

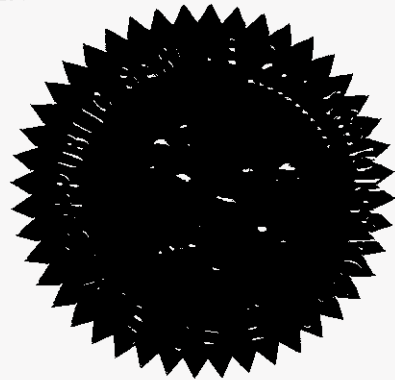
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 080295-WS

REQUEST BY SUN COMMUNITIES FINANCE,
LLC D/B/A WATER OAK UTILITY FOR A
REVENUE-NEUTRAL RATE RESTRUCTURING
TO IMPLEMENT CONSERVATION RATES
IN LAKE COUNTY.



PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 9

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER NATHAN A. SKOP
 COMMISSIONER DAVID E. KLEMENT
 COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, March 2, 2010

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

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

DOCUMENT NUMBER 080295-WS

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FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** Let's move on to
3 Issue 9. I think Jennie, Jennie Lingo will brief
4 us, and introduce the item.

5 **MS. LINGO:** Good morning, Commissioners.
6 I'm Jennie Lingo with Commission staff.

7 Commissioners, Item Number 9 relates to
8 Water Oak Utilities' request for a revenue neutral
9 rate restructuring in Lake County. Commissioners,
10 the major issue in this case is the requested rate
11 case expense of the utility. Commissioners, we are
12 recommending that there be a recommended rate case
13 expense of zero. We have recommended a
14 conservation-oriented rate structure with blocks of
15 0 to 6 and 6 and over, with a base facility charge
16 cost allocation percentage of 40 percent.

17 We're available to answer questions. And
18 I believe Mr. Deterding, on behalf of the utility,
19 wishes to speak.

20 **CHAIRMAN ARGENZIANO:** Absolutely. You're
21 recognized. Good morning.

22 **MR. DETERDING:** Thank you, Madam Chairman.
23 Yes. As the staff notes, the major issue here is
24 rate case expense. The case was filed as a rate
25 restructuring in May of 2008. The staff has

1 proposed recognition of no rate case expense, and I
2 want to go through the reasoning as expressed by the
3 staff in Issue 1 for that denial. That is outlined
4 on Pages 4 through 7, I believe, of the staff
5 recommendation.

6 First of all, the staff would have you
7 believe that it was not apparent from the schedules
8 filed by the utility that we were requesting rate
9 case expense with the initial filing. The utility
10 filed four pages of pleadings and four schedules
11 with its filing. In Schedules 2 and 3, it was
12 clearly shown that the revenues requested were above
13 those for the actual test year. In Schedule 3, it
14 is clearly shown that the utility is requesting
15 recovery of rate case expense.

16 In fact, in the fall of 2008, one of the
17 few back and forths between the utility and the
18 staff was our updating the actual rate case expense
19 incurred through that time period and an estimate to
20 complete. Again, in January or February of 2009,
21 the utility updated its estimated rate case expense,
22 which was, again, one of the few back and forths
23 with the staff other than merely status reports. So
24 I think it's incorrect to state that this was not
25 clear from the beginning.

1 Secondly, staff notes that there have been
2 two rate restructurings in the water and wastewater
3 industry similar to this one. In both of those
4 cases, as staff notes, rate case expense was
5 recognized. And the staff attempts to distinguish
6 those, first of all, by noting two other rate
7 restructurings by gas companies where rate case
8 expense was not recognized. In both of those cases
9 there was no requirement for rate restructuring, and
10 in neither case was there a request for rate case
11 expense. Both of those cases involved situations
12 where the gas companies were anticipating a revenue
13 shortfall because of a change in the make-up of
14 their customers and sought to avert that shortfall
15 by restructuring rates.

16 In the case of the water and wastewater
17 companies, including this one, the two previous and
18 this one, the rate restructuring was undertaken in
19 order to promote conservation. So in the only two
20 cases similar to this involving water and wastewater
21 utilities, rate case expense was recognized and the
22 terminology revenue neutral was also included in one
23 of those two cases, but the Commission still said
24 that it was appropriate to recognize rate case
25 expense.

1 Next the staff attempts to distinguish
2 those other two water and wastewater cases by saying
3 they are Class B utilities and that Water Oak is a
4 Class C utility. Water Oak is not a Class C
5 utility. Water Oak is a Class B utility, and has
6 been filing annual reports on the Class B form since
7 2005. It also should be noted that in the
8 Commission's last order dealing with this company,
9 in 2000, it was noted that it was a Class B utility
10 in the Commission's order.

11 Staff further notes that in one of those
12 other two cases the Commission authorized rate case
13 expense recovery because failure to do so would,
14 quote, result in an unrecoverable loss to the
15 utility. Well, that is clearly the case here, as
16 well. There is no other methodology by which this
17 utility can recover its costs of going through this
18 process.

19 At the end of its recommendation, the
20 staff -- on this issue, the staff notes that the
21 utility could have and implies it should have
22 applied for a staff-assisted rate case in order to
23 avoid incurring rate case expense or at least some
24 portion of it. First of all, this utility was not
25 eligible for a staff-assisted rate case when it was

1 filed in May of 2008. The statute has since been
2 changed to authorize a company of this size to file
3 for staff assistance, but that did not occur until
4 after this filing, months after this filing was
5 submitted.

6 Next staff takes the position that the
7 instant rate restructuring was not required by the
8 water management district and states that the
9 utility provided no proof that it was required.
10 This recommendation 22 months after the filing of
11 this case is the first time we've heard that, that
12 they felt that this was not a requirement of the
13 water management district. Staff quotes from a
14 letter from the water management district that
15 states that -- let me find the exact language that
16 the staff has quoted -- an application for a CUP, a
17 consumptive use permit, which the utility must get
18 from the water management district, is required to
19 submit a written proposal and implement a water
20 conservation promoting rate structure, unless it
21 demonstrated that the cost of implementing such rate
22 structure is not justified because it would have
23 little or no effect on reducing water usage.

24 Well, I would refer you to the St. Johns
25 River Water Management District's Applicants

1 Handbook for Consumptive Use Permitting, and in that
2 as part of the requirements of a utility it states,
3 "The utility must submit a written proposal and
4 implement a water conservation promoting rate
5 structure, unless the applicant demonstrates the
6 cost of implementing such a rate structure is not
7 justified because it would have little or no effect
8 on reducing water use."

9 This company filed a limited proceeding
10 in, I believe it was approximately 1999. And in
11 that they sought two things: Recovery of a new cost
12 of operating its water -- a new capital investment
13 in its water system and rate restructuring, because
14 the water management district had required the
15 utility to implement an inclining block rate
16 structure. The Commission ultimately in that case
17 convinced the water management district not to
18 require that new rate structure, and that case was
19 resolved without that change.

20 But in that case, the Commission also said
21 they would review this issue again in the future
22 because there were extraneous issues that the
23 Commission felt affected the consumption above the
24 rate structure. So this is the first case that this
25 utility has had an opportunity to readdress that

1 issue. We clearly believe that the water management
2 district has required us to file for an inclining
3 block rate structure, and this is the second time
4 they have done so.

5 Next, the staff says that the utility was
6 offered alternatives, including refiling the case as
7 a standard limited proceeding. Well, there are only
8 three different methods by which a utility can
9 adjust rates before this Commission. One is a
10 general rate case, the second is a limited
11 proceeding, and the third is an index or
12 pass-through. This is a limited proceeding, it was
13 filed as such, it references a statute for the
14 limited proceeding in the initial pleading, so this
15 is a limited proceeding.

16 Most of the discussions between the
17 utility and the staff over the past 22 months this
18 case has been pending have been either status --
19 requests for status updates, when was this thing
20 going to get finalized, or were in discussions about
21 when the customer meeting would take place. Other
22 than that, really the only discussions were one back
23 and forth in the fall of 2008 about the staff's
24 initial feelings about the appropriateness of the
25 inclining block rate structure and the staff's

1 initial feelings about how that should be adjusted.

2 Other than that, there were three
3 different occasions where the utility submitted to
4 the Commission staff updated rate case expense
5 estimates and actual costs. So a significant
6 portion of the back and forth between the staff and
7 the utility was on the issue of updating rate case
8 expense. Fourteen months after the filing of this
9 case, the utility was informed for the first time
10 that the staff believed that implementation of
11 rates, including rate case expense, was
12 inappropriate. That was the first we had heard of
13 that issue.

14 In summary, this is a relatively simple
15 case. It was when it was filed in May of 2008. It
16 was filed as a limited proceeding that requested a
17 change in rate structure as required by the water
18 management district. The utility clearly requested
19 rate expense in its initial filing, and the utility
20 could not have filed for staff assistance as the
21 staff has noted. And the only two water and sewer
22 cases that are similar both allowed rate case
23 expense recovery in the final order.

24 The Commission must be consistent in order
25 for the utilities in this industry to be able to

1 know what to expect when they come before this
2 Commission. In this case, we filed an application
3 that we felt was consistent with the prior two cases
4 that had been considered, and I see nothing in the
5 staff recommendation that should change that.

6 Denial in this -- of rate case expense in
7 this case will clearly result in an recoverable loss
8 to the utility, as was noted in the other case in
9 which it was allowed. For all of these reasons we
10 believe that the Commission should reject the staff
11 recommendation on this issue and allow the minor
12 amount of rate case expense requested by the
13 utility, and which has been requested since its
14 initial filing, and has been done in the other two
15 cases that the Commission has considered that are
16 similar. Thank you.

17 **CHAIRMAN ARGENZIANO:** Commissioner
18 Stevens, then Commissioner Skop, and then
19 Commissioner Klement.

20 **COMMISSIONER STEVENS:** Thank you, Madam
21 Chair.

22 Ms. Lingo, do we have a detailed breakdown
23 of the rate case expense of what that 32,600 is
24 comprised of?

25 **MS. LINGO:** Yes, sir, we do. In fact,

1 Commissioner, we have an updated -- we have an
2 updated amount. And that total is actually upwards
3 of \$48,000. Legal expenses amount to approximately
4 \$28,600.

5 **COMMISSIONER STEVENS:** How many hours are
6 in that?

7 **MS. LINGO:** I'm sorry, sir, I didn't total
8 up the hours, but the legal expenses are typically
9 billed at between \$295 an hour and \$320 an hour.

10 **COMMISSIONER STEVENS:** Okay.

11 **MS. LINGO:** The accounting expenses
12 totalled approximately \$11,300. And in-house time
13 and expenses are approximately \$1,100.

14 **COMMISSIONER STEVENS:** 1,100?

15 **MS. LINGO:** I'm sorry, 8,100.

16 **COMMISSIONER STEVENS:** 8,100. On the
17 accounting piece, do we have how many hours are in
18 that?

19 **MS. LINGO:** I apologize, sir, I didn't
20 bring that with me, either --

21 **COMMISSIONER STEVENS:** No, that's fine.

22 **MS. LINGO:** -- but I can tell you that
23 they are typically billed at between \$160 an hour
24 and \$190 an hour, because different people in the
25 accounting firm perform different tasks.

1 **COMMISSIONER STEVENS:** Sure.

2 Thank you, Madam Chair.

3 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Madam
5 Chair.

6 Good morning, Ms. Lingo. With respect to
7 the revised rate case expense that you just
8 mentioned, I believe you indicated that it had risen
9 from a request of 32,620 -- excuse me, \$32,628.50.
10 It had risen to approximately 48,000, is that
11 correct?

12 **MS. LINGO:** Yes, sir.

13 **COMMISSIONER SKOP:** So the revised rate
14 case expense in this issue before us is roughly
15 one-third of the revenue requirement?

16 **MS. LINGO:** Yes, sir.

17 **COMMISSIONER SKOP:** And with respect to
18 the point raised by counsel as to the ability to
19 request a staff-assisted rate case, I think that
20 staff discusses that a little bit on Page 7, but if
21 staff could briefly respond to the assertion made by
22 the company's counsel.

23 **MS. LINGO:** Yes, Commissioner, and thank
24 you for the opportunity.

25 Commissioners, at one time this utility

1 was, in fact, a Class C utility, and it still is.
2 In 1996, NARUC changed the threshold for what it
3 classifies as Class A, B, and C utilities. In 1996,
4 the threshold for Class C utilities was increased
5 from \$150,000 to \$200,000. Subsequently, by Rule
6 25-30.115, I believe it is, this Commission adopted
7 NARUC's increased thresholds by rule. So since
8 January 1998, this utility has still been considered
9 a Class C utility because its annual revenues are
10 less than \$200,000 per system.

11 So regardless of how the utility files its
12 annual report, whether it uses a Class C annual
13 report form, or a Class A, or B annual report form,
14 you know, that's not the determining factor of
15 whether it's a Class C or not. You look at the
16 annual revenues of the utility.

17 According to Schedule 2 in the utility's
18 application, the utility has requested test year
19 revenues of approximately \$151,000. Commissioners,
20 we would point out that this is significantly less
21 than the \$200,000 threshold between a Class C and a
22 Class B utility. Therefore, Commissioners, this
23 utility was, in fact, eligible for staff assistance.
24 And the fact that they did not avail themselves of
25 that opportunity when staff assistance would have

1 basically resulted in zero cost to the ratepayer has
2 given us great concern. And that's consistent with
3 cases that we have outlined in the recommendation.

4 **COMMISSIONER SKOP:** Madam Chair, two
5 follow-ups.

6 Ms. Lingo, with respect to the revised
7 rate case expense, does staff consider that rate
8 case expense to be appropriate or excessive?

9 **MS. LINGO:** Commissioner, we consider all
10 of that to be inappropriate and excessive because
11 the utility could have availed itself of staff
12 assistance.

13 **COMMISSIONER SKOP:** Okay. And then,
14 finally, was there anything presented by the
15 utility's counsel that would cause staff to modify
16 its recommendation?

17 **MS. LINGO:** Absolutely not.

18 **COMMISSIONER SKOP:** Thank you.

19 **CHAIRMAN ARGENZIANO:** Commissioner
20 Klement.

21 **COMMISSIONER KLEMENT:** Thank you, Madam
22 Chair. Continuing with some of the points made by
23 the utility counsel, was it or was it not required
24 by the water district to impose a conservation plan?
25 He asserts that it was, and there is an indication

1 here that it was an option.

2 **MR. YOUNG:** Good morning, Commissioners.

3 Keino Young.

4 Mr. Deterding said it was required, but
5 Mr. Deterding presented no evidence as saying that
6 it was inquired, nothing explicit. What he provided
7 was a letter from the water management district
8 which he correctly quoted from, and it says --
9 moving through the letter, it says does require the
10 public supply of applicants for a conservative --
11 consumption use permit, but it did not specifically
12 state that you would not, the permit would not be
13 renewed without a conservative rate structure.
14 Also, it said that if they can demonstrate the cost
15 of implementing such a rate structure, the rate
16 structure is not justified. If they could present
17 that, then they wouldn't have to implement a
18 conservative rate structure. Mr. Deterding
19 presented no evidence as to any of those things.

20 **COMMISSIONER KLEMENT:** Well, as I read
21 that section that is on Page 6, Commissioners, in
22 the middle, it seemed like something of a
23 technicality. What would be your response to that
24 concept?

25 **MR. YOUNG:** I don't think -- I think Mr.

1 Deterding can say it's a technicality, but I don't
2 believe it's a technicality. Because if it was a
3 technicality, all he could do is present some kind
4 of confirmed evidence. He did not. I don't think
5 it's within staff's power or the Commission's power
6 to say it's a technicality or not if he didn't -- if
7 the water management district did not explicitly
8 state that their permit would not be renewed without
9 a conservative rate structure.

10 **COMMISSIONER KLEMENT:** And, also, further
11 with the assertions by the counsel, he indicated in
12 more than one way, maybe not directly, that there
13 was limited or poor communications with staff. How
14 do you respond to that?

15 **MS. LINGO:** Commissioner, as you may or
16 may not be aware, a limited proceeding has no
17 statutory deadline. It's the only type of case that
18 we process that doesn't have some statutory deadline
19 that is attached to it. If there are other cases
20 with pending statutory deadlines that are more
21 critical with deadlines that we need to meet so that
22 we cannot violate the statute, those cases have to
23 be processed first, and they were.

24 It wasn't until -- it wasn't until
25 approximately the early to middle of 2009 that we

1 actually actively began processing and looking at
2 the case. But, again, that is a direct result of
3 this case not having a statutory deadline. So there
4 was some time that elapsed between when they filed
5 and when we began active communications with him,
6 but that doesn't take away the fact that they filed
7 a revenue neutral rate restructuring stating in its
8 application in two different places that it requests
9 no increase in rates, also stating in its
10 application it's not requesting an increase in
11 expenses, yet it is requesting rate case expense.

12 Commissioners, those two statements are
13 incongruous. We went with what was in the
14 application, and we still stand behind our
15 recommendation that there should be zero rate case
16 expense.

17 **COMMISSIONER KLEMENT:** Thank you. That's
18 all for now.

19 **MR. DETERDING:** May I respond?

20 **CHAIRMAN ARGENZIANO:** Yes.

21 **MR. DETERDING:** Did Mr. Reilly have
22 something first?

23 **MR. REILLY:** I can do it now or after your
24 response.

25 **MR. DETERDING:** Go ahead.

1 **MR. REILLY:** We just wanted to make a
2 brief appearance to say that we do certainly support
3 staff's recommendation on rate case expense and the
4 recommendation and the reasons for that
5 recommendation. And one of the reasons that seemed
6 very persuasive to us is found on the second full
7 paragraph on Page 6, and that is where the staff
8 clearly made the company aware of the fact that
9 staff was considering this a revenue neutral
10 petition. And that if, in fact, the company did
11 wish to establish its entitlement to rate case
12 expense, that it should withdraw. And I think the
13 actual language is one of the options given to Water
14 Oak's counsel was to withdraw the application and
15 refile as a standard limited proceeding application
16 without being revenue neutral. So this way out,
17 this way forward was certainly offered to the
18 company.

19 They went back, spoke to their principals
20 and decided to go full steam ahead anyway. And I
21 just feel that, perhaps, the company is not in the
22 strongest position at this -- six-month later asking
23 for this when, in fact, another way was provided by
24 staff. Thank you.

25 **CHAIRMAN ARGENZIANO:** Thank you.

1 You're recognized.

2 **MR. DETERDING:** Thank you very much.

3 Commissioner Skop, just to your point
4 about the level of rate case expense. First of all,
5 yes, it does constitute -- the total rate case
6 expense does constitute close to one-third of the
7 revenue requirement for the water system. However,
8 this is a water and wastewater utility, and rate
9 case expense is amortized over a four-year period in
10 keeping with the standard practice, and, therefore,
11 represents something in the neighborhood of about
12 two percent of total revenues of this company as far
13 as the impact on the revenue requirement. So I just
14 wanted to make sure that was clear.

15 Second of all, there was a question about
16 whether or not rate case expense is appropriate if
17 this had been filed as staff assistance. Well, the
18 Commission routinely authorizes recovery of some
19 rate case expense in staff-assisted rate proceedings
20 when the utility is assisted by legal counsel or by
21 consultants in getting through that process.

22 As far as being eligible for staff
23 assistance, at the time of the filing this company
24 had a water system with approximately \$150,000 in
25 revenue which was then the maximum allowed under the

1 staff-assisted rate case proceedings, and it had a
2 sewer system with over \$230,000 in annual revenues.
3 The combination of those, it's my understanding, has
4 never been recognized as a company eligible for
5 staff assistance when one of the systems is well
6 over the authorized threshold.

7 **CHAIRMAN ARGENZIANO:** Can you hang on one
8 second?

9 **MR. DETERDING:** Sure.

10 **CHAIRMAN ARGENZIANO:** Staff, respond to
11 that.

12 **MS. LINGO:** Commissioners, we still stand
13 behind the fact that according to our rule that was
14 adopted in January 1998, the utility is a Class C
15 utility, certainly for its water system.

16 **CHAIRMAN ARGENZIANO:** He just said --
17 could you repeat?

18 **MR. DETERDING:** Well, both in the filing
19 of an annual report and in the filing of a
20 staff-assisted rate case, if a utility has both a
21 water and wastewater system and the revenues of one
22 of those systems exceeds the threshold, then the
23 utility is not eligible for staff-assistance and
24 must file a Class B annual report.

25 **CHAIRMAN ARGENZIANO:** And that's the

1 question I have. Is that correct?

2 **MS. LINGO:** Madam Chairman, if you'll
3 wait, we have --

4 **COMMISSIONER SKOP:** Sure. And you can
5 continue.

6 **MR. DETERDING:** Okay, sure.

7 **CHAIRMAN ARGENZIANO:** Commissioner
8 Stevens.

9 **COMMISSIONER STEVENS:** Can I ask a
10 question? A few minutes ago you responded to
11 Commissioner Skop's math, and then you came back
12 with something that was two percent. Can you
13 explain that to me, please?

14 **MR. DETERDING:** Sure. And I'm not
15 suggesting that Commissioner Skop was wrong in what
16 he said, I just felt that --

17 **COMMISSIONER STEVENS:** He's not.

18 **MR. DETERDING:** Oh, I agree with you that
19 he's not. I wasn't suggesting he was.

20 **COMMISSIONER STEVENS:** Okay.

21 **MR. DETERDING:** I was simply suggesting
22 that rate case expense as a percentage of the
23 revenues of this company, water and wastewater, is
24 much less than that. And because rate case expense
25 is amortized over a four-year period rather than all

1 recovered in the revenue requirement, matching a
2 one-year revenue requirement against four years
3 worth of rate case expense I don't think is a
4 reasonable comparison. It should be what is the
5 rate case expense amortization as a percentage of
6 total revenue, and I noted that it was approximately
7 2 to 3 percent of the total revenue.

8 And the only other point I had, while
9 staff is still conferring on that, is I wasn't
10 suggesting that there was poor communication with
11 the staff. In fact, when I contacted the staff, I
12 got quick replies. So it wasn't that there was poor
13 communication, it was that this was a relatively
14 simple case, and there wasn't all that much
15 communication. Most of it was about status updates
16 and about setting up the customer meeting, and small
17 things like that. But I was noting that on two
18 different occasions before we were even informed
19 that there was an issue around rate case expense,
20 that we updated rate case expense to the staff
21 showing them what the actual and estimated at
22 various points along the processing of this case.

23 And that was all I was trying to note. I
24 wasn't suggesting there was poor communication.

25 **CHAIRMAN ARGENZIANO:** And in your

1 understanding of eligibility for staff-assisted, you
2 are saying that the company felt because they had
3 the sewer system also, the revenues were higher and
4 it was not eligible?

5 **MR. DETERDING:** That is correct,
6 Commissioner.

7 **CHAIRMAN ARGENZIANO:** Does staff have an
8 answer?

9 **MS. LINGO:** Madam Chairman, with your
10 permission we'd like to request a five-minute break.

11 **CHAIRMAN ARGENZIANO:** Okay. We're on a
12 five-minute break.

13 **MS. LINGO:** Thank you, ma'am.

14 (Recess.)

15 **CHAIRMAN ARGENZIANO:** Okay, we're back.

16 Mr. Devlin.

17 **MR. DEVLIN:** Madam Chairman, to the point
18 made by counsel on whether this particular company
19 is eligible for a staff-assisted rate case, we would
20 like the opportunity to make sure that we have the
21 accurate answer, because apparently there is some
22 leeway there in interpreting different facets of
23 that question. And since there isn't a statutory
24 clock regarding a limited proceeding, we don't see
25 any drawback in deferring this case for at least one

1 agenda, maybe only one agenda.

2 **CHAIRMAN ARGENZIANO:** Okay. We have a
3 Commissioner who has a question, and then I think we
4 are going to make a motion to -- or accept a motion
5 to defer. Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam
7 Chair.

8 And I have no problem with the deferral to
9 give staff the additional time it needs to make that
10 determination. In parallel, however, I do have
11 concerns regarding the proposed legal expenditures.
12 During the break I had the opportunity to get the
13 detailed legal billings from our staff, and I have
14 some concerns. Again, this is, by most standards, a
15 very short staff recommendation. And I'm looking at
16 the invoice for legal services, and one of the costs
17 is to obtain and review staff recommendation,
18 telephone conference with client, yadda, yadda,
19 yadda, six hours at \$310. Prepare for and attend
20 final agenda conference, make presentation to
21 Commission, six hours at \$310. Review final order,
22 yadda, yadda, yadda; those are the additional costs
23 that are proposed.

24 I guess I would ask staff to take a
25 critical look at what is appropriate here. Again, I

1 don't want this to be a legal billing bonanza on
2 something that could have otherwise been avoided for
3 the ratepayers.

4 **CHAIRMAN ARGENZIANO:** Commissioner Skop,
5 can I ask you a question? Are you saying for an
6 attorney three hours -- what was it, six hours at
7 \$310, is that what you're making reference to?

8 **COMMISSIONER SKOP:** That's what I'm making
9 reference to. I mean, I'm a Commissioner, and,
10 again, I'm not an attorney, I'm not reviewing this,
11 I'm simply --

12 **CHAIRMAN ARGENZIANO:** I wish I could find
13 an attorney who would give me six hours for \$310.
14 But I didn't know if that is what your reference was
15 to the billing by an attorney, I'm sorry, for the
16 company?

17 **COMMISSIONER SKOP:** Yes, it was. That is
18 the detailed proposed estimated cost to complete the
19 case before us resulting in additional legal costs.
20 I guess my concern is this is by most standards a
21 pretty benign staff recommendation. There is not a
22 whole lot of heartache here. In actuality, I spent
23 last than an hour reviewing this, and I have
24 complete confidence in the fact that I know what's
25 going on. Not to say there may be some legal

1 reasons for why, but six hours certainly seems to be
2 excessive for a recommendation of this magnitude.

3 So, again, I can understand maybe a full
4 blown rate case, but I would ask staff to take a
5 look at what is fair, just, and reasonable here.
6 Because, again, it seems, if I hear staff correctly,
7 that the rate case expenses could have been avoided
8 by the ratepayers. So, again, they seem to be high,
9 given the revenue requirements. If it is deferred,
10 I'd ask staff to take a look in further detail as to
11 the proposed rate case expenses.

12 **CHAIRMAN ARGENZIANO:** And with that said,
13 Commissioner Edgar has a question. But I have a
14 question. I'm very concerned with the eligibility.
15 If the company is eligible for a staff-assisted rate
16 case, that makes a difference to me. If they are
17 not, that's a whole different story, and they are
18 entitled, then, to that recovery in my view. So
19 that's the question I need answered.

20 Commissioner Edgar, you're recognized.

21 **COMMISSIONER EDGAR:** Thank you, Madam
22 Chair.

23 Likewise, the eligibility question seems
24 like a material issue to me.

25 Question: Will a deferral increase rate

1 case expense?

2 **MS. LINGO:** I would hope not, but that
3 question, I guess, should be posed to counsel.

4 **CHAIRMAN ARGENZIANO:** How about we ask
5 counsel his opinion, and where does the deferral put
6 this.

7 **MR. DETERDING:** If I have to come back
8 here that requires -- if I have to review a changed
9 staff recommendation, additional items, I've gone
10 through many things here in order to respond to the
11 issues raised by the staff, because I had concerns
12 with them, it will definitely change the amount of
13 rate case expense incurred.

14 I will note that in one of the two cases
15 noted by staff, the rate case expense 15 years ago
16 was higher than what we have requested in this case.
17 So it will change it, yes.

18 **CHAIRMAN ARGENZIANO:** Would that be
19 depending on how long it's deferred? I mean, I know
20 it's going to be --

21 **MR. DETERDING:** It's really more a
22 question of how detailed the change in the staff
23 recommendation is and how much more time we spend
24 over here dealing with the issue.

25 **CHAIRMAN ARGENZIANO:** And that's if it's

1 changed, depending on what the outcome is.

2 **COMMISSIONER EDGAR:** Thank you.

3 **CHAIRMAN ARGENZIANO:** Commissioner
4 Stevens.

5 **COMMISSIONER STEVENS:** Madam Chair, I
6 agree. And the basis, or my basis was whether or
7 not this could have been a staff-assisted rate case.
8 You know, and I understand billable hours, and every
9 time, you know, an attorney or a CPA has to look at
10 this again --

11 **CHAIRMAN ARGENZIANO:** It costs.

12 **COMMISSIONER STEVENS:** -- the cost goes
13 up.

14 **COMMISSIONER EDGAR:** Or come see us.

15 **COMMISSIONER STEVENS:** Right.

16 **CHAIRMAN ARGENZIANO:** But, you know, life
17 happens. Things happen. If we are not clear on
18 whether it could have been a staff-assisted rate
19 case -- counsel seems clear.

20 **MR. DETERDING:** I have the rule in front
21 of me, and the old rule at the time this thing was
22 filed said a combined of 300,000 or less, and this
23 company was clearly more than \$300,000 in gross
24 revenue.

25 **CHAIRMAN ARGENZIANO:** Well, can staff

1 respond to that today at all? I mean, do we know?
2 I mean, we should know if this company is eligible
3 for staff-assisted, and we shouldn't have to defer
4 something. We'll seek a legal opinion. Maybe we
5 don't have to defer it and maybe we can dig a little
6 deeper here today.

7 **MR. WILLIS:** Commissioner, I have looked
8 at the old law. The old law, what I'm referring to
9 is for staff assistance, and the old law, I believe,
10 says 150,000 for both water or wastewater, 300,000
11 combined. Mr. Deterding may have a point. I wasn't
12 aware of the wastewater system when I looked at
13 this. He may have a point that --

14 **CHAIRMAN ARGENZIANO:** But can I ask you a
15 question, and I mean this with all due respect to
16 staff, how do you come up with a recommendation if
17 you don't know what it is, what is allowed, and what
18 is eligible, and what is not? Do you not have a --

19 **MR. WILLIS:** Well, I would say if -- well,
20 I would tell you now that if the wastewater system
21 is truly higher, like I believe it is now, I believe
22 he's correct.

23 **CHAIRMAN ARGENZIANO:** Okay. Then let's
24 assume that it is, and he is correct, and we move
25 on. At some point if it's not, will we find that

1 out and be able to correct that?

2 **MR. WILLIS:** Yes.

3 **CHAIRMAN ARGENZIANO:** Okay. Then I would
4 suggest, members, that since staff was not sure and
5 it seems that counsel here -- that Mr. Deterding is
6 correct, that we do not defer it and we move on.

7 **COMMISSIONER STEVENS:** I agree.

8 **CHAIRMAN ARGENZIANO:** Any other questions?
9 Mr. Deterding.

10 **MR. DETERDING:** I just had one other point
11 I wanted to make, and that was on the question of
12 whether or not this was -- the utility was required
13 to go to an inclining block rate structure. The
14 utility, as I noted, filed in 2000 requesting a
15 change to that type of rate structure and the
16 Commission -- because there were some unbilled
17 customers, this was a relatively new system to the
18 Commission, and I believe it's the first case before
19 the Commission, there were some unbilled revenues.
20 So the Commission expressed concern in that order
21 that because there was unbilled revenue and many
22 customers were getting by without consumption-based
23 rates, that the consumption levels were not
24 reflective of what they should be when there was
25 consumption-based rates, so they ordered the utility

1 to begin everybody appropriately, and then hopefully
2 things would go down, and they denied the new rate
3 structure at that time and said we will deal with
4 that with the next filing. This is, in effect, the
5 next filing. It wasn't at that time what they
6 thought would be the next filing, but it is the next
7 filing.

8 Now, as to the requirement, I have
9 reviewed the handbook and the rule that was
10 referenced by that letter that the Commission staff
11 noted, and I believe attached to the staff
12 recommendation. And it, as I said, says the
13 applicant must submit a written proposal and
14 implement a water conservation promoting rate
15 structure unless the applicant demonstrates that
16 costs of implementing such a rate structure is not
17 justified because they have little or no effect on
18 reducing water use.

19 Well, just as a background, the water
20 management district especially in these water use
21 caution areas, which this utility is in, is seeking
22 150 gallons per capita per day for water use. This
23 company is currently over the last three-year
24 average prior to filing this was at 232 gallons per
25 day per capita, which is about 60 percent higher

1 than what the water management district is seeking.
2 Therefore, they have indicated to us very clearly
3 that they believe we are required to implement an
4 inclining block rate structure.

5 So I just -- if we had known from the
6 staff that they felt that that was not proven prior
7 to the issuance of this staff recommendation ten
8 days ago, I would have tried to get them more
9 information on that issue, but this is the first
10 time in the 22 months this case has been pending
11 that we have even heard that that was a concern.

12 **CHAIRMAN ARGENZIANO:** And to staff, if you
13 could respond, but I have a question to that because
14 I have problems with the inclining rate structures,
15 conservation rate structures, although I know it's
16 great for some areas where conservation is -- you
17 almost have to force people to conserve. But I
18 think it is also not fair to people who have
19 families, who have more people living in a home, and
20 I just have a real problem with it sometimes. But
21 in saying that, every since I have been here most of
22 the water cases that have come before us with that
23 conservation rate structure I have always heard
24 staff say that the water management district -- and
25 we have recently had a case that the water

1 management district insists on the conservation
2 rate. We went through a case not too long ago where
3 we were kind of tossing it back and forth, and we
4 picked a certain scenario here, and we said we think
5 that will alleviate the concern of the water
6 management district.

7 So I'm having a hard time now finding how
8 maybe staff would think it doesn't -- the water
9 management district doesn't imply or heavily imply
10 to the companies that a conservation rate structure
11 is something that they are to adhere to. Why is it
12 different now?

13 **MR. YOUNG:** I think, Madam Chairman, that
14 with staff's recommendation -- in terms of staff
15 debating that, in terms of whether the water
16 management district actually did, in fact, demanded
17 that the utility come in, and what staff based its
18 recommendation on is the fact that the utility did
19 not provide any documentation of that.

20 Now, Mr. Deterding said that, you know,
21 you didn't hear about that for, like, ten days prior
22 to today. Again, it's not incumbent upon staff to
23 prove Mr. Deterding's case. Mr. Deterding has to
24 prove his case in terms of Water Oak utility. So
25 that's what staff's recommendation is based on, the

1 fact that Mr. Deterding did not provide any
2 information besides saying we are in support of the
3 water management district. We are in support of
4 your conservative rate structure.

5 **CHAIRMAN ARGENZIANO:** I understand that.
6 But all the other times that I have heard staff say
7 that the water management district pretty much
8 insists on a conservation rate structure, are you
9 saying that the water management district did have
10 something that the company brought in? I mean, I
11 don't know why they would pick and choose,
12 especially in a water use caution area. Why they
13 wouldn't -- if they insist in one of the part of the
14 state that there is a -- I mean, it was one of the
15 last cases, and I don't remember which case, and I'm
16 not going to cite it anyway, that we talked about
17 that. It was a real concern as to which scenario we
18 picked if it met the water management district's
19 criteria for a conservation rate structure.

20 And I don't even think it was in a water
21 use caution area, so I am having a hard time
22 understanding. I understand what you are saying,
23 they should have brought in something, or you feel
24 they should have brought something in, but on the
25 other times I have heard staff pretty much say that,

1 you know, water management districts want a
2 conservation rate structure.

3 **MS. LINGO:** Madam Chairman, that is
4 typically the case. But, again, to echo Mr. Young's
5 concerns that the letter that was provided in
6 support of the conservation rate structure did not
7 list an affirmative requirement that one be
8 implemented.

9 But if I may, Madam Chairman, getting back
10 to the rate case expense and whether it should or
11 should not be allowed. Putting aside for a moment
12 the eligibility for staff assistance, let's please
13 look at what a revenue neutral rate restructuring
14 is. It is taking test year revenues from the annual
15 report, changing the base facility charge and the
16 gallonage charges around such that the revised rate
17 structure, as in the revenue neutral rate
18 restructure, equals or generates the revenues from
19 that annual report.

20 Commissioners, that's all that is
21 involved. Our heartburn with the rate case expense
22 is also in part due to the simplicity of the case
23 generating such a tremendous amount of rate case
24 expense when, you know, looking at the annual
25 report, pulling the number, changing the billing

1 determinates around to generate the revenue,
2 Commissioners, it's very simple and straightforward.
3 So I did want to -- I did want to put that out
4 there, Madam Chairman.

5 **CHAIRMAN ARGENZIANO:** And I understand
6 that, but can I go back to something? You said
7 putting aside the eligibility. To me that is the
8 criteria. Because if they are eligible -- if they
9 are not eligible for staff rate assistance, then
10 it's not their fault whether you like the amount of
11 money, or the amount of hours, or the amount it
12 costs. It is not their -- how can you then say
13 blame the company if they are not eligible? So that
14 is a very big question in my mind.

15 And then if they are not eligible, well,
16 then do we get to look at their expenses closely and
17 scrutinize that? Yes, absolutely, I think. But I
18 don't know how you could blame the company if they
19 are correct. You know, I can understand you saying
20 that, look, there shouldn't have maybe been this
21 many hours, this is straightforward, it's a simple
22 thing. And will we get to scrutinize that? I
23 believe we will and we must. I think that is very
24 important, as Commissioner Skop had brought up some
25 issues as well as staff.

1 But to deny that they may be not eligible
2 for that is not the way to go about it. I think you
3 have to look at the eligibility first and then
4 address the prudence of the costs. I just --

5 **MS. LINGO:** I didn't mean to step on you,
6 ma'am. I'm sorry.

7 **CHAIRMAN ARGENZIANO:** No, no, go right
8 ahead.

9 **MS. LINGO:** And to that end, since there
10 does appear to be some confusion, we, again, request
11 a deferral so that we can look at the matter more
12 closely and bring back a revised recommendation, if
13 needed.

14 **CHAIRMAN ARGENZIANO:** Commissioner
15 Stevens.

16 **COMMISSIONER STEVENS:** Madam Chair, I
17 don't want to defer this. All that does is increase
18 the hours and the billable hours and everything
19 else. I want to look at -- I think Commissioner
20 Skop had some detail. Maybe we can take five
21 minutes and staff can provide the rest of the
22 Commission with some of that detail. We can
23 evaluate it and go with a recommendation from that.

24 **CHAIRMAN ARGENZIANO:** Well, and I am going
25 to ask staff one more time. Marshall, if you could

1 answer this for me. I don't want to defer today,
2 either. If staff wasn't prepared with the
3 eligibility question, we shouldn't, I think, defer
4 and then have costs just grow on us. I don't think
5 it's right. But if we were to move forward today,
6 we get an opportunity at some point to scrutinize
7 the costs and to decide whether they are prudent and
8 wisely spent, is that correct?

9 **MR. WILLIS:** That's correct. And,
10 Chairman, if I could just throw this out. I'm
11 satisfied they were eligible at this point -- or
12 they were eligible. I'm sorry. Toss that.

13 I'm satisfied they were not eligible for
14 staff assistance because of the way the rules were
15 outlined at that point in time.

16 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
17 Edgar.

18 **COMMISSIONER EDGAR:** Thank you, Madam
19 Chair.

20 **CHAIRMAN ARGENZIANO:** Thank you, Marshall.

21 **COMMISSIONER EDGAR:** Just to follow up on
22 that point. What would -- if a decision, whatever
23 that decision is, is made today, then what would be
24 the process or the next steps to follow through on
25 Commissioner Argenziano's point about us having

1 additional review?

2 **MR. WILLIS:** If you would like, we could
3 temporarily pass this item while staff can take the
4 time -- while you all are doing other items, we can
5 take the time to look at the rate case expense and
6 give you an oral recommendation on that, if you
7 don't want to just defer it today.

8 **COMMISSIONER EDGAR:** Okay. I'm a little
9 confused, then, because I thought that your response
10 to -- your response or somebody's response to the
11 Chairman, I didn't realize that you meant today. I
12 thought you were talking about sometime in the
13 future. But when you or somebody said that we would
14 have the additional opportunity to look at those,
15 did you mean today and I just misunderstood?

16 **MR. WILLIS:** We can do it today through an
17 oral recommendation if you want, or if you want to
18 defer it to the next agenda, we can write that issue
19 up quickly and get it filed.

20 **MR. DETERDING:** Commissioner, just to
21 clarify, this is the final recommendation to end
22 this case.

23 **COMMISSIONER EDGAR:** And that's what I
24 thought, which is why when I thought I heard a
25 response that meant it would be coming back again if

1 we took action today, I was a little confused. So
2 not coming back today, the decision is today if we
3 are able to move forward will basically wrap it all
4 up and put a bow on it at this point.

5 **MR. WILLIS:** Yes.

6 **COMMISSIONER EDGAR:** Okay. And if we are
7 going to have further discussion about that issue, I
8 would like a few minutes to look at that detail that
9 I don't have in front of me.

10 **CHAIRMAN ARGENZIANO:** Absolutely.

11 **COMMISSIONER EDGAR:** Thank you.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Madam
14 Chair. I'm trying to get that additional detail
15 copied as we speak to relieve staff of any burden.
16 Maybe we can use that opportunity to have staff take
17 a look at it, or, alternatively, perhaps, we could
18 reserve this item until the end of the agenda giving
19 staff additional time to look at things and then
20 move on with other matters.

21 **CHAIRMAN ARGENZIANO:** Okay. How about we
22 do that.

23 And, Commissioner Edgar, do you want to
24 ask questions now?

25 **COMMISSIONER EDGAR:** No, I just would like

1 the opportunity to review that information before we
2 have further discussion on it or hear a
3 recommendation, if any, from staff.

4 **CHAIRMAN ARGENZIANO:** Absolutely.

5 **COMMISSIONER EDGAR:** I just haven't looked
6 at those particular numbers and would like a few
7 minutes at whatever is the best time to do that.

8 **CHAIRMAN ARGENZIANO:** Okay. How about we
9 do this, then, let's --

10 **MR. WILLIS:** Temporarily pass?

11 **CHAIRMAN ARGENZIANO:** -- TP this to the
12 end of the agenda and come back to it and give staff
13 the opportunity to get that information to us.

14 **MS. LINGO:** Very well. Thank you.

15 * * * * *

16 **CHAIRMAN ARGENZIANO:** Okay. Given that,
17 Staff, are we anywhere close to having Issue 9? If
18 not, just let me know.

19 **MR. WILLIS:** We are not, Chairman.

20 **CHAIRMAN ARGENZIANO:** We are not. Okay.
21 Do you have a feel for how much time?

22 **MR. WILLIS:** If you could give us -- if it
23 would be appropriate to give us an hour lunch break,
24 we can get back here.

25 **COMMISSIONER STEVENS:** I appreciate Mr.

1 Butler being here. Thank you.

2 **MR. BUTLER:** My pleasure.

3 **CHAIRMAN ARGENZIANO:** Okay. Then let's do
4 that. Let's say we come back at 1:40.

5 **COMMISSIONER EDGAR:** Madam Chair, to
6 staff, are you bringing forward a new
7 recommendation, or just additional information, or
8 both?

9 **MR. WILLIS:** We are bringing forward the
10 analysis of rate case expense that was requested.

11 **CHAIRMAN ARGENZIANO:** Right.

12 **MR. WILLIS:** My staff is over there trying
13 to go line-by-line making sure -- if the Commission
14 wants to go -- what I heard was the Commission wants
15 to go line-by-line and basically look at rate case
16 expense, what may be appropriate and not
17 appropriate, so staff is wanting to be able to
18 address that.

19 **CHAIRMAN ARGENZIANO:** Now, are we giving
20 them enough time to do that? Will an hour be enough
21 time?

22 **MR. WILLIS:** Commissioner, I believe so.

23 **COMMISSIONER STEVENS:** Madam Chair.

24 **CHAIRMAN ARGENZIANO:** Commissioner
25 Stevens.

1 **COMMISSIONER STEVENS:** And I appreciate
2 what staff is doing. As they go through it, you
3 know, we are going to end up putting, I think, Mr.
4 Deterding on the spot. Are we going to communicate
5 with Mr. Deterding as to what we are looking at?

6 **CHAIRMAN ARGENZIANO:** I think we've done
7 that.

8 **COMMISSIONER STEVENS:** When it's complete.

9 **CHAIRMAN ARGENZIANO:** Oh, yes, when we
10 come back, of course.

11 **MR. WILLIS:** I mean, if the Commission
12 desires, if we have a chance before getting back
13 here, we'll be happy to communicate to Mr. Deterding
14 those areas where we have concerns.

15 **CHAIRMAN ARGENZIANO:** That would be great.
16 Okay. That would be great.

17 **COMMISSIONER STEVENS:** Thank you.

18 **CHAIRMAN ARGENZIANO:** And then, of course,
19 Commissioner Stevens, when we come back he'll have
20 input.

21 **COMMISSIONER STEVENS:** Yes.

22 **CHAIRMAN ARGENZIANO:** And I don't want
23 anybody to forget that after we are done here, we
24 are going to -- after we come back from lunch and
25 get done with this, and I will probably give like

1 ten minutes to transition to IA, and then we have
2 the Call Center after we are done. I'd like to be
3 able to do the Call Center when people are still
4 calling in. So, hopefully we get that done. Let's
5 come back at 1:40. We are on recess.

6 (Lunch recess.)

7 **CHAIRMAN ARGENZIANO:** Okay. I think we're
8 ready to go. And as I was saying before, it took a
9 little longer because we need to give staff time.
10 But we also understood that Ryan, Commissioner
11 Stevens' staff, had a very hard time getting his
12 lunch stains out of his shirt today. He's turning
13 as red as the stain on his shirt now. I just wanted
14 to properly tease him.

15 (Laughter.)

16 Thank you. Okay. Staff, you're
17 recognized.

18 **COMMISSIONER STEVENS:** May I ask staff a
19 question real quick?

20 **CHAIRMAN ARGENZIANO:** Yes. Yes,
21 Commissioner.

22 **COMMISSIONER STEVENS:** Going through this
23 spreadsheet, is this legal and accounting but
24 excludes in-house?

25 **MS. LINGO:** Yes, sir, it does --

1 (Technical difficulty with microphone.)

2 **CHAIRMAN ARGENZIANO:** No. I think it's
3 controlled on its own.

4 **MS. LINGO:** Yes, sir. That's correct.

5 **COMMISSIONER STEVENS:** Okay. Thank you.
6 Thank you.

7 **MS. LINGO:** Madam, Madam Chairman,
8 Commissioners, Jennie Lingo on behalf of Commission
9 staff.

10 At your direction before lunch we were
11 asked to take Water Oak back and look at rate case
12 expense. Commissioners, we have done so, and we
13 think all of you have before you the detailed
14 spreadsheet of our analysis.

15 Bottom line, Commissioners, we are
16 recommending a disallowance of \$17,524. The
17 resulting rates, Commissioners, that fall out, our
18 recommended rate structure using a rate structure of
19 40 percent BFC, the BFC is \$5.03, and the gallonage
20 charges, Commissioners, for zero to 3,000 gallons
21 representing the nondiscretionary consumption that,
22 that we hold harmless when we're doing the
23 repression calculation consistent with what we've
24 done in Peoples and in prior cases the last several,
25 several weeks, that gallonage charge is 94 cents.

1 And from 3 to 6 it's 101, and from, for over
2 6,000 gallons it's 126. We're available to answer
3 your questions, Commissioners, and we appreciate the
4 extended time to prepare this and bring it to you.

5 **CHAIRMAN ARGENZIANO:** Certainly. Did you
6 say over -- the 6,000 was 126?

7 **MS. LINGO:** 126, ma'am.

8 **COMMISSIONER STEVENS:** Do we have that
9 handout?

10 **MS. LINGO:** No, sir.

11 **COMMISSIONER STEVENS:** Okay. That's fine.

12 **MS. LINGO:** This was -- this, this mike
13 really is impaired. I'm sorry.

14 We did this at the very last instant
15 before we ran out the door.

16 **COMMISSIONER STEVENS:** That's fine.

17 **CHAIRMAN ARGENZIANO:** Sure.

18 **MS. LINGO:** Okay.

19 **CHAIRMAN ARGENZIANO:** Okay. Now is the
20 time for questions, Commissioners.

21 Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Madam
23 Chair. And thank you to Commission staff and Ms.
24 Lingo for preparing a summarized copy of what staff
25 feels the appropriate adjustments should be made to

1 legal expenditures.

2 If I could ask my colleagues to turn to
3 the large handout that we previously handed out
4 before staff took the liberty of preparing an easier
5 document, the concerns I had on the, I think, second
6 page were the number of hours --

7 **COMMISSIONER EDGAR:** Commissioner, which,
8 which date? Are you looking at the October 15th or
9 the December 12th?

10 **COMMISSIONER SKOP:** The October 15th.

11 **COMMISSIONER EDGAR:** Thank you.

12 **COMMISSIONER SKOP:** And on the second page
13 of that handout it has a list of legal services with
14 an estimate to complete. And if we were to look at
15 some of the -- one, two, third, third page. Okay.
16 If we were to look at some of the estimates to
17 review the staff recommendation and such at six
18 hours at \$310, and prepare and attend final agenda,
19 six hours, and review final order, seven hours, and
20 check on finalization orders, 2.5 hours, those were
21 some of the concerns that I had.

22 And to put this in context to Commissioner
23 Stevens' prior point, what I tried to do in the
24 other case, again, the same law firm, two different
25 attorneys working on two water cases, you had the

1 same tasks that are, you know, two hours that in
2 this case are six, you know, other tasks that in
3 this case it's six, it's two in the other. And,
4 again, the order of magnitude difference in the
5 complexity of the two cases is, is huge in my part.
6 The one that we had before, a full-blown rate case.
7 This is just a sub-issue.

8 So, again, it looks to me that staff has
9 made the appropriate adjustments as illustrated
10 within the handout.

11 **MS. LINGO:** Thank you, sir.

12 **COMMISSIONER SKOP:** And I'm pretty
13 comfortable with -- they've kind of looked at
14 cutting the hours back to a more appropriate level
15 that's indicative of what was charged for an even
16 bigger rate case from the same law firm. So I think
17 that that's an appropriate adjustment and I'm
18 comfortable with that.

19 **COMMISSIONER STEVENS:** Madam Chair.

20 **CHAIRMAN ARGENZIANO:** Commissioner
21 Stevens.

22 **COMMISSIONER STEVENS:** How many hours were
23 allowed and disallowed? Do we know that?

24 **MS. LINGO:** Commissioner, I could add that
25 up real quickly. There are columns on the

1 spreadsheet, sir, for hours allowed.

2 **COMMISSIONER STEVENS:** Uh-huh.

3 **MS. LINGO:** And if you would -- and I did
4 not sum those. So if --

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

6 **MS. LINGO:** I'm happy to, I'm happy to --

7 **COMMISSIONER STEVENS:** No. That's fine.

8 **MS. LINGO:** Okay.

9 **COMMISSIONER STEVENS:** Madam Chair.

10 **COMMISSIONER ARGENZIANO:** Yes.

11 **COMMISSIONER STEVENS:** Did, did the
12 counsel, Mr. Deterding, did he have time to review
13 this?

14 **MR. DETERDING:** I've had about five
15 minutes to look at it. I don't see anywhere where
16 it gives an explanation for any of the
17 disallowances, but I've looked at it.

18 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you, Madam
20 Chair.

21 Mr. Deterding, again, the concern I have,
22 and this is because it stuck out like a sore thumb,
23 and I don't want to mix dockets or what have you,
24 but Mr. Friedman had basically appeared on behalf of
25 your law firm in the other case. And for a much,

1 what appears to be a much more complicated rate
2 case, reviewing staff recommendation, conference
3 with client, yada, yada, yada, he had two hours;
4 review PAA order, conference with client, yada,
5 yada, yada, two hours; prepare revised tariff
6 sheets, 2.5 hours. Those charges seem reasonable.

7 When I look at the proposed estimate to
8 completion in this case before us, which is far less
9 complicated than the case previously, I see six
10 hours for the same type of general task, six hours
11 for the same type of general task, seven hours for
12 review of final order.

13 How complicated is this? I mean, I'm not
14 to discredit what you're billing, but I see two
15 partners from the same firm working on a water case
16 and completely two different types of results. And,
17 I mean, frankly, the prior case is much more
18 complicated than this one, so what's the need for
19 these additional billable hours?

20 **MR. DETERDING:** Well, all I can tell you,
21 Commissioner, is I have not had an opportunity to
22 review what was filed in the other case, whether it
23 dealt with the same issues or not. I do know that
24 it dealt with a company who has in-house staff doing
25 a great deal of what's going on in any given rate

1 case. This company does not.

2 But as far as comparing them, I'd be
3 pretty surprised if they involved all of the exact
4 same tasks because certainly we don't have a
5 standard form for estimating the cost to complete or
6 hours to complete.

7 **COMMISSIONER SKOP:** Let me just ask this,
8 and, again, I don't want to belabor this point
9 because I think the adjustments that staff made are
10 appropriate. But I'm a Commissioner, I'm also an
11 attorney. It took me about an hour to review the
12 staff recommendation. I mean, there's a little bit
13 more work scope there, but, you know, why would it
14 take six hours to accomplish all of that as shown in
15 the estimate to complete?

16 **MR. DETERDING:** Well, my responsibility as
17 counsel to this utility is more than just reviewing
18 the staff recommendation. It is to review the staff
19 recommendation, compare it to what was filed,
20 contact the accountant and the utility, discuss with
21 them the adjustments that have been made and the
22 conclusions that have been reached, and then to
23 report to them what their course of action, their
24 next course of action is. So I think it's a little
25 more than just how long it takes me to read the

1 staff recommendation.

2 **COMMISSIONER SKOP:** So with respect to
3 Mr. Feldman's (sic.) comment that you read slower
4 than he does, I mean, how is he able to accomplish
5 the same general work scope for what seems to be a
6 much larger case, more complicated case in two hours
7 for an estimate? I'm trying to look at the order of
8 magnitude here.

9 **MR. DETERDING:** As I said, Commissioner, I
10 have no idea what -- I have not seen his estimate to
11 complete, I do not know what it entailed, and I have
12 not been involved in that case at all, so I can't
13 tell you.

14 **COMMISSIONER SKOP:** Okay. All right.
15 Thank you.

16 **CHAIRMAN ARGENZIANO:** Commissioner Edgar,
17 then Commissioner Stevens.

18 **COMMISSIONER EDGAR:** Thank you.

19 Ms. Lingo, could you go over again for me
20 the recommendation that is reflected, the summary of
21 the recommendation that is reflected in the sheet
22 that you just passed out? I know you did when we
23 first started, but I need you to do it one more
24 time, please.

25 **MS. LINGO:** And, Commissioner Edgar, I'm

1 happy to do it.

2 **CHAIRMAN EDGAR:** Thank you.

3 **MS. LINGO:** As shown on the final page of
4 this spreadsheet, we are disallowing \$17,525, which
5 is approximately 43 percent of their requested rate
6 case expense. And would you like for me to repeat
7 the fallout rates, ma'am, or did that --

8 **COMMISSIONER EDGAR:** I would, yes. Thank
9 you.

10 **MS. LINGO:** Yes, ma'am. The fallout rates
11 based on staff's recommended rate structure from our
12 recommendation, at a BFC of 40 percent the base
13 facility charge increases to 503. The gallonage
14 charges change to 94 cents for zero to 3, 101 for 3
15 to 6, and 126 for consumption greater than
16 6,000 gallons.

17 **COMMISSIONER EDGAR:** Okay. And the 17,000
18 and a little more, some more that the staff is now
19 recommending be disallowed, is this a correct
20 statement: That that recommendation is not based
21 upon the way in which the law firm carried out its
22 fiduciary relationship to its client, it is based
23 upon what the staff deems to be reasonable for
24 recovery?

25 **MS. LINGO:** Yes, ma'am. That's correct.

1 **COMMISSIONER EDGAR:** Okay. And those
2 disallowances that are being recommended as not --
3 and if I'm not saying this correctly, correct me --
4 those items or those amounts that are not being
5 recommended for recovery, the recommendation for
6 disallowance is based upon what?

7 **MS. LINGO:** Is based upon whether or not
8 the items that were included in terms of the
9 requested rate case expense, whether the items
10 related to this case or not. There were, there were
11 a substantial number of hours relating to a price
12 index passthrough application that didn't, that
13 didn't concern this case.

14 Commissioner, it also frankly had to do
15 with some of the repetition that was involved in
16 some of the tasks. For example, reviewing,
17 reviewing the same document several times, just as
18 an example, ma'am. Those would be really the two
19 main concerns we have. And we also had the
20 assistance of Mr. Bart Fletcher so that when we were
21 doing our analysis, we could be consistent with how
22 the disallowances are typically reflected and
23 analyzed in the rate, in rate cases proper.

24 **COMMISSIONER EDGAR:** Okay. And just to
25 follow up on that. When I was on the lunch break

1 reviewing some of this information in the
2 October 15th submittal, I saw some itemized,
3 itemized items from the CPA firm. And for example,
4 one says, "Completion of 2007 compiled financial
5 statements." That seems to me to be a task that
6 perhaps would be required or a function required not
7 just because of the rate case. So would that
8 perhaps be an example of something that would be
9 disallowed from, from the description that you have
10 just given me?

11 **MR. FLETCHER:** That's correct.

12 **COMMISSIONER EDGAR:** Okay. All right. I
13 think I understand better. Thank you.

14 **CHAIRMAN ARGENZIANO:** Commissioners?
15 Commissioner Stevens.

16 **COMMISSIONER STEVENS:** Yes, ma'am. Thank
17 you.

18 Ms. Lingo, help me understand, and I know
19 you just explained to Commissioner Edgar, but help
20 me understand why, and let's just start on the, that
21 second to the last page where -- I don't have a page
22 number, but the top amount disallowed was
23 \$1,550 because it was a review of a final order.
24 Why was that dis -- how come that was disallowed or
25 two hours were allowed and five hours weren't?

1 **MR. FLETCHER:** If I may, Commissioner, on
2 the second to the last page with the review of the
3 final order, again it goes to Commissioner Skop's
4 statements regarding the review by the same law
5 firm, a different attorney that was before us, Ni
6 Florida, for the same duties, the exact same duties
7 in order to review the PAA order, to conference,
8 conference with --

9 **COMMISSIONER STEVENS:** Were there changes
10 made to the document? Is that why they rereviewed
11 it or --

12 **MR. FLETCHER:** No. This would be the
13 review of the final order. Is it the first item
14 listed on that second to the last page?

15 **COMMISSIONER STEVENS:** Yes, sir. Yeah.

16 **MR. FLETCHER:** Where we had billed hours,
17 they had down estimate to complete of seven. We
18 matched what was done in the Ni Florida case for the
19 estimate of hours to complete by an attorney from
20 the same law firm, and that's why we recommended two
21 hours there.

22 And then if you go a little bit further
23 down for the, to check the finalized order, the
24 teleconference that, listed there for 2.5 hours, and
25 then the one that is for four hours to assist the

1 client in preparation of the final customer notice,
2 all of those that were submitted, an estimate to
3 complete, same law firm for the Ni Florida case for
4 the same duties was 2.5 hours. So that's our reason
5 for recommending one there on the first one, 1.5.

6 **COMMISSIONER STEVENS:** Well, let me ask
7 you this. Do we know that -- is -- are the -- is
8 the management team at Ni Florida, do they
9 understand things better than the finance people at
10 Sun Communities or -- I mean, these are different
11 people that we're dealing with, different attorneys
12 that we're dealing with.

13 **MR. FLETCHER:** Right.

14 **COMMISSIONER STEVENS:** So I have a --

15 **MR. FLETCHER:** Well, for this case we feel
16 comfortable with those numbers. Like for the
17 customer meeting notice, staff had prepared that
18 notice for a review of the client, and we would, I
19 would see no reason why we wouldn't prepare the
20 notice for the final rates too for him to review.

21 **COMMISSIONER STEVENS:** I guess it seems to
22 me that, and this is my opinion, so don't take
23 offense to it, but it seems to me that we have been
24 kind of arbitrary going through this, so. Thank
25 you.

1 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam

3 Chair. I want to touch upon Commissioner Stevens'
4 point. I thought it was a good one. Commissioner
5 Stevens, I respect the point of view that you've
6 raised. I think my concern in terms of the level of
7 effort that's required, again, the Ni Florida case
8 before us this morning, a very lengthy, fully
9 developed rate case; whereas the Water Oak utility,
10 again, zero revenue -- let me get to the right
11 words, but basically it was a revenue neutral case,
12 not a whole lot of discussion, you're just looking
13 at basically developing whatever the appropriate
14 conservation rates. And correct me if I'm wrong,
15 staff.

16 So it seems to me that the work scope in
17 terms of what was required by a lawyer -- and again,
18 you know, I want to be fair to the law firm, but,
19 you know, I just am not comfortable with the
20 projected hours that would be expended for reviewing
21 on those three line items this level of work. I
22 mean, I went through this PAA order in an hour.
23 Okay? I fully understand it. Now I know there's
24 conference calls and such like that, but, again, you
25 know, it doesn't justify six or seven hours or four

1 hours or six, you know, some of the things that have
2 been put on there. I just can't -- I would view
3 that as excessive and I think that's why I'm so
4 adamantly in support of the staff recommendation.
5 I'm not questioning any of the CPA or accounting
6 things on either, but I'm just looking at legal
7 services. And in this case it appears to be
8 excessive to the norm for this scope of work because
9 this is a real straightforward PAA item to me.

10 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Thank you. Two
12 questions, I think.

13 The first is looking at the summary sheet
14 on the back page that you've shared with us, how
15 many -- okay. 5.25 hours of billable time are being
16 recommended for recovery; is that a correct reading?

17 **MS. LINGO:** On the, on the final page,
18 ma'am?

19 **COMMISSIONER EDGAR:** Yes.

20 **MS. LINGO:** Yes, ma'am. That looks, that
21 looks to be correct.

22 **COMMISSIONER EDGAR:** Okay. And how many
23 hours of time are being recommended for
24 disallowance?

25 **MS. LINGO:** Let's see. Three -- one

1 moment, please, ma'am.

2 **COMMISSIONER EDGAR:** Sure.

3 **MS. LINGO:** 12.25 hours.

4 **COMMISSIONER EDGAR:** Thank you. About
5 75 percent; is that right?

6 **MS. LINGO:** Yes, ma'am. That would be
7 about right.

8 **COMMISSIONER EDGAR:** Okay. And back on a
9 slightly different area, earlier this morning, I
10 think it was this morning --

11 **MS. LINGO:** It seems like so long ago.

12 **COMMISSIONER EDGAR:** It does seem like
13 a -- I agree with you, Ms. Lingo.

14 Earlier this morning we had some
15 discussion about the eligibility for this case to be
16 handled as a staff-assisted rate case.

17 **MS. LINGO:** Yes, ma'am.

18 **COMMISSIONER EDGAR:** And I think I heard
19 our acting director tell us that after some
20 discussion that his thinking was that this case was
21 probably not eligible, realizing that we have spent
22 some, you have spent some more time on it, we have
23 spent some more time on it. Is that still the
24 assessment of staff?

25 **MR. WILLIS:** That's my opinion.

1 **COMMISSIONER EDGAR:** Okay. I just
2 wondered if that had changed, realizing that you had
3 spent some more time looking at it.

4 **MR. WILLIS:** Just to make it clear -- now
5 mine is doing this. Just to make it clear, my, my
6 whole disagreement with the company's filing when I
7 originally talked to staff about this was the fact
8 that this company filed a revenue neutral rate
9 restructuring case, and in their pleading they
10 actually said we're not asking for a revenue
11 increase, we are not asking for additional expenses.
12 But then when staff got back to the actual schedules
13 put together by the accountant, low and behold there
14 were additional expenses, there were additional
15 revenue.

16 The company was contacted, basically
17 explained to that you need to refile this as a new
18 limited proceeding, because it is a limited
19 proceeding the way it's filed, but a new one making
20 sure that it's not a revenue neutral rate
21 restructuring now but a restructuring with a request
22 for additional expenses. The company declined to do
23 that and instead said they would rather have that
24 discussion at the Agenda Conference. That would
25 have cleared it all up.

1 But as it was filed it was strictly a
2 revenue neutral rate restructuring, which is not
3 entailing any increase in expenses or revenue. That
4 was my major disagreement with the filing. I missed
5 the fact that there was a wastewater company here.
6 When you combine the two, based on the practice this
7 Commission has had since we started staff-assisted
8 rate cases, you combine both, they're not eligible
9 for staff assistance.

10 **COMMISSIONER EDGAR:** Okay. And I'm not
11 trying, necessarily trying to, to replot already
12 plowed ground. It's just since we had taken some
13 more time to look at it, I did want to make sure
14 that I understood that that was still the
15 assessment.

16 Okay. Two additional points that brings
17 to mind. So earlier this morning the recommendation
18 was they should not have had any rate case expense
19 because perhaps they could have gone the staff,
20 staff assisted route. And now the recommendation is
21 25 percent of what they have submitted for recovery.
22 Am I -- and if I've got it wrong, tell -- I mean --

23 **MR. WILLIS:** No. Let me try and address
24 what the recommendation is. The recommendation this
25 morning was to give them a revenue neutral rate

1 restructuring based on several facts. One was the
2 company didn't ask for it to start with. Now
3 they're saying they are asking for a revenue
4 increase at this Agenda Conference. The other is we
5 were, after talking with the company and
6 understanding they were going to ask for rate case
7 expense, staff went back and looked at rate cases.
8 One of the staff's arguments was they weren't --
9 they were eligible for a staff-assisted rate case,
10 therefore, they shouldn't get any of it. That was
11 one of our arguments against giving them any rate
12 case expense.

13 I don't like the fact that a company comes
14 before us with a pleading that says they're not
15 asking for something and then comes to an Agenda
16 Conference and says they are asking for something.
17 I think it's a little disingenuous as far as the
18 pleading goes. But needless to say, if the
19 Commission wants to give the company rate case
20 expense, we are making a recommendation now as to
21 what that would be. That in particular is on the
22 last page of that schedule that Ms. Lingo prepared,
23 which basically is giving them 57 percent of what
24 they asked for.

25 In other words, Ms. Lingo and Mr. Fletcher

1 have gone through this thing and they believe that
2 out of all of this they could easily recommended
3 \$23,390 in rate case expense which would be
4 amortized over four years, which would disallow
5 \$17,524.

6 **COMMISSIONER EDGAR:** Okay. And of this,
7 is that -- this is attorneys -- this rate case
8 expense that is reflected on this summary sheet,
9 this is attorney and accountant costs?

10 **MS. LINGO:** Yes. Yes, ma'am.

11 **COMMISSIONER EDGAR:** Do we go through the
12 same review and analysis process with other
13 professional services to the same degree:
14 Engineering, plumbing, wiring?

15 **MR. FLETCHER:** For rate case expense, if
16 they have the engineering consultants or whatever
17 other consultants they may hire to process the case,
18 yes, we do that level of review.

19 **COMMISSIONER EDGAR:** Okay. So in that
20 instance, hypothetical or maybe not hypothetical,
21 but I'm pulling these numbers out of, out of the
22 sky. So if, if there had been engineering
23 consulting expense, which seems to me a reasonable
24 thing that might occur with a rate case at some
25 point, that we would go through and the staff would

1 make a recommendation and we would accept or alter
2 it. For instance, six hours of engineering at X
3 amount, but we will only allow four hours because we
4 think six is excessive.

5 **MR. FLETCHER:** That's correct. We would
6 look at those estimates to complete. And even in a
7 rate case, I mean like if they spent, the engineer
8 spent some time on deficiency, looking at the actual
9 invoices we identify which part they had to respond
10 to any kind of deficiencies that would normally be
11 disallowed. As far as excessive, yes, we would look
12 at that. As far as, you know, like the, whatever
13 the case may be, sending out a customer meeting
14 notice, in this case they requested six hours. We
15 thought that was excessive to review the customer
16 notice in this case by the attorney, particularly in
17 the fact when staff developed the customer notice.
18 That, that seemed excessive to us of what he
19 actually billed his client to review the customer --

20 **COMMISSIONER EDGAR:** But my question is
21 about other professional services.

22 **MR. FLETCHER:** Oh. Yes, we would do that,
23 the same level of review.

24 **COMMISSIONER EDGAR:** We would go through
25 that, that same review process. Are there examples

1 where, where we have not approved recovery of the
2 full amount of professional engineering services?

3 **MR. FLETCHER:** Yes. There is other, like
4 Utilities, Inc., rate cases, they commonly hire
5 Mr. Frank Seidman to develop those. We have gone
6 through there for excessive amounts to complete,
7 particularly when, when like we send out a data
8 request and, you know, it doesn't relate to
9 engineering at all, then we would remove that if he
10 had no part of it. But if it's excessive like he
11 had only to answer one question and it related to --
12 we'd look at that data request that we sent out and
13 if he like has three hours to answer something that
14 we believe was simplistic in nature, we'd look at
15 that as far as the review of those services.

16 **COMMISSIONER EDGAR:** My words, but we've,
17 you know, had some discussion. Clearly I would --
18 I'm making no accusations or representations
19 whatsoever, but I would certainly not be in favor
20 of, you know, padding a bill from, in any way. On
21 the other hand, I do want to try to understand the
22 rationale and the approach and have some consistency
23 and lack of arbitrariness, which is why I'm asking
24 the questions I am to try to, you know, pull out a
25 little bit of how we have done this in the past and

1 how we are continuing to do it in the future. So
2 thank you.

3 **CHAIRMAN ARGENZIANO:** Commissioner
4 Stevens.

5 **COMMISSIONER STEVENS:** Thank you, Madam
6 Chair.

7 On the, on the first page of the
8 spreadsheet on the, I guess the April 22nd, '08, we
9 disallowed .75 hours and we allowed .75, but we
10 don't show any dollars in the amount allowed column.
11 Am I reading this wrong? And the same goes for
12 April 23rd. Should there be numbers over there that
13 aren't included in the totals?

14 **MS. LINGO:** No, sir, you're not reading it
15 wrong. But the, the bottom line numbers regarding
16 what we are recommending disallowance, those numbers
17 are correct. And we tied, we tied that,
18 Commissioner, to the total amount billed. So even
19 though there may be, and I apologize for this,
20 blanks in some of those line items, the amount
21 allowed --

22 **COMMISSIONER STEVENS:** So that, that
23 column on the back page that shows 23,390, that
24 doesn't add up all the columns? Is that just a plug
25 after the amount disallowed?

1 **MS. LINGO:** Yes, sir. That, that is -- we
2 take total amount billed, which is one, two, three,
3 it's the fourth column in this spreadsheet, sir.

4 **COMMISSIONER STEVENS:** Uh-huh.

5 **MS. LINGO:** That number is summed and then
6 we compare that to the amount disallowed, which is
7 the third column from the end.

8 **COMMISSIONER STEVENS:** Right.

9 **MS. LINGO:** And that resulting number is
10 23,390.

11 **COMMISSIONER STEVENS:** Well, I have a --
12 I'm just going to look at this first line here.
13 March 19th of '08. Review Nixon's rate
14 restructuring schedules. Billed two hours. Hours
15 allowed, one. How did we make a decision that it
16 was, that only one hour was allowed?

17 **MR. FLETCHER:** If I may, Commissioner.
18 That's one that we looked at a group. That's,
19 that's related also to the entry on April -- if you
20 look down, the fourth entry, the April 23rd, the
21 April 29th and the May 5th. Looking at all of those
22 together as far as time spent to look at that same
23 schedule that we're talking about here that was
24 developed by the accountant, a total of six hours is
25 what we're able to come up with as far as the

1 attorney's review of that same schedules, and we
2 believe that was excessive.

3 I mean, the accountant is coming up with
4 that information with all the revenue neutral rate
5 restructuring, and we felt that that was an
6 excessive amount of time for the attorney to review
7 the accounting.

8 **COMMISSIONER STEVENS:** Were we sitting
9 with the attorney while they reviewed this?

10 **MR. FLETCHER:** No, we weren't.

11 **CHAIRMAN ARGENZIANO:** But do you ever do
12 that?

13 **MR. FLETCHER:** No.

14 **COMMISSIONER ARGENZIANO:** Okay. So it's
15 never been done that way.

16 **COMMISSIONER STEVENS:** And that's why I'm
17 --

18 **CHAIRMAN ARGENZIANO:** But because they
19 can't get to that, they can't do it in a sense where
20 you sit here and think that logically we'll go over
21 each case by each case. It's done in comparables
22 and it's done in comparables --

23 **COMMISSIONER STEVENS:** I understand.

24 **CHAIRMAN ARGENZIANO:** -- only because they
25 can't do it the other way.

1 **COMMISSIONER STEVENS:** But my problem, my
2 problem with the process we're using right here is
3 we're not comparing apples to apples. We don't have
4 standards set that we can follow. So if, if I
5 engage an attorney in my business and he sends me a
6 bill, I can't say, well, it shouldn't have taken you
7 two hours to do this, and I've got to, I have to pay
8 the bill because I owe him the money. So --

9 **CHAIRMAN ARGENZIANO:** Right. But, but let
10 me ask you this, let me ask you this question though
11 to that point. If the attorney says, well, okay,
12 Commissioner Stevens, we've just done one like this
13 but it was much broader, a much bigger case, it was
14 a full rate case -- this is not by any means a full
15 rate case.

16 **COMMISSIONER STEVENS:** And I totally
17 understand that. I think that they spent a lot of
18 time here. But I wasn't with them, so I don't know
19 what their client was asking them. And if their
20 client is asking them things, I'm at a quandary
21 because I don't have standards set that say, okay,
22 we're capping this at \$200 an hour and things of
23 that nature. So I --

24 **CHAIRMAN ARGENZIANO:** Mr. Reilly, then
25 maybe Mr. Deterding. Hang on. Hang on a second,

1 Commissioner Skop. Mr. Reilly, and then if
2 Mr. Deterding cares to answer, and then we have
3 Commissioner Skop and staff. Let's go in that
4 order.

5 **MR. REILLY:** I'll take a quick stab at
6 Commissioner Stevens' question.

7 **CHAIRMAN ARGENZIANO:** Okay.

8 **MR. REILLY:** And I think there's a
9 difference between -- it could well be that it would
10 be proper legal fees for proper legal services. In
11 your example, this particular owner, a son, he
12 doesn't understand the final order as much, it takes
13 more time to explain it to him, to carry him through
14 it. There just might be differences with the client
15 and attorney relationship.

16 The only argument I would make against
17 that is that might be a totally proper bill for that
18 client and that attorney. But the question before
19 this Commission is how much of that time should be
20 recovered from the ratepayers?

21 **COMMISSIONER STEVENS:** Right.

22 **MR. REILLY:** Should the ratepayers of this
23 utility have to pay more because that owner doesn't
24 understand it as much and needs to have his hand
25 held more? There has to be some sort of fairness at

1 the end of the day that the ratepayers, how much,
2 that's the key issue, how much is recoverable from
3 the ratepayers? I think is the attempt to do that
4 to make it --

5 **CHAIRMAN ARGENZIANO:** Can it be, can best
6 management practices be applied somehow here?
7 That's how I look at it. When we would look at
8 things in certain committees in the Senate, there
9 are certain -- you can't get into each case and say
10 so and so. But to your point, I think best
11 management practices I think is what you're trying
12 to say to me, is that there should be a certain
13 amount of, I guess, understanding that it's going to
14 take this amount of time. And if it takes more --
15 because what you're saying, maybe the attorney can't
16 get it or doesn't get it, is that acceptable?

17 **MR. REILLY:** That doesn't mean that his
18 bill is improper and that he might have needed that
19 service for that client. But that's a little
20 different bill that still has to come before this
21 body to say how much of this, perhaps all of it
22 legitimate bill is, we think is properly recoverable
23 from these ratepayers?

24 **CHAIRMAN ARGENZIANO:** Does the word
25 prudence, prudency come into play here? And that's

1 part of our charge is to determine prudence.

2 **MR. WILLIS:** Prudence definitely comes
3 into play, Commissioner. If I could, a clear
4 reading of the statute concerning rate case expense
5 basically says that it gives the Commission great
6 deference when it comes to rate case expense for
7 your determination.

8 I think there's a good reason for that.
9 Water and wastewater, in the water and wastewater
10 industry rate case expense is a material, material
11 expense item. Ever since I've been with this
12 Commission the Commission has wrestled with rate
13 case expense. There are times when it gets really
14 out of hand. You could run up bills rather quickly.
15 Staff who work on water and wastewater cases have to
16 be very particular about the amount of discovery
17 they send out. Everybody understands that when you
18 send discovery, it's going to result in a bill. And
19 that bill is going to be a huge part of a customer's
20 bill in the long run, especially in water and
21 wastewater.

22 Electric, it's so immaterial. It probably
23 isn't even close to a penny on the bill. But when
24 it comes to water and wastewater it can be 20 to
25 30 percent of a rate increase is rate case expense.

1 And that's why you see such a scrutiny in the water
2 and wastewater industry when it comes to rate case
3 expense because there has to be something out there
4 that tells the industry if you don't watch what you
5 file, it could be very well disallowed because it's
6 going to be heavily scrutinized.

7 **CHAIRMAN ARGENZIANO:** Mr. Deterding, did
8 you want to respond?

9 **MR. DETERDING:** Yes. Thank you, Madam
10 Chairman.

11 A couple of things from earlier comments.
12 First of all, Ms. Lingo said that a substantial
13 amount of this was disallowances related to items
14 that were not related to this rate case, and I have
15 no doubt there may be a few minor items that have
16 been commingled, but it's not substantial. In my
17 looking at it, it's somewhere around three to four
18 hours.

19 Also, as to Commissioner Skop's concern
20 about the estimate to complete, which was where he
21 had focused his concerns, even if you disallowed
22 two-thirds of the amounts in the estimate to
23 complete, you don't come anywhere close to the total
24 disallowance being proposed here. So these are
25 actual costs, these are actual bills, this is what

1 we actually incurred, and they are the time I spent
2 on these matters.

3 Now is my explanation complete? No, of
4 course not. I can't give you in a bill every single
5 thing I went back and forth with the client on in,
6 in formulating the bill every month, every day. We
7 give, as Mr. Friedman noted earlier, we give more
8 detailed bills than any law firm I've ever seen
9 because of the scrutiny that the staff wants to put
10 on this.

11 As to the comments earlier by Mr. Willis
12 that the utility said this was revenue neutral,
13 well, both of the prior cases were referred to as
14 revenue neutral. Both of the prior water cases were
15 referred to as revenue neutral and rate case expense
16 was recognized.

17 In addition, our filing included rate case
18 expense. In two thousand -- six months later, in
19 November of 2008 we provided an updated, current
20 rate case expense with actual and estimated. In
21 February of 2009 we provided yet another update of
22 current and estimated rate case expense. And it was
23 not until six months later at the end of July of
24 2009 when we were informed for the first time that
25 there was a proposal to disallow rate case expense.

1 So I just wanted to make that point.

2 There have been adjustments here for
3 accounting the rates, the hourly rates charged. I
4 have no idea why, but there are adjustments on every
5 one of the accounting hourly rates. I don't have
6 any idea what the basis for that is. I don't have
7 the basis for any of the adjustments, to be honest
8 with you.

9 This, this -- certainly it is true that
10 the Commission on a normal, in a normal rate case
11 carefully scrutinizes rate case expenses and
12 honestly I believe severely cuts them on a regular
13 basis. However, I don't think I've ever seen one
14 where they cut out 43 percent of the rate case
15 expense.

16 As to -- just a couple of other comments.
17 As to Mr. Reilly's comment about the, you know,
18 what's appropriate to be recovered versus what's
19 appropriate to be billed, you know, one client may
20 require more hand holding than another, that's true.
21 And it's especially true when you're trying to
22 compare one of the largest water utilities in the
23 country, if not the world, to Sun Communities, which
24 has very little involvement in water and sewer
25 utility operation. I'm dealing with a client who is

1 in the development business and has, has water
2 utilities in its mobile home park. Mr. Friedman is
3 dealing with a utility that's one of the largest in
4 the world and has people who do nothing but
5 utilities. So that's certainly one explanation for
6 the differences. And that's really all I had.

7 Thank you.

8 **CHAIRMAN ARGENZIANO:** I think Commissioner
9 Klement and then Commissioner Skop.

10 **COMMISSIONER KLEMENT:** I wanted to expand
11 on what -- I'm sorry. I lost --

12 **MR. DETERDING:** Deterding.

13 **COMMISSIONER KLEMENT:** Said regarding the
14 past. We've been arguing or talking here today for
15 hours about rate costs, rate case costs, but we must
16 have done hundreds of these in the past. Has, do we
17 take apart each one of these in figuring how much is
18 allowed? For we new Commissioners, maybe we need to
19 look at the past.

20 **CHAIRMAN ARGENZIANO:** That was kind of my
21 point before, Commissioner Klement.

22 Marshall, can you --

23 **MR. WILLIS:** Commissioner Klement, I
24 really believe that depends upon whether the utility
25 company or an intervenor comes in to address the

1 Commission on that subject.

2 Normally rate case expense isn't one of
3 the issues that's actually discussed heavily in
4 water and wastewater. It really depends on if an
5 intervenor or the company wishes to discuss it.

6 **COMMISSIONER KLEMENT:** So there can't --
7 there isn't or perhaps can't be a template that you
8 can apply?

9 **MR. WILLIS:** It's, it's very difficult to
10 have a template for the very reason that we talked
11 about the one item where you have one person from
12 the same law firm wanting six hours to review what
13 may be a six-page order versus the Ni Florida person
14 who wanted two hours to review what's probably going
15 to be close to an 80- page order. There's just no
16 template you can do for that. You have so many
17 different types of rate cases, you have so many
18 different levels of rate cases. And that's why --
19 and I wish everybody would have referred to it a lot
20 earlier this morning as a benchmark. Because Miles
21 Grant was a benchmark in this case. We have always
22 benchmarked. That's one of our sanity checks for
23 rate case expense is you can go back and look at
24 like utility companies and see what's so different.
25 Why did it take so much more to file this case

1 versus that case? Why was this case so much cheaper
2 than that case? Those are benchmarks. They're
3 sanity checks.

4 If you can't come up with a good reason as
5 to why this company is so much higher in the current
6 case versus a case that seems so much similar, then
7 why give this company in the current case the higher
8 rate case expense when a company of like size seemed
9 to do it for the same price, a much cheaper price
10 actually?

11 **COMMISSIONER KLEMENT:** Well, is, is his
12 claim that he just said a few minutes ago of the
13 relative size of these two companies relevant, that
14 the one is a small little company and that one is
15 one of the biggest in the country? Is that
16 relevant?

17 **MR. WILLIS:** Well, sometimes it is,
18 sometimes it isn't. I would tell you that when his
19 company took over this utility company, they stated
20 that they were fully capable of understanding our
21 procedures and running a water and wastewater -- in
22 this case a wastewater company for Ni Florida versus
23 Water Oaks, which is a pretty small company. So
24 sometimes it's relevant, sometimes it's not. It
25 really depends on, on the owner's ability.

1 Now if it's a staff-assisted rate case, a
2 lot of those owners don't have the ability to
3 understand a lot.

4 **COMMISSIONER ARGENZIANO:** Marshall, can I
5 ask you this question? Can you go over again what
6 the statutes indicate that this PSC must do in
7 regards to, to looking at --

8 **MR. WILLIS:** Rate case expense?

9 **COMMISSIONER ARGENZIANO:** Yes. Rate case
10 expense.

11 **MR. WILLIS:** I certainly will.

12 **CHAIRMAN ARGENZIANO:** Because -- and the
13 reason I ask that, and I'm not saying that -- this
14 is staff's job, this is what they're supposed to be
15 doing. I'm not saying they're always right, and
16 that's what the company is saying here, they're not,
17 and staff is saying they are. But to understand the
18 charge I think is very important. So if you would,
19 if you would read that, please.

20 **MR. WILLIS:** Yes. This comes out of
21 Chapter 367.081. And I'd point out you won't find a
22 like portion of the statute in any other industry
23 except water and wastewater.

24 This is 367.081(7). It says, "The
25 Commission shall determine the reasonableness of

1 rate case expenses and shall disallow all rate case
2 expenses determined to be unreasonable. No rate
3 case expense determined to be unreasonable shall be
4 paid by a consumer. In determining the reasonable
5 level of rate case expense the Commission shall
6 consider the extent to which a utility has utilized
7 or failed to utilize provisions of 4A or 4B" -- that
8 happens to be the index and passthrough statutes --
9 "and such other criteria as it may establish by
10 rule."

11 **COMMISSIONER ARGENZIANO:** So now, and I'm
12 not saying the company has done this or hasn't, this
13 is just -- so the Commission, in order to safeguard
14 that there aren't excessive rates or excessive
15 charges, must look at certain things as you look at
16 it. And to do that -- I guess if a company is
17 inefficient in their -- doesn't have greater
18 efficiencies as one attorney may, the other may not
19 have and it could cost more, that's part of the
20 charge that we have before us. Isn't that, doesn't
21 that fit into that language? If you're saying that
22 it's just efficiencies between one attorney and
23 another, even though there are cases, like
24 Commissioner Stevens had indicated, there are times
25 that you don't know that there's extra work that the

1 company had to go through, and I guess that's what
2 the company has to make their case and say that it's
3 not the same or it is the same.

4 But for the PSC's charge, the purpose --
5 and let's say there are attorneys who are less
6 efficient than others and need more time or whatever
7 the case is, then that doesn't mean, to me that
8 doesn't mean that we should just give them whatever
9 for those inefficiencies. What that statute says to
10 me is we should look at the most reasonable. And if
11 the company has attorneys that can't be as
12 efficient, then perhaps they need to reassign
13 because of the protections to the ratepayer in that
14 statute.

15 Now on the other hand, for the company,
16 the company has to make the case that if it is
17 different, quite different and why the staff is
18 wrong. But to understand what the statute is saying
19 and why we're charged with that, you can't get down
20 and say -- if I was a business owner, I'd say, well,
21 you don't know the particular things that I may have
22 had to go through and I guess I have to make that
23 case. But what we're charged with is making sure
24 that it's reasonable. So if you say that, look, it
25 took me longer because my attorney doesn't normally

1 work on that, well, perhaps that shouldn't be the
2 guy doing it because the statute indicates it has to
3 be reasonable. And if you can't do it in a
4 reasonable manner, then maybe somebody else has to
5 be assigned to that. That's the way I'm taking
6 this.

7 Now I'm not saying that's the company's --
8 that's what happened to the company. I don't know
9 how efficient or not. They may have had legitimate
10 instances where it may, may cost them more. And
11 that's what I really probably want to get down to is
12 the, you say, actual costs of time. And is it, is
13 it due to extra work, additional work, other work,
14 or is it just that, as you I think indicated a
15 minute ago, that the other staff may have more
16 experience in doing that job?

17 **MR. DETERDING:** It's any number of things,
18 including the fact that I don't doubt that Ni
19 Florida charges its subsidiaries management fees by
20 its technical staff, who have a heck of a lot more
21 knowledge, and a lot more of those management fees
22 in the regular operating expenses than does Water
23 Oak, who doesn't have staff that does utility work.

24 **CHAIRMAN ARGENZIANO:** Commissioner
25 Stevens. And, Marshall, if you wanted to respond.

1 **COMMISSIONER STEVENS:** Madam Chair, with
2 all, with all the variables that occur, and I don't
3 know if I added this up right or not, but it looks
4 like the hours billed were 152.65 hours, and give or
5 take a few if I messed up, and then the hours
6 allowed were 81.76, give or take a few if I messed
7 up.

8 When we go through this, you know, we're
9 using a comparison again that's not apples to
10 apples. So it's arbitrary, there's no basis. I've
11 only been here two months, so I don't know if this
12 is consistent with what we've done in the past. And
13 we, we don't have a rationale for the disallowance.
14 Now is 152 hours reasonable? And that's what the
15 statute says: Is it reasonable? Well, I don't
16 know. Staff is saying no, that, you know, 81.76
17 hours is reasonable. So that's my, that's my issue.

18 **COMMISSIONER ARGENZIANO:** And I understand
19 that.

20 **COMMISSIONER STEVENS:** No basis, no
21 rationale, inconsistency.

22 **COMMISSIONER ARGENZIANO:** Well, I don't
23 know if there's -- I'm not sure if there's no basis.
24 I think I heard some rationale and some basis on
25 both parts, to be honest with you.

1 But let me ask you this question, how
2 would you then determine if someone was not, and I'm
3 not saying this company is, but how would you, it's
4 a question that comes up, how would you determine
5 then that there is maybe a lack of efficiency or
6 padding or whatever to -- how would you determine
7 that?

8 **COMMISSIONER STEVENS:** Well, I, I would
9 never think that there would be padding. Okay? I
10 believe in professionalism. I believe that CPAs and
11 attorneys hold themselves to a high standard so that
12 they're not going to do that. So that's --

13 **CHAIRMAN ARGENZIANO:** I guess I --

14 **COMMISSIONER STEVENS:** Maybe that's naive,
15 but that's where I am.

16 **COMMISSIONER ARGENZIANO:** I understand
17 that and I appreciate that and respect that.

18 **COMMISSIONER STEVENS:** And I understand
19 inefficiencies, but I think it was proven today that
20 the company paid for expertise. You know, their
21 attorney explained to us why we couldn't use a
22 staff-assisted rate case. Okay? There is a prime
23 example of why they're paying him to do that.

24 So, you know, this is a small company,
25 they paid for the expertise. Whether or not it's

1 all reasonable, you know, I guess that's up to us to
2 decide. But I don't think the method we're using
3 here is the way to go.

4 **CHAIRMAN ARGENZIANO:** Okay. If that's the
5 case, then what we have to decide today also is that
6 that means that there's a new criteria. Because as
7 long as I've been here, and Commissioner Edgar has
8 been here longer than all of us, it seems to be this
9 is the way these things have been done. So if we're
10 talking about that today, then perhaps today is the
11 time to say that there's going to be new rules and
12 we're going to determine these costs on a different
13 way rather than just saying comparison, comparables,
14 which is probably the only way to really do that in
15 the long run because I don't think you can get a
16 case done if you have to go down for each little
17 thing. I don't know how you're going to find a
18 benchmark, and that's the right word, a benchmark.

19 But if that's the case, if you're going to
20 make that determination, and that's been done here
21 from time on, and I'm not the one to say that the
22 way it's been done is the right way, but then you
23 have to make a decision today also that every case
24 that comes before us then has to be done the same
25 way, and that means for every cost.

1 I don't know how you do that. Is there
2 some place you go to, some kind of best management
3 practice booklet for what attorneys charge for each
4 hour, for each conversation, for each -- I don't
5 know how you get there. And if you can, can add to
6 that, that would be great. Because otherwise
7 changing what's been done here forever I guess has
8 to be done, has to be done today in making a
9 decision, if we're going to do that. Because
10 otherwise I'm not sure what we're asking staff to do
11 the next time this come up. Not have a benchmark
12 and have just particulars for everything? And,
13 Commissioner Edgar, you might, you might have some
14 suggestions here.

15 **COMMISSIONER EDGAR:** I don't know that I
16 have suggestions. But the discussion that you're
17 having and the comments that you're sharing with us
18 are obviously more clearly articulated than the ones
19 I was trying to make this morning. But I think that
20 we were trying to make some similar comments or
21 points, which was how, my trying to understand how
22 are we doing it and what does it mean on a
23 go-forward basis? And I don't have a great
24 recommendation, but I do know I want to understand
25 it much more clearly than has been clear to me

1 through some of the discussion today.

2 **CHAIRMAN ARGENZIANO:** Well, I think what
3 I'm saying, what I'm saying is if you decided to do
4 what Commissioner Stevens had indicated because he
5 has not a comfortable feeling of looking at, you
6 know, how you compare or he feels there's not a
7 rationale, but in looking at the way that this
8 Commission has done this for so many years, there
9 had to be a reason why there's benchmarks other than
10 doing it the other way. And I can understand,
11 certainly understand and say that, you know, if a
12 business has spent money on this and they're
13 entitled to a recovery, they are. But I also want
14 some safeguards, and that's what the statute
15 indicates to me, that there isn't any padding or
16 excessive, and it may not be padding, but whatever
17 it could be.

18 These fees, as you say, on water, on water
19 rates are, are quite, could be dramatic, and we need
20 to make sure. That's not saying this company is not
21 right on target or anything else. I'm going to the
22 process that we use. You can't suddenly throw your
23 arms up and say the process is no good unless you
24 have a way to determine how you're going to do this
25 process in the future. And I'd like some maybe

1 history on why it's been done this way forever.
2 And, and I think there should be reasonable
3 comparables, that's my opinion, or reasonable
4 benchmarks. And if there isn't, then that's what I
5 want to hear the company tell me, why it's not
6 reasonable and why it should be different. So if
7 you could shed some light.

8 **COMMISSIONER STEVENS:** Well, and what you
9 just said I would totally agree with. If, if we
10 knew that issues such as these were coming forward
11 and we had a standardized hourly rate or a
12 standardized number of hours or range of hours that
13 we expected, that's something I can measure.

14 **CHAIRMAN ARGENZIANO:** But do attorneys, do
15 we have that? Do attorneys do that? Is there a
16 standardized -- is there -- I used the best
17 management practice because that comes from my
18 agricultural days. That what you looked at to see
19 basically the same type of things. Is this being --
20 is there a book that says this is how it works? And
21 I don't see that in the world of attorneys or law
22 firms.

23 **MR. WILLIS:** Commissioners, I have, I've
24 been in this industry for 30 years dealing with
25 water and wastewater companies. I've never seen a

1 standardized way of billing clients. Every law firm
2 is going to do it a different way, every accounting
3 firm is going to do it a different way. I've seen
4 tremendous differences between hourly rates for the
5 same services.

6 The only way that we've been able to
7 actually look at this stuff is basically by
8 comparison, to benchmark it against other companies,
9 other utilities who have comparable services done
10 for them. We've looked at comparable hourly rates.
11 This Commission has disallowed hourly rates, they've
12 reduced hourly rates because they were far more
13 excessive than what other utilities could get the
14 same service for. We looked at hours.

15 We have to build in inefficiency in here
16 somehow. We have to look at the hourly rates that
17 other utilities can perform the same services for.
18 They may change based on the particular utility
19 company, based on the problems that you might have
20 with the utility company, whether they have
21 tremendous quality of service problems with their
22 customers. The company may have to put a lot more
23 legal services into a system with a lot of problems,
24 accounting or engineering.

25 **CHAIRMAN ARGENZIANO:** And, Marshall, I'm

1 saying that smaller companies, it's harder for them
2 to do that. I mean they have -- you know.

3 **MR. WILLIS:** Very much so.

4 **CHAIRMAN ARGENZIANO:** Uh-huh. So that's a
5 lot to consider.

6 Commissioner Skop, then Commissioner
7 Klement.

8 **COMMISSIONER SKOP:** Thank you.

9 I think Ms. Brubaker may have -- do you
10 have a point that you wanted to make?

11 **MS. BRUBAKER:** It's very similar along the
12 lines of what -- Jennifer Brubaker for legal staff.
13 It's very similar along the lines of what Mr. Willis
14 was just saying.

15 I would not be as comfortable if the
16 Commission were to tell utilities how to run their
17 business, which experts to hire, what those
18 reasonable rates should be. I do think -- and if
19 you'll actually pass me back what I just handed you,
20 I'll read from it.

21 As a Commission it is our responsibility
22 to look at the prudence of those costs for the
23 ratepayers. And if I could just point out on Page
24 14 of the recommendation -- I'm sorry. This is
25 actually from the Ni Florida recommendation, but I

1 do believe that it's equally applicable to what
2 we're doing here.

3 It talks about it would be, constitute an
4 abuse of discretion to automatically award rate case
5 expense without reference to the prudence of the
6 cost incurred in the rate case proceedings. And I
7 do think that's where, where a certain amount of
8 judgment comes in. And just dozens and dozens of
9 these cases, staff does have a lot of experience in
10 looking at the comparables that have been discussed
11 here.

12 I would really hesitate to second guess
13 the business judgment of a utility and who it hires
14 and what it thinks it needs to do to process the
15 case. I absolutely think it's the purview of this
16 Commission to look at the prudence of those costs.
17 And as Marshall says, I think one of the best ways
18 to do that is to look as a whole and our experience
19 what kind of costs have come before us.

20 **CHAIRMAN ARGENZIANO:** And I appreciate
21 that. Thank you.

22 Commissioner Skop, then Commissioner
23 Klement.

24 **COMMISSIONER SKOP:** Thank you, Madam
25 Chair. And I'll just try and make this brief. You

1 know, we've spent a considerable amount of time
2 today --

3 **COMMISSIONER ARGENZIANO:** By the way, I'm
4 sorry, we're going to have to cancel IA.

5 **COMMISSIONER SKOP:** Okay.

6 **CHAIRMAN ARGENZIANO:** Go ahead.

7 **COMMISSIONER SKOP:** We've spent a
8 considerable amount of time today discussing
9 professional service and what is the appropriate
10 charge particularly for legal services.

11 I just wanted to ask staff, in relation to
12 the two cases, do we know what the total legal hours
13 were case to case and also the estimate to complete
14 for legal services? Do y'all have that rough handy?

15 **MS. LINGO:** No, sir. I'm sorry. We
16 don't. We could, we could get that for you.

17 **COMMISSIONER SKOP:** Okay. Again, my
18 primary concern here is I'm looking at the Ni case,
19 a typical rate case, fully developed, lots of
20 issues; whereas the Water Oak utility, somewhat
21 truncated, revenue neutral, putting in conservation
22 rates, not rocket science.

23 But let me get to my point. Mr. Deterding
24 spoke about the disallowance or the adjustment for
25 misbilling and that may have been four hours. Well,

1 actually, you know, any hour that's billed that's
2 misbilled is a concern to me. The term "padding"
3 has come up. I'm not going to use that term. But,
4 you know, I just can't get comfortable with the
5 estimates to complete for the scope of work, noting
6 that, you know, I've got about 3.5 years doing this
7 and it took me all of less than an hour to read
8 these 16 pages of the staff recommendation. So that
9 would leave me five additional hours to make any
10 additional phone calls I would need to make as a
11 member of the Bar to my client and explain ad
12 nauseam what these 16 pages meant. So I just can't
13 get comfortable with that. I'm sorry.

14 And finally -- and, again, I'm spending my
15 time more on the estimates to complete the extra --
16 you know, this is here's what we spent, here's how
17 much additional we need to get there. That's where
18 my problem is, not necessarily with the adjustment
19 staff has previously made.

20 Last question to OPC, Mr. Reilly, in one
21 or two succinct words, not a five-minute statement,
22 what's your impression of the appropriateness of
23 these legal bills?

24 **MR. REILLY:** I think staff has made a
25 genuine effort to try to see what portion of these

1 bills should be reasonably collected from
2 ratepayers, and I think this is -- I wouldn't second
3 guess that effort here today.

4 **COMMISSIONER SKOP:** So Public Counsel
5 would not be in support of allowing the legal
6 expenses as proposed to be recovered under rate case
7 expense?

8 **MR. REILLY:** That's correct.

9 **COMMISSIONER SKOP:** Okay. Thank you.

10 **MR. WILLIS:** Commissioner Skop, in answer
11 to your question you had before about the
12 difference, I did just look that up. For Ni
13 Florida, the total legal fees estimated were
14 \$50,000, but the utility actual revised estimated
15 was 39,211 versus the legal in this current case of
16 \$28,604.

17 **COMMISSIONER SKOP:** Okay. Well, what
18 about total hours, because the billing rates --

19 **MR. WILLIS:** Oh, the total hours? I
20 don't have the total hours in these documents.

21 **COMMISSIONER SKOP:** I guess what I'm
22 saying is it seems to be a whole lot of hours on the
23 other case that seemed to be legitimate where there
24 is a whole lot of hours on this case that just
25 seemed to be excessive. I mean, that's about as

1 close as I can put it.

2 **MR. WILLIS:** And we do have one correction
3 here. The numbers that Ms. Lingo gave you a minute
4 ago did not amortize the rate case expense we
5 recommended over four years, so she has to give you
6 a revised rate number.

7 **COMMISSIONER STEVENS:** Can I ask something
8 along with Commissioner Skop? Please repeat for me
9 that Ni had estimated \$50,000 for legal and then the
10 actual was 39,211?

11 **MR. WILLIS:** That is on Page 15 of the
12 recommendation.

13 **COMMISSIONER STEVENS:** Of the Ni
14 recommendation?

15 **MR. WILLIS:** Of the Ni recommendation,
16 yes.

17 **COMMISSIONER STEVENS:** So we're at legal
18 here at 28.6, which is less than 39.2.

19 **MR. WILLIS:** Yes. But it's a much smaller
20 case compared to a much larger case here. A
21 full-blown rate case versus a limited one-issue
22 item, two with rate case expense versus multiple
23 issues in a rate case.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you.

1 And to Mr. Willis to touch upon
2 Commissioner Stevens' question, the number that you
3 gave for the Water Oak Utility, was that the
4 adjusted number, the 28.6, or was that the
5 unadjusted?

6 **MR. WILLIS:** That is the adjusted number
7 that the company requested. The 39,000 is what the
8 company requested. What I was giving you was
9 company requested numbers versus company requested.
10 The company in the Ni Florida requested 39, staff
11 had recommended 33. The company in this has
12 requested 28 in the current case, in the Water Oak
13 case.

14 **COMMISSIONER SKOP:** Okay. Thank you.

15 **MR. WILLIS:** And Ms. Lingo needs to give
16 you that corrected rate number.

17 **MS. LINGO:** Commissioners, I apologize.
18 In my haste to try to get the rates calculated and
19 get back down here, I failed to amortize the
20 requested rate case expense over four years. The
21 base facility charge of 503 that I had quoted you
22 earlier is actually 456.

23 **COMMISSIONER STEVENS:** 456?

24 **MS. LINGO:** 456; yes, sir. We're unable
25 to do the calculations for the individual blocks,

1 but what I can tell you is the average gallonage
2 charge, for example, for the general service
3 customers, that would be 93 cents per k/gal, so the
4 rates in blocks one and two for the residential
5 service would be less than 93 cents, and the rate in
6 block three would be greater than 93 cents. And I
7 apologize for the confusion.

8 **CHAIRMAN ARGENZIANO:** Commissioner
9 Klement.

10 **COMMISSIONER KLEMENT:** I'm wishing that we
11 could cut to the chase, and I want to repeat or to
12 reiterate what Ms. Brubaker said a minute or two
13 ago, that using comparables seems to be a reasonable
14 benchmark for us to rely upon, but ultimately it
15 comes down to the judgment of this Commission and
16 its reliance upon the staff's recommendations. And
17 if we try to pick apart every single case's hourly
18 rates, the number of hours, we will be in a
19 minefield that we will never get out of.

20 And I think we should look at the
21 recommendation that we got from staff when we began
22 after the recess, and consider the fact that the
23 company may not like what I'm going to say, but
24 looking what the staff recommended, 57 percent,
25 that's \$23,000 more than the staff was going to

1 recommend at 10:00 o'clock this morning, so I just
2 think that's some kind of a reasonable compromise
3 here.

4 **CHAIRMAN ARGENZIANO:** And I appreciate
5 that. But, remember, staff was wrong this morning
6 when it came to the staff-assisted case, so I'm not
7 sure.

8 **COMMISSIONER KLEMENT:** Nevertheless,
9 that's where we are.

10 **CHAIRMAN ARGENZIANO:** Right. What it
11 really comes down to, or it should come down for
12 each one of us, do we feel comfortable with the
13 benchmark. That's really what it comes down to.
14 And I guess we have discussed it. If there's any
15 more discussion, I'm open.

16 Commissioner Edgar.

17 **COMMISSIONER EDGAR:** I'm sorry, Madam
18 Chair, because I know we are about ready to be done,
19 but realizing on the earlier case today we had a lot
20 of discussion about a benchmark or comparable case
21 from two years ago, what is the benchmark or
22 comparable that this recommendation is based upon?

23 **MS. LINGO:** Commissioner, when we first
24 went through and began looking at items or hours to
25 disallow, the first thing we did was look at items

1 that were not related to this case. After that, we
2 started looking at the repetition of things that
3 were done within a close proximity of one another.
4 We also looked at the scope of this revenue neutral
5 rate restructuring.

6 I think this recommendation is 16 pages.
7 The length of time that one would expect to have to
8 review an order, to review a recommendation, make
9 recommendations to the client regarding a 16-page
10 recommendation is going to be different than in much
11 greater sized cases. And that's what we started
12 with. And then, again, we relied on other expertise
13 so that we could be consistent with what we were
14 doing in rate case filings proper.

15 **COMMISSIONER EDGAR:** Okay. You know where
16 I'm going here, so I'm going to have to say it, and
17 then I would like to listen to it you. I think we
18 have had a lot of discussion today about the pros,
19 cons, and other circumstances surrounding using
20 benchmarks and comparables, but I think what you
21 just told me is that's not what we did here.

22 **MS. LINGO:** Well --

23 **MR. WILLIS:** If I could just jump in here.
24 Benchmarks come in different fashions. Benchmarks
25 can come in looking at one comparable case to a

1 comparable case. There isn't really a comparable
2 case that I know of recently for a case like this.
3 But what there are are individual benchmarks. You
4 look at other cases where they reviewed orders. How
5 much are they charging you to review an order? How
6 much are they charging to send notices? How much
7 are they charging to look at a similar type MFR
8 filing?

9 **COMMISSIONER EDGAR:** And that's what you
10 all did over the lunch break and before today?

11 **MR. WILLIS:** That's what we have looked at
12 here, and that's where we got into this big
13 discussion a minute ago about two different orders;
14 and you have to take those benchmarks and you have
15 to look at them, and you have to compare the size of
16 what you are doing. It's just not a benchmark in
17 total is what I'm trying to say. You might get
18 lucky and find one case that compares so naturally
19 to another case, but in most cases that's not true.

20 **COMMISSIONER EDGAR:** Which is what
21 happened this morning?

22 **MR. WILLIS:** Yes, that's what happened
23 this morning.

24 **COMMISSIONER EDGAR:** Right down to the
25 30 minutes, as I recall. (Laughter.)

1 **MR. WILLIS:** In this case it's a lot of
2 small benchmarks you have to look at, individual
3 issues within a case, and the time to look at those.

4 **CHAIRMAN ARGENZIANO:** Have you been doing
5 it this way since you have been here?

6 **MR. WILLIS:** Probably about 30 years since
7 I have been here we have been doing it this way. I
8 know of no other way to do it. I can't be there in
9 the office with the utility company. I could
10 propound a ton of interrogatories which would get me
11 to maybe another place, but that's going to cause
12 more rate case expense. I could send out
13 interrogatories and discovery on every one of these
14 particular things to get me down to the information
15 I really need, but that's getting us to a ton of
16 rate case expense.

17 **COMMISSIONER EDGAR:** The lawyer employment
18 act.

19 **MR. WILLIS:** Yes.

20 **CHAIRMAN ARGENZIANO:** I think what I'm
21 looking at is the process that was used, and that
22 doesn't mean that staff is always correct, there
23 could be times the company comes in and they may be
24 right. They may deserve that. And as Commissioner
25 Klement said, it's up to us to make that

1 determination on the basis of the facts before us.
2 But for the process itself which was in question
3 here, I think that's what caused most of the
4 heartburn here today on this discussion was the
5 process. And I don't know any other way you would
6 do it, either. And I have to wonder why it has been
7 done that way for so many years and why it's a
8 problem suddenly. And if it is, then what I'm
9 saying is if we are making that determination today,
10 we have to make the determination today that the
11 process has to change, and I'm not sure there is
12 anything on the table that says how you would do
13 that.

14 So as we have the process today, and the
15 facts before us, is there any more discussion?
16 Commissioner Skop, did you want to -- or
17 Commissioner Stevens, anybody else?

18 **COMMISSIONER STEVENS:** Thank you.

19 **CHAIRMAN ARGENZIANO:** Okay. Then I think

20 --

21 **MR. DETERDING:** May I make one point?

22 **CHAIRMAN ARGENZIANO:** Yes, please. Mr.
23 Deterding.

24 **MR. DETERDING:** Mr. Willis says he has
25 been doing for 30 years. He has been doing it for

1 34, because I have been doing for 33-1/2, so --

2 **MR. WILLIS:** That's not fair. I wasn't
3 counting that far.

4 **CHAIRMAN ARGENZIANO:** We are just showing
5 our age, guys. Okay. Then are we ready to move on?
6 Commissioners, do I have a motion?

7 **COMMISSIONER SKOP:** Madam Chair, with
8 respect to the disposition of Item 9 on the agenda
9 before us, I respectfully move to adopt the staff
10 recommendations on Issues 1 through 6, noting the
11 oral modifications and corrections to the BCF that
12 has been made, as well as the spreadsheet that
13 indicates the required disallowances for rate case
14 expense. Does that encompass everything, I hope?

15 **CHAIRMAN ARGENZIANO:** Does that totally
16 take in everything?

17 **MS. LINGO:** It does with the exception of
18 I was unable to actually calculate the revised
19 residential gallonage charges, and we would ask that
20 you allow us to do that administratively.

21 **COMMISSIONER SKOP:** So I amend my prior
22 motion to give staff the administrative authority to
23 make that calculation and incorporate that
24 appropriately.

25 **MS. LINGO:** Yes, sir. Thank you.

1 **CHAIRMAN ARGENZIANO:** Do I have a second?

2 **COMMISSIONER KLEMENT:** Second.

3 **CHAIRMAN ARGENZIANO:** Second. All those
4 in favor say aye.

5 (Vote taken.)

6 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
7 Show that approved. And just as a reminder to
8 Commissioners, anybody can make a motion here. So
9 if there's something on your mind, you can just jump
10 in there, okay? I'm not asking for one person's
11 motions. Anybody at anytime.

12 **COMMISSIONER STEVENS:** Do you want a
13 motion to adjourn?

14 (Laughter.)

15 **CHAIRMAN ARGENZIANO:** With that, we're
16 adjourned. Thank you.

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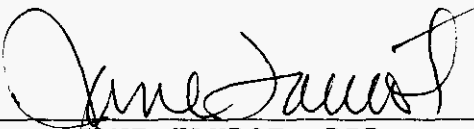
1
2 STATE OF FLORIDA)
3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)
5

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

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

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

20 DATED THIS 19th day of March, 2010.

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24
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JANE FAUROT, RPR
Official FPSC Hearings Reporter
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