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-M-E-M-O-R-A-N-D-U-M-

DATE: October 14, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Mouring, Fletcher, Lingo, Maurey, Rieger, Salnova, Thompson) *NS*
Office of the General Counsel (Klancke) *ONE KEY FOR JSC*

Handwritten notes: ALM SDR, P.O., and various initials.

RE: Docket No. 090349-WS – Application for limited proceeding rate increase in Polk County by Cypress Lakes Utilities, Inc.

AGENDA: 10/26/10 – Regular Agenda – All Issues Proposed Agency Action Except Issues 8 and 9 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090349.RCM.DOC

Case Background

Utilities, Inc. (UI or parent) is an Illinois corporation which owns approximately 75 subsidiaries throughout 15 states including 15 water and wastewater utilities within the State of Florida. Cypress Lakes Utilities, Inc. (Cypress Lakes or Utility) is a Class B utility providing water and wastewater service to approximately 1,426 residential and 44 general service customers in Polk County. Rates were last established for Cypress Lakes in its 2006 rate proceeding.¹

On June 30, 2009, Cypress Lakes filed its application for a limited proceeding pursuant to Section 367.0822, Florida Statutes (F.S.). Unlike a full rate case, Cypress Lakes' request consists

¹ See Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

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only of additions to rate base for the cost of modifications to the water and wastewater plants; costs incurred by the Utility for the modernization of its information, customer service, and computer systems; taxes other than income (TOTI); income taxes; rate case expense; and increases in sludge hauling expense. Staff has determined that Cypress Lakes met the filing requirements of Rule 25-30.445, Florida Administrative Code (F.A.C.).

On March 18, 2010, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket. By Order No. PSC-10-0187-PCO-WS, the Commission acknowledged OPC's intervention in the instant docket.²

Staff's recommendation was filed previously for consideration at the June 1, 2010, Commission Conference. The consideration of this case was deferred to allow the parties to meet and discuss some of the issues in this case, as well as give staff time to examine issues raised at the Commission Conference. On June 16, 2010, a conference call was held in which members of Commission staff, OPC, the Utility and their representatives, and members of the Cypress Lakes Home Owner's Association (HOA) took part in a discussion of the issues. Then, on June 22, 2010, the Utility met with the HOA to attempt to resolve issues regarding the quality of service and a letter that was jointly prepared by the HOA and the Utility was sent to the Commission, summarizing the talking points of the meeting. Subsequently, on September 1, 2010, another conference call was held between all of the parties to discuss any remaining issues or concerns before staff filed its revised recommendation. This revised recommendation includes additional discussions regarding the appropriateness of a limited proceeding being utilized in this case, the Commission's legal authority to approve temporary rates subject to refund in the event of a protest, updated quality of service considerations, and staff's revised revenue increase calculations.

The Commission has jurisdiction to consider this matter pursuant to Section 367.0822, F.S.

² See Order No. PSC-10-0187-PCO-WS, issued March 19, 2010.

Discussion of Issues

Issue 1: Is the Utility's request for a limited proceeding appropriate pursuant to Section 367.0822, F.S. and Rule 25-30.445, F.A.C.?

Recommendation: Yes. Staff believes that the Utility's filing is appropriate pursuant to Section 367.0822, F.S. and Rule 25-30.445, F.A.C. and thus recommends that the Commission grant the Utility's petition for a limited proceeding with adjustments as detailed in the following issues. (Klancke, Mouring)

Staff Analysis: Cypress Lakes filed its application for a limited proceeding pursuant to Section 367.0822, F.S., on June 30, 2009. Around the time of its filing, several of Cypress Lakes' sister companies had filed or were in the process of filing full general file and suspend rate cases pursuant to Section 367.081, F.S.³ Unlike a full rate case, however, Cypress Lakes' filing sought recovery for a limited number of items. Specifically, as stated in its petition, the purpose of Cypress Lakes' request for a limited proceeding was to recover the costs of modifications to its wastewater treatment plant, to recover the costs of Project Phoenix, to recover the cost of the supply main upgrade, and to recover the costs of increase in property tax and sludge hauling.

As discussed in the case background, this recommendation was initially presented to the Commission for disposition at its June 1, 2010, Commission Conference. At that Commission Conference, OPC raised a number of concerns regarding staff's recommendation on the Utility's filing. One of the broad concerns raised by OPC was the appropriateness of the Utility's decision to file the instant case as a limited proceeding. OPC also raised a concern that the Utility's filing was inconsistent with or did not meet the requirements of Rule 25-30.445, F.A.C., which is the Commission's rule on limited proceedings. A summary of the parties' comments at the June 1, 2010, Commission Conference and staff's analysis are below.

The statutory provision that governs limited proceedings is Section 367.0822, F.S., which provides:

Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters.

Rule 25-30.445, F.A.C., is the Commission's rule that provides the minimum filing requirements for a limited proceeding. In addition, the Rule provides a list of factors that the

³ See, Docket No. 090392-SU, In re: Application for increase in wastewater rates in Seminole County by Utilities, Inc. of Longwood; Docket No. 090392-WS, In re: Application for increase in water and wastewater rates in Lake County by Utilities Inc. of Pennbrooke; Docket No. 090402-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation; and Docket No. 090462-WS, Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

Commission will consider in evaluating whether a utility's request is proper for a limited proceeding.⁴

OPC

At the June 1, 2010, Commission Conference, counsel for OPC began his discussion regarding staff's recommendation in this docket with the overarching issue of the appropriateness of the instant case being filed as a limited proceeding. Among his comments on this issue, counsel for OPC pointed out that in the same general time frame as Cypress Lakes' limited proceeding had been filed, Utilities Inc. had also filed four other general file and suspend rate cases for Cypress Lakes' sister companies. Counsel also cited to both Section 367.081, F.S. and Rule 25-30.445, F.A.C., correctly noting that according to the statute governing limited proceedings, it is within the Commission's discretion to determine the scope of the limited proceeding.

With respect to the rule on limited proceedings, counsel for OPC noted that Rule 25-30.445(4)(a), F.A.C., requires that the Utility include in its application for a limited proceeding, "a detailed statement of the reason(s) why the limited proceeding has been requested." OPC went on to read the portion from the Utility's application that corresponds to the requirement of the rule. Specifically, the Utility's application states, "The purpose of this limited proceeding is for the Utility to (1) recover the costs of the modifications to the Utility's wastewater treatment plant, (2) to recover the cost of Project Phoenix, the Utility's modernization of its information, customer service and computer systems, (3) to recover the cost of the supply main upgrade, and (4) to recover the costs of increases in property tax and sludge hauling." While noting that the application included four numbered items, OPC contended that there were actually five items because it did not believe that property taxes and sludge hauling were related. According to OPC, the number of items included in the Utility's application is significant to Rule 25-30.445(6), F.A.C., which contains the factors for the Commission to evaluate in determining whether the Utility's request is improper for a limited proceeding, one of which is whether the filing includes more than four separate projects. In addition, OPC noted that the Utility's request included a 21 percent increase for water and 43 percent increase for wastewater. According to counsel for OPC, the Utility's filing is inconsistent with a limited proceeding and it is larger in scope than the rule possibly contemplates. Counsel for OPC also pointed out that the Utility declined to respond to some of staff's data requests because according to the Utility, the requests were outside of the scope of the proceeding.

⁴ Rule 25-30.445(6), F.A.C.: In evaluating whether the utility's request is improper for a limited proceeding, the Commission will consider factors such as:

- (a) Whether the utility's filing includes more than 4 separate projects for which recovery is sought and the requested rate increase exceeds 30 percent. Corresponding adjustments for a given project are not subject to the above limitation;
- (b) Whether the utility has not had a rate case in more than seven years and the requested rate increase exceeds 30 percent; or
- (c) Whether the limited proceeding is filed as the result of the complete elimination of either the water or wastewater treatment process and the requested rate increase exceeds 30 percent.

Cypress Lakes

With respect to the concerns raised by OPC that Cypress Lakes' filing may contain too many projects to be appropriate for a limited proceeding, counsel for Cypress Lakes responded that a case containing four, five or six projects may still be appropriate for a limited proceeding, and that is a determination for the Commission to make. According to counsel for Cypress Lakes, neither the rule nor the statute states that a party may not exceed four projects in a limited proceeding, and the rule exists to provide guidelines to determine when a limited proceeding is appropriate. Further, the issue of whether the Commission ought to consider more issues than those raised in the Utility's filing is, according to Cypress Lakes, true of every limited proceeding by virtue of the fact that it is a limited proceeding and the Commission is only considering certain issues.

In response to the comments made by OPC about the Utility's refusal to respond to certain questions by staff about salaries, counsel for Cypress Lakes stated that the issue of salaries was not an issue in this proceeding, and had it been, it would have resulted in a substantial increase. Finally, counsel for Cypress Lakes stated that it is typical in this type of proceeding for the limited number of issues to be driven by the reason the company is not reaching its authorized rate of return, and that is what the Utility attempted to do in the instant case.

Staff Analysis

As stated above and as noted by the parties, it is within the Commission's discretion to consider and act upon any matter within its jurisdiction in a limited proceeding, and the Commission must determine the issues to be considered in a limited proceeding. Limited proceedings generally address a specific or significant change that would adversely affect the normal operating income of the utility and are usually narrow in scope.⁵ Staff believes that Cypress Lakes' case as filed is sufficiently narrow in scope to qualify for a limited proceeding, especially in light of the number of issues that would have been addressed if Cypress Lakes had instead chosen to file its case as a general file and suspend case as it did with its sister companies. Staff agrees with Cypress Lakes that the factors contained in the Commission rule to determine whether a filing is appropriate for a limited proceeding, notably the number of projects to be considered, is a guide, rather than a strict limit. Further, the Commission has in the past approved limited proceedings where the utility sought recovery of numerous projects.⁶

Staff also believes that Cypress Lakes' filing meets the minimum filing requirements of Rule 25-30.445, F.A.C. With respect to OPC's allegation that the Utility did not satisfy the requirement of the rule that it provide a "detailed statement of the reasons why the limited proceeding has been requested," staff notes that at the time of the filing, staff was satisfied with the explanation contained in the Utility's petition, and had it not been deemed to be detailed enough, that requirement would have been identified as a deficiency to its filing which the Utility would have had to satisfy in order to move forward. Staff also notes that similar statements have

⁵ See Order No. PSC-99-1883-PAA-SU, issued on September 21, 1999, In re: Petition for limited proceeding to implement two-step increase in wastewater rates in Pasco County by Lindrick Service Corporation at 27.

⁶ See Order No. PSC-02-1657-PAA-WU, issued on November 26, 2002 in Docket No. 011621-WU, In re: Petition for Limited Proceeding to Implement an Increase in Water Rates in Highland County, by Placid Lakes Utilities, Inc.

been contained in other utilities' petitions for limited proceedings which have been deemed sufficient by the Commission.⁷

Conclusion

For the reasons discussed, staff believes that the Utility's filing is appropriate pursuant to Section 367.0822, F.S. and Rule 25-30.445, F.A.C. and thus recommends that the Commission grant the Utility's petition for a limited proceeding with the adjustments as noted in the following issues.

⁷ See Docket Nos. 070041-SU, In re: Application for limited proceeding rate increase in Monroe County by Key Haven Utility Corporation and Docket No. 090121-SU, In re: Application for limited proceeding rate increase in Seminole County by Alafaya Utilities, Inc.

Issue 2: Is the quality of service provided by Cypress Lakes Utilities, Inc., satisfactory?

Recommendation: Yes. The quality of service provided by Cypress Lakes Utilities, Inc., should be considered satisfactory. (Rieger)

Staff Analysis: Pursuant to Rule 25-30.433(1), F.A.C., the Commission determines the overall quality of service provided by a Utility by evaluating three separate components of operations. These components include the quality of the Utility's product, the operational condition of the Utility's plants and facilities, and the Utility's attempt to address customer satisfaction. Comments or complaints received by the Commission from customers are reviewed. The Utility's current compliance with the Department of Environmental Protection (DEP) for wastewater and Polk County Health Department (PCHD) for water were also considered for purposes of this recommendation.

Quality of Utility's Product and Operational Condition of Plant and Facilities

Cypress Lakes is current with respect to all DEP and PCHD required chemical analyses. Further, the operating conditions of the facilities were in compliance with the DEP and PCHD rules and regulations until a recent PCHD review found possible violations regarding the lack of maintaining the required minimum chlorine residual throughout the drinking water system. Because of the lack of a continuous chlorine residual throughout the water system, boil water advisories (BWA) were issued to the Utility's water customers on at least two occasions on March 10-15 and March 22-23, 2010. To date, the sporadic cause of the residual problem has yet to be determined. The Utility has noted that there is satisfactory chlorine residual present at the plant, with a resulting quick drop off of the residual once the water leaves the facility. The Utility attempted to isolate the source by replacing discolored bleach with a new chemical and by replacing chemical feed pumps, as well as the feed lines from the pumps to the injection points. The Utility now asserts that the situation is resolved because a consistent chlorine residual throughout the system has been reestablished. Unidirectional flushing of the system to help further assure consistent chlorine residuals began on May 17, 2010. The customers are being notified of the flushing events via billing inserts, the community TV channel, and reverse-911 calls. The Utility has also purchased and installed automatic flushing valves at key dead end locations. The PCHD has acknowledged that with the improvements made by the Utility, it now appears that the chlorine residual situation maybe under control. It will continue to monitor the situation. The Utility entered into a June 1, 2010 Consent Order Agreement with the PCHD over this matter. A \$1,799 settlement was agreed upon. Presently, there are no outstanding enforcement issues.

The Utility's Attempt to Address Customer Satisfaction

Customer Meeting A customer meeting was held on November 18, 2009, at the Cypress Lakes Clubhouse in Lakeland, Florida. Approximately 300 customers attended the evening meeting. The majority of those who attended were concerned with the proposed rate increase which will produce, in their view, little or no benefit to the customers. The majority of the attendees also expressed concerns about the quality of water service provided by the Utility. Most of the twenty-one customers who spoke referred to water quality problems. They noted that the water supplied to them is undesirable, and has not improved since the last rate case. The

customers mainly noted that the water tastes bad and contains sediment. It was generally acknowledged that the majority of those who attended the customer meeting either use home filtering devices to help improve the water quality or purchase bottled water. There were no comments made about the wastewater quality of service. However, the customers were concerned about the legality of previous agreements over a developer-related wastewater treatment plant expansion. Another concern that was brought up at the customer meeting involved a customer request for an irrigation meter. The Utility found no such request in its records; however, it does not oppose the installation of a separate irrigation meter and is willing to discuss the situation with the customer. Staff has contacted this customer and recommended that he contact the Utility on this matter.

Correspondence The Commission has received over 250 letters and e-mails from customers who expressed similar concerns over the proposed rate increase and the resulting negative effect the increase would cause on their over fifty-five, fixed income community. The customers also complained about low pressure, unacceptable water quality, and more recently the inconvenience of the BWAs. Several customers commented about the additional cost of using home filtration devices and the need for the Utility to do a better job on water quality.

Customer Complaints There are currently no open complaints logged with the Commission. In the past three years, twelve customer complaints have been logged. Nine of these complaints were billing-related and three were service-related. One of the service complaints was about a manhole elevation problem. Another complaint dealt with the possible relationship between a customer's illness and chlorine residual in the distribution system. The most recent complaint, closed on April 29, 2010, concerned a boil water notice resulting from a problem with chlorine residual levels.

Prior Rate Cases Cypress Lakes has had two previous rate cases. In Docket No. 020407-WS,⁸ it was noted that the majority of complaints in the Utility's complaint log focused on the water's bad odor and taste. The Utility's water and wastewater systems were operating properly and in compliance with DEP and Health Department standards. The Commission determined that the Utility was actively attempting to address the concerns of the customers at that time. As a result, quality of service provided by the Utility was considered satisfactory. In the next rate case, Docket No. 060257-WS,⁹ the Commission determined that the Utility had been unable to fully satisfy the customers' concerns about water odor, low pressure, low chlorine, black residue in toilets, billing and water meter readings. Although the Utility was in compliance with DEP and Health Department standards, the Commission concluded that the quality of service provided by Cypress Lakes was marginally satisfactory. In an effort to improve the customer satisfaction situation, the Commission required Cypress Lakes to perform a complete examination of its distribution system to address low chlorine residuals, as well as alternatives to address the hydrogen sulfide problems. The examination was to include all related costs for the water treatment plant, booster pump, engineering, and permitting. In addition, all viable options, as well as the cost of each option, was to be included in the evaluation. The Utility was ordered to

⁸ See, Order No. PSC-03-0647-PAA-WS, issued May 28, 2003, in Docket No. 020407-WS, In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.

⁹ See, Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS, In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.

submit the evaluation to the Commission, the Office of Public Counsel, and to the Cypress Lakes HOA within 9 months of the date of the Consummating Order.

While the Utility did provide a timely response to the Commission on July 21, 2008, the report was not provided directly to the Office of Public Counsel or the HOA, although the report was available via the docket file. According to the Utility, a copy of the Commission order was provided to its engineering consultant who was directed to conduct a site visit to evaluate existing conditions, collect data, review water industry Best Management Practices, and prepare a summary report with recommendations and estimates.

The resulting report identified tasks that the consultant believed addressed the most expedient and cost effective means of improving water quality, as well as optimizing operational efficiency. The evaluation indicated that the prime cause of the water quality issues was attributed to an unequal distribution of the groundwater pumped from the two water supply wells. As a result of that problem, a constant chlorination feed rate could not be maintained. In April 2008, the Utility interconnected the water lines from both wells to a common header pipe, relocated a chlorination injection point, and installed additional gate valves. Additional improvements, such as flushing valves, were considered but deemed unnecessary because it was believed that the modifications implemented produced a significant increase in water quality and stabilized the chlorine residual throughout the area. The report indicated that no customer complaints have been reported since the modifications were performed.

Cypress Lakes Response to Quality of Service Concerns Cypress Lakes has pointed out that in Docket No. 060257-WS, the customers expressed dissatisfaction with water quality, particularly a lack of a consistent chlorine residual that resulted in finished water having a strong sulfur odor. After completing piping improvements in April 2008, the Utility claims to have seen significantly fewer water quality complaints registered by the customers. As a point of clarification, Cypress Lakes indicated that the hydrogen sulfide issue raised in Docket No. 060257-WS was incorrect, and that hydrogen sulfide is not and has never been an issue at Cypress Lakes. The Utility believes that the issue the Commission intended to address was total sulfides, which was directly related to the now-corrected chlorination issue. The Utility notes that it is in full compliance with all current water quality rules and regulations, and that it believes that the issues associated with water quality (particularly inadequate disinfection) in the previous rate case have been addressed.

However, recent problems in 2010 with maintaining an adequate chlorine residual have prompted the Utility to reevaluate its disinfection system to ascertain the source of the current problem that have prompted recent PCHD enforcement activity. The Utility has acknowledged the fact that some customers are dissatisfied with the color, taste, or odor associated with the water. However, it pointed out that these are generally aesthetic issues (as opposed to health issues) and the Commission will generally not consider improvements to aesthetic issues to be prudent investment opportunities, and therefore, will not offer the Utility an opportunity to recover said investment.

In response to customer concerns brought out at the June 1, 2010 agenda conference, the Cypress Lakes Homeowners Association (CLHA) and the Utility held a meeting on June 22, 2010

to discuss items associated with the present filing before the Commission. In a June 23, 2010 joint letter to the Commission, it was pointed out that the meeting was non-confrontational and significant information was communicated by both parties aimed at promoting better understanding of key issues remaining in the filing and outside of the filing. In reference to quality of service concerns, the letter described discussions about unidirectional flushing, and the possibility of relocating existing automatic flushing valves to better improve water quality throughout the service area and why a chlorine booster addition would not be applicable to resolving the problems that are water quality related. The letter also discussed the proposal to interconnect with the City of Lakeland in order to supply water to the Utility's system. It was pointed out that the proposal to interconnect with the City of Lakeland, in order to supply water to the service area would lead to added cost to the customer base from connection fees without a major difference in water quality. It was agreed that the Utility would supply copies of its latest well water analysis to CLHA and CLHA would contact the City of Lakeland to obtain similar data. The parties agreed that if the water was of similar quality, the issue would likely be dropped.

Summary

Cypress Lakes is current in all of the required chemical analyses and there are no outstanding enforcement issues. The modifications implemented in 2008 to repipe the lines to the wells and install additional gate valves were successful in helping stabilize the chlorine residual throughout the area until this year when the issue of maintaining the chlorine residual in the distribution system recurred. The Utility believes that the implementation of the unidirectional flushing program and automatic flushing valves will maintain PCHD compliance and improve on the customer concerns. The customer concerns regarding taste and odor are aesthetic problems and not a health compliance issue. For systems with challenging water quality aesthetics, point-of-use home treatment systems are often the most cost-effective mechanism to achieve customer aesthetic quality objectives. Utility treatment of water to the highest customer aesthetic expectation can result in significant costs to customers. So far, customer satisfaction has not been fully achieved. Staff is aware that along with the present case, there have been two prior cases where the customers raised similar concerns about water quality. However, because the Utility is actively working to maintain compliance with the PCHD and DEP and address customer concerns regarding the aesthetic quality of the water provided, staff recommends that the overall quality of service provided by Cypress Lakes be considered satisfactory.

Issue 3: Should any adjustments be made to the Utility's Project Phoenix Financial/Customer Care Billing System (Phoenix Project)?

Recommendation: Yes. Plant should be increased by \$455 for water and \$418 for wastewater. In addition, accumulated depreciation should be reduced by \$3,977 for water and \$3,654 for wastewater and depreciation expense should be reduced by \$2,173 for water and \$1,996 for wastewater, respectively. (Deason, Fletcher, Mouring)

Staff Analysis: The purpose of the Phoenix Project was to improve accounting, customer service, customer billing, and financial and regulatory reporting functions of UI and its subsidiaries. The Phoenix Project became operational in December 2008. UI allocated the cost of the Phoenix Project to all its subsidiaries based on each subsidiary's ERCs as of September 30, 2009.

Allocation of Phoenix Project Costs

During 2009, the Commission approved recovery of the cost of the Phoenix Project in seven UI rate cases.¹⁰ The approved costs were allocated based on each subsidiary's specific test year ERCs to the total UI test year ERCs. With respect to the current UI cases before the Commission, UI allocated the Phoenix Project costs based on each subsidiary's ERCs at the end of the 2008 test year, in relation to UI's total 2008 ERCs. Cypress Lakes divided its ERCs by UI's total ERCs resulting in an allocation percentage of 0.81. This percentage was multiplied by the total investment in the Phoenix Project. Unlike its sister companies that used a gross amount of \$21,364,569 in their filings, Cypress Lakes used the amount of \$21,122,602. This represents a difference of \$241,967. Based on total Phoenix Project costs of \$21,122,602 mentioned above, Cypress Lakes calculated its allocated share to be 0.81 percent, or \$170,183. Of this amount, 52.12 percent or \$88,699 was assigned to the water system and \$81,484 was assigned to the wastewater system.

Divestiture of UI Subsidiaries

As addressed in the audits of three of Cypress Lakes' sister companies, staff agreed with the adjustments recommended by the auditors to apply a more current ERC count provided by the Utility which recognized the divestitures of certain UI systems in 2009. According to UI's response in current dockets for its other Florida subsidiaries, UI recently divested several Florida subsidiaries including Miles Grant Water and Sewer Company (Miles Grant), Utilities, Inc. of Hutchinson Island (Hutchinson), and Wedgefield Utilities, Inc. (Wedgefield), as well as subsidiaries in other states.

In addition, during a conference call on April 16, 2010, between staff, OPC, and the Utility, UI stated that it purchased a wastewater system in Louisiana¹¹ that was not included in the ERC count previously provided to the staff auditors. The Utility stated that the ERCs for the newly acquired system should be included in order to properly account for that system's share of the cost of the Phoenix Project.

¹⁰ See Docket Nos. 080250-SU, 080249-WS, 080248-SU, 080247-SU, 070695-WS, 070694-WS, and 070693-WS.

¹¹ This wastewater system represented approximately 950 ERCs.

Staff agrees that allocating costs according to ERCs is an appropriate methodology to spread the cost of the Phoenix Project. However, staff does not believe the Phoenix Project costs previously allocated to the divested subsidiaries should be reallocated to the surviving utilities. Wedgefield was sold for an amount significantly greater than its rate base.¹² Miles Grant and Hutchinson were sold collectively for an amount significantly greater than the rate base.¹³ Staff believes the amounts allocated to the divested subsidiaries were recovered by the shareholders through the sale of those systems. Because no added benefit was realized by the remaining subsidiaries, staff further believes it is not fair, just, or reasonable for ratepayers to bear any additional allocated Phoenix Project costs. Thus, staff believes the divested subsidiaries allocation amounts should be deducted from the total cost of the Phoenix Project before any such costs are allocated to the remaining UI subsidiaries.

In the current audits of its sister companies, staff auditors determined that the correct ledger balance of the software is \$21,617,487, not the \$21,122,602 that Cypress Lakes used to calculate its allocated share of the Phoenix Project. Based on the ERC percentages of all the divested subsidiaries immediately prior to their respective closing dates, staff determined the actual amount paid of \$21,617,487 for the Phoenix Project should be reduced by \$1,724,166 resulting in a remaining balance of \$19,893,321. Based on the unrecovered cost of the Phoenix Project and the ECRs adjusted for divestiture, staff recommends that the appropriate amount of Cypress Lakes' allocated share of the Phoenix Project is \$171,055. Cypress Lakes water system's share is 52.12 percent or \$89,154, and its wastewater system's share is 47.88 percent or \$81,901. As such, staff recommends that plant be increased by \$455 for water and \$418 for wastewater.

Amortization Period

In previous UI cases, the Commission approved a 6-year amortization period for the Phoenix Project.¹⁴ In subsequent UI cases,¹⁵ staff recommended and the Commission found that an 8-year amortization period was more appropriate for a software project of this magnitude. For several reasons, staff now believes that the amortization period for the Phoenix Project should be changed to 10 years. First, the Phoenix Project was specifically tailor-made to meet all of UI's needs. Such a project is not "off the shelf" software, but software designed to fulfill long term accounting, billing, and customer service needs. Second, staff believes the software will be used for at least 10 years. UI's legacy accounting system had been used for 21 years. Third, in a recent docket involving a UI subsidiary in Nevada,¹⁶ UI responded that any amortization period between 4 and 10 years would be in compliance with Generally Accepted Accounting Principles. As such, staff believes 10 years is a more reasonable amortization period than the 8-year amortization period currently approved by this Commission. Thus, staff recommends that accumulated depreciation should be reduced by \$3,977 for water and \$3,654 for wastewater and

¹² The sale price of Wedgefield Utilities, Inc. in April of 2009 was \$7,300,000. Based on the rate base reported in its 2008 annual report, this amount is approximately 13.81 percent or \$885,852 greater than rate base.

¹³ The sale price of Miles Grant Water and Sewer Company and Utilities, Inc. of Hutchinson Island in August of 2009 was \$7,500,000. Based on the rate base reported in their respective 2008 annual reports, this amount is approximately 33.88 percent or \$1,897,837 greater than their collective rate bases.

¹⁴ See Docket Nos. 070695-WS, 070694-WS, and 070693-WS.

¹⁵ See Docket Nos. 080250-SU, 080249-WS, 080248-SU, and 080247-SU.

¹⁶ Modified Final Order, issued January 15, 2009, in Docket No. 08-06036.

depreciation expense should be reduced by \$2,173 for water and \$1,996 for wastewater, respectively.

Summary

In summary, staff recommends that plant be increased by \$455 for water and \$418 for wastewater. In addition, the balances of accumulated depreciation should be reduced by \$3,977 for water and \$3,654 for wastewater and depreciation expense should be reduced by \$2,173 for water and \$1,996 for wastewater, respectively.

Issue 4: What is the appropriate amount of rate case expense?

Recommendation: The appropriate rate case expense is \$78,480. This expense should be recovered over four years for an annual expense of \$19,620. Thus, rate case expense should be reduced by \$1,274 for water and \$1,170 for wastewater, respectively. (Mouring)

Staff Analysis: The Utility included in its application an estimate of \$88,257 for current rate case expense. Staff requested an update of the actual rate case expense incurred, with supporting documentation, as well as the estimated amount to complete the case. On March 8, 2010, the Utility submitted a revised estimated rate case expense through completion of the limited proceeding process. Then, on April 14, 2010, the Utility provided an updated schedule of the capitalized time worked by Water Service Company (WSC) employees and invoices from the law firm of Rose, Sundstrom & Bentley through March 2010. Most recently, on August 6, 2010, the Utility submitted another updated request for legal fees to reflect current legal rate case expense incurred as well as a revised estimate to complete.

	<u>Original Estimate</u>	<u>Actual</u>	<u>Additional Estimated</u>	<u>Total</u>
Legal and Filing Fees	\$17,625	\$48,211	\$9,240	\$57,451
Consultant Fees – HDR Engineering	0	1,464	0	1,464
Consultant Fees – M&R	0	1,195	0	1,195
WSC Fees – In House	60,808	9,431	6,711	16,142
Filing Fee	0	0	0	0
Travel – WSC	2,600	0	0	0
FedEx, Miscellaneous	500	219	436	655
Notices	<u>6,726</u>	<u>1,586</u>	<u>6,726</u>	<u>8,312</u>
Total Rate Case Expense	<u>\$88,259</u>	<u>\$62,106</u>	<u>\$23,113</u>	<u>\$85,219</u>

Pursuant to Section 367.081(7), F.S., the Commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. Staff has examined the requested actual expenses, supporting documentation, and estimated expenses as listed above for the current rate case. Based on our review, staff believes several adjustments are necessary to the revised rate case expense estimate.

The first adjustment relates to legal expenses incurred in relation to duties that staff believes are redundant and excessive. In the supporting documentation provided by the Utility, several invoices listed duties performed multiple times resulting in a total amount of hours which staff believes is excessive. Staff has identified approximately 2.73 hours that should be removed from rate case expense as redundant and excessive. This results in an adjustment of \$793 (2.73 hours x \$290).

The second adjustment relates to the Utility's estimated legal fees to complete the rate case. Cypress Lakes estimated 28 hours totaling \$9,240, which is the result of all of the estimated time being billed at Mr. Friedman's new hourly rate of \$330, instead of the time being split

between Mr. Friedman and Mr. Marcelli. Staff also notes that all of the supporting documentation provided by the Utility for legal expenses prior to February 2010, used Mr. Friedman's hourly rate of \$320 and Mr. Marcelli's hourly rate of \$290. However, in the Utility's invoices from February and March of 2010, and the estimate to complete this case, the hourly rates used for Mr. Friedman and Mr. Marcelli are \$330 and \$305, respectively. The specific amounts of time associated with each item are listed below:

<u>Estimate To Complete Through PAA Process</u>		
<u>Description</u>	<u>Hours</u>	<u>Fees</u>
Respond to formal data requests from staff and informal requests for information from staff and/or OPC	2.0	\$660
Respond to informal data requests from Cypress Lakes HOA	1.5	495
Review staff recommendation; conference with client and consultant regarding recommendation; conference with staff regarding recommendation	3.5	1,155
Prepare for and attend Agenda conference; discuss Agenda with client and staff	15.0	4,950
Review PAA Order; Conference with client and consultant regarding PAA Order	2.0	660
Prepare revised tariff sheets; obtain staff approval of tariffs; draft and revise customer notice; obtain staff approval of notice; coordinate mailing of notices and implementation of tariffs; facilitate compliance with Order	4.0	1,320
Total estimated fees	<u>28.0</u>	<u>\$9,240</u>

The Utility has estimated 15 hours to prepare for, and attend the Commission Conference. However, the Utility was only billed 8 hours to prepare for and attend the Commission Conference on June 1, 2010, that Mr. Friedman attended. As such, staff recommends reducing the 15 estimated hours by 7 hours, and applying Mr. Friedman's hourly rate of \$330. This results in a reduction of \$2,310 (7.0 hours x \$330).

Also, in response to a staff data request, the Utility provided the estimated legal hours necessary to complete the case. The Utility then applied Mr. Friedman's proposed hourly rate of \$330 to the estimated hours to arrive at the \$9,240 in legal costs to complete the case. However, based on the actual participation of Mr. Friedman, only about 10 percent of the hours billed through March 10, 2010, have been attributable to him (14.7/146.8), with the remaining 90 percent being attributable to Mr. Marcelli (132.1/146.8). Also, staff notes that the hourly rate of both Mr. Friedman and Mr. Marcelli has changed during the course of this limited proceeding. Staff has identified legal expenses of \$4,846 attributable to Mr. Friedman and \$39,334 attributable to Mr. Marcelli. As such, staff has calculated a weighted average hourly rate of \$300.95 [(\$4,846+\$39,334)/146.8 hours] based on the actual cost attributable to each attorney, to be applied to the remaining 13 estimated hours to completion. This results in a reduction of \$378 [(\$330-\$300.95)x13 hours]. This methodology of using a weighted average cost for legal services is consistent with the Commission's decision in the 2009 Ni Florida, LLC rate case.¹⁷

¹⁷ See Order No. PSC-10-0168-PAA-SU, issued March 23, 2010, in Docket No. 090182-SU, In re: Application for increase in wastewater rates in Pasco County by Ni Florida, LLC.

The third adjustment relates to the 181 hours and \$6,711 of estimated costs to complete this case by WSC employees. Cypress Lakes asserted that additional hours were required for assistance with the limited proceeding, staff analyst's data requests, and audit facilitation. However, the Utility failed to provide any detailed documentation of what tasks were involved in its estimate to complete the case for each employee. Cypress Lakes simply stated that the \$6,711 was to assist with the limited proceeding, data requests, and audit facilitation. The hours needed were not broken down to estimate the hours needed to complete each item. In addition, there were no timesheets provided to show actual hours worked. Therefore, staff had no basis to determine whether the individual hours estimated are reasonable. Staff reviewed these requested expenses and believes the estimates are overstated. As discussed below, it is the Utility's burden to justify its requested costs. Staff believes that 93.65 hours is reasonable to allow Cypress Lakes to complete the limited proceeding and respond to data requests. By applying the individual employee rates and the average number of hours worked by WSC employees, staff recommends that the estimated WSC fees to complete the case should be \$3,454. Thus, the Utility's requested expense of \$6,711 should be decreased by \$3,258. In those cases where rate case expense has not been supported by detailed documentation, the Commission practice has been to disallow some portion or remove all unsupported amounts.¹⁸

It is the Utility's burden to justify its requested costs.¹⁹ Further, the Commission has broad discretion with respect to the allowance of rate case expense. It would constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings.²⁰

In summary, staff recommends that Cypress Lakes' revised rate case expense be decreased by \$6,738 for unsupported and unreasonable rate case expense. The appropriate total rate case expense is \$78,481. A breakdown of rate case expense is as follows:

<u>Description</u>	<u>Original Estimated</u>	<u>Utility</u>		<u>Total</u>
		<u>Revised Actual & Estimated</u>	<u>Staff Adjustments</u>	
Legal Fees	\$17,625	\$57,451	(3,480)	\$53,971
WSC In-House Fees	60,808	16,142	(3,258)	12,884
Consultant Fees-Engineering	0	2,659	0	2,659
Miscellaneous	9,826	8,967	0	8,967
Total Rate Case Expense	<u>\$88,259</u>	<u>\$85,219</u>	<u>(6,738)</u>	<u>\$78,481</u>
Annual Amortization	<u>\$22,065</u>	<u>\$21,305</u>	<u>(1,685)</u>	<u>\$19,620</u>

¹⁸ See Order Nos. PSC-94-0075-FOF-WS, issued January 21, 1994, in Docket No. 921261-WS, In re: Application for a Rate Increase in Lee County by Harbor Utilities Company, Inc.; PSC-96-0629-FOF-WS, issued May 10, 1996, in Docket No. 950515-WS, In re: Application for staff-assisted rate case in Martin County by Laniger Enterprises of America, Inc.; and PSC-96-0860-FOF-SU, issued July 2, 1996, in Docket No. 950967-SU, In re: Application for staff-assisted rate case in Highlands County by Fairmount Utilities, the 2nd, Inc. Staff notes that in all of these cases the Commission removed the entire unsupported amounts.

¹⁹ See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982).

²⁰ See Meadowbrook Util. Sys., Inc. v. FPSC, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), rev. den., 529 So. 2d 694 (Fla. 1988).

In its application, Cypress Lakes requested total rate case expense of \$88,259, which amortized over four years would be \$22,065 per year. The annual amortization of rate case expense included in its application was \$11,500 ($\$22,065 \times .5212$) and \$10,564 ($\$22,065 \times .4788$) for water and wastewater, respectively. Thus, rate case expense should be decreased by \$1,274 and \$1,170 for water and wastewater, respectively.

The recommended total rate case expense should be amortized over four years, pursuant to Section 367.0816, F.S. Based on the data provided by Cypress Lakes and the recommended adjustments discussed above, staff recommends annual rate case expense of \$19,620, or \$10,226 for water and \$9,394 for wastewater.

Issue 5: What is the appropriate increase in revenues for this Utility?

Recommendation: The appropriate revenue increase is \$54,673 for water and \$181,814 for wastewater. (Mouring, Rieger)

Staff Analysis: In its application, the Utility requested increases of \$68,388 for water and \$238,907 for wastewater. The Utility's proposed increases consist of additions to rate base for the cost of modifications to the water and wastewater plants; costs incurred by the Utility for the modernization of its information, customer service, and computer systems; TOTI; income taxes; rate case expense; and an increase in sludge hauling expense. The Utility's revenue increase is comprised of a return on rate base items, plus the increase in operating expenses, and gross-up for taxes. Staff has reviewed the application as well as supporting documentation provided by Cypress Lakes. Based on the review, staff recommends a revenue increase of \$54,673 or 17.24 percent be approved for water and a revenue increase of \$181,814 or 32.89 percent be approved for wastewater. Items included in the determination of the revenue increase are discussed below.

Plant Increases

In its filing, Cypress Lakes included increases in water plant of \$148,738, which consists of \$60,039 for supply mains associated with tying two wells together and altering the chlorine injection points to maintain adequate chlorine residuals in the system and reduce the amount of sulfides in the system, and \$88,699 representing Cypress Lakes' allocated portion of the Phoenix Project. The Utility also included increases in wastewater plant of \$1,130,535, which consists of \$1,049,052 for expansion of the wastewater collection system to phase 12 of Cypress Lakes Estates and modifications to the wastewater treatment plant, and \$81,484 for Cypress Lakes' allocated portion of the Phoenix Project.

In an e-mail response to a staff inquiry regarding the disposition of a generator used at the wastewater treatment plant, the Utility stated that its requested incremental increase in wastewater plant reflected a net increase in rate base for the purchase of the new generator, net of a retirement adjustment. However, a subsequent Utility response given in an e-mail dated September 2, 2010, indicated that the old generator had been transferred to UI's Pebble Creek subsidiary and that no such net adjustment had yet been made. As such, staff recommends that the retirement value of the old generator be removed from the Utility's requested incremental plant increase. Staff also recommends that both accumulated depreciation and plant be reduced by the accumulated depreciation balance at the time of transfer, as well as a corresponding reduction in depreciation expense. In conclusion, staff recommends reducing wastewater plant and accumulated depreciation by \$16,639, reducing the Utility's requested incremental wastewater plant increase by \$17,590²¹ and reducing depreciation expense by \$1,426.

²¹ This represents the net book value of the old generator that was transferred to UI's Pebble Creek subsidiary.

Contribution In Aid of Construction (CIAC)

Pursuant to a settlement agreement with OPC that was approved by the Commission in the Utility's last rate case,²² Cypress Lakes collects plant capacity charges of \$750 per lot water plant capacity charge and \$355 unpaid per lot portion of the wastewater plant capacity charge. These capacity charges are due and payable at the time the meters are set. In response to staff's eighth data request, the Utility provided a schedule of meter tap-in fees, as well as plant capacity charges that have been collected from 2006 through 2008, and the corresponding reconciliations to the annual reports. This schedule indicated that over that period of time, 18 lots were connected and the corresponding plant capacity charges had been collected. Staff also notes that it appears as if five more lots have been connected in 2009, per the 2009 annual report. As these plant capacity charges are related to the plant expansion for the remaining 93 lots in the existing service territory and the 120 lots of Phase 12, staff recommends that these charges be recognized in this case.

Based on the above, staff recommends increasing CIAC by \$17,250 ($\750×23 lots) for water and \$8,165 ($\355×23 lots) for wastewater. Accordingly, corresponding adjustments to accumulated amortization of CIAC and depreciation expense associated with the amortization of CIAC should be made. Staff recommends that accumulated amortization of CIAC should be increased by \$577 for water and \$531 for wastewater. Also, CIAC amortization expense should be increased by \$493 for water and \$454 for wastewater.

Used and Useful

In the last rate proceeding where rate base was established for this Utility, used and useful (U&U) determinations were 100 percent for the water treatment plant, 95.71 percent for the wastewater treatment plant, and 100 percent for the water distribution and wastewater collection systems.

Water Treatment Plant (WTP)

In the previous rate case, the Commission found the water treatment plant to be 100 percent U&U. Since there has been no change in treatment capacity, staff recommends that the WTP should continue to be 100 percent U&U.

Wastewater Treatment Plant (WWTP)

During the previous rate case, the Commission determined the WWTP to be 95.71 percent used and useful. At that time, the permitted capacity of the plant was 175,000 gpd. Due to a recent expansion, the capacity of the plant is now 190,000 gpd. Because the Utility is not required to provide a used and useful analysis for limited proceeding filings, staff requested additional information about the recently expanded WWTP. The Utility submitted a letter with supporting data justifying a 100 percent used and useful determination. The information provided

²² See Order No. PSC-07-0912-AS-WS, issued November 9, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc. The settlement agreement approved by the Commission superseded the terms of a 2006 developer agreement.

demonstrated a growth analysis which indicated the system will reach build-out, even with the recent housing slowdown, in less than five years as contemplated in Section 367.081(2)(a)2, F.S., and Rule 25-30.432, F.A.C. The Utility pointed out that although there has been an increase of 138 customers, flows are now virtually the same as in the 2005 test year. This appears to be the result of the customers' conservation efforts. This assumption is based on the maximum three-month average daily flows (the basis of the Utility's permitted plant capacity).

Pursuant to Rule 25-30.432, F.A.C., in determining the U&U amount, the Commission may consider factors such as the extent to which the area served by the plant is built out and a reduction in flows due to conservation. Since the service area, which includes approximately 1,608 residential lots, will reach build-out with no potential for expansion, staff recommends that the WWTP be considered 100 percent U&U.

Water Distribution and Wastewater Collection Systems

In the previous rate case, both the distribution and collection systems were considered 100 percent U&U. The Utility's service area was expanded in 2007 to include an additional 120 potential connections. According to the developer agreement, the distribution and collection systems were to be constructed by the developer and donated to the Utility. As a result, U&U adjustments are not needed for donated lines. Therefore, staff recommends that the water distribution and collection systems are 100 percent U&U.

Working Capital

On Schedule No. 14 in its filing, the Utility calculated its incremental increase in working capital allowance to be \$1,437 for water and \$5,071 for wastewater. Rule 25-30.433(2), F.A.C., states that working capital for Class B utilities shall be calculated using one-eighth of operation and maintenance (O&M) expenses. Based on staff's O&M expense adjustments, staff has calculated working capital allowance to be \$1,278 for water and \$4,925 for wastewater. As a result, working capital allowance has been reduced by \$159 for water \$146 for wastewater.

Cost of Capital

In its filing, Cypress Lakes used a weighted cost of capital based on Cypress Lakes' parent company, UI's relative percentage of common equity at a cost rate of 11.45 percent and the relative percentage of long-term debt at a cost rate of 6.60 percent as of December 31, 2008. According to Rule 25-30.445(4)(e), F.A.C., the calculation of the weighted average cost of capital for purposes of a limited proceeding shall be based on the most recent 12-month period, using the mid-point of the range of the last authorized rate of return on equity, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the utility. The return on equity (ROE) of 11.45 percent is the authorized ROE used in the Utility's last rate proceeding. As such, staff is recommending a weighted average cost of capital of 8.87 percent be used in calculating the incremental increase of this docket.

Sludge Hauling Expense

In its filing, Cypress Lakes requested an increase in sludge hauling expense of \$30,000, which represents the difference between the 2008 sludge hauling expense and the sludge hauling expense in the 2006 rate case. In a memorandum, dated June 23, 2010, that was jointly prepared by the Utility and the CLHA, stated in part:

Patrick Flynn commented that sludge hauling costs reflect three elements – amount of wastewater handled, the amount of sludge produced needing to be hauled and the cost per unit to haul. His view of the 2009 reduced cost is a reflection of the process improvements that occurred after completing the WWTP modifications in reducing the amount of sludge produced. In the absence of changes to the other two elements, the future annual cost should be similar to the 2009 expense.

As a result, staff recommends that the Utility's requested increase in sludge hauling expense be reduced by \$19,015 to reflect the 2009 sludge hauling expense incurred by the Utility.

Taxes Other Than Income (TOTI)

In its filing, the Utility requested a total increase in TOTI of \$59,073 or \$25,657 for water and \$33,416 for wastewater. This included increases in property taxes since its last rate case,²³ additional property taxes that would result from the increases in the assessed value of the water and wastewater treatment plants discussed in this recommendation, and regulatory assessment fees.

The incremental increase in property taxes from 2005 to 2008 are reflected in the Utility's filing. Subsequently, the 2009 property tax information has been examined by staff, and staff recommends utilizing the current 2009 property taxes in calculating the incremental increase in property taxes.

Also, staff believes that the property taxes that would result from the increases in the assessed value of the water and wastewater treatment plants have already been captured in the 2009 property taxes because all of the plant additions appear to have been completed no later than June 2009. Thus, staff recommends that the Utility portion of the requested increases in property taxes associated with the increases in the assessed value of the water and wastewater treatment plants be removed.

In response to staff's seventh data request, the Utility explained that in 2007 the allocation method of property taxes had changed. Rather than allocated based on ERCs, property taxes are now allocated based on gross plant. Staff recommends that property taxes be allocated based on ERCs. Thus, staff recommends a total decrease to TOTI of \$21,652 or \$6,153 for water and

²³See, Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS, In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.

\$15,499 for wastewater. As a result of the above adjustments, staff recommends a total increase in TOTI of \$37,421 or \$19,504 for water and \$17,917 for wastewater.

Income Tax

At the June 1, 2010, Commission Conference, OPC had raised some concerns regarding the calculation of income taxes. Typically, interest expense is deducted from revenue to determine the taxable income. As such, staff has revised its income tax calculation to remove the interest expense associated with the incremental water and wastewater increases and recalculated the provision for income tax in this case.

Depreciation Expense

Cypress Lakes included additional annual depreciation expense related to the Phoenix Project in its revenue requirement determination in the amount of \$11,088 for water and \$10,186 for wastewater. As discussed in Issue 2, staff is recommending amortizing this system over a 10-year period, instead of an 8-year period. As a result, staff has decreased depreciation expense by \$2,173 for water and \$1,996 for wastewater. Also, this results in a reduction to accumulated depreciation of \$3,977 for water and \$3,654 for wastewater.

Summary

The following table details staff's recommended revenue increases for water and wastewater.

Table 5-1

	<u>Utility</u> <u>Water</u>	<u>Utility</u> <u>Wastewater</u>	<u>Staff</u> <u>Water</u>	<u>Staff</u> <u>Wastewater</u>
Utility Plant In Service	\$148,738	\$1,130,535	\$149,193	\$1,113,363
Retirements	0	0	0	(16,639)
Accumulated Depreciation	(23,302)	(52,650)	(19,325)	(32,357)
CIAC	0	(125,000)	(17,250)	(133,165)
Acc. Amort. Of CIAC	0	4,051	577	4,582
Working Capital	<u>1,437</u>	<u>5,071</u>	<u>1,278</u>	<u>4,925</u>
Total Increase to Rate Base	<u>\$126,873</u>	<u>\$ 962,007</u>	<u>\$ 114,473</u>	<u>\$ 940,709</u>
Weighted Ave. Cost of Capital	8.87%	8.87%	8.87%	8.87%
Required Return	<u>\$11,247</u>	<u>\$85,283</u>	<u>\$10,148</u>	<u>\$83,395</u>
Increase In Depreciation Expense	\$12,803	\$44,183	\$10,630	\$40,761
Increase in CIAC Amort.	0	(6,944)	(493)	(7,398)
Increase in Rate Case Expense	11,500	10,564	10,226	9,394
Increase in Sludge Hauling	0	30,000	0	10,985
Increase in TOTI	<u>25,657</u>	<u>33,416</u>	<u>19,504</u>	<u>17,917</u>
Total Increase in O&M	<u>\$49,960</u>	<u>\$111,219</u>	<u>\$39,867</u>	<u>\$71,659</u>
Total Taxable Income	\$11,247	\$85,283	\$6,122	\$50,306
State IT(5.5%)	\$619	\$4,691	\$337	\$2,767
Federal IT(34%)	<u>\$3,614</u>	<u>\$27,402</u>	<u>\$1,967</u>	<u>\$16,163</u>
Increase in Revenue	\$65,440	\$228,594	\$52,319	\$173,984
RAFs Gross-up	<u>\$2,945</u>	<u>\$10,287</u>	<u>\$2,354</u>	<u>\$7,829</u>
Total Revenue Increase	<u>\$68,385</u>	<u>\$238,881</u>	<u>\$54,673</u>	<u>\$181,814</u>

Issue 6: What are the appropriate rate structures for the Utility's water and wastewater systems?

Recommendation: The appropriate rate structure for the water system's residential class is a continuation of its three-tier inclining-block rate structure approved in Cypress Lakes' 2006 rate proceeding. The current usage blocks and usage block rate factors should also remain unchanged. The appropriate rate structure for the water system's non-residential classes is a continuation of its base facility charge (BFC)/uniform gallonage charge rate structure. The appropriate rate structure for the wastewater system is a continuation of the BFC/gallonage charge rate structure. The residential wastewater gallonage cap should remain at 6,000 gallons (6 kgals), with no cap applied to general service gallons. (Thompson, Lingo)

Staff Analysis: Cypress Lakes is a Class B utility providing water and wastewater service to approximately 1,287 residential and 43 general service customers in Polk County. Rates were last established for Cypress Lakes in its 2006 rate proceeding.²⁴ Cypress Lakes currently has a three-tier inclining block rate structure which includes a monthly BFC of \$5.22. The usage blocks are set at: a) 0-6 kgals, b) 6.001-12 kgals; and c) usage in excess of 12 kgals, with usage block rate factors of 1.0, 1.50 and 2.0, respectively. The current usage charges are \$3.59 per kgal, \$5.38 per kgal and \$7.18 per kgal, respectively.

In the Utility's 2006 case, the current three-tier rate structure was designed and subsequently approved by the Commission after a thorough review of the Utility's billing data in the same case. The test year in the instant proceeding is 2008. Based on staff's review of the Utility's billing data provided in the MFRs, staff recommends that the data is sufficient such that an across-the-board increase may be applied to the current rates.

Staff's recommended rate design for the water system is shown on Table 6-1 on the following page.

²⁴ See Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

TABLE 6-1

CYPRESS LAKES UTILITIES, INC. STAFF'S RECOMMENDED WATER RATE STRUCTURE AND RATES				
Current Rate Structure and Rates		Recommended Rate Structure and Rates		
3-Tier Inclining Block Rate Structure Rate Factors 1.00, 1.50 and 2.00 BFC = 30%		3-Tier Inclining Block Rate Structure Rate Factors 1.00, 1.50 and 2.00 BFC = 30%		
BFC	\$5.22	BFC		\$6.12
0-6 kgals	\$3.59	1 st tier	0-6 kgals	\$4.21
6-12 kgals	\$5.38	2 nd tier	6-12 kgals	\$6.31
12+ kgals	\$7.18	3 rd tier	12+ kgals	\$8.42
Typical Monthly Bills		Typical Monthly Bills		
Cons (kgals)		Cons (kgals)		
0	\$5.22	0		\$6.12
1	\$8.81	1		\$10.33
3	\$15.99	3		\$18.75
5	\$23.17	5		\$27.17
10	\$48.28	10		\$56.62
20	\$116.48	20		\$136.60

Staff recommends that the 17.24 percent revenue requirement increase, as recommended in Issue 5, be applied as an across-the-board increase to the water system's BFC and gallonage charges.

Based on the foregoing, staff recommends that the Utility's current residential water rate structure, which consists of a three-tiered inclining block rate structure with usage blocks set at 0-6 kgals, 6-12 kgals and usage in excess of 12 kgals, with rate factors of 1.0, 1.5 and 2.0, respectively, remain unchanged. The BFC allocation should remain at 30 percent. The recommended rate structure for the system's non-residential class consists of a traditional monthly BFC/uniform gallonage charge rate structure and should remain unchanged.

Consistent with the recommended water rate structure methodology, staff recommends that the wastewater revenue requirement increase of 32.89 percent, as recommended in Issue 5, be applied as an across-the-board increase to the wastewater system's BFC and gallonage charges. The BFC cost recovery percentage should continue at 50 percent. Staff's recommended rate design for the wastewater system is shown on Table 6-2 on the following page.

TABLE 6-2

CYPRESS LAKES UTILITIES, INC. STAFF'S RECOMMENDED WASTEWATER RATE STRUCTURE AND RATES			
Current Rate Structure and Rates		Recommended Rate Structure and Rates	
BFC = 50% Gallage Charge Maximum Charge at 6,000 Gallons		BFC = 50% Gallage Charge Maximum Charge at 6,000 Gallons	
BFC	\$16.30	BFC	\$21.66
\$/kgal	\$5.49	\$/kgal	\$7.30
Typical Monthly Bills		Typical Monthly Bills	
Cons (kgals)		Cons (kgals)	
0	\$16.30	0	\$21.66
1	\$21.79	1	\$28.96
2	\$27.28	2	\$36.26
3	\$32.77	3	\$43.56
4	\$38.26	4	\$50.86
5	\$43.75	5	\$58.16
6	\$49.24	6	\$65.46

Issue 7: What are the appropriate monthly rates for the water and wastewater systems for the Utility?

Recommendation: The appropriate monthly water rates are shown on Schedule No. 1-A, and the appropriate monthly wastewater rates are shown on Schedule No. 1-B. Excluding miscellaneous service charges, the recommended water rate structure is designed to produce revenues of \$54,673. Excluding miscellaneous service, the recommended wastewater rate structure is designed to produce revenues of \$181,814. The Utility should file revised water and wastewater tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved water and wastewater rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved water and wastewater rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson, Lingo, Mouring)

Staff Analysis: The appropriate revenue requirements, excluding miscellaneous service charges, are \$54,673 for the water system and \$181,814 for the wastewater system. As discussed in Issue 6, staff recommends that the appropriate rate structure for the water system's residential class is a continuation of its three-tier inclining-block rate structure, with no changes made to the usage blocks or usage block rate factors. The BFC cost recovery percentage should continue at 30 percent. Staff recommends that the traditional BFC/uniform gallonage charge rate structure be applied to the general service class. As also discussed in Issue 6, staff recommends a continuation of the Utility's current wastewater rate structure. The residential wastewater gallonage cap should continue at 6 kgals, no cap should be applied to general service kgals, and the BFC cost recovery percentage should continue at 50 percent.

The Utility should file revised water and wastewater tariff sheets and a proposed customer notice to reflect the Commission-approved water and wastewater rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved water and wastewater rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

A comparison of the Utility's original rates, requested rates, and staff's recommended water and wastewater rates are shown on Schedules Nos. 1-A and 1-B, respectively.

Issue 8: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense?

Recommendation: The rates should be reduced, as shown on Schedule Nos. 1-A and 1-B, to remove \$10,805 from water rates and \$9,926 from wastewater rates for rate case expense, grossed-up for RAFs. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. (Mouring)

Staff Analysis: Section 367.0816, F.S., requires rates to be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense, the associated return included in working capital, and the gross-up for RAFs, which is \$10,805 for water and \$9,926 for wastewater. The decreased revenue will result in the rate reduction recommended by staff on Schedule Nos. 1-A and 1-B.

The Utility should be required to file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice. Cypress Lakes should provide proof of the date notice was given within 10 days of the date of the notice.

If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

Issue 9: Should the recommended rates be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a substantially affected person or party other than Cypress Lakes?

Recommendation: Yes. The recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a substantially affected person or party other than Cypress Lakes. Prior to implementation of any temporary rates, the Utility should provide appropriate security. UI's total guarantee should be in the amount of \$757,076. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. (Mouring, Klancke, Salnova)

Staff Analysis: This recommendation proposes an increase in water and wastewater rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, in the event of a protest filed by a substantially affected person or party other than the Utility, staff recommends that the recommended rates be approved as temporary rates. The recommended rates collected by the Utility should be subject to the corporate undertaking and refund provisions discussed below.

As discussed in the case background, this recommendation was initially presented to the Commission for disposition at its June 1, 2010, Commission Conference. At that Commission Conference, the OPC raised a number of concerns with issues contained in staff's recommendation. One of the issues of concern to OPC was the instant issue wherein staff was recommending that the Commission approve temporary rates, subject to refund, in the event of a protest filed by a substantially affected person. The parties' arguments raised at the June 1, 2010, Commission Conference with respect to the allowance of temporary rates in a limited proceeding as well as subsequent information submitted by both parties on this matter are summarized below. For the reasons articulated below in staff's analysis, upon review of the parties' arguments, and the relevant Commission precedent, staff believes that it is well within the Commission's discretion to approve temporary rates in the event of a protest in a limited proceeding filed pursuant to Section 367.0822, F.S. In order to remain consistent with the Commission's statute on file and suspend rate cases, staff believes that it is appropriate to limit the allowance of temporary rates to protests filed by a substantially affected person or party other than the Utility.

OPC

At the June 1, 2010, Commission Conference, Counsel for OPC raised the issue of temporary rates as one of significant concern to its office and to the customers who would be required to pay these rates. According to OPC, there is no authority in the Commission's law or in Commission precedent to support temporary rates in the event of a protest in a limited proceeding. Further, the allowance of temporary rates in the event of a protest is not supported by the evidence or the nature of this case, and was not requested by the Utility. OPC further stated that because the Utility refused to answer staff's questions regarding the total nature of the company's earnings, the Utility cannot meet the standard set forth in Commission precedent for emergency rates or rates that require a Utility to consider financial distress.

OPC went on to cite three separate statutes that, according to OPC, bear upon the issue of interim rates or temporary rates. Section 367.082, F.S., is the statute that allows the Commission to grant interim rates, and according to OPC, is not applicable or available for use in a limited proceeding. Section 367.081(8), F.S., is the general file and suspend statute under which the Utility's sister companies filed for relief. Pursuant to that statute, if a party other than the company protests the Commission's proposed agency action (PAA) order, the approved rates may go into effect subject to refund on a temporary basis. According to OPC, that statutory provision does not apply in this case because the Utility did not file for relief under this statute. Finally, OPC cited to Section 367.0814, F.S., which is the statute that governs staff-assisted rate cases and also allows for temporary rates subject to refund in the event of a protest from a party other than the utility. OPC noted that Cypress Lakes did not file for relief under this statute, either. According to OPC, these three statutes are significant because they all address interim or temporary rates, but they do not address the instant case. Further, OPC acknowledged that there is Commission precedent regarding the allowance of temporary emergency rates.

Specifically, OPC discussed a number of limited proceeding cases in which the utility sought interim or temporary emergency rates.²⁵ Following the June 1, 2010, Commission Conference, counsel for OPC provided to staff and the Utility copies of the cases cited during the Commission Conference with a cover letter. OPC stated that the cases cited are not dispositive of the matter regarding temporary rates during a limited proceeding, and that the objection to temporary rates by OPC is "premised in the lack of express statutory authority, and the lack of authority as found in the rules of statutory interpretation for interim relief during the pendency of a limited proceeding."²⁶ According to OPC, this reasoning is consistent with the Commission's decision in the 1998 Gulf Utility, Inc. decision in Order No. PSC-98-0382-FOF-WU.²⁷ OPC further stated that the cases were reviewed because despite the lack of express statutory authority, the Commission has granted "interim" relief in a limited proceeding in the form of "emergency temporary" rates, and the cases provided were generally representative of the reasons for, and the circumstances surrounding the imposition of emergency temporary rates during a limited proceeding.

Cypress Lakes

At the June 1, 2010, Commission Conference, counsel for Cypress Lakes, in response to the arguments raised by OPC regarding this issue, noted that the cases that OPC cited were not

²⁵ See Order Nos. PSC-01-0997-PAA-WU, issued April 23, 2001, in Docket No. 010168-WU, Application for limited proceeding emergency, temporary, and permanent increase in water rates to customers in Seven Springs service area in Pasco County, by Aloha Utilities, Inc; PSC-98-0382-FOF-WU, issued March 10, 1998, in Docket No. 980057-WU, Petition by Gulf Utility Company for interim and permanent increase in water rates, pursuant to Sections 367.0817, 367.082, and 367.0822, F.S., in Lee County; PSC-93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU, Petition for a limited proceeding to adjust water rates in Pasco County by BETMAR UTILITIES, INC; 25711, issued February 12, 1992, in Docket No. 911206-SU, Petition for emergency limited proceedings on wastewater service in Pasco County by MAD HATTER UTILITY, INC; PSC-92-0633-FOF-WS, issued July 8, 1992, in Docket No. 911168-WS, Petition for a limited proceeding for emergency interim rates and for permanent adjustment in rates in Duval County by ORTEGA UTILITY COMPANY.

²⁶ Document No. 9950-09, filed September 29, 2010, in Docket No. 090349-WS.

²⁷ See Order No. PSC-98-0382-FOF-WU, issued March 10, 1998, in Docket No. 980057-WU, In re: Petition by Gulf Utility Company for interim and permanent increase in water rates, pursuant to Sections 367.0817, 367.082, and 367.0822, F.S., in Lee County.

post-PAA cases. Rather, those cases were limited proceedings wherein the utility was seeking temporary emergency rates or interim rates prior to the Commission's final decision. Counsel for Cypress Lakes agreed that interim rates are not appropriate in a limited proceeding and the Utility in this instance is not seeking interim or temporary rates. Further, in a PAA process, the Commission should apply a different standard because the Commission, in its PAA Order, is at least preliminarily finding that the utility is entitled to the revenue and thus, temporary rates are appropriate to protect the utility during an administrative proceeding that could last nine months to a year. According to Cypress Lakes, this is done to help reduce regulatory lag.

Upon receipt of the cases relied upon by OPC, Cypress Lakes responded with a letter dated June 16, 2010, in order to comment upon those decisions cited by OPC and on staff's recommendation on this issue.²⁸ Counsel for Cypress Lakes noted that all but one of the cases cited by OPC addressed emergency or temporary rates during the pendency of a limited proceeding up to the time of the issuance of a PAA Order granting or denying a rate increase. Only the order issued by the Commission in the Betmar Utilities, Inc. case addressed emergency temporary rates after the issuance of a PAA Order.²⁹ In that case, following a protest of the Commission's PAA Order by a customer, the utility requested interim rates during the pendency of the administrative hearing. The Commission denied the request for interim rates, noting that it did not have the authority to grant interim rates in a limited proceeding. Instead, the Commission treated the utility's request as one for emergency rates and granted the request, noting that the determination of emergency rates is made on a case by case basis.

Cypress Lakes further noted that, in Order No. PSC-99-1010-PCO-SU, the Commission has stated that "[a]lthough Chapter 367, Florida Statutes, does not expressly authorize "emergency" rates, Section 367.081(2), Florida Statutes, provides that we must fix rates which are just, reasonable, compensatory and not unfairly discriminatory."³⁰ The Utility asserts that, under the Commission's authority to grant just and reasonable rates, it is authorized to allow the implementation of temporary rates during the pendency of the protest of a PAA Order in a limited proceeding.

Staff's Analysis

As discussed in the case background, on June 30, 2009, Cypress Lakes filed its application for a limited proceeding pursuant to Section 367.0822, F.S., in contrast to its sister companies, which filed general file and suspend rate cases pursuant to Section 367.081, F.S. Section 367.0822(1), F.S., provides

Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, *any matter within its jurisdiction*, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to

²⁸ Id.

²⁹ See Order No. PSC-93-0525-FOF-WU at p. 2.

³⁰ Issued May 20, 1999, in Docket No. 980242-SU, In re: Petition for limited proceeding to implement two-step increase in wastewater rates in Pasco County by Lindrick Service Corporation.

include other related matters. However, unless the issue of rate of return is specifically addressed in the limited proceeding, the commission shall not adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

(Emphasis added) This provision affords the Commission with broad statutory authority to conduct limited proceedings wherein the Commission may consider and act upon any matter within its jurisdiction. Although Section 367.0822(1), F.S., does not expressly provide for the granting of temporary rates, it is well settled Commission precedent that temporary rates in the event of a protest may be approved on a case by case basis.³¹

Staff disagrees with OPC's contention that the lack of express statutory authority within Section 367.0822, F.S., prohibits the Commission from granting emergency or temporary rates, subject to refund, in a limited proceeding. Section 367.081(2), F.S., provides that this Commission must fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. Pursuant to its authority to grant just and reasonable rates, the Commission has granted emergency and temporary rates in limited proceedings where a timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Similarly, in the instant case, staff believes that the granting of temporary rates is warranted because a timely protest of this PAA Order may delay a justified rate increase for another year while the matter is adjudicated at hearing. Moreover, staff believes that the ratepayers are adequately protected because all rates collected by the Utility will be subject to the corporate undertaking as discussed below.

Staff further disagrees with OPC's contention that adequate precedent does not exist supporting the Commission's granting of temporary rates in the event of a protest in a limited proceeding. Although OPC cites to a host of cases in which *emergency* temporary rates were analyzed in the limited proceeding context, OPC fails to consider cases in which the Commission granted temporary rates in a limited proceeding in order to mitigate the potential affects of regulatory lag in the event of a protest. Staff asserts that there is ample Commission precedent for the granting of temporary rates in a limited proceeding.³² For example, in Order No. PSC-09-0651-PAA-SU, issued September 28, 2009, the Commission approved temporary rates in the event of a protest in a limited proceeding explaining that a "timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility." The Commission further asserted that adequate safeguards existed for the potentially affected ratepayers because the approved temporary rates were subject to the refund provisions provided in that case.

³¹ See e.g. Order No. PSC-09-0651-PAA-SU, issued September 28, 2009, in Docket No. 090121-SU, Application for limited proceeding rate increase in Seminole County by Alafaya Utilities, Inc; Order No. PSC-08-0083-PAA-SU, issued February 13, 2008, in Docket No. 070466-SU, Application for limited proceeding rate increase in Polk County by West Lakeland Wastewater, Inc; Order No. PSC-08-0334-PAA-WS, issued May 27, 2008, in Docket No. 080024-WS, Application for limited proceeding rate increase in Sumter County by Continental Utility, Inc; Order No. PSC-99-1883-PAA-SU, issued September 21, 1999, in Docket No. 980242-SU, Petition for limited proceeding to implement two-step increase in wastewater rates in Pasco County by Lindrick Service Corporation; Order No. PSC-95-1605-FOF-SU, issued December 28, 1995, in Docket No. 950615-SU, Application for approval of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc.

³² Id.

For the foregoing reasons staff believes that the recommended rates should be approved for the Utility on a temporary basis, subject to the corporate undertaking discussed below. In order to ensure that the Utility may not unfairly benefit from the issuance of temporary rates and in order to comport with the granting of temporary rates in proceedings filed pursuant to Sections 367.081 and 367.0814, F.S., staff further recommends that temporary rates should only be allowed in the event of a protest filed by an entity or individual other than the Utility.

Corporate Undertaking/Refund Provisions

Cypress Lakes is a wholly-owned subsidiary of UI, which provides all investor capital to its subsidiaries. UI has requested an incremental increase in its corporate undertaking in the amount of \$157,805 for the combined water and wastewater interim increase for its Cypress Lakes system. The current cumulative corporate undertaking amount outstanding for other UI systems is \$599,271. The new request would bring the cumulative amount outstanding to \$757,076. The following tables list the new request, the other amounts outstanding, and the proposed cumulative corporate undertaking amount outstanding for UI. All of these systems are subsidiaries of UI.

New Request for Corporate Undertaking

UI System	Corp. Undertaking Amount	Docket No.
Cypress Lakes Utilities, Inc.	\$157,805	090349-WS

Other Security Amounts Outstanding

UI System	Amount Subject to Refund	Type	Docket No.
Utilities, Inc. of Florida	\$599,271	Corp. Und.	090462-WS
Proposed Cumulative Corporate Undertaking Amount	\$757,076		

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed the financial statements of the parent company to determine if UI can support a corporate undertaking on behalf of its subsidiary. UI's 2007, 2008 and 2009 financial statements were used to determine the financial condition of the Utility. According to the financial statements, UI reported deficient liquidity and low levels of interest coverage over the review period. In addition, UI experienced a net loss in the amount of \$635,405 in 2008. However, UI improved profitability to sufficient levels in 2009 achieving net income in the amount of \$5,662,600. In addition, over the three year period net income has been on average three times greater than the requested cumulative corporate undertaking amount of \$757,076. The Utility has also improved its interest coverage ratio in 2009. Finally, UI's average equity ratio has increased to 45.5 percent in 2009 from 40.7 percent in 2008.

Staff believes UI has adequate resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that a cumulative corporate undertaking of \$756,737 is acceptable contingent upon receipt of the written guarantee of UI and written confirmation that UI does not have any outstanding guarantees on behalf of UI-owned utilities in other states.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as a result of the rate increase should be maintained by the Utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The Utility should maintain a record of the amount of the corporate undertaking, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Conclusion

For the reasons articulated above in staff's analysis, upon review of the parties' arguments, and the relevant Commission precedent, staff believes that it is well within the Commission's discretion to approve temporary rates in the event of a protest in a limited proceeding filed pursuant to Section 367.0822, F.S. In order to remain consistent with the Commission's precedent involving temporary rates afforded in file and suspend as well as staff assisted rate cases, staff believes that it is appropriate to limit the allowance of temporary rates to protests filed by a party other than the Utility.

Accordingly, staff believes it is appropriate in this case that the recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility. Prior to implementation of any temporary rates, the Utility should provide appropriate security. UI's total guarantee should be in the amount of \$756,737. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

Issue 10: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. When the PAA issues are final and the tariff and notice actions are complete, this docket may be closed administratively. (Klancke, Mouring)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. When the PAA issues are final and the tariff and notice actions are complete, this docket may be closed administratively.

Cypress Lakes Utilities, Inc. Water Monthly Service Rates		Schedule No. 1-A Docket No. 090349-WS		
	Rates Prior to Filing	Utility Requested Final	Staff Recomm. Final	4-year Rate Reduction
<u>Residential and General Service</u>				
Base Facility Charge by Meter Size:				
5/8" x 3/4"	\$5.22	\$6.35	\$6.12	\$0.21
1"	\$13.06	\$15.88	\$15.30	\$0.52
1-1/2"	\$26.11	\$31.74	\$30.60	\$1.04
2"	\$41.78	\$50.79	\$48.96	\$1.67
3"	\$83.55	\$101.57	\$97.92	\$3.34
4"	\$130.55	\$158.71	\$153.00	\$5.21
6"	\$261.11	\$317.42	\$306.00	\$10.43
Residential Service Gallonage Charge, per 1,000 Gallons				
0-6,000 Gallons	\$3.59	\$4.36	\$4.21	\$0.14
6,000-12,000 Gallons	\$5.38	\$6.54	\$6.31	\$0.22
Over 12,000 Gallons	\$7.18	\$8.73	\$8.42	\$0.29
General Service Gallonage Charge	\$3.81	\$4.63	\$4.47	\$0.15
<u>General Service Irrigation</u>				
Base Facility Charge by Meter Size				
5/8" x 3/4"	\$5.22	\$6.35	\$6.12	\$0.21
1"	\$13.06	\$15.88	\$15.30	\$0.52
1-1/2"	\$26.11	\$31.74	\$30.60	\$1.04
Gallonage Charge, per 1,000 Gallons	\$3.81	\$4.63	\$4.47	\$0.15
<u>Typical Residential Bills 5/8" x 3/4" Meter</u>				
3,000 Gallons	\$15.99	\$19.43	\$18.75	
5,000 Gallons	\$23.17	\$28.15	\$27.17	
10,000 Gallons	\$48.28	\$58.67	\$56.62	

Cypress Lakes Utilities, Inc. Wastewater Monthly Service Rates		Schedule No. 1-B Docket No. 090349-WS		
	Rates Prior to Filing	Utility Requested Final	Staff Recomm. Final	4-year Rate Reduction
<u>Residential Service</u>				
Base Facility Charge All Meter Sizes:	\$16.30	\$23.35	\$21.66	\$0.39
Gallonge Charge, per 1,000 Gallons (6,000 gallon cap)	\$5.49	\$7.86	\$7.30	\$0.13
<u>General Service</u>				
Base Facility Charge by Meter Size:				
5/8" x 3/4"	\$16.30	\$23.35	\$21.66	\$0.39
1"	\$40.76	\$58.38	\$54.15	\$0.97
1-1/2"	\$81.49	\$116.71	\$108.30	\$1.94
2"	\$130.40	\$186.76	\$173.28	\$3.11
3"	\$260.79	\$373.51	\$346.56	\$6.22
4"	\$407.49	\$583.62	\$541.50	\$9.72
6"	\$814.98	\$1,167.24	\$1,083.00	\$19.45
Gallonge Charge, per 1,000 Gallons	\$6.59	\$9.44	\$8.76	\$0.16
<u>Typical Residential Bills 5/8" x 3/4" Meter</u>				
3,000 Gallons	\$32.77	\$46.93	\$43.56	
5,000 Gallons	\$43.75	\$62.65	\$58.16	
6,000 Gallons	\$49.24	\$70.51	\$65.46	
(Wastewater Gallonge Cap 6,000 Gallons)				