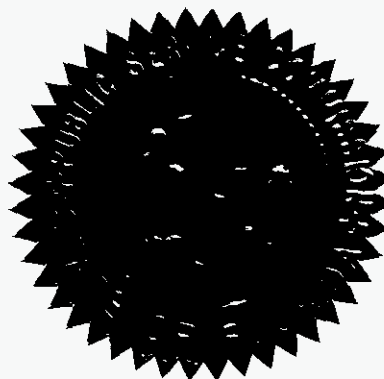


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090182-SU

APPLICATION FOR INCREASE IN
WASTEWATER RATES IN PASCO
COUNTY BY NI FLORIDA, LLC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 15

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
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P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** Okay. We'll move on
3 to the next item, which is Item 15. And I believe
4 there is an oral modification. And if staff would
5 take up the oral modification. As soon as you get
6 to your seats.

7 Good morning.

8 **MR. MOURING:** Commissioners, I'm Curt
9 Mouring with Commission staff. Item 15 is staff's
10 recommendation regarding the application for
11 increase in wastewater rates in Pasco County by Ni
12 Florida LLC.

13 Staff has an oral modification for Item
14 15. The Commissioners and parties have already been
15 provided this modification. Mr. Steve Reilly from
16 the Office of Public Counsel is here to answer any
17 questions that the Commission may have; and
18 Mr. Marty Friedman, counsel to Ni Florida, is here
19 to address the Commission.

20 Staff is prepared to answer any question
21 the Commission may have.

22 **CHAIRMAN ARGENZIANO:** Mr. Friedman.

23 **MR. FRIEDMAN:** Thank you, Madam Chairman
24 and Commissioners. My name is Marty Friedman. I'm
25 the attorney for Ni Florida in this case.

1 We take exception. I want to comment on
2 several of the staff recommendations, and I'll take
3 them -- I'll take them in order. The first issue
4 would be Issue Number 8, which is rate case expense.
5 The staff is recommending total rate case expense as
6 a little over \$98,000. The utility, as of the end
7 of January, has actually incurred rate case expense
8 of almost \$126,000. Now, we acknowledge the staff's
9 deduction of about \$2,100 for correcting
10 deficiencies, that is a standard deduction that is
11 done and we certainly recognize that's appropriate
12 to do so, but that still leaves Ni with
13 approximately \$124,000 in rate case expense.

14 The legal rate case expense, the staff --
15 we had estimated about 61-1/2 hours, the staff
16 reduced that to 53.5, and allocated 15 percent of
17 that to my time and the rest to the associates'
18 time. Obviously we have got different billing
19 rates, and so they used that to determine what the
20 blended rate should be.

21 Typically, I spend about a third of the
22 time in a rate case. The staff on this one had
23 15 percent, which was probably true during that time
24 frame. I was going through cancer therapy, and so I
25 did not spend as much time on clients during the

1 last fall than I typically do. And typically, like
2 I say, I spend about 30 percent of my time, or
3 30 percent of the rate case is my time and the other
4 two-thirds is the associates' time. And I'm
5 generally the person that shows up here at the
6 agenda to argue the utility's position. So I think
7 that typically in estimating the future -- the
8 estimated to complete rate case expense, probably
9 instead of a 15, probably a 30 or 35 percent would
10 be a more appropriate rate.

11 Secondly, the staff has reduced the
12 estimated to complete based upon an estimate to
13 complete that they adopted from the Miles Grant rate
14 case, and we think -- we do not think that is
15 appropriate to just arbitrarily say your time in
16 this other case was 53, we think that's appropriate.
17 I mean, every rate case is different. It has
18 different issues, it has different time to address
19 different issues.

20 Interestingly, in the Miles Grant rate
21 case where the staff wants to reduce our estimate to
22 complete, they don't increase the total time. In
23 other words, in the Miles Grant rate case the total
24 rate case expense hours were higher than they are
25 this case, but staff hasn't said it's reasonable to

1 use the higher rate, but they have said it's
2 reasonable for the estimate to complete to use the
3 lower rate. And I think that's inconsistent. I
4 think the staff needs to be -- if the staff is
5 comparing this to the Miles Grant case, I think they
6 need to be consistent in doing so, which would mean
7 that they would be consistent in the number of hours
8 to do the total case. And if that's true, then they
9 should go to the total rate case expense that they
10 approved in Miles Grant, which is about what it
11 would be if you didn't reduce the estimate to
12 complete.

13 In fact, the utility has actual rate case
14 expense of \$45,000 as of the end of -- as of the end
15 of January. And this case has got some nuances.
16 It's a wastewater only case. There were some issues
17 that are unique to this case. We had a particular
18 customer involvement that took a lot of time to deal
19 with. Another issue I'm going to address later, NSF
20 charges is a new issue that we had to deal with.
21 And so there are nuances in every case that make
22 them different.

23 And so while I think that looking at other
24 cases and saying, you know, here is what you spent
25 in this, let's see if you are about right in

1 line with what we've approved in other cases, I
2 think that's okay. But to say we are going to use
3 what we used in another case, I think is not proper
4 regulatory policy in establishing rate case expense.
5 Using it as a guideline, yes. Using it as a bright
6 line, no.

7 Also, on the nonlegal expenses there is
8 nothing included in there for mailing of any of the
9 customers notices, and that's a substantial expense
10 that was ignored by the staff. And we think that
11 the staff should not have made the adjustments they
12 made on rate case expense and would request that the
13 Commission evaluate that and not make the deductions
14 that the staff has recommended.

15 The next issue which I would address is
16 the -- and I'm just going to mention this briefly,
17 is Issue 9. There are two recommendation on bad
18 debt expense, and, you know, obviously because of
19 the economy, the main staff recommendation has got a
20 five-year average, and we think that the alternative
21 staff recommendation is more appropriate because the
22 downturn in the economy came so drastically and so
23 quick. And I think you probably have seen this with
24 other utilities that bad debt expense in utilities
25 has substantially increased in the last couple of

1 years. And, unfortunately, I think it is going to
2 stay that way for the next couple of years. So we
3 believe that the alternative staff recommendation is
4 the more well-reasoned recommendation on that issue.

5 The next, I guess next one in order would
6 be Issue Number 18. And our disagreement -- this is
7 the staff's recommendation to approve NSF charges
8 for this utility. And our position is obviously not
9 that you shouldn't approve them; our position is
10 it's unnecessary to approve them.

11 Section 832.05, *Florida Statutes*,
12 articulates the public policy behind NSF charges by
13 noting that the purpose is to remedy the evil, and
14 that's the word the Legislature uses, evil, the evil
15 of giving bad checks, which tends to create a
16 mischief to trade or commerce. So the Legislature
17 has dictated that it is an evil to give, to give bad
18 checks to businesses. It has an adverse effect on
19 trade and commerce. A utility is a trade and is a
20 commerce. It doesn't affect utilities any
21 differently than it affects your corner drugstore.

22 Section 832.07 sets forth the procedure
23 for collecting those fees that are, that are
24 actually approved in Section 68.065, as noted in the
25 staff recommendation.

1 It's our position that since these NSF
2 charges are established by law, and I believe this
3 and it's my opinion of such, that there's no
4 requirement that those charges be specifically put
5 in a staff -- in a, a tariff. That since the
6 Legislature has dictated that every business should
7 be able to charge these NSF charges, that the, that
8 a utility should be in no different position.

9 And so you look at, as a comparison look
10 to other, other type charges. I mean, if you, if
11 you're going to have to have NSF charges in a
12 tariff, you know, what other charges does the
13 Legislature grant to businesses and persons that
14 also might have to be included, which I think
15 certainly shouldn't have to be? And those are some
16 charges such as there's a, there's a statute -- part
17 of the NSF statute says that if you have to sue to
18 collect against a customer, that you're entitled to
19 reimbursement of your court costs and your
20 attorney's fees.

21 So are we saying or is the staff saying in
22 its recommendation that we must also include in our
23 tariffs that in addition to the NSF charges that
24 we're entitled to impose, that we also are entitled
25 to attorney's fees and court costs should we file a

1 lawsuit against them?

2 There's another statute, 812.14, that
3 allows treble damages or a thousand dollars,
4 whichever is greater, whenever someone has obtained
5 utility services in violation of that law. Now does
6 that mean that a utility can't sue a customer for
7 treble damages or a thousand dollars, whichever is
8 greater, under those circumstances unless it's
9 included in their tariff?

10 And I'd suggest there's probably -- I
11 didn't go through all the *Florida Statutes* -- but I
12 would venture to guess that there are lots of
13 charges that are allowed to, to businesses and
14 persons in the *Florida Statutes* and that, that I
15 don't think the intent is that each and every one of
16 those charges have to be included in a utility's
17 tariff in order to impose them. And I think the NSF
18 charges is the biggest one. I mean, that is a,
19 that's a charge that everybody knows they have to
20 pay. Every customer should know that if they write
21 a bad check, that it's going to be returned and
22 they're going to have to pay a charge for that.

23 And part of the reason for, for putting
24 something in the tariff, excuse me, is to, is to put
25 people on notice. Let the customers know what

1 charges they're going to face. And this NSF charge
2 is a charge that the Legislature has established,
3 and I think every customer, every person in the
4 state I think knows that if they write a bad check,
5 that they're going to have to pay a bad check charge
6 and may be prosecuted for it. But as far as we're
7 concerned in the utility industry is that, is that
8 they're going to be charged for a bad check charge,
9 and that's all, that's all they're doing.

10 In other words, if you, if you don't allow
11 the imposition of bad check charges, then, you know,
12 your good paying customer is basically paying for
13 the manpower of the staff dealing with, with the,
14 with the people who are the deadbeats.

15 And so I would suggest to you that the
16 best public policy is that NSF charges, which are
17 allowed by, by law to every business and person in
18 the State of Florida who fits under that
19 circumstances, should be equally applicable to every
20 utility without regard to whether an NSF charge is
21 established in the utility's tariff.

22 The -- excuse me.

23 **CHAIRMAN ARGENZIANO:** Could I ask you to
24 hang on one second?

25 **MR. FRIEDMAN:** Oh, of course.

1 **CHAIRMAN ARGENZIANO:** Can staff respond to
2 that? Because it seems that staff is not against
3 the NSF charges but is, is saying that you're
4 supposed to follow the rules and let us know first
5 and give us the opportunity to look at the notice.
6 Is that what staff is saying?

7 **MS. WILLIAMS:** Yes.

8 **CHAIRMAN ARGENZIANO:** I'm not putting
9 words -- that's what I'm reading. So I'm asking you
10 if that's correct, if there's anything else that you
11 can add to that.

12 **MS. WILLIAMS:** Yes. This is Anna Williams
13 for legal staff.

14 In response to some of the arguments that
15 Mr. Friedman has made, 367.011 is the statute
16 covering the Commission's jurisdiction. And that
17 statute states that we have preemptive and exclusive
18 jurisdiction over the rates and charges of a
19 utility.

20 That means that every time that they want
21 to charge a customer on a bill a certain charge or a
22 late fee or a penalty, it has to be approved by us
23 and included in their tariff.

24 832.07 and 68.05 are respectively the
25 criminal and civil statutes regarding bad, bad

1 checks, and often we do tie the fees that a utility
2 can charge for a bad, for a bad check and a bad
3 check fee to that statute so that we'd have some
4 kind of reference for what, what the amount should
5 be. We have consistently, it's been the
6 Commission's policy to require that these be
7 approved and included in the tariff.

8 I'd also like to note that this is a
9 charge. This isn't similar at all to attorney's
10 fees, damages, civil court costs that may be
11 incurred. I agree with him that they would not have
12 to come forward and get approval in their tariff to
13 sue a customer, if that were their choice.

14 **CHAIRMAN ARGENZIANO:** Okay. Thank you.
15 I'm sorry, Mr. Friedman. Continue.

16 **MR. FRIEDMAN:** Well, in quick response to
17 that about, the comments you made about approving of
18 the form, the Legislature in the bad check statute
19 has, has approved a form that businesses are
20 required to send. And it's set forth in the statute
21 the exact form you do and you just fill in the
22 blanks depending upon the amount of the bad check.
23 And so I would suggest to you that the form is
24 approved. There's no form that the Commission
25 approves in their tariff. They're just authorizing

1 the imposition of those charges. And I think it's,
2 it's appropriate to, to use the statutory, the
3 amount that the, that the Legislature has dictated.

4 I question maybe, you know, whether,
5 whether -- maybe what she's saying is that we can
6 impose a charge greater than that that the
7 Legislature has determined for everybody else if
8 it's, if we can do a cost-based justification. And
9 I don't -- again, the purpose of putting things in
10 the tariff is so that everybody knows the rules, and
11 I think that every customer knows the rule of bad
12 checks.

13 **CHAIRMAN ARGENZIANO:** Hang on to that.
14 Let's let Mr. Friedman, and then if you could
15 respond after he's finished.

16 **MR. FRIEDMAN:** Well, that's all I have on
17 that particular issue. If, if --

18 **CHAIRMAN ARGENZIANO:** Well, okay. Wait a
19 minute then. Go ahead and respond. It looks like
20 staff is trying to get to the button there, and
21 then, Mr. Friedman, you can continue.

22 **MS. WILLIAMS:** I'm not used to them
23 turning it on and off for me.

24 I would like to note that unlike -- am I
25 on -- unlike other businesses, Ni Florida is a

1 regulated monopoly. It's a regulated utility in
2 front of this Commission. Unlike other businesses,
3 they are subject to Chapter 367.

4 That statute, and I'd like to read it just
5 for the Commission, it says that this chapter shall
6 supersede all other laws on the same subject, and
7 subsequent inconsistent laws shall supersede this
8 chapter only to the extent they do so by express
9 reference. Whether 832 or Section 68, whether
10 they're subsequent or not, they make no express
11 reference to supersede 367; therefore, 367 should
12 apply. Also, the tariff does provide notice, and
13 none of these, these customers did receive notice
14 that if they wrote a bad check, they would be
15 charged this fee. And, therefore, we believe it's
16 inappropriate for them to have been charged so and
17 should be refunded that money.

18 **CHAIRMAN ARGENZIANO:** Thank you.

19 Mr. Friedman, do you want to continue?

20 **MR. FRIEDMAN:** Thank you. Yes. The next
21 issue I want to address is Issue 19, which is the
22 staff's recommendation that a utility refund \$5 late
23 payment fees in lieu of a show cause proceeding.

24 And as the staff pointed out, when, when
25 Ni purchased these systems, it continued with the

1 same policies the prior owner had, and one of those
2 policies was a \$5 late fee. Apparently the utility
3 found out during this proceeding that the \$5 late
4 fee had not been approved by the Commission and it
5 immediately quit imposing that \$5 late fee. And as
6 you know from the other issue in here, the late fee
7 is imposed on those people who pay late in order for
8 the cost and expense of people that pay late not to
9 be borne by the general body of ratepayers, who in
10 large part pay on time.

11 In spite of the fact that the utility, as
12 soon as it found out, it ceased collecting those,
13 the staff is recommending that we have to refund
14 with interest. And the calculation of interest on
15 \$5, it's got to be miniscule, but the staff is
16 recommending that it be calculated.

17 And the problem with it is that in order
18 to figure out who paid the \$5 versus who was billed
19 the \$5, who actually paid the \$5, somebody manually
20 has got to go through every, every deposit for those
21 or every bill that was paid for that timeframe and
22 look for people that paid the \$5 and then make those
23 calculations. And I would suggest to you that, that
24 it's -- because those were fees that were paid by
25 people that were late, I mean they're not, they're

1 not fees paid by the, by the good paying customers,
2 they were fees paid by the late people, that maybe a
3 good compromise would be for the utility to book
4 those fees as CIAC. And that way it would go to, to
5 reduce the rates for everybody and would benefit
6 the, the good paying people without rewarding the
7 late payment people for, you know, not paying on
8 time and incurring expenses that everybody had to
9 pay for.

10 **CHAIRMAN ARGENZIANO:** Is that correct, the
11 company did cease as soon as they knew that it was
12 not approved?

13 **MR. FLETCHER:** Yes. That's our
14 understanding based on we got a copy of their trial
15 balances, and also that is proof that they have not,
16 those accounts have not grown or continued the
17 collection of those charges.

18 **MR. FRIEDMAN:** Thank you. And my final
19 issue is somewhat related to that, and that is the
20 staff's recommendation that the utility refund the
21 NSF charges it collected. And I think this is even
22 a more egregious task to have to refund because
23 these are really, I mean these are really the
24 deadbeats, the people that wrote bad checks, what
25 the Legislature called an evil practice. All of the

1 sudden now we have to reward these, these evil
2 practitioners by not only refunding their bad check
3 charges, but also paying them interest on that. And
4 the calculation would be just as arduous as I
5 mentioned on the \$5 fee, that they would have to go
6 back through all the bills during that time period
7 and figure out who, who should benefit. And I, I do
8 not think it's good public policy to pay money back
9 to people that wrote bad checks.

10 And, again, I would suggest that maybe a
11 good compromise would be to book those NSF charges
12 also as CIAC, which would benefit the body of
13 ratepayers instead of creating a public policy of
14 paying money to people who wrote bad checks. Thank
15 you.

16 **CHAIRMAN ARGENZIANO:** Commissioners?

17 **MR. FRIEDMAN:** Any questions?

18 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

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

21 Just a quick question for Mr. Friedman, if
22 I may. On Page 14 of the staff recommendation it
23 discusses the estimate to complete for legal
24 expenses, and I want to make sure I'm speaking
25 correctly, but those are the legal expenses;

1 correct, staff?

2 **MR. MOURING:** Yes. That's correct.

3 **COMMISSIONER SKOP:** Okay. So in terms of
4 reviewing the staff recommendation it shows two
5 hours, in terms of reviewing the PAA order it shows
6 two hours, and in preparing the revised tariff sheet
7 it shows 2.5 hours; is that correct?

8 **MR. FRIEDMAN:** Well, no, it's not. I
9 mean, if you look at it, it says what it is is to
10 review the PAA order and conferences and clients.
11 So it's not just, it's not just me looking, reading
12 a 20-page order.

13 **COMMISSIONER SKOP:** I'm speaking generally
14 to the line item. I don't want to have to read
15 three or four sentences if I can make a point
16 succinctly.

17 Basically that category there is
18 respectively two hours, two hours and 2.5 hours.
19 Would you agree?

20 **MR. FRIEDMAN:** Performing those tasks that
21 are articulated on that, yes.

22 **COMMISSIONER SKOP:** All right. Thank you.
23 And Mr. Deterding, excuse me, Mr. Friedman, is it
24 also true that you work for the same law firm as
25 Mr. Deterding?

1 **MR. FRIEDMAN:** Yes.

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

3 **MR. FRIEDMAN:** I think that's well known.

4 **CHAIRMAN ARGENZIANO:** Well, staff --

5 **MR. FRIEDMAN:** But he reads slower than I
6 do.

7 **COMMISSIONER SKOP:** That, that would lead
8 me to my line of questioning, because this seems to
9 be an infinitely more complicated rate case than the
10 one we're going back to and we previously discussed.
11 So that will be a point of discussion.

12 **CHAIRMAN ARGENZIANO:** My thoughts,
13 Commissioners, and I'd like to hear yours if you
14 have, on the late fees, the late payment fees, I
15 feel if the company has, didn't know that that was
16 not approved and they've stopped, then I'm not so
17 inclined to say, hey, go back and have them refund.
18 Just make sure it's approved from now on, I guess.
19 Let's approve it from now on.

20 And the, and the NSF, I have a different
21 feeling. I feel like the company should know you
22 are a regulated utility and those things should come
23 before the Public Service Commission for approval.
24 That's what the statute says and that should be
25 done. However, I'm not sure about the refund on the

1 NSF. These are, these are penalties and people who
2 did not pay and -- but the rules are the rules also.
3 It says this is what you have to have approved
4 before you can do such. So, Commissioners, I'd like
5 to hear your thoughts.

6 **COMMISSIONER KLEMENT:** Madam Chair.

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

9 **COMMISSIONER KLEMENT:** Can we ask the
10 staff to respond to that, the assertion about the
11 evil and the wording in effect, the insufficient
12 fund checks?

13 **CHAIRMAN ARGENZIANO:** If staff could do
14 that. Yes.

15 (Technical difficulty with sound system.)

16 Chris, I think you're having fun with the
17 staff today.

18 **MS. WILLIAMS:** It keeps it light. We can
19 respond to that.

20 I think staff's reasoning behind its
21 recommendation for the refund of the monies
22 collected is typically when we do find a utility is
23 charging a fee that they're not authorized to
24 charge, we contact them, let them know that they are
25 charging something that has not been approved by the

1 Commission and ask them to cease collecting it.
2 That's traditionally what companies do if they've,
3 if they are, you know, informed by us that they're
4 not allowed to do that charge.

5 The reason I think we chose to refund the
6 money is because it's the same type of -- you don't
7 want to reward wrongdoing, as he said, to those who
8 have paid late and are evildoers, but you also don't
9 want to reward a utility for collecting a fee that
10 was unauthorized and not approved.

11 What we were doing with the refund was
12 putting, putting everyone back to the status quo
13 that they shouldn't have paid those fees without
14 them being approved.

15 **COMMISSIONER KLEMENT:** Madam Chair. Did
16 they cease to collect it when they were notified?

17 **CHAIRMAN ARGENZIANO:** That's on the late
18 fee, they were still collecting the NSF or did that
19 change also?

20 **MS. WILLIAMS:** Once notified --

21 **MR. FRIEDMAN:** (Inaudible. Not on
22 microphone.)

23 **MS. WILLIAMS:** Right. Once notified, we
24 discovered one earlier -- we discovered one,
25 notified them, they ceased collecting that one. And

1 then when making sure, when we were ensuring that
2 they had ceased collecting it, then we noticed that
3 they were charging another unauthorized charge, so
4 we noticed them and they ceased collecting that as
5 well.

6 **COMMISSIONER KLEMENT:** Okay.

7 **CHAIRMAN ARGENZIANO:** Commissioners, any
8 other comments?

9 Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Madam
11 Chair.

12 I'm testing my feeble memory here, but if
13 staff could briefly elaborate. I think that we've
14 encountered this situation before and I think it's
15 important for us as a regulatory body to be
16 consistent, but wasn't there an instance where a
17 utility was doing something substantially similar
18 and we made them do the refund? And, again, I'm not
19 saying that's the way. I'm just trying to get all
20 the information before I form an opinion.

21 **MS. WILLIAMS:** We do have -- I pulled
22 numerous cases where we have done the refunds
23 pursuant to Rule 25-30.360, and that has been
24 Commission practice to refund the monies that were
25 collected unauthorized.

1 **COMMISSIONER SKOP:** Thank you.

2 **CHAIRMAN ARGENZIANO:** Has there ever been
3 an instance where they didn't collect a refund?
4 When you say practice, that's general practice. Is
5 there ever a time when it was not refunded?

6 **MR. MOURING:** Well, Commissioners,
7 typically -- I mean in certain cases it has been
8 treated, monies collected has been treated as cash
9 CIAC. But kind of the threshold for that is if the
10 administrative cost of making the refund would be
11 greater than or equal to the refund, that the
12 utility should refund that money to the customer.

13 **MS. BANKS:** This is Cheryl Banks on behalf
14 of Commission staff. We also have had some
15 anomalies where if they were forced to make the
16 refund, they would be bankrupt. So there are some
17 anomalies in there.

18 **CHAIRMAN ARGENZIANO:** Are refunds
19 typically the same as more of a evildoer refund --
20 and I'm not saying all people who write bad checks,
21 sometimes they don't even, they're not even aware
22 they're writing a bad check -- poor bookkeeping does
23 occur. But is it always something that is that type
24 of fee, a more penalty fee than a service fee or --

25 **MS. BANKS:** I don't believe, I don't

1 believe we've ever made really that distinction of
2 evil doing versus just an oversight. I mean,
3 they're both considered kind of like an oversight in
4 most cases. We haven't really seen any utility that
5 purposely went out to circumvent our authority.

6 **CHAIRMAN ARGENZIANO:** Let me ask you this
7 question in regards to this company. Since I heard
8 before that the company thought that the previous
9 owners were approved for a late fee, were they also
10 thinking that the NSF fee was approved?

11 **MR. MOURING:** That's my understanding,
12 that they, they just continued on with the practices
13 of the prior owner.

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

16 **COMMISSIONER STEVENS:** Madam Chair, as we
17 go through these issues and when we get to those
18 later issues, you know, trying to go back and
19 reimburse or pay people something that was again
20 collected incorrectly, but the administrative cost
21 of doing that is -- I think the cost versus the
22 benefit, you can't do it. And I think it would be
23 not only not feasible, but it would hurt the
24 company. And I think this company, just reading,
25 you know, our background information, is trying to

1 do the right thing here.

2 **CHAIRMAN ARGENZIANO:** So basically just
3 move on and follow --

4 **COMMISSIONER STEVENS:** Obviously -- right.
5 When they found out that they didn't have it on
6 their tariff, they stopped doing it.

7 **CHAIRMAN ARGENZIANO:** Right.

8 **COMMISSIONER STEVENS:** So I'm not for
9 penalizing the company. I'm certainly not for
10 giving back NSF fees to people.

11 **CHAIRMAN ARGENZIANO:** But getting it
12 approved, having it approved.

13 **COMMISSIONER STEVENS:** Yes.

14 **CHAIRMAN ARGENZIANO:** I'm kind of inclined
15 to say the same.

16 Commissioner Skop, did you want to ask a
17 question?

18 **COMMISSIONER SKOP:** Yes. Madam Chair,
19 thank you.

20 To Commissioner Stevens' point, to staff,
21 with respect to the NSF refund, I tend to agree -- I
22 think Commissioner Stevens raised a point about
23 refunding to customers may be cost-prohibitive. But
24 was staff envisioning that the refund would be a
25 credit on existing customers' bills or -- I didn't

1 see that in there, but I'm scouring the page.

2 **MR. MOURING:** That's how it should be
3 treated. I believe there's a provision in a, in a
4 rule where if the customer requests a check, that
5 they can get a check mailed to them within ten days.
6 But typically it would just be a credit.

7 **COMMISSIONER SKOP:** Okay. And do we have
8 an order of magnitude on what the total refund
9 amount would be in terms of dollars?

10 **MR. FLETCHER:** I've just spoken with the
11 utility, and it was in the neighborhood -- Marty,
12 correct me if I'm wrong -- but about, he estimated
13 about 25,000. So that would -- that just gave me a
14 little bit of pause about the administrative cost,
15 given the amount that would be refunded, versus the
16 administrative burden that the utility would have to
17 take on to administer that refund, that it would be
18 excessive of that.

19 **COMMISSIONER SKOP:** Well, that's, that's,
20 that's where I'm trying to, I think, concur with my
21 colleagues on Issue 18. I didn't, I didn't see the
22 amount, unless I'm missing something. But my eyes
23 are pretty tired here. But I was looking for the
24 amount in question, whether it was negligible or de
25 minimis or, you know, whether we're talking about a

1 couple of hundred thousand dollars or, you know,
2 just a small amount.

3 **MR. FLETCHER:** Well, we didn't have access
4 to all the information regarding that. It was
5 mainly just a timeframe when the utility took
6 ownership of May 2008 to when the, when and if the
7 Commission were to approve these charges to refund
8 that amount. I mean, it's just, the time is still
9 going on for that as far as the amount to be
10 refunded. So that's a moving target.

11 **CHAIRMAN ARGENZIANO:** The issue, I am
12 inclined to, to do the same as Commissioner Stevens.
13 But I want to commend staff because they did the
14 right thing. Companies that are regulated by the
15 PSC cannot, excuse the term, just flip us off. I'm
16 not saying this company did. But if we're, if we're
17 going to send a message that you can go ahead and
18 disregard the rules, that's not a good message to
19 send either because we could have 25,000 here,
20 25,000 there, and just we're the regulators.

21 So I -- with all due respect to, to staff,
22 and I commend them because they did the right thing,
23 that's what they're supposed to do, you're supposed
24 to follow the rules. And this -- and hopefully this
25 company will do that from now on. And not to

1 disrespect or to disregard the staff's correct
2 assertion that you need to follow the rules, it
3 just, at this point it shows that it may be more
4 beneficial to just say, okay, you've stopped doing
5 that, don't do it again, and other companies,
6 listen, we're not going to put up with disregarding
7 the rules, be careful and pay attention. But in
8 this case with this company, since they've stopped,
9 let's, let's -- it would be the next step to approve
10 the notices that are sent out and the way they
11 collect the fees and the type, the amount of fees;
12 is that correct?

13 **MR. MOURING:** Yes. Those, those are
14 issues in this case.

15 **CHAIRMAN ARGENZIANO:** Okay. So maybe if
16 we decide that we don't go back to refund, we also
17 kind of state to other companies, please don't,
18 don't take this as a license to just disregard the
19 rules that you're supposed to live by, because we
20 may not be so inclined to do so the next time. If
21 it becomes a real problem, then we have to really
22 wonder if we have done the right thing then.

23 Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Madam
25 Chair. And to your point and to staff with respect

1 to the, I guess the \$25,000 that we now know about,
2 and I also commend staff for trying to do the right
3 thing. I think that they mentioned where refunds
4 have not been done in the past there was an
5 accounting adjustment done to book that as CIAC
6 or -- can staff briefly elaborate on that?

7 **MR. MOURING:** Yes. Whenever a refund
8 ordered by the Commission is unable to be made
9 because the customer has, is unreachable or if, like
10 I said before, if the amount is, is such a small
11 amount that it's just not feasible to do it, that
12 that refund would be treated as cash CIAC for the
13 utility.

14 **COMMISSIONER SKOP:** So neither the, the
15 company would benefit nor the ratepayers would be
16 harmed in that instance.

17 **MR. MOURING:** That's correct.

18 **COMMISSIONER SKOP:** Okay.

19 **CHAIRMAN ARGENZIANO:** Commissioners?
20 Anything else, Mr. Friedman? Anything else?

21 **MR. FRIEDMAN:** Nothing. Thank you very
22 much.

23 **CHAIRMAN ARGENZIANO:** Okay. Well, we also
24 hope that your cancer therapy was very successful.

25 **MR. FRIEDMAN:** So far so good. Thank you.

1 **CHAIRMAN ARGENZIANO:** Good. Good. Glad
2 to hear that.

3 Staff?

4 **MR. MOURING:** Okay. Well, I'll go back to
5 the, Mr. Friedman's comments on rate case expense,
6 Issue 9 -- Issue 8. I'm sorry.

7 **CHAIRMAN ARGENZIANO:** Okay.

8 **MR. MOURING:** In terms of the estimate to
9 complete, Miles Grant was a water and sewer company
10 that had very contentious customer meetings and
11 there was a lot more involved with that case, and
12 this is just a wastewater only that has had some
13 customer involvement but it has not been anywhere
14 near the magnitude of Miles Grant. So I think in
15 terms of the total duties to be performed through
16 the PAA process, they're similar, if not identical.
17 And I just, I don't think it would require more time
18 allocated to each duty to perform that.

19 And Mr. Friedman also mentioned where
20 staff had calculated kind of a composite rate
21 between Mr. Friedman and Mr. Marcelli. Miles Grant,
22 I don't believe Mr. Marcelli was a part of that at
23 all. It was strictly Marty's rate. So that was,
24 that was what was used there.

25 And I, I was not aware of his, his health

1 issues as being his reason for not participating as
2 much as he asserts he typically would. But that's
3 all staff has to go off of is the actual invoices
4 that were provided, and to use that as a going,
5 going forward allocation of time.

6 Let's see. He also mentioned that no
7 postage was, no, no cost was, was allocated for
8 noticing the customers. And the utility did not
9 request that in their revised estimate to complete
10 as of September 30th, 2009. The only thing they had
11 listed there was \$17 for postage.

12 **CHAIRMAN ARGENZIANO:** And you denied \$17?

13 **MR. MOURING:** No. No. The 17 --

14 (Laughter.)

15 **CHAIRMAN ARGENZIANO:** Commissioners?

16 Okay. If there's no other discussion, do we have a
17 motion? And I would -- I'm sorry. I'm sorry.
18 There's other people. I'm sorry. I was ready to
19 go. Wait. Commissioner Stevens -- we still have
20 others. I'm sorry, Mr. Reilly.

21 **COMMISSIONER STEVENS:** Well, I wanted
22 to -- can we take this issue by issue or are we
23 going to take it as a box?

24 **CHAIRMAN ARGENZIANO:** Well, whatever way
25 the Commission --

1 **COMMISSIONER STEVENS:** I'd rather take it
2 issue by issue, if we could.

3 **CHAIRMAN ARGENZIANO:** We can do that. We
4 can do that. Absolutely. Mr. Reilly, I'm sorry.

5 **MR. REILLY:** No problem. Just speak very
6 briefly on two of the issues. On the rate case
7 expense issue, I believe your staff has made a very
8 good faith effort to review and recommend to you a
9 reasonable rate case expense that should be borne by
10 the ratepayers. And really this review process has
11 produced fairly modest adjustments, which I would
12 urge you to approve.

13 On the issue of the bad debt expense, we
14 do support the primary recommendation. It is also a
15 reasonable methodology to, to normalize that expense
16 for the average of the five years. I would point
17 out that of those five years, a very anomalous, very
18 high 2008 is in that average. And, and we don't
19 know what happened in 2008, but we do know that the
20 utility was, they assumed control of the utility
21 during that year. And it may well be that the new
22 owners came in and wrote off a number of the old
23 accounts, accounts receivable, and this would be an
24 anomalous situation that we wouldn't expect to see
25 in the future. And so that even by including that

1 anomalous year with the other four is a reasonable
2 primary recommendation for bad debt expense. So we
3 would support the primary recommendation.

4 **MS. BANKS:** Cheryl Banks on behalf of
5 Commission staff.

6 Just for clarification, the year 2008
7 because of that anomaly was removed from the average
8 in calculating the alternative. Staff did not use
9 that because of that high amount.

10 **MR. REILLY:** Okay. Thank you.

11 **CHAIRMAN ARGENZIANO:** Any questions for
12 Mr. Reilly?

13 Mr. Friedman, did you want to respond?

14 **MR. FRIEDMAN:** Oh, I've already addressed
15 that issue, and we, we support the alternative
16 recommendation.

17 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

18 **MR. REILLY:** I guess I stand -- my
19 accountant tells me that it is in the average. At
20 least the information I'm looking at here --

21 **CHAIRMAN ARGENZIANO:** Okay.

22 **MR. FRIEDMAN:** -- has, for the primary
23 recommendation it does include the anomalous high to
24 produce that.

25 **CHAIRMAN ARGENZIANO:** Okay. Cheryl.

1 **MR. FRIEDMAN:** Now I may be -- I'm assured
2 of that.

3 **MS. BANKS:** That's correct, Steve, you are
4 in that. Not in the alternative though.

5 **MR. REILLY:** Right. But I was supporting
6 the primary, which gave --

7 **CHAIRMAN ARGENZIANO:** Primary, which does
8 --

9 **MS. BANKS:** Sorry. Okay. Did not
10 understand. Thank you.

11 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
12 Edgar.

13 **COMMISSIONER EDGAR:** Thank you. And I'm
14 going to start with staff, but perhaps if the
15 company would then like to respond as well, that's
16 fine. And I'm looking at Issue 8 on the rate case
17 expense. And there has been some discussion here
18 and also, of course, in the written item about the
19 2007 Miles Grant case when we're looking at the rate
20 case expense that has been requested.

21 I think it's important and I certainly try
22 to have my rationale for decisions be consistent;
23 however, I also recognize that every rate case,
24 every case is unique and has unique aspects to it.
25 So I'm just wondering with the Miles Grant case

1 if -- are we holding that up now as the standard on
2 a go-forward basis? I mean, when I read the
3 write-up, it's, it kind of seems to say, well, this
4 is more than that case was and the cases have some
5 similarities; therefore, it should be a similar
6 amount. And I'm not sure that -- well, let me
7 rephrase. I am certain that when I voted on the
8 Miles Grant case, I didn't necessarily know that
9 that was going to be the standard that would be
10 applied to all similar cases in the future. And are
11 we, are we on firm legal, legal ground to say that
12 that indeed is the standard of this Commission on a
13 go-forward basis, which is what it seems to kind of
14 be saying to me?

15 **MR. MOURING:** Well, each rate case is
16 certainly different. However, both cases were
17 processed by Rose, Sundstrom & Bentley by Marty
18 Friedman for that utility, representing them. And
19 just the duties that they would be performing, the
20 legal functions that Marty or Christian Marcelli
21 would have to be performing are very, are
22 essentially identical. And the time associated with
23 them, it would stand to seem reasonable that they
24 should be very similar as well. And that, that's
25 the justification that, that staff has used in

1 determining that that, that was a reasonable amount
2 of time.

3 **CHAIRMAN EDGAR:** Okay. So if the staff
4 recommendation were to be adopted by this Commission
5 today, are we putting all companies or just
6 companies that use this law firm on notice that from
7 this point forward 53.5 hours is all that can be
8 approved for a rate case or the maximum that can be
9 approved for rate case expense for comparably sized
10 utilities?

11 **MR. MOURING:** I don't think so. I think
12 the 53.5 hours is just kind of a high watermark that
13 staff has used in determining the reasonableness of
14 --

15 **COMMISSIONER EDGAR:** What's the difference
16 between a high watermark and the maximum amount?
17 And I do -- and I'm not trying to be argumentative.
18 Whether 61 hours is exactly right or whether 53.5 is
19 exactly right is probably a little bit, you know,
20 subjective by decision-makers and others. But my
21 question is trying to get where would this decision
22 really be taking us or putting us? And it sounds to
23 me like we might be establishing a standard. And if
24 that's the case, I think we should be up-front about
25 it.

1 **MR. MOURING:** Well, it does come down to a
2 judgment call for each individual case, but these
3 cases are similar.

4 **MS. WILLIAMS:** Anna Williams.

5 I think that what staff was doing was just
6 drawing, drawing an analogy between what they
7 believed was a similar case. I think in order to
8 help your decision process, kind of finding apple,
9 comparing apples to apples, I don't think a decision
10 approving staff's recommended amount would indicate
11 that that's now the standard, especially if you
12 indicate that that's not what you're basing your
13 opinion on, just looking at a, at a comparison to
14 this case so that we have kind of a benchmark to go
15 off of.

16 **COMMISSIONER EDGAR:** And I do appreciate
17 the discussion and the written discussion in the
18 item making some comparisons, I really do. I think
19 that that is helpful. But, again, I'm trying to
20 understand what the future implications, if any,
21 would be on a decision that is framed in this
22 manner.

23 And, Mr. Friedman, do you have any
24 comment?

25 **MR. FRIEDMAN:** It seems like the staff is

1 saying one thing and doing another. I mean, it
2 seems like to me now they're saying we're not using
3 it as a bright line, we're using it as a guideline.
4 But yet if you look at the -- they're saying now
5 53.5 is the number. If they had looked at 53.5 and
6 said, well, you know, this case is a little bit
7 different. Maybe it should be -- and you're asking
8 for 61, maybe it should be 58, then, you know, using
9 it as a guideline I think is fine. I mean, that's
10 what everybody does I think in looking at the cost
11 of things is to look at what's the guideline and
12 then go up or down depending upon the nuance of
13 every case.

14 And that's my problem with this is they're
15 just saying it's 53.5 because that's what we said in
16 Miles Grant and it's kind of like this case and so
17 it's going to be the rule in this case.

18 And, you know, like look at data requests.
19 You can't say responding to data requests in one
20 case is going to be like the others. They're all
21 very different. And so all I'm suggesting is don't
22 create a bright line. If you want to say it's not
23 61.1 that we asked for, fine. But have a legitimate
24 basis for saying it should be 59 or 58 or even 53.5
25 other than saying we did it in Miles Grant, so

1 that's why we're doing it here. And that's, that's
2 my concern is I think what you're saying is you're
3 creating a bright line about this is going to be the
4 number and this -- so I need to look at every other
5 rate case I process and it's going to be, this is
6 going to be the number. I mean, why even file the
7 estimate of rate case expense? From now on I'll
8 just put down 53.5 pursuant to the Ni Florida order.

9 **CHAIRMAN ARGENZIANO:** I'm not so sure that
10 I take it as the staff drawing a white line. I
11 think that they're doing what they have to do in
12 looking at comparable cases. They're not saying
13 this is it and this is what you have to go by
14 forever. I think they're saying, well, in order to
15 give you comfort to have some kind of a guideline to
16 go by, this is what a comparable case is and then
17 you take it from there. I don't see it as that
18 white line.

19 **MR. FRIEDMAN:** Well, I wonder if the
20 comparable case would have been higher, whether they
21 would have come back and said, oh, no, you only
22 asked for 61.1, but this comparable case said 65. I
23 don't think you can say -- and that's why I'm saying
24 I think, I think what the staff is saying and what
25 they're doing are two different things. They're

1 saying it's a guideline. They're treating it like a
2 bright line. They went, they went to the exact same
3 number, the exact same number they had in that case.
4 That's where I find fault. That's not good
5 regulatory policy to say it's going to be the same
6 when every rate case expense -- every rate case is
7 somewhat different and, therefore, every rate case
8 expense is going to be somewhat different.

9 **CHAIRMAN ARGENZIANO:** Well, then is it --

10 **MR. FRIEDMAN:** If this case is like the
11 Miles Grant case, overall rate case expense number
12 of hours is less in this case -- the staff has
13 approved less in this case than they did in Miles
14 Grant.

15 **CHAIRMAN ARGENZIANO:** Well, then is it
16 possible, do you think that staff can go to the
17 minutia of every case and figure out every little
18 thing? Is that possible to do it that way?

19 **MS. BANKS:** Yes, ma'am, it is.
20 Essentially that's what we typically try to do is
21 that we look at the invoices and we see and we try
22 to determine is that a reasonable amount of time.
23 And that's how you got to some of the original
24 bases. So we can do that in the future rather
25 than -- you know, if you don't want us to mention

1 another case, but we'll do the same exercise.

2 **CHAIRMAN ARGENZIANO:** Commissioner Skop,
3 then Commissioner Stevens.

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

6 It seems that we're spending an awful lot
7 of time discussing legal fees this morning on many
8 issues. But I tend to concur with the discussion
9 that I also don't believe that this is intended to
10 be a bright line or to articulate a standard. I
11 think simply put, staff is looking at reasonable and
12 customary legal expenses as a comparison to
13 historical cases versus this case that had been
14 prosecuted or litigated by the same law firm, if not
15 the same attorneys.

16 So I think that, you know, looking at the
17 rational basis for costs, ensuring that all costs
18 are prudently incurred that are passed through to
19 the ratepayers is an important aspect of any rate
20 case and that a test for reasonableness is certainly
21 appropriate. Again, that should not be construed to
22 be a bright line or a standard, but merely staff
23 doing their job. So that's the way I'd look at it.

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

1 **COMMISSIONER STEVENS:** I'm fine. Thanks.

2 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
3 Edgar.

4 **COMMISSIONER EDGAR:** I guess it would, it
5 would look less like a standard to me if it was 54,
6 54.5, 51, but to put it at exactly to the 30 minutes
7 of the exact same amount, you know, walks, quacks,
8 talks a little bit like a standard to me.

9 Now as far as referencing prior cases, I
10 find that helpful, so I hope that will continue. It
11 helps trigger my memory and, and other things. But
12 the difference between a high watermark or a bright
13 line or an absolute standard and guidance I think is
14 a discussion that was worth having, so I appreciate
15 that.

16 **CHAIRMAN ARGENZIANO:** Commissioner
17 Klement.

18 **COMMISSIONER KLEMENT:** To amplify on that
19 point, has Mr. Friedman defended the reason, the
20 justification for this case being more complicated
21 or more anomalous than the Miles Grant one to
22 justify the higher number of hours? Have we -- are
23 we satisfied that he has?

24 **CHAIRMAN ARGENZIANO:** Staff?

25 **MR. MOURING:** No. If anything, Ni Florida

1 should have been a simpler case to process than
2 Miles Grant. Miles Grant had, like I said, it was
3 water and wastewater and there was a lot of customer
4 involvement and a lot of different customer concerns
5 that needed to be addressed.

6 **COMMISSIONER KLEMENT:** And there were none
7 here?

8 **MR. MOURING:** There were no quality
9 concerns issued by the, or brought forth by the
10 customers, but they did have some concerns about the
11 rate increase.

12 **CHAIRMAN ARGENZIANO:** Anything else,
13 Commissioners?

14 Mr. Reilly?

15 Okay. Commissioner Skop.

16 **COMMISSIONER EDGAR:** I'm sorry.

17 **CHAIRMAN ARGENZIANO:** I'm sorry.
18 Commissioner Edgar, then Commissioner Skop.

19 **COMMISSIONER EDGAR:** I thought you called
20 on me. I apologize.

21 **CHAIRMAN ARGENZIANO:** I'm sorry. No. Go
22 right ahead.

23 **COMMISSIONER EDGAR:** And I have a head
24 cold, so actually I'm not sure I'm even hearing
25 correctly. So bear with me. I appreciate your

1 patience to everyone.

2 Did I just hear you say there were not
3 concerns about quality when the recommendation is
4 that the quality is, is not satisfactory, or did I
5 misunderstand?

6 **MS. BANKS:** That was from a customer
7 perspective. In, in the Miles Grants case there was
8 a lot of concern from the customers on water
9 quality. This wasn't so much the customer's issue
10 in this.

11 **COMMISSIONER EDGAR:** So we're saying that
12 the overall quality of service is marginal, but that
13 doesn't have anything to do with the customers'
14 quality of service?

15 **MR. MOURING:** The customers at the
16 customer meeting, their, their concerns were based
17 off of the proposed rate increase and the negative
18 financial impact that it would have on them. But
19 it's, it's a wastewater only, so I mean the water
20 quality would not be an issue. It's just -- and
21 there was no sewer backing up, no concerns of that
22 issue.

23 **COMMISSIONER EDGAR:** I'm all for the no
24 backing up.

25 **MR. RIEGER:** Commissioner, Stan Rieger of

1 staff.

2 This was more of a compliance situation
3 that generated the marginal determination. Ni
4 Florida, when they purchased the utility, they
5 purchased a problem system where the system was
6 having problems with chlorides getting into the, the
7 wastewater. And the receiving treatment entity,
8 which was Pasco County, was experiencing the high
9 chloride events coming into their treatment system
10 that was being received from the Ni Florida service
11 area, which was affecting their treatment. So they
12 were having a situation with the utility and
13 requiring them to improve the situation, which is
14 what the utility is attempting to do.

15 **COMMISSIONER EDGAR:** Thank you.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Madam
18 Chair.

19 Just briefly again on the staff
20 adjustments to the estimated cost of completion for
21 legal services. Again, I did think that the
22 weighted average adjustment was appropriate. I
23 didn't think necessarily the total hours were way
24 out of whack, but I think the adjustments made by
25 staff are appropriate. And, again, I think this is

1 a useful benchmark for a segue into discussion on
2 legal fees on the Water Oak utility case, which I
3 will not be so kind when I get to that.

4 **CHAIRMAN ARGENZIANO:** Okay. Do we want
5 to -- Commissioner Stevens, did you want to just go
6 issue by issue, start at a particular place or --

7 **COMMISSIONER STEVENS:** If that's okay with
8 the Commission.

9 **CHAIRMAN ARGENZIANO:** Absolutely. Yes.
10 Absolutely.

11 Okay. So we -- staff -- well, I'll see.
12 Are you okay?

13 **COMMISSIONER STEVENS:** I'm okay with
14 1 through 6. I mean, if --

15 **CHAIRMAN ARGENZIANO:** I meant the court
16 reporter.

17 **COMMISSIONER STEVENS:** Oh.

18 **CHAIRMAN ARGENZIANO:** Are you okay for a
19 few minutes? Okay. Let's go on.

20 On Issue Number 1?

21 **COMMISSIONER STEVENS:** I'm good, I'm good
22 with 1 through 6, if you want to take it in a block.

23 **CHAIRMAN ARGENZIANO:** Okay. Let me ask
24 the other Commissioners, any, any questions or
25 anything you want to talk about on Issues 1 through

1 6? Are we all okay? Commissioner Klement?

2 **COMMISSIONER KLEMENT:** Okay.

3 **CHAIRMAN ARGENZIANO:** Commissioner Skop?

4 Okay. So then we can go on. We know that 1 through
5 6 we're okay.

6 How about we then start at Issue 7.

7 Commissioners, questions for staff? So then we were
8 okay through 1 through 7.

9 **COMMISSIONER STEVENS:** Yes, ma'am.

10 **CHAIRMAN ARGENZIANO:** Okay. Let's go to
11 Issue 8 again. Questions? Would you like staff to
12 explain the, the --

13 **COMMISSIONER STEVENS:** Well, I know that
14 staff looks through these bills and I appreciate the
15 comparables that they've given us from past cases,
16 and I treat those as comparables, not as a
17 precedent. And I hope that we continue to have
18 those comparables. I don't want to get into looking
19 at these bills after staff looks at them. If staff
20 can work with the company or work with counsel and
21 if something is not supposed to be included in the
22 bill and it was incorrectly there, then they can
23 back it out. But, you know, I don't want to tell
24 people how to handle billable hours. And, you know,
25 every case is different. I don't know how many

1 times the attorney or CPA has to talk to the actual
2 company and things come up. And even though it may
3 look like a simple case, there may be something that
4 doesn't seem so simple. So I don't want to, you
5 know, dive into these bills and each incremental
6 hour and look at what the phone conversation was.

7 **CHAIRMAN ARGENZIANO:** I think that what
8 staff, and my thought on it is that we have to have
9 some kind of control of the amount of available
10 hours and they have to be some kind of comparison,
11 with the understanding that there may be more
12 difficult things or more tasks involved that are
13 going to be higher billable hours. But, you know,
14 it could be -- if we're not looking at that, our
15 staff is not looking at that, we could wind up
16 paying, or the ratepayer could wind up paying a lot
17 more than, than absolutely necessary. And I think
18 that's the control in being a regulated utility.

19 Commissioner Skop, but I don't think
20 Commissioner Stevens is finished.

21 **COMMISSIONER STEVENS:** I'm all right.

22 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
23 Skop.

24 **COMMISSIONER SKOP:** Thank you, Madam
25 Chair.

1 And I agree with Commissioner Stevens. I
2 don't like getting into the minutia except where,
3 those areas where something sticks out like a red
4 thumb and it requires a little bit more discussion.

5 So, again, I think that I'm comfortable
6 with the staff adjustments, trusting our staff that
7 they've got far more experience in looking at things
8 and assessing what's appropriate. Again, I don't
9 want to constrain reasonably incurred legal
10 expenses, but then again there needs to be a
11 reasonable and customary, you know, aspect made.
12 And I think how you, how you get there is, is
13 looking at comparisons to similar cases, noting that
14 you're not going to get to the exact number. But a
15 good rule of thumb is a, is an acid test, if you
16 will.

17 **CHAIRMAN ARGENZIANO:** Well, I think
18 putting it very plainly, as I, as I try to do many
19 times and it just seems so natural to do is that --
20 I mean, you have to have some kind of an
21 understanding of, of what a case involves. And not
22 to go down -- and I've heard the word minutia used
23 recently very wrongly, and I don't want to make it
24 sound like that's what we're doing today. I think
25 what we're talking about is complexity, not minutia.

1 Minutia is the little stuff that, you know, crossing
2 the I's -- I mean dotting the I's and crossing the
3 T's. But so I think it depends on the complexity of
4 each case and what is involved in that. And so you
5 really can't rubber stamp. But staff has only
6 certain things that they have to use, certain tools.
7 And the tools are, hey, if we know this case is
8 pretty similar and we've looked through and the
9 complexities are not much greater -- and if they
10 are, it's up to the utility to let us know -- if
11 they're not much greater, then what is the stopping,
12 then what is the stop point to what is unreasonable?
13 I'm not saying that attorneys will do that, but, you
14 know, it's to their benefit if they do sometimes
15 push a little, and I'm not saying they do, but
16 that's what staff is there to do. So I think the
17 minutia we put aside and look at the complexities of
18 each case. And if they are different, then they
19 can't be rubber stamped. And that's up to the
20 utility then to make sure they make their case in
21 front of us and to staff that there are different
22 complexities and that they need to be treated
23 differently.

24 Commissioner Skop.

25 **COMMISSIONER SKOP:** Just briefly. And I

1 wholeheartedly agree. I think at least from an
2 engineering perspective it's an order of magnitude
3 estimate as to what's reasonable. And as long as
4 it's the same order of magnitude, everything is
5 fine. But if it gets way out there to where it's
6 causes concern, that's where adjustments are
7 appropriate.

8 **CHAIRMAN ARGENZIANO:** And to make this
9 sound this simple, but it's the same thing, you're
10 going out shopping and buying a major appliance.
11 You kind of know what's in line and what's not. You
12 know, if it's a GE refrigerator here at Lowe's for
13 \$1,500 and there's the same one at Home Depot for
14 \$3,500, guess what? Something is not right. And
15 that's really what it comes down to very plain and
16 simple. So, but -- and given that, the company has
17 a right to make sure that those complexities, if
18 they are different than the standard case that looks
19 comparable, is expressed. And it's up to us to make
20 sure that we look at that too.

21 Okay. Anything else? Commissioner Skop.

22 **COMMISSIONER SKOP:** (Inaudible.
23 Microphone not on.)

24 **CHAIRMAN ARGENZIANO:** Anything else on --
25 thank you, Commissioner Skop. I'm not sure we're

1 done with 8. Are we done with 8 for everybody's
2 satisfaction?

3 **COMMISSIONER STEVENS:** Well, I heard a
4 couple of different numbers.

5 **CHAIRMAN ARGENZIANO:** Uh-huh.

6 **COMMISSIONER STEVENS:** I believe when
7 Mr. Friedman was going through it, he said that the,
8 the costs incurred so far were around \$126,000, and
9 staff is recommending the 98,184 based on their
10 estimates. So where are we going with Issue 8?

11 **CHAIRMAN ARGENZIANO:** Okay. Discussion.
12 Commissioner Skop, then Commissioner Klement.

13 **COMMISSIONER SKOP:** Thank you, Madam
14 Chair.

15 I -- as far as Commissioner Stevens'
16 question, where I'm at with Issue 8 is I pretty much
17 support the staff recommendation for the adjustment.

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

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

22 Well, that's what it appears the majority
23 consensus seems to be, that we agree the staff's
24 recommendation is the better, closer cost, although
25 Commissioner Edgar perhaps has not said that.

1 **COMMISSIONER EDGAR:** I have not. I -- it
2 sure would be easier if it was just even off a
3 little bit. It's just so ironic to me that two
4 years apart that two similar cases would come down
5 to the exact 30-minute increment as a guideline.
6 Just I, you know, I, I feel like we're being a touch
7 disingenuous.

8 But recognizing the discussion that we've
9 had as to how we're, how we're approaching it and
10 how we're thinking it through, it's just -- I mean,
11 the exact 30-minute increment but it's not an exact
12 comparison. I don't know. It's irony.

13 **CHAIRMAN ARGENZIANO:** Well, I think I've
14 heard -- and if that changes your mind, I'm not
15 sure, or you have a different -- I think what I
16 heard from staff is that they felt that this was
17 actually less of work -- more -- less work detail
18 oriented or less complex than the other case. Is
19 that correct?

20 **MR. MOURING:** That is correct. And --

21 **CHAIRMAN ARGENZIANO:** So basically instead
22 of going lower, if you really wanted to go down to
23 the complexities of the different cases, in your
24 opinion then it may even be a lower amount than the
25 exact amount.

1 **MR. MOURING:** It -- that is absolutely
2 correct. The problem --

3 **CHAIRMAN ARGENZIANO:** That's what I heard.

4 **MR. MOURING:** -- is it's kind of difficult
5 to quantify the complexity in terms of estimated
6 hours to complete. But in the future staff will,
7 will attempt to address that.

8 **COMMISSIONER EDGAR:** And that's my point
9 right there, it's difficult to quantify; therefore,
10 we're going to use the exact number?

11 **CHAIRMAN ARGENZIANO:** Well, then how have
12 you done it here for the past 20, 30 years? I mean,
13 is this suddenly something new? This is amazing to
14 me that you don't know all of the sudden what it
15 takes to do a case, I mean, within reason. If I'm
16 hearing from staff that you're saying it's actually
17 less complex or less work than the other case that
18 you're comparing it to, well, then perhaps you're
19 being generous.

20 **MR. MOURING:** Well, the total number of
21 hours in this case, as Mr. Friedman pointed out, is
22 less than Miles Grant. And that was what kind of
23 gave me --

24 **CHAIRMAN ARGENZIANO:** Okay. So then, then
25 maybe inflation or something else has to, attorney

1 fees rising or whatever it is maybe is the answer to
2 that. But I don't find it amazing that it's the
3 same number, especially if there's less work. I
4 just don't find that amazing. It has to make we
5 wonder how you've done it here for some many years
6 if all of the sudden we don't know how attorneys
7 bill similar cases. And if that's the case, then
8 are we to tell staff that everything, everything,
9 even every phone call is to be looked at? Then we'd
10 never get done with a case. So I'm really not sure
11 what the amazement is.

12 I understand Commissioner Edgar's
13 comments, but it just confuses me more. If there's
14 less work, and that's what I hear staff and that's
15 what I'm trying to answer Commissioner Klement's
16 comment, if it's less work, I don't hear where the
17 problem is. If it was more work and the company was
18 telling me it was more complex and so on and staff
19 was agreeing with that, well, then I'd have to
20 question how is it the same number? Do we change
21 the number by a point? I don't know.

22 **MR. FRIEDMAN:** Well, Madam Chairman, you
23 haven't heard me say it was less complex.

24 **CHAIRMAN ARGENZIANO:** No. No, I haven't.
25 And --

1 **MR. FRIEDMAN:** Maybe from the staff's
2 perspective, maybe from the staff's perspective --

3 **CHAIRMAN ARGENZIANO:** True.

4 **MR. FRIEDMAN:** -- it was less complex. It
5 certainly wasn't from our perspective.

6 **CHAIRMAN ARGENZIANO:** But you didn't make
7 a basis for it. I didn't hear the complexity in
8 detail, and that's what I have to -- that's what I'm
9 trying to say here. I'm not hearing --

10 **MR. FRIEDMAN:** I don't think anybody bills
11 more detailed than we do because we know you're
12 going to look at it. And we -- they put this in
13 every staff recommendation. We articulate down to
14 the tenth of an hour what we expect.

15 **CHAIRMAN ARGENZIANO:** So then you're
16 telling me that staff, with your detail, and all
17 your detail in there, staff came up with that it was
18 less hours but it should cost more?

19 **MR. FRIEDMAN:** Well, the company has
20 actually paid us \$44,000. And I tell you, we don't
21 bill them anything that we don't think is
22 reasonable.

23 **CHAIRMAN ARGENZIANO:** Excuse me. Excuse
24 me. Hang on one second. Are you finished with your
25 comment?

1 **MR. FRIEDMAN:** Yeah.

2 **CHAIRMAN ARGENZIANO:** Okay.

3 Commissioner Stevens.

4 **COMMISSIONER STEVENS:** And that's where my
5 anxiety is. If we don't have a standard, which we
6 don't, and we're using a comparable down to the half
7 hour on a case that is, you know -- yeah, it's
8 comparable, but there are differences all the way
9 through. It's a different time, it's a different
10 year, it's different attorneys, it's a different
11 company, and questions arise. And that's where I go
12 back to I appreciate the comparable, but I don't
13 want to take something that I feel is, and this is
14 my opinion, that's arbitrary.

15 If I have a bill that outlines the hours
16 and the hourly rate and a description of the work
17 performed and staff reviews it in detail and they're
18 able to find something that may be duplicated and
19 pull it out and talk to that counsel and they agree
20 to it, I don't want to go back on that because I
21 don't, I don't think that's right because we don't
22 have a standard.

23 Now if we want to have a standard that
24 says, you know, you're not going to go over \$50,000
25 or 50 hours or whatever it is, I'll work with that.

1 But I don't think it's right for me to go in and
2 say, well, you didn't need to talk to that guy for
3 an hour, it should have been a half hour, and you
4 don't need to charge \$320 when you can let this guy
5 talk for \$150 an hour.

6 So that's -- I'm not into that decision.
7 I'm into looking at this, there's not a standard,
8 evaluating the comparable. And if it looks
9 reasonable, then I believe we need to go, go with
10 that. Thank you.

11 **CHAIRMAN ARGENZIANO:** Commissioner
12 Klement.

13 **COMMISSIONER KLEMENT:** To that point,
14 Commissioner Stevens' point, I think we can sit here
15 all day picking apart, nitpicking every, every cost
16 here, every hour or half hour or quarter hour. I
17 think that would be self-defeating. I think there,
18 there should be a reasonable range and some
19 reasonable leeway for each case's conditions and
20 factors that weigh into what costs, what the costs
21 are.

22 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you, Madam
24 Chair.

25 And, again, I don't know what the right

1 answer is. I know that typically, you know, staff's
2 recommendation forms the basis for appropriate
3 adjustments that the Commission considers on a
4 case-by-case basis.

5 Looking at the difference here, 61.5 hours
6 versus staff recommendation of 53.5 hours, it
7 appears to me that roughly, subject to check, about
8 seven hours of legal services at roughly \$300 an
9 hour. So we're talking about \$2,100. It seems
10 somewhat trivial, but that's cost that does
11 ultimately get passed through to the ratepayer,
12 which is why we have to get embroiled in such
13 discussions to make sure that such costs
14 are reasonably and prudently incurred before, you
15 know, we just arbitrarily pass them through.

16 So, again, whatever the majority chooses
17 to do. I'm comfortable with the staff
18 recommendation, noting that it's not perfect, I have
19 flexibility there, I'm willing to compromise. But
20 it seems to me that there ought to be an objective
21 comparison performed. And like Chairman Argenziano
22 stated, you know, if you, if you go to the appliance
23 store or go to the grocery store, I'll use grocery
24 store as a better example, and I buy Coke Zero and I
25 buy a lot of it, you tend to have a good

1 appreciation, if you do it often enough, what Coke
2 Zero should cost you.

3 So, again, this doesn't seem to be
4 extraordinarily out of whack, but, again, there has
5 to be I think some deference given to staff,
6 adjustments, and they're more detailed, so.

7 **CHAIRMAN ARGENZIANO:** Okay. Staff,
8 anything else? Anything further? Mr. Friedman?

9 **MR. FRIEDMAN:** No, nothing further.

10 **CHAIRMAN ARGENZIANO:** Do you want to
11 add --

12 **MR. FRIEDMAN:** I think what, what
13 Commissioner Skop said was correct. I mean, we, we
14 put in the right number of hours and we think those
15 are legitimate. And, in fact, the client has paid
16 \$44,000. So at the very least we think the staff
17 adjustment of 58.16 should be deleted and our rate
18 case expense increased by that amount. Thank you.

19 **CHAIRMAN ARGENZIANO:** Thank you.

20 Mr. Reilly.

21 **MR. REILLY:** I would just add that I think
22 staff has made a good faith effort to say what, what
23 is the reasonable expense that should be borne by
24 the ratepayers? In looking at these past cases they
25 said they could go out and bill however many hours,

1 but the ratepayers should not have to bear anymore
2 rate case expense except for this level. And we
3 think they did a reasonable job of doing that.

4 **CHAIRMAN ARGENZIANO:** Okay. We're on
5 Issue 8 and we haven't voted on 1 through 7.

6 **COMMISSIONER EDGAR:** Mr. Reilly, so you
7 are saying that 53.5 is the ceiling? I mean, I
8 think that's what you just said.

9 **MR. REILLY:** No, ma'am. I don't think
10 that's what I said.

11 **COMMISSIONER EDGAR:** Okay. Then what did
12 you say?

13 **MR. REILLY:** I said that they looked at
14 the other cases and determined that, what would be
15 a, a reasonable level. And, if anything, I think we
16 explained that this is just one of many, many
17 elements. That 53 that you've homed in on, the
18 entire rate --

19 **COMMISSIONER EDGAR:** .5.

20 **MR. REILLY:** And I think that it was a
21 reasonable standard that they could apply.

22 **COMMISSIONER EDGAR:** But a standard.

23 **MR. REILLY:** Well --

24 **COMMISSIONER EDGAR:** If it's a reasonable
25 standard, it is a standard. I mean, an unreasonable

1 standard is a standard, but you just said it is a
2 reasonable standard and that's saying it's a
3 standard.

4 **MR. REILLY:** I think they were trying to
5 use it as a benchmark to see -- and if it came out
6 to that exact penny --

7 **COMMISSIONER EDGAR:** Or a guideline.

8 **MR. REILLY:** -- which is a problem, but I
9 think this was an exercise that they did which was
10 to try to keep rate case expense from just being
11 able to bill any number of hours just because --

12 **COMMISSIONER EDGAR:** I don't think I've
13 said anything about billing any number of hours.
14 And I'm not being critical of staff; I'm just trying
15 to understand what the rationale is and what the
16 implications are. And to tell me it is not a
17 standard, but then to tell me it's a reasonable
18 standard just is a little -- the cognitive
19 connection is not made for me between a standard or
20 a reasonable standard being two distinct things.

21 **MR. REILLY:** I think staff has frequently
22 looked at past cases. I have seen it in case after
23 case, and I think it's an effort to try to keep this
24 escalating rate case expense -- when we first
25 started doing this, over the years the rate case

1 expense has just escalated to where it has become a
2 major, major problem for ratepayers. And I think
3 that this is staff's way of trying to determine, you
4 know, what has happened in similar cases and --

5 **COMMISSIONER EDGAR:** Mr. Reilly, I don't
6 disagree with you at all on that point, nor with
7 any, really, of the discussion. But I still feel
8 like I'm hearing from staff it's a standard, but
9 it's not a standard. And you just said it's not a
10 standard, but it's a reasonable standard.

11 **MR. REILLY:** Well, I think I would use the
12 word benchmark.

13 **COMMISSIONER EDGAR:** Eventually, yes.
14 Thank you.

15 **MR. REILLY:** Well -- thank you.

16 **CHAIRMAN ARGENZIANO:** Okay. Since we were
17 moving on, we're going to take them individually,
18 and we didn't vote for 1 to 7. Let's go ahead and
19 get a motion on 1 to 7.

20 **COMMISSIONER SKOP:** Madam Chair, I move to
21 approve staff recommendation for Issues 1 through 7.

22 **COMMISSIONER KLEMENT:** Second.

23 **CHAIRMAN ARGENZIANO:** Okay. All those in
24 favor, aye.

25 (Vote taken.)

1 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
2 That is approved.

3 Now we are on Issue 8. Do I have a motion
4 on Issue 8?

5 **COMMISSIONER SKOP:** Move to adopt the
6 staff recommendation for Issue 8.

7 **COMMISSIONER KLEMENT:** Second.

8 **CHAIRMAN ARGENZIANO:** We have a second.
9 All those in favor, say aye.

10 (Vote taken.)

11 **CHAIRMAN ARGENZIANO:** Opposed, the same
12 sign. That motion is adopted.

13 Now we are going to move to Issue 9.

14 **MR. MOURING:** On Issue 9, staff believes
15 that --

16 **CHAIRMAN ARGENZIANO:** Excuse me. This is
17 where we have the alternative recommendation, so we
18 would like an explanation on both, please.

19 **MR. MOURING:** Staff believes that a
20 five-year average should be used to normalize the
21 bad debt expense. Given the substantial increase in
22 bad debt expense concurrent with the economic
23 downturn, staff does not believe that this level of
24 bad debt expense will be incurred in the future, and
25 thus a normalizing adjustment is necessary.

1 Also, staff notes that there are
2 mechanisms in place to attempt to mitigate some of
3 the bad debt expense incurred by the utility. And
4 in setting rates on a prospective basis, staff
5 believes that a five-year average more accurately
6 reflects a normal year of operation and should be
7 utilized in this case.

8 **CHAIRMAN ARGENZIANO:** And that is the
9 recommendation where the 2008 was not -- was used.
10 It was used. Okay.

11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam
13 Chair.

14 I guess I'm comfortable either way, I just
15 wanted to get the views of my colleagues,
16 particularly with respect to the alternate
17 recommendation to see if there is any interest in
18 moving forward with that. But, again, either/or is
19 appropriate.

20 **CHAIRMAN ARGENZIANO:** Well, could I hear
21 an explanation on the alternate recommendation and
22 why there is an alternate recommendation?

23 **MS. BULECZA-BANKS:** Yes, Chairman.

24 When I evaluated this and I looked at the
25 anomalies that were occurring in the early years of

1 2004 through 2006 and saw that that was very low
2 compared to what we are seeing from 2007 on, in my
3 viewpoint we are trying to set the rates that are
4 reflective of what costs the utility will incur.
5 And by using three years of those lower average, I
6 thought that you would end up with an amount that
7 was too low and that the company would be incurring
8 this bad debt expense and would not be able to
9 recover -- would not be recovering.

10 Please note that these bad debt expenses
11 that you see are net of the write-offs that they
12 would have had from the deposits. So these are net.
13 These are actual write-offs of the utility of what
14 they didn't collect. However, when I did look at
15 that, I agree as Mr. Reilly pointed out, 2008 was
16 definitely an anomaly, and I didn't see that
17 continuing on. So while I would have recommended
18 truly a typical three-year average, which I think
19 would be more indicative of what we would see in the
20 future, I did have to take 2008 out because it was
21 just -- it would have skewed it too badly.

22 So to me taking the average of the 2009
23 and 2007 would get you a more realistic amount of
24 what they probably will incur at least in 2010,
25 probably as much as 2011. I don't think you're

1 going to see the averages down to the lines of 2007
2 backwards.

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

5 **COMMISSIONER STEVENS:** Madam Chair, I
6 appreciate the work that staff put into this. In
7 looking at the history, I don't think there's any --
8 you know, looking at the 9,000 in '06, the 7,500 in
9 '05, I don't think we're going to get back to that
10 level. Looking at '07, and then '08, and then
11 looking at the estimate for '09, I believe that the
12 alternative of -- I believe, 24,549 is more
13 realistic for bad debt expense. That's where I am
14 with that.

15 **CHAIRMAN ARGENZIANO:** And I tend to agree
16 with having 2008 out of that, it is based on the '07
17 and '09, and I think it may be more realistic.

18 Commissioner Skop, Commissioner Klement,
19 Commissioner Edgar, any comments? Okay.

20 Commissioner Skop.

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

23 If there's no further discussion, I would
24 move to accept the --

25 **CHAIRMAN ARGENZIANO:** Wait, wait. Before

1 we do that any -- Mr. Friedman, Mr. Reilly, anything
2 further on that? Okay. Go ahead, Commissioner
3 Skop.

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

6 If there's no further discussion, I would
7 move to adopt the alternate staff recommendation for
8 Issue 9.

9 **COMMISSIONER STEVENS:** Second.

10 **CHAIRMAN ARGENZIANO:** All those in favor,
11 say aye.

12 (Vote taken.)

13 **CHAIRMAN ARGENZIANO:** Opposed, same sign?
14 That's adopted.

15 Okay. Issue 10. Staff.

16 **MR. MOURING:** Item 10 addresses the
17 depreciation expense adjustment, net adjustment of
18 \$3,654.

19 **CHAIRMAN ARGENZIANO:** Any questions?

20 **COMMISSIONER STEVENS:** No, ma'am.

21 **CHAIRMAN ARGENZIANO:** Okay. Do we have a
22 motion?

23 **COMMISSIONER SKOP:** I move to approve
24 staff recommendation on Issue 10.

25 **COMMISSIONER STEVENS:** Second.

1 **CHAIRMAN ARGENZIANO:** All those in favor,
2 say aye.

3 (Vote taken.)

4 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
5 That's adopted.

6 Issue 11.

7 **MR. MOURING:** Issue 11 addresses what the
8 appropriate test year operating income before any
9 increase, and that number will have changed with the
10 Commission approving Staff's Alternative
11 Recommendation on Issue 9.

12 **COMMISSIONER STEVENS:** It's a fallout.

13 **CHAIRMAN ARGENZIANO:** Okay. Motion?

14 **COMMISSIONER SKOP:** Move to approve staff
15 recommendation on Issue 11, noting that it's a
16 fallout issue and the numbers are subject to change,
17 and staff will make those adjustments or have
18 administrative authority to make those adjustments
19 appropriately.

20 **COMMISSIONER STEVENS:** Second.

21 **CHAIRMAN ARGENZIANO:** All those in favor,
22 say aye.

23 (Vote taken.)

24 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
25 Issue 12.

1 **MR. MOURING:** Issue 12 addresses the
2 appropriate revenue requirement, and likewise this
3 will be a fallout.

4 **CHAIRMAN ARGENZIANO:** Okay. Motion?

5 **COMMISSIONER SKOP:** Move to adopt the
6 staff recommendation on Issue 12, noting that the
7 numbers will change as a result of this being a
8 fallout issue and staff will have the administrative
9 authority to make the appropriate adjustments.

10 **COMMISSIONER STEVENS:** Second.

11 **CHAIRMAN ARGENZIANO:** All in favor, say
12 aye.

13 (Vote taken.)

14 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
15 It's adopted.

16 Issue 13.

17 **MR. MOURING:** Issue 13 addresses what the
18 appropriate rates for this utility should be. And
19 likewise that, too, is a fallout.

20 **CHAIRMAN ARGENZIANO:** Any questions?
21 Comments? Do we have a motion?

22 **COMMISSIONER SKOP:** I move to adopt the
23 staff recommendation on Issue 13, noting that this
24 is a fallout issue, and the final numbers will
25 change, and staff will have administrative authority

1 to make those adjustments.

2 **COMMISSIONER STEVENS:** Second.

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

5 (Vote taken.)

6 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
7 It's adopted. Issue 14.

8 **MR. MOURING:** Issue 14 address the
9 utility's request for authorization of a
10 miscellaneous service charge.

11 **CHAIRMAN ARGENZIANO:** Questions?

12 **COMMISSIONER STEVENS:** Madam Chair.

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

15 **COMMISSIONER STEVENS:** Where did we -- how
16 did we arrive at a labor cost of \$32 an hour?

17 **CHAIRMAN ARGENZIANO:** Staff.

18 **MR. MOURING:** That number was provided to
19 us by the utility.

20 **COMMISSIONER STEVENS:** Do we know what
21 comprises that number?

22 **CHAIRMAN ARGENZIANO:** Maybe Mr. Friedman
23 could better answer that.

24 **MR. FRIEDMAN:** I don't have any specifics
25 on what the particular person that they had in mind

1 when they put that labor charge in there. I would
2 note that overall these miscellaneous service
3 charges are consistent with what you all have
4 approved for other utilities recently, but I don't
5 have any specific information, Commissioner Stevens,
6 about that particular employee.

7 **COMMISSIONER STEVENS:** I just have a --

8 **CHAIRMAN ARGENZIANO:** Go right ahead.

9 **COMMISSIONER STEVENS:** -- hard time
10 looking at this without -- you know, we are supposed
11 to be justifying what the true cost is so that we
12 can set up the service charge, you know, and that
13 labor cost of \$32 hour, that's the crux. And, you
14 know, I'm -- I don't have an answer for it.

15 **CHAIRMAN ARGENZIANO:** Staff maybe can
16 elaborate?

17 **MR. MOURING:** These cost justifications
18 are comparable with other cases in which the utility
19 has requested miscellaneous service charges and the
20 Commission has approved them.

21 **MR. FLETCHER:** Commissioners, my
22 understanding from the utility's data request, it is
23 for the hourly rate for the specific technicians
24 that would be responsible for answering the initial
25 connection, normal reconnection and the premises

1 visit.

2 **CHAIRMAN ARGENZIANO:** Do we have an
3 understanding of a typical time frame?

4 **COMMISSIONER STEVENS:** Is this a
5 \$64,000-a-year position with benefits? That's what
6 I'm asking.

7 **MR. FLETCHER:** It's with benefits,
8 Commissioner.

9 **COMMISSIONER STEVENS:** It's probably a
10 \$50,000-a year position that's a technician, is that
11 right?

12 **MR. FLETCHER:** My understanding is that
13 they have a management company and that management
14 company employs -- and they gave us the hourly rate,
15 and it is a third-party management company that
16 performs the services for this utility, and that
17 hourly rate that they have to charge through that
18 management contract for them to take the service
19 calls, that is the rate that is being charged or
20 assessed to the utility.

21 **COMMISSIONER STEVENS:** So it's the salary
22 plus the admin fees added onto the hourly rate for
23 the management company, is that right?

24 **MR. FLETCHER:** That's correct. It
25 includes all the labor. It's not just for the field

1 technician, I should say, it's also for the
2 administrative cost that is involved in -- as far as
3 the normal reconnection with the billing, setting up
4 the account again.

5 **CHAIRMAN ARGENZIANO:** So it is not an
6 employee of the utility, it is an employee of the
7 management company.

8 **MR. FLETCHER:** Correct.

9 **COMMISSIONER STEVENS:** It's not a
10 \$50,000-a-year position, it's probably a
11 \$25,000-a-year position with the admin fees tacked
12 on.

13 **CHAIRMAN ARGENZIANO:** Well, is it an
14 hourly fee?

15 **MR. FLETCHER:** Based on what they said,
16 the labor for the actual person going out there and
17 performing the duty as well as the administrative
18 aspects of it, that is the hourly cost in order to
19 process that. And for the -- during business hours,
20 it's going to be 1/7th of an hour to perform that
21 function.

22 **CHAIRMAN ARGENZIANO:** Do we know, do we
23 have an idea of how long it normally takes to do
24 these services, initial connections, reconnections?
25 Is it something that down the line, you know, I

1 mean, if I'm a management company, my incentive is
2 to keep the guy out there as long as I can. How do
3 you prevent that?

4 **MR. FLETCHER:** Well, again, each call
5 varies as far as the time and what you are going to
6 be faced with out there, particularly for premises
7 visits. But as far as using other utilities,
8 Mr. Mouring said that has been recently approved by
9 the Commission. I have seen them every winter
10 between .5 hours all the way up to this .7 as far as
11 time spent.

12 **CHAIRMAN ARGENZIANO:** To reconnect?

13 **MR. FLETCHER:** To perform these particular
14 functions.

15 **CHAIRMAN ARGENZIANO:** To reconnect
16 someone, it could take up to seven hours for a
17 reconnection?

18 **MR. FLETCHER:** No, .7 hours.

19 **CHAIRMAN ARGENZIANO:** Oh, .7. I thought
20 you said seven hours.

21 **MR. FLETCHER:** I'm sorry if I misstated
22 that.

23 **CHAIRMAN ARGENZIANO:** All right. Is there
24 a way that you can keep this Commission informed if
25 those fees start going higher because of longer time

1 frames, for not just this company, for any company
2 that uses a management firm?

3 **MR. FLETCHER:** Right.

4 **CHAIRMAN ARGENZIANO:** Actually, what I
5 would like it to see is some type of research to see
6 if those connection times or those services that are
7 given are increasing in time, which means increasing
8 in charges?

9 **MR. FLETCHER:** Yes, Commissioner.

10 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

11 Any other questions? Okay. A motion on
12 Issue 14.

13 **COMMISSIONER SKOP:** Madam Chair, if
14 there's no further discussion, I would move to adopt
15 the staff recommendation on Issue 14.

16 **COMMISSIONER STEVENS:** Second.

17 **CHAIRMAN ARGENZIANO:** All those in favor
18 say aye.

19 (Vote taken.)

20 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
21 Issue 15. Staff.

22 **MR. MOURING:** Issue 15 addresses whether
23 any portion of interim increase granted should be
24 refunded and how the refund should be calculated.
25 This would also be a fallout.

1 **CHAIRMAN ARGENZIANO:** Right. Commissioner
2 Skop.

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

5 And on this in the recommendation portion,
6 I guess staff is recommending that the utility
7 should treat any unclaimed refunds as CIAC, is that
8 correct?

9 **MR. MOURING:** Yes, that's correct.

10 **CHAIRMAN ARGENZIANO:** Any questions?
11 Comments? Okay. A motion.

12 **COMMISSIONER SKOP:** I move to adopt the
13 staff recommendation on Issue 15.

14 **COMMISSIONER STEVENS:** Second.

15 **CHAIRMAN ARGENZIANO:** All those in favor
16 say aye.

17 (Vote taken.)

18 **CHAIRMAN ARGENZIANO:** Opposed, same sign?
19 It's adopted.

20 Issue 16.

21 **MR. MOURING:** Issue 16 addresses the
22 appropriate amount by which rates should be reduced
23 four years after the established effective date to
24 reflect the removal of amortized rate case expense.

25 **CHAIRMAN ARGENZIANO:** Commissioners, any

1 questions? Comments? Motion.

2 **COMMISSIONER SKOP:** I'll move to adopt the
3 staff recommendation on Issue 16.

4 **COMMISSIONER KLEMENT:** Second.

5 **CHAIRMAN ARGENZIANO:** All those in favor
6 say aye.

7 (Vote taken.)

8 **CHAIRMAN ARGENZIANO:** Same sign, opposed?
9 It's adopted.

10 Issue 17.

11 **MR. MOURING:** Issue 17 addresses the
12 utility's request for approval of a five-dollar late
13 fee.

14 **CHAIRMAN ARGENZIANO:** Okay. This is --
15 and is this also the -- is the refund included in
16 this? Not in this one? Okay. Any questions?
17 Comments? Motion.

18 **COMMISSIONER SKOP:** I move to adopt the
19 staff recommendation on Issue 17.

20 **CHAIRMAN ARGENZIANO:** I need a second.

21 **COMMISSIONER KLEMENT:** Second.

22 **COMMISSIONER STEVENS:** Second.

23 **CHAIRMAN ARGENZIANO:** All those in favor
24 say aye.

25 (Vote taken.)

1 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
2 It's adopted.

3 Issue 18.

4 **MR. MOURING:** Issue 18 address the
5 utility's request for approval of a non-sufficient
6 funds fee.

7 **CHAIRMAN ARGENZIANO:** Commissioners, any
8 comments?

9 **COMMISSIONER SKOP:** Discussion.

10 **CHAIRMAN ARGENZIANO:** Discussion, yes.
11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam
13 Chair.

14 If I took the pulse of the Commission
15 correctly, I think some of the issue was regarding
16 the refund aspect of the staff recommendation, that
17 the majority was probably not in favor of requiring
18 a refund, but was in favor of approving the NSF fee
19 on a forward-going basis. I'm fine with that.

20 I think my only concern would be, as staff
21 has indicated, that the company did collect
22 approximately \$25,000. Certainly the company
23 shouldn't benefit for not complying with the rule.
24 So in order to maintain the status quo, I think what
25 I perhaps would like to offer in lieu of a refund is

1 consideration for using that money as an accounting
2 entry to CIAC which would ultimately benefit
3 existing customers.

4 So you would basically take the money that
5 was collected, make an accounting entry to
6 contribution in aid of construction. And if I'm
7 wrong on this, staff, correct me, but I think that
8 would have a beneficial effect here for ratepayers.

9 **COMMISSIONER STEVENS:** Madam Chair.

10 **CHAIRMAN ARGENZIANO:** Commissioner
11 Stevens.

12 **COMMISSIONER STEVENS:** What would be the
13 effect to the company if that occurred?

14 **MR. FLETCHER:** Their investment level
15 would decrease when you add the CIAC or treat it as
16 CIAC, and also their depreciation expense would also
17 decrease.

18 **COMMISSIONER SKOP:** So is that a good
19 thing for ratepayers?

20 **MR. FLETCHER:** Yes. It lowers their
21 investment which they would earn a return on.

22 **COMMISSIONER SKOP:** I don't want to hurt
23 the company, but I don't want to reward them for
24 collecting monies and just giving them when they
25 weren't operating in accordance with the rules. I

1 see Commissioner Stevens' merit in not making the
2 refunds, but then with the disposition of that
3 amount in question, certainly if you applied it in a
4 way to where the company doesn't lose but consumers
5 win, then that's a good thing, a win/win solution.

6 **COMMISSIONER STEVENS:** Good solution.

7 **CHAIRMAN ARGENZIANO:** Now, let me just ask
8 this question, again, in fairness to the company,
9 were they thinking that these -- the NSF fees were
10 already granted to the previous company? I mean,
11 it's not like a new company came in and said, to
12 heck with you, PSC, and that's what I'm concerned
13 with.

14 If the company was acting -- the same
15 thing with the other fees, they thought the previous
16 company had those in place, and assumed that they
17 were approved, and then once they found out they
18 were not approved, I'm not so sure it's right to do.

19 **MR. FLETCHER:** That is correct. They
20 assumed based on the former owner charging the NSF
21 and the late payment fees that they were authorized.
22 When they learned by Commission staff that they were
23 not authorized, they did cease those charges.

24 **CHAIRMAN ARGENZIANO:** So I'm not so sure
25 that I want to slap the company for something they

1 assumed and thought was right. But I don't want to
2 send that message -- hang on, Commissioner Skop -- I
3 don't want to send the message to other companies
4 that it's okay to do, but I don't see it was
5 malicious or done intentionally on the company's
6 part.

7 Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Madam
9 Chair.

10 I agree with you on that. I think that
11 from a legal sense, you know, the company when it
12 made the acquisition obviously should have conducted
13 due diligence, and maybe they missed that aspect,
14 but typically any liability of the predecessor
15 company transfers to the new owner.

16 So, again, if we're looking at this
17 holistically of, you know, somebody thought they
18 were in compliance with the rule and they weren't,
19 then, you know, I see your point and it's a good
20 one. But then certainly that doesn't address the
21 underlying issue of the ill-collected funds so to
22 speak. So what I was trying to do was find that
23 win/win.

24 **CHAIRMAN ARGENZIANO:** To that point,
25 Commissioner Skop, the funds that were collected are

1 not in question as to whether they were legitimately
2 collected as non-sufficient funds, right? They were
3 bad checks.

4 **MS. BULECZA-BANKS:** That is correct.

5 **CHAIRMAN ARGENZIANO:** Okay. That makes me
6 feel better that way. I just can't fault the
7 company for -- you know, they stopped when they
8 should. I understand, you know, that we don't want
9 to send that signal out there, but I'm not going to
10 beat up on the company for assuming -- you know,
11 that was in practice when the company took over, and
12 I would probably do the same thing, even though you
13 say there is due diligence, and I understand that,
14 but at this point I think it's probably better to
15 just leave the refunds, say no and move on. And
16 that is the will of the rest of the Commissioners,
17 but that is just my opinion.

18 Commissioners, any other comments? Do I
19 have a motion?

20 **MS. WILLIAMS:** I do just want to note that
21 the issue about the refund is in Issue 20, not in
22 Issue 19. This is just approval of the actual fees
23 for going forward.

24 **CHAIRMAN ARGENZIANO:** Okay. So then we're
25 just on whether we are approving the NSF funds be

1 granted? Okay. We need a motion for that.

2 **COMMISSIONER SKOP:** I would move to
3 approve the staff recommendation for Issue 19 to
4 grant the NSF fee deleting --

5 **CHAIRMAN ARGENZIANO:** 18.

6 **COMMISSIONER SKOP:** 18, I'm sorry. Move
7 to adopt the staff recommendation to grant the NSF
8 fee on Issue 18, noting that I would strike the
9 recommendation from the passage about the refund,
10 and that would make the recommendation consistent
11 with how I think the Commission will ultimately
12 vote.

13 **COMMISSIONER STEVENS:** Second.

14 **CHAIRMAN ARGENZIANO:** Okay. All those in
15 favor say aye.

16 (Vote taken.)

17 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
18 It's adopted.

19 Issue 19.

20 **MR. MOURING:** Issue 19 addresses the show
21 cause issue for the late payment fees.

22 **CHAIRMAN ARGENZIANO:** Okay. Members, any
23 questions?

24 **COMMISSIONER KLEMENT:** That is essentially
25 the same thing?

1 **CHAIRMAN ARGENZIANO:** Basically the same
2 thing. And we are dealing with the refund together
3 on 20, or -- let's see. Okay. This is the fine.

4 **COMMISSIONER SKOP:** Yep.

5 **CHAIRMAN ARGENZIANO:** Right. I think it's
6 the same issue. I think we have pretty much
7 discussed that the company assumed -- Commissioner
8 Stevens.

9 **COMMISSIONER STEVENS:** Right. And I don't
10 think we need to do a show cause proceeding, so I
11 agree with staff there, but I do not agree with the
12 refund with interest.

13 **CHAIRMAN ARGENZIANO:** So we need a motion
14 if all are in agreement with that.

15 **COMMISSIONER SKOP:** Madam Chair, if there
16 is no further discussion, I'd move to adopt the
17 staff recommendation on Issue 19 striking the
18 reference in the recommendation to the refund.

19 **COMMISSIONER STEVENS:** Second.

20 **COMMISSIONER SKOP:** With interest.

21 **CHAIRMAN ARGENZIANO:** With interest,
22 right. All those in favor say aye.

23 (Vote taken.)

24 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
25 Adopted. Now we're on Issue 20. Staff.

1 **MR. MOURING:** Issue 20 is the show cause
2 issue for the NSF fee.

3 **CHAIRMAN ARGENZIANO:** Okay.

4 Commissioners.

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

7 With respect to Issue 20, I would move to
8 adopt the staff recommendation on Issue 20 striking
9 the reference to the required refund with interest.

10 **COMMISSIONER STEVENS:** Second.

11 **CHAIRMAN ARGENZIANO:** All those in favor
12 say aye.

13 (Vote taken.)

14 **CHAIRMAN ARGENZIANO:** Opposed, same sign.

15 **COMMISSIONER STEVENS:** Madam Chair.

16 **CHAIRMAN ARGENZIANO:** Yes, Commissioner
17 Stevens.

18 **COMMISSIONER STEVENS:** At this time I'd
19 like to reiterate, I think, one of the comments that
20 you made that the utilities shouldn't look at us as
21 being accommodating here, and, you know, that things
22 can change.

23 **CHAIRMAN ARGENZIANO:** This is not setting
24 a precedent.

25 **COMMISSIONER STEVENS:** Right.

1 **CHAIRMAN ARGENZIANO:** This is a particular
2 circumstance that we believe the company took over a
3 company and did cease when they were notified. That
4 doesn't mean that the next company that comes in
5 that we are not going to look at it differently if
6 the circumstances are different. Thank you.

7 **COMMISSIONER STEVENS:** Yes, ma'am.

8 **CHAIRMAN ARGENZIANO:** Okay. Issue 20 was
9 adopted. We will go to Issue 21.

10 **MR. MOURING:** Issue 21 addresses whether
11 or not the utility should be required to provide
12 proof that it has adjusted its books for all
13 Commission approved adjustments.

14 **CHAIRMAN ARGENZIANO:** Commissioners, any
15 comments or questions?

16 **COMMISSIONER STEVENS:** No, ma'am.

17 **CHAIRMAN ARGENZIANO:** Okay. Motion?

18 **COMMISSIONER SKOP:** I move to adopt staff
19 recommendation on Issue 21.

20 **COMMISSIONER STEVENS:** Second.

21 **CHAIRMAN ARGENZIANO:** All those in favor
22 say aye.

23 (Vote taken.)

24 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
25 It's adopted.

1 Issue 22, should the docket be closed.

2 **MR. MOURING:** Yes.

3 **CHAIRMAN ARGENZIANO:** Commissioners, any
4 discussion?

5 **COMMISSIONER EDGAR:** Madam Chair, just for
6 the record, that we did adopt the oral modifications
7 in all three items.

8 **CHAIRMAN ARGENZIANO:** Yes, we did. Thank
9 you. Okay.

10 Commissioners, do I have a motion on Issue
11 22?

12 **COMMISSIONER SKOP:** Before I make a
13 motion, Madam Chair, I just wanted to have a point
14 of clarification with staff that the recommendation
15 as no still stands in light of the fact that the
16 Commission is not proceeding forward with the
17 refund.

18 **MR. MOURING:** Yes. It would change the
19 language there regarding Issues Number 19 and 20.

20 **COMMISSIONER SKOP:** All right.

21 **CHAIRMAN ARGENZIANO:** Okay.

22 **COMMISSIONER SKOP:** I'll take a stab at
23 this. This is I'm a little bit uncomfortable with,
24 but I would move to adopt the staff recommendation
25 on Issue 22 not to close the docket, deleting the

1 references to Issues 19 and 20.

2 **COMMISSIONER STEVENS:** Second.

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

5 (Vote taken.)

6 **CHAIRMAN ARGENZIANO:** Opposed, same sign.
7 It's adopted. Thank you. Okay. Now we are on
8 Issue 17. And, Commissioner Skop, since it is
9 undocketed and you have requested this, you're
10 recognized. Let's give -- how about we take -- do
11 you want to take a five minute break? Okay. Thank
12 you.

13 (Recess.)
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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 19th day of March, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

1 STATE OF FLORIDA)
 2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3

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

6

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

9

10 I FURTHER CERTIFY that I am not a relative,
 11 employee, attorney or counsel of any of the parties, nor
 12 am I a relative or employee of any of the parties'
 13 attorneys or counsel connected with the action, nor am I
 14 financially interested in the action.

12

13 DATED THIS 19th day of March,
 14 2010.

14

15

Linda Boles

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LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
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FLORIDA PUBLIC SERVICE COMMISSION