISSIONER SKOP: Thank you, Mr. Chair. And  
5 I agree with Commissioner Edgar. I'm about done  
6 with this. But what I'm wondering, if there's --  
7 there's probably not a good way procedurally,  
8 because there's a statutory time deadline.

9 I mean, to me, the only concern I have right  
10 now -- I think we've worked through the issue of  
11 the ROE. I think we've sent out an appropriate  
12 message to the company with respect to what is  
13 expected. But what concerns me is some of  
14 Mr. Reilly's points, and I was wondering if there  
15 is a way to break out that specific rate case  
16 expense issue, but I don't think there is, because  
17 everything is tied to that. And I'm concerned  
18 about just making a judgment call that's arbitrary  
19 and capricious. So while I want to respect  
20 Mr. Reilly's comments, I also have to trust our  
21 staff.

22 So again, if Commissioner Edgar wants to make  
23 a motion, I think I'm ready to be done with this.

24 COMMISSIONER EDGAR: Mr. Chairman,  
25 Commissioners, I'll give it a try. I am

1 appreciative of everybody's continued focus on this  
2 issue, because I know we're all tired, and my  
3 thanks to our staff and OPC and the utility for  
4 being with us through a very long day and a little  
5 bit of fatigue, at least on my part, but I have  
6 listened very carefully.

7 On the issue of ROE, I recognize and  
8 appreciate the staff bringing this to our attention  
9 and highlighting that this is an approach that we  
10 have not used, and I think it is a valid one, but  
11 yet with the body of the discussion, this is what I  
12 would propose right now. And I do again recognize  
13 that this is PAA and not evidentiary and where that  
14 places us procedurally.

15 I welcome comments, as always, but on this  
16 issue now, I would make the motion that we adopt  
17 the staff's recommendation on all issues, with the  
18 exclusion of the 100 basis points reduction from  
19 the leverage formula included in Issue 9 and ask  
20 that adjustments be made accordingly, with the  
21 further understanding that our staff will continue  
22 to work with the Water Management District and this  
23 utility in particular on this issue as we go  
24 forward.

25 COMMISSIONER SKOP: Second.

1 MR. REILLY: Mr. Chairman, may I interrupt  
2 just a second?

3 CHAIRMAN CARTER: Ever so briefly, ever so  
4 briefly.

5 MR. REILLY: One sentence. I've heard no  
6 discussion at all about the legal argument on the  
7 used and useful. It's seven lines in the statute  
8 and three lines in the rule, and it's as clear as a  
9 bell.

10 CHAIRMAN CARTER: Just because you have not  
11 heard it does not mean that we have not reviewed  
12 it. Before we come down here, we review all of the  
13 documents and all of the cases.

14 Commissioners.

15 COMMISSIONER SKOP: Mr. Chair.

16 COMMISSIONER ARGENZIANO: Mr. Chair.

17 CHAIRMAN CARTER: Commissioner Argenziano and  
18 then Commissioner Skop.

19 COMMISSIONER ARGENZIANO: What is the time  
20 frame we're on? Because I'm afraid that we're  
21 tired, and I don't want to rush through something.

22 CHAIRMAN CARTER: Today, Commissioner. It was  
23 extended to today.

24 COMMISSIONER ARGENZIANO: It was? I thought  
25 so.

1 CHAIRMAN CARTER: Yes, ma'am.

2 COMMISSIONER ARGENZIANO: I want to make sure  
3 that we're addressing the concerns of Mr. Reilly,  
4 but also, you know, making sure that we address the  
5 used and useful concerns also, and I guess we  
6 really have.

7 I guess -- Commissioner Edgar, do you feel  
8 that the motion as you stated it would address  
9 Mr. Reilly's concerns as well as the company's  
10 concerns in the future? I mean, I --

11 COMMISSIONER EDGAR: Well, on which issue?

12 COMMISSIONER ARGENZIANO: I know.

13 COMMISSIONER EDGAR: Commissioner, I  
14 appreciate your question sincerely. It was my  
15 effort to try to incorporate to the best of my  
16 ability a consensus with all of the discussion that  
17 we've had. And it's probably far from perfect in  
18 anybody's mind, but that effort at consensus.

19 COMMISSIONER SKOP: Mr. Chair.

20 CHAIRMAN CARTER: Commissioner Skop.

21 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
22 Just to the point made by counsel as to the used  
23 and useful, I mean, I have considered the argument,  
24 so I don't want you to think that that goes unheard  
25 or unnoticed just because there hasn't been

1 specific discussion, as the Chairman mentioned.

2 Secondly, to Mr. Reilly, again, it would be  
3 incumbent upon OPC to raise these concerns sooner  
4 rather than later, because again, to Commissioner  
5 Argenziano's point, I would have deferred this in a  
6 heartbeat already at this hour had I had the  
7 statutory flexibility to do so, but we have a  
8 critical date facing me. So I'm trying to be  
9 responsive to your concerns, but I'm constantly  
10 hijacked at the last minute on issues that,  
11 frankly, could have been be addressed, brought to  
12 the Commission's attention, brought to the staff's  
13 attention much earlier.

14 I know you guys are resource constrained as  
15 well as we are, but if you want relief, it's hard  
16 to just expect immediate gratification. I need to  
17 see what you're talking about. And we've spent  
18 substantial discussion. So I want to be receptive  
19 to your concerns, because I think you've raised  
20 some valid ones, but they've got to be timely. So  
21 that's just my concern. And I apologize if I'm a  
22 little testy, but it's late.

23 COMMISSIONER ARGENZIANO: Well, there's no way  
24 that between the parties an agreement that it could  
25 be deferred -- and I'm not trying to shuffle it

1 off, but are we on kind of a drop dead deadline  
2 here, Mr. Chair? Is that what you're telling me?

3 CHAIRMAN CARTER: Well, what happened is they  
4 had already agreed to a waiver, and we got here  
5 because of that extension.

6 COMMISSIONER ARGENZIANO: Right, right.

7 CHAIRMAN CARTER: Mr. Casey, do you want to be  
8 heard?

9 MR. CASEY: Mr. Chairman, I conferred with  
10 Mr. Ade to ask if he would like to put it off for a  
11 month or so in order to look at these items, and he  
12 said that he would be willing to do it for used and  
13 useful, but not the other things. But it's --

14 CHAIRMAN CARTER: No, no. No, forget about  
15 it. That's a distinction without a difference.

16 Okay, Commissioners. It's time to cut bait.  
17 You want to give another stab at it?

18 COMMISSIONER EDGAR: Mr. Chairman, again, I  
19 appreciate the discussion and the questions. I've  
20 put a motion out there. It's my effort. It is  
21 beyond my abilities probably to come up with  
22 anything today or a month from now that will make  
23 absolutely everybody happy on every point in this  
24 case, and so I offer my motion to the Commission  
25 for your will.

1 COMMISSIONER SKOP: Second.

2 CHAIRMAN CARTER: Commissioners, is there any  
3 further discussion of the bait? We have a motion  
4 and a second.

5 Hearing none, all in favor let it be known by  
6 the sign of "aye."

7 (Simultaneous affirmative responses.)

8 CHAIRMAN CARTER: All those opposed, like  
9 sign. Show it done.

10 MS. LINGO: Thank you, Commissioners.

11 (Conclusion of consideration of Item 9.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 79 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 1st day of September, 2009.

  
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