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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090349-WS

APPLICATION FOR LIMITED
PROCEEDING RATE INCREASE
IN POLK COUNTY BY CYPRESS
LAKES UTILITIES, INC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 15

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, October 26, 2010

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734



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P R O C E E D I N G S

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3 **CHAIRMAN GRAHAM:** The next one up is Item 15.
4 Mr. Mouring, you're up.

5 **MR. MOURING:** Good morning, Commissioners.
6 I'm Kurt Mouring with Commission Staff.

7 Item 15 is staff's revised recommendation
8 regarding the application for a limited proceeding
9 increase in water and wastewater rates in Polk County by
10 Cypress Lakes Utilities, Inc. Staff notes that this
11 item was deferred from the June 1st, 2010, Commission
12 Conference. And with us today there are a couple of
13 customers of the Utility, the Office of Public Counsel,
14 and counsel for Cypress Lakes are here to address the
15 Commission. And Staff is prepared to answer any
16 questions the Commission may have.

17 **CHAIRMAN GRAHAM:** Thank you, Staff.

18 Public Counsel -- can I get the Intervenors to
19 introduce themselves, please?

20 **MR. REHWINKEL:** Thank you, Mr. Chairman.
21 Charles Rehwinkel on behalf of the Office of Public
22 Counsel.

23 I'll let the customers introduce themselves.

24 **MR. ATTEBERY:** I'm Bob Attebery, Cypress
25 Lakes.

1 **DR. HALLEEN:** I'm Dr. Robert Halleen,
2 President of Cypress Lakes Homeowners Association.

3 **CHAIRMAN GRAHAM:** Is that it? Okay.

4 Commission, any questions of the Staff or the
5 Intervenors or customers?

6 **COMMISSIONER EDGAR:** Mr. Chair, I don't have
7 any questions, but I would appreciate the opportunity to
8 hear from OPC and the customers, and then of course to
9 allow the Company to respond and see if that engenders
10 any questions.

11 **CHAIRMAN GRAHAM:** Sure.

12 **MR. REHWINKEL:** Mr. Chairman, I think it would
13 be appropriate to let the customers speak first, and
14 then I intend to follow them and address a legal issue.
15 I think they have the most specific issues to discuss
16 with the recommendation, if that's appropriate.

17 **CHAIRMAN GRAHAM:** Thank you, Mr. Rehwinkel.
18 Bob, what is your last name again?

19 **DR. HALLEEN:** Halleen. Very appropriate to
20 the time of year. You spell it Halloween and then drop
21 out the O-W.

22 **CHAIRMAN GRAHAM:** Got you.

23 **DR. HALLEEN:** We have documented our comments
24 in a letter, and I have asked your Staff to pass it to
25 you so you have a copy as we go through the discussion.

1 **CHAIRMAN GRAHAM:** That's coming? Please
2 continue, sir.

3 **DR. HALLEEN:** The first major issue that we
4 had dealing with the time since the last hearing is the
5 fact that we still have some unanswered questions,
6 particularly a question from OPC and another smaller
7 question from the Utility.

8 Since the agenda hearing we requested the
9 details of the settlement agreement dealing with the
10 wastewater treatment plant expansion, which is the
11 dominant element in the rate case or the rate structure
12 that's being changed. To date we have received no
13 information on that detailed development of the
14 settlement agreement which was done by OPC.

15 Now in the last agenda hearing that took place
16 in 2007, there was no discussion of a wastewater
17 treatment plant expansion, and the Utility commented
18 that there was no plan to expand the water treatment,
19 the other element for the Phase 12 expansion that was
20 taking place in our community. In fact, at that hearing
21 the Office of Public Counsel recommended that a service
22 ability fee be added to the structure of the tariff
23 structure for the Utility as they did not have one and
24 most utilities did have one.

25 The OPC recommended at that time a value of

1 \$1,500 for the connection fee for water and \$1,500 for
2 the connection fee for wastewater. That recommendation
3 was approved in -- at the time by the Commission.

4 Then to our surprise, later we found that
5 the -- well, we knew the protest from the developer
6 about these fees. And we were advised by OPC that the
7 group of the Utility, the developer and OPC would
8 undertake a development of an agreement to meet the
9 protest. We were not invited because they felt we had
10 no concern that dealt with the future customers that the
11 Utility would have. Then to our surprise when the
12 settlement agreement appeared, we found that there had
13 been a previous agreement between the developer and the
14 Utility that was negotiated actually prior to that 2007
15 agenda hearing.

16 Further in that system, the fee structure was
17 dramatically reduced, first to about \$750 for the water
18 and \$1,250 for the wastewater, which was then reduced
19 further down to about \$377 for wastewater due to some
20 work that supposedly the developer had done. It also
21 called for an upfront payment of \$125,000 towards the
22 then undocumented cost of \$250,000. And in that
23 agreement it also states that if the cost exceeded the
24 \$250,000, the developer was also responsible for half of
25 the funding. Again, there was no reference to who was

1 responsible for the other half.

2 And since -- when they filed the limited
3 proceedings that we're now considering, the final cost
4 was not \$250,000 but \$1,050,000 or, in other words, a
5 fourfold increase.

6 Well, we anticipated that the revenue
7 agreement as we looked at it would suggest that the
8 developer would pay his 50 percent and the Staff would
9 recommend how the remainder was to be paid, but
10 unfortunately the original recommendation by Staff did
11 not reflect that. They only accepted the \$125,000
12 upfront payment and put the other 900 and some thousand
13 dollars back to customers, none of it back to the
14 developer.

15 We have been trying to find out from OPC, who
16 negotiated that, what the status of the previous
17 agreement is. In other words, the Utility's position is
18 clear to us when they talked to us at an early
19 conference over a year ago. They believe that the
20 original agreement is negated by the settlement
21 agreement. An interesting point of view, but there's
22 absolutely nothing in the settlement agreement that says
23 that. So we don't know where we stand.

24 Now we did get in the revised recommendations
25 this time a further addition to the CICA [sic], which

1 was the service ability fees that have been collected to
2 date. The -- however, the Utility and the developer in
3 the settlement agreement, that the total of \$235,000
4 should be collected towards this. Now unfortunately the
5 developer hasn't sold the houses as fast and the money
6 is not coming in.

7 But our real question is are we being told by
8 the Commission or through the Commission Staff that to
9 get this information that we need as to how the cost was
10 established that we have to seek legal means outside the
11 Commission? So that's our issue relative to the
12 wastewater treatment plant.

13 The other issues that, the other primary issue
14 that we brought last time was the quality issue. And I
15 would compliment the Utility because we had a meeting
16 with them, we referred that, and the Utility has stepped
17 forward and made some significant changes in both how
18 they handled the flushing procedure and in relocating
19 blowout valves, which apparently did an excellent job in
20 reducing the chlorine residual. The outcome of that
21 will be probably found this year when the full
22 complement of people come back and we see when we use
23 the maximum amount of water.

24 Because the problem that resolves in this is
25 the fact that there is a sulfide content. And with

1 excessive chlorine to accomplish the chlorine levels
2 required by the state and EPA you get a black scum in a
3 large number of toilets. But there -- in the one area
4 where they put automatic blowout valves in they did get
5 significant improvement in it. So we're waiting to see
6 what happens. But I would compliment them that on that
7 issue they did step forward and did very well and we'd
8 agree with staff's recommendation.

9 The other issues we would take are in how
10 three things were calculated in the recommendation.
11 First of all, property tax. The Staff took half of the
12 step in correcting that situation from the original
13 recommendation in that there is no increase in what is
14 being called property tax but which is really a tangible
15 tax. It is based on market assessed valuation, and the
16 documents that we finally were able to obtain from the
17 tax collector shows that the market value assessment
18 from '7, '8, '9 and '10 is literally unchanged. So we
19 feel that any year that is picked with the tax level to
20 compare with the 2005 is an acceptable increase.

21 What is not acceptable is to take the
22 Utility's value of 2008 because they use both the
23 property bill for 2008 and the value that they did not
24 list in the annual report for 2007. So the -- and
25 there's a table on the back of this document I provided

1 with you with all of the tax bills: The assessed
2 values, the taxable values and the final taxes that are
3 being proposed through 2010.

4 So if you're going to pick 2008, you need to
5 take, we think, that value in calculating the increase
6 from 2005. But you also must adjust the 2005 for the
7 increase you gave them at that time versus the 2005 rate
8 case. So property tax, we feel, needs to be adjusted.

9 Sludge hauling fee, the data supplied by the
10 Utility is incomplete after the improvement. The Staff
11 has taken a position to take 2009 as the year of showing
12 the improvement when the improvement did not finish 'til
13 midyear. We suggest that there's some further
14 improvement that we'll see in sludge hauling costs in
15 2010.

16 The final item was probably the biggest one.
17 We do not understand why income tax in the revenue
18 request is based on gross revenue. Income tax is based
19 on revenue versus -- minus expenses. That's the way we
20 do our federal income tax. We get our wages and
21 salaries and dividends, subtract off our deductions, and
22 you pay a tax on the difference.

23 We don't understand why a rate structure has a
24 tax on gross revenue, because fundamentally the gross
25 revenue is being taken care of by the assessment in what

1 you call UPIS. So fundamentally they're getting the
2 money back for UPIS and then they're getting money that
3 they will then write off to UPS [sic] I hope each year
4 in either depreciation or by some other mechanism for
5 both the Phoenix Project, the expense of the hydraulic
6 upgrade and the wastewater treatment plant. So
7 obviously there is some expense against the revenue
8 they're going to get that year. Why is the tax figured
9 on the gross revenue?

10 That's basically the problems that we see in
11 the existing recommendation, and we, we don't, don't
12 have an answer to, to any of them.

13 **CHAIRMAN GRAHAM:** Thank you, Doctor.

14 **DR. HALLEEN:** We certainly appreciate the fact
15 that last time you did defer this. Because even if you
16 accept totally without changing a thing in this, our
17 people did benefit by the reexamination of several
18 things like adding the CICA [sic], taking out the gross
19 property tax that was added for supposedly the increase
20 in UPIS. But we think there are still other things that
21 need to be addressed because they just don't make sense
22 when we try to explain them.

23 **CHAIRMAN GRAHAM:** Thank you, Dr. Halleen.

24 Is there anything else from the customers?
25 Yes, sir. Can I get your name once again?

1 **MR. ATTEBERY:** Yeah. Bob Attebery, Cypress
2 Lakes Homeowners Board.

3 I have two things that I would like to
4 discuss. The first of them is back to the Phoenix
5 Project that we've talked about before. We still have
6 been looking for some benefit from this Phoenix Project.
7 We're paying a lot of money for a system that the
8 Utility says is beneficial, and yet we see no cost
9 benefit from that.

10 I worked in the industry for over 30 years,
11 and any time we initiated a project, either software or
12 hardware, we had to justify that this project would save
13 some money. We see no money saved from the Phoenix
14 Project. It's totally a cost on our residents that they
15 have to pay for with no offsetting benefit, and I think
16 that's unfair.

17 The second thing I would like to talk about is
18 under Issue 5 they talk about the hookup, again these
19 hookup fees of 23 lots, and they're including that in
20 the Staff recommendation. However, what about the other
21 97 lots? That total Phase 12 consists of 120 lots.
22 Eventually those other 97 lots are going to be sold, and
23 the hookup fees, reduced as they are, are going to be
24 added to the Utility's revenue. Those 97 lots should
25 also have been included in the CIAC, I believe.

1 Those are my only two comments. Thank you.

2 **CHAIRMAN GRAHAM:** Thank you, sir.

3 Do we have any questions of the Commission
4 board before we go to Public Counsel?

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you. Just to
7 Mr. Halleen.

8 **DR. HALLEEN:** Yeah.

9 **COMMISSIONER SKOP:** With respect to two
10 assertions that you made in the handout, I'll get to the
11 substantive one first -- or actually three. You
12 indicated that the quality issue has been improved
13 through automated flushing in those areas where they
14 have the automated flushing valves; is that correct?

15 **DR. HALLEEN:** In the, in the critical area,
16 yes. And we'll see how it, how it does there.

17 **COMMISSIONER SKOP:** Okay. And hydrogen
18 sulfide seems to be the biggest problem where the
19 automated flushing valves aren't installed that you have
20 that residue that builds up; is that correct?

21 **DR. HALLEEN:** Yes.

22 **COMMISSIONER SKOP:** And that's esthetics, not
23 so much --

24 **DR. HALLEEN:** It's not -- yeah. It's not,
25 shall we say, a health issue.

1 **COMMISSIONER SKOP:** Okay. All right. Now
2 substantively on the assertion as to the property tax,
3 because you have asserted that the tax is a tangible tax
4 based upon market assessed value and you provide some
5 numbers supporting a reduction to that, and those
6 numbers are provided in Table 1. Have you previously
7 discussed those numbers with Public Counsel or
8 Commission Staff?

9 **DR. HALLEEN:** We just received them recently.
10 We've been -- we were prohibited from getting that
11 information because we basically live on leased lands.

12 **COMMISSIONER SKOP:** Okay.

13 **DR. HALLEEN:** We finally, through your
14 counsel, got directed to, one, the office -- the Freedom
15 of Information Act and, secondly, to use the developer,
16 who is one of the people that will bear part of the cost
17 of this rate increase. We then had the developer get us
18 copies of the tax structure from the county.

19 **COMMISSIONER SKOP:** Okay.

20 **DR. HALLEEN:** We still do not know how they
21 did the increase in issues from '5, 2005 to '7 that you,
22 or '6 that you see there.

23 **COMMISSIONER SKOP:** Okay. And I'll ask our
24 Staff at the appropriate time, not now, to respond to
25 that concern.

1 **DR. HALLEEN:** Okay.

2 **COMMISSIONER SKOP:** And last, finally I guess
3 you asserted that there had been no response from the
4 Office of Public Counsel and the details underlying the
5 settlement agreement. Are you talking about the current
6 settlement agreement or the past settlement agreement?

7 **DR. HALLEEN:** The one that's in place. In
8 other words, how did it, how did they establish the new
9 fees? You know, why, why was it reduced?

10 **COMMISSIONER SKOP:** Okay.

11 **DR. HALLEEN:** What work was done to, to
12 establish it? What happened to the original agreement?
13 Is it in place or not?

14 **COMMISSIONER SKOP:** Okay. All right. And did
15 Public Counsel, you know, indicate why they did not
16 provide that information or any, offer any --

17 **DR. HALLEEN:** No.

18 **COMMISSIONER SKOP:** Mr. Rehwinkel, can you
19 elaborate?

20 **CHAIRMAN GRAHAM:** We'll get to him in just a
21 second. Let's just go, stick with the customers now.

22 **DR. HALLEEN:** Your General Counsel for the
23 PSC, Lorena Holley, sent me a copy of a letter that she
24 sent just about a week and a half ago to both the
25 Utility and the Office of Public Counsel saying very

1 clearly that they had not answered these letters in
2 requests that we had made. And at that time there was a
3 third one on the audit which dealt, we thought, with
4 benefits. And she gave me the complete audit. So we've
5 been -- we feel that Staff has done a, a job to get us
6 the information that we need. There's still some pieces
7 that are missing.

8 **COMMISSIONER SKOP:** All right. Very well.
9 Thank you.

10 **CHAIRMAN GRAHAM:** Any other questions of the
11 customers?

12 Mr. Rehwinkel, please.

13 **MR. REHWINKEL:** Thank you, Mr. Chairman.

14 And, Commissioner Skop, with respect to the
15 specific question that you asked, I'm going to try to be
16 very careful about this. I was not around when, when
17 those actions occurred. The Public Counsel's Office
18 believes that they are the statutory legal
19 representatives of the customers; however, suggestions
20 of litigation with respect to this issue create a
21 potential ethical conflict for the Office of Public
22 Counsel. And I'm not in a position to know whether that
23 is a true concern or it's just a potential concern.

24 I will state for the record I do not want to
25 be perceived to be or in any actual conflict with the

1 clients that I have or that the Public Counsel has.

2 In July we received a letter asking for the
3 document, complete documentation and numbers associated
4 with the settlement agreement. And, you know, the
5 letter was directed to me. I was working on the nuclear
6 case, the case that just got voted on, and I asked that
7 the work papers, that whatever we had be sent to the
8 company and I had thought they were. But apparently
9 based on what has been said here today they were not.

10 All the Public Counsel's Office had to provide
11 and can provide to the Commission is, are work papers
12 that are essentially from Staff work papers that show
13 the breakdown of the dollars that went into the two
14 sides of the service availability charges that were
15 established, the water and the wastewater side.

16 I have no knowledge, I have no documentation
17 to provide about any thinking that went into the service
18 availability tariff versus any developer agreement that
19 may have existed at that time.

20 So that's all that I can offer. All we know
21 is that, all I know is that these numbers were agreed
22 upon and approved by the Commission. And for whatever
23 legal impact they have vis-a-vis a developer agreement,
24 they are the numbers that are there. And if there are
25 any ramifications or legal statuses that need to take

1 place as a result of that, so be it. I don't know what
2 to say beyond that, to answer your question, if I have.
3 But I apologize to, to the customers if this information
4 didn't get to them as I intended.

5 **CHAIRMAN GRAHAM:** Please continue.

6 **MR. REHWINKEL:** Okay. I -- the Public
7 Counsel's Office stands on the, the remarks that we made
8 at the prior agenda with respect to the expenses. I can
9 state that, that the revenue requirement adjustments
10 that are discussed in the letter that I've just seen
11 that was handed out, we believe that are -- I believe,
12 based on my 25 years of working in this business, I
13 think that the customers have made a good point and that
14 it deserves to be responded to by Staff and the Company
15 with respect to the accounting adjustments that they,
16 they have raised.

17 Because of the improvements in the Staff
18 recommendation and the thoroughness of the customers'
19 presentations, I came prepared to discuss a legal issue
20 about the establishment of temporary rates in the event
21 of a protest. I would be glad to make those arguments
22 at this time, or, if it's the preference of the
23 Commission, allow you to deal with the accounting issues
24 that have been addressed and then discuss the temporary
25 rate issue if it is still necessary at that time.

1 Whatever the preference of the Commission is.

2 **CHAIRMAN GRAHAM:** I think we'll let Staff
3 reply to some of the comments that were made by the
4 customers, and then let the board ask some questions to
5 get some clarity, and then we'll get back to that issue.

6 **MR. REHWINKEL:** Okay.

7 **CHAIRMAN GRAHAM:** If there's no questions of
8 Public Counsel, I'm going to let Staff reply.

9 Staff, please.

10 **MR. FLETCHER:** Commissioners, Bart Fletcher
11 with Commission Staff.

12 The customer's question regarding the plant as
13 far as the developer's contribution for the expansion of
14 the plant, that was in the 2006 developer agreement and
15 the parties were the Utility and the developer. And in
16 the -- subsequent to that developer agreement there was
17 the Cypress Lakes 2006 rate case. And in that rate case
18 one of the things that were mentioned at the agenda was,
19 I think it was brought out about, brought up by OPC, was
20 service availability charges. And that PAA order was
21 issued. And subsequent to the issuance of that, the
22 developer protested the PAA order in the last case.

23 And then there was a settlement that was
24 basically filed with the Commission by -- OPC was a
25 signatore (phonetic), the developer was also, and the

1 Commission approved that settlement. Now that
2 determined what the developer's contribution level would
3 be for the plant expansion.

4 In this case, the plant, in order -- was
5 expanded by about 15,000 gallons per day in order to
6 provide the appropriate capacity to serve that
7 additional subdivision the developer was developing.
8 It's about 112 lots. And that's a distinction here in
9 what the Company has asked for in this case as far as
10 wastewater. It's not solely for the plant expansion of
11 the 15,000 gallons per day. That, as stated in
12 Dr. Halleen's letter or handout, the wastewater plant
13 improvements was 1 million -- \$1,049,000. We have a
14 little bit, slightly more than that, so it's a little
15 bit more in our recommendation. But that's not solely
16 for the plant expansion. That, about 295,000 of that
17 amount was for the actual plant expansion for growth
18 related plant investment.

19 The other part is what we, Staff considers the
20 same project; you had the same vendor doing it and at
21 the same time for the modification for the wastewater
22 treatment facilities. You had other modifications in
23 order, for what we perceive was in order to maintain
24 compliance with DEP's rules as far as the operational
25 conditions of the Utility's wastewater treatment plant.

1 So you have growth related, nongrowth related, and we,
2 in this recommendation, we believe the developer has
3 paid its share as far as the growth related matter.
4 They were not required as a part of the initial
5 developer agreement or the settlement agreement to pay
6 for half of the nongrowth related expansion.

7 With regard to the property taxes, what
8 Staff -- subsequent to our original recommendation, we
9 had looked at the Utility's actual 2009 property tax
10 bills in order to recommend only the incremental amount
11 that was not previously embedded in rates that the
12 Commission voted on in the last rate case. So in doing
13 so, we relied on the tax bills provided by the county
14 for the tax assessed value for the tangible personal
15 property taxes. And what we have reflected in our rec
16 is only the incremental amount.

17 As far as the final issue for Dr. Halleen, it
18 was the income taxes. What we have come up with are
19 Staff's calculation. You'll see on page 30 -- 23,
20 excuse me, in Table 5-1, we have not based the income
21 taxes based on gross revenues. What we have done here
22 is basically you see the total increased revenues, the
23 final line, final row.

24 What we have done -- you can see the taxable
25 income is far less than that. What we basically have

1 considered is, in the taxable income is just basically
2 the return less interest expense based on the return on
3 the plant investment. That's why we're coming up with
4 taxable income for the water of 6122 and a little over
5 50,000 for the wastewater. This is consistent with how
6 you have to calculate income taxes. You have to
7 consider the interest expense as a reduction to the
8 taxable income. And so we feel we calculated that
9 correctly. It is not based on gross revenues.

10 For Mr. Attebery's comments regarding -- he
11 had a question on the Phoenix Project, which is Issue 3.
12 This has previously been decided by the Commission in
13 about -- we got I think at least four, probably five
14 consummating or final orders from sister companies of
15 Cypress Lakes. The distinction there is that in those
16 other companies we had, it was a file and suspend case
17 where there was an audit performed and we looked at the
18 total -- an audit was performed of the total gross
19 amount before it was allocated down to each of UI's
20 subsidiaries, including Cypress Lakes. They have
21 followed the ERC method to allocate that gross
22 investment, and it's, basically it's got kind of like
23 administrative finality with the Commission's decision
24 with regard to the prudence of that expense.

25 The remaining question for Mr. Attebery was

1 the CIAC with just the additional 23 lots is what Staff
2 included as far as an increase in the CIAC. That's
3 covered on page 19 of the recommendation. And the
4 reason why we only included the 23 is because of the
5 growth expansion. That is the CIAC to cover the
6 remaining lots that have not been paid of that
7 additional 112-lot development. So we only included
8 that incremental amount as far as that goes.

9 Everything that -- like I say, the other part
10 of the nongrowth related plant expansion, that's for the
11 existing customers. So that's the reason why we held it
12 or stuck to it consistent with what they were requesting
13 in their filing only that which is associated with their
14 plant increase request. We didn't want to go beyond
15 that as a matching principal (phonetic).

16 **CHAIRMAN GRAHAM:** Mr. Fletcher, Dr. Halleen
17 also said something about sludge hauling fee.

18 **MR. FLETCHER:** Okay. I apologize,
19 Commissioner. That is addressed on page 21. And we
20 have looked at that since the last, our original
21 recommendation, and we have recommended a reduction of
22 about \$19,000. We received supplemental information
23 from the Utility. And based on that information, we
24 agree on a prospective basis that the sludge hauling
25 expense will be the same level as what was incurred in

1 2009. So we have accounted for that additional
2 reduction that was mentioned or expressed concerns by
3 Ms. Sterling.

4 **CHAIRMAN GRAHAM:** Thank you, sir.

5 **MR. FLETCHER:** Yes, sir.

6 **CHAIRMAN GRAHAM:** Commission board, any
7 questions, clarifications, statements of interest?

8 **COMMISSIONER EDGAR:** Not at this time.

9 **CHAIRMAN GRAHAM:** Mr. Rehwinkel?

10 **MR. FRIEDMAN:** Mr. Chairman.

11 **CHAIRMAN GRAHAM:** Yes, sir.

12 **MR. FRIEDMAN:** This is Marty Friedman of the
13 Law Firm of Rose, Sundstrom & Bentley on behalf of the
14 Utility, Cypress Lakes Utilities.

15 Can I interject something on these other
16 issues? And then I'll address, I know what issue
17 Mr. Rehwinkel is going to address, and I'd like to
18 address that at that time. But since we're going
19 through the technical issue, I thought I'd give you my
20 two cents' worth while we're, while we're here.

21 And I think that, that Mr. Fletcher has
22 adequately discussed the settlement agreement that was
23 the, between the, among the Utility, the developer and
24 OPC back in probably '06, '07. It seems like the
25 customers are trying to make something surreptitious

1 about that, but it wasn't. I mean, it was something
2 that when we were sitting here at the Staff rec, and I'm
3 not sure anybody except maybe Commissioner Edgar was
4 here back then, but when we were sitting here at the
5 agenda like we are today, Public Counsel raised the
6 issue that there was no CIAC. They convinced, Public
7 Counsel convinced the Commission to adopt a number for
8 CIAC, and, in fact, the Commission did so at that time.
9 And as Mr. Fletcher mentioned, the developer protested
10 that, and we went through that normal process.

11 The Utility never asked for it and, in fact,
12 in the, in the settlement had very little to do with it.
13 You know, we basically didn't care one way or the other.
14 And it was done, I think, according to Commission
15 practice, and this Commission did approve that. And I
16 believe that there's nothing surreptitious about it to
17 give rise to, to thinking that there was some backroom
18 dealing.

19 The second on those expenses that Dr. Halleen
20 mentions in his letter, the Staff has addressed all
21 those in this new Staff recommendation. The Project
22 Phoenix costs, we don't believe that the amortization
23 period in Project Phoenix is, is the correct one to use.
24 I made that argument to this exact same panel, and I
25 won't bore you with that argument again. And if any of

1 the Commissioners have questions, I'll be glad to answer
2 them. Otherwise, after Mr. Rehwinkel makes his legal
3 argument, I'd like to throw in my two cents' worth on
4 that, too.

5 **CHAIRMAN GRAHAM:** Thank you, sir. Anything
6 from the board before we go back to Public Counsel?

7 Mr. Rehwinkel.

8 **MR. REHWINKEL:** Thank you. Thank you, Mr.
9 Chairman and Commissioners.

10 The issue that I would like to address is
11 Issue 9. And two of the four Commissioners have heard
12 some of this argument before when we were here before,
13 but the other two Commissioners are new. So I would
14 like to raise the, the objection on behalf not only of
15 the customers of Cypress Lakes, but of all utility
16 customers in the state about what I believe is an
17 erroneous approach to the creation of what is
18 effectively rate increases without a hearing.

19 You have several ways of creating interim
20 rates in your ratemaking. The most predominant way is
21 the interim statute. Now the interim statute exists
22 alongside of what's effectively a common law remedy
23 that's available to the Commission of interim rates that
24 existed prior to the enactment of the interim statute.
25 But the interim statute gives the Commission the

1 authority to hold -- to grant a rate increase to
2 utilities without holding a hearing if a statutory
3 formula is followed. And that statutory formula is very
4 rigid and it's set out in the statute, and it is based
5 on a 12-month historical period. Rates are subject to
6 refund and they are refundable if the final rates that
7 are granted are less than the interim rates as measured
8 by the statutory formula.

9 And usually what happens is that the statutory
10 formula, of course, is historical. Ratemaking generally
11 in this state on a, in a rate case basis is prospective
12 in the sense that it uses a, either a historical year
13 with pro forma adjustments to represent going-forward
14 conditions or a projected test year.

15 And the Commission's precedent has been to say
16 that interim rates under the statutory formula are not
17 available if limited rates are sought, limited
18 proceeding rate increases are sought, and I think your
19 precedent is pretty clear on that. And one of the
20 reasons for that is, as I've just mentioned, is that you
21 have, you have a formula that is a make whole standard
22 that looks at what your historical earnings were and
23 what you're entitled to earn on an entire company rate
24 of return, achieved rate of return basis versus your
25 allowed rate of return at the bottom of the range, the

1 Commission determines an interim rate. But you look at
2 the whole thing. Limited proceedings do not, by
3 definition, look at the entire earnings of a company.
4 And we raised at the last Agenda Conference the company
5 did not respond to and objected to responding to Staff
6 data requests that would have looked at more
7 information. But, nevertheless, the interim rate
8 statute is not available.

9 There is also a statutory provision that
10 allows for temporary rates which are almost identical,
11 if not identical, to what is being recommended here
12 where there's a Staff assisted rate case, which is small
13 water and sewer companies where the Staff provides
14 assistance. But, again, these are, these are full rate
15 case proceedings, and the statutory formula is exactly
16 what is set out here, temporary rates. Well, of course,
17 this is not eligible for temporary -- for Staff
18 assistance, nor is it a full rate case.

19 What you have to remember is the Company had
20 the discretion to file for limited rates, for a limited
21 proceeding rate increase. They didn't have to, and we
22 have raised the objection that they essentially exceeded
23 what you, the Staff has called guidelines in the, in the
24 rule. But, nevertheless, they made the choice to come
25 in and ask for limited proceeding rates instead of

1 filing a full rate case.

2 The way this case has gone we can hindsight
3 evaluate it and say maybe they should have done that. I
4 don't know. But, nevertheless, they made the choice to
5 come in, knowing full well that interim relief was not
6 available for, for a limited proceeding increase.

7 The Commission also has created and has a long
8 body of precedent that allow for emergency temporary
9 rates where the company requests this type of relief
10 pending a protest or during the pendency of the
11 proceeding if the company makes a showing and makes a
12 showing that there is some sort of emergency. Well, A,
13 Utilities, Inc., did not ask for any temporary relief or
14 any interim relief in this case, nor is there any
15 emergency that would qualify under the Commission's
16 standards.

17 So what you have done -- and here is the
18 problem that the Public Counsel has -- is that you
19 have -- oh, you also have another statutory formula,
20 which is the PAA rate case, where if there is a protest
21 by anyone other than the company, the company is allowed
22 to put in the, the requested rates subject to refund.
23 That's a statutory formula or a statutory creation of
24 these interim rates which are rates that are granted
25 without a hearing.

1 In this case, the Company chose, as I've
2 stated several times, to file for a limited proceeding
3 increase. They made that choice. And the Staff is
4 recommending that in the event of a protest, that
5 temporary rates go into effect, and these would be rates
6 that would be without affording people a hearing. And
7 when I say hearing, an evidentiary hearing with
8 cross-examination that is consistent with 120.57 of
9 *Florida Statutes*, the Administrative Code.

10 And what is being proposed is that you look
11 back to, well, some sort of inherent authority of the
12 Commission and also a reference to prior cases which
13 were all done by PAA. And the problem that the PAA
14 process gives with respect to being precedent is if you
15 look at those cases, they're all small water companies
16 where rate case expense is always a front of the burner
17 issue. It's always a big revenue requirement issue. So
18 customers cannot go -- and if they want to challenge the
19 propriety, the legality of a PAA that has temporary
20 rates in them, they cannot go and challenge it just on
21 that issue. Because not only does that create more rate
22 case expense, but if there's any appellate, if there's
23 any appellate action that needs to be taken, that adds
24 more rate case expense. So PAAs that contain a policy
25 change with respect to establishing this temporary rate

1 formula I believe are not good Commission practice.

2 In addition, the fact that the Legislature has
3 established these mechanisms, the interim rate statute,
4 the temporary rates in the staff assisted context or
5 the, the ability to put in temporary rates or interim
6 rates in a PAA rate case environment says to you that
7 the Legislature has said these are the ways you do it.
8 And by not including it for limited proceedings in the
9 way you've created or you would propose to create here,
10 they are saying to you this is not authorized. And then
11 there are principles of statutory construction that say
12 that the Commission should not create law where there is
13 law in effect, and the Legislature has essentially said
14 what -- the Legislature has essentially said these are
15 the interim or temporary rate formulas that are in
16 place.

17 Again, staff assisted -- the Legislature could
18 have authorized this, if they wanted to. So we think
19 that this is not well-taken. The Staff's recommendation
20 points to the *Alafaya* case, which was a case that was
21 filed very close in time to this case, and it was by PAA
22 that no one protested.

23 The *Alafaya* case contained recommendations
24 from two original certificate cases that are not this
25 situation. One was a situation where the customer --

1 the company would be providing service without any
2 rates. And so these temporary rates were put into
3 effect to make sure that there were rates that went into
4 effect, and that would be, it was a case in the Ocala
5 area.

6 There was another case in Southwest Florida
7 where there was, again, new rates that went into effect,
8 but not the, the, not a limited proceeding like you have
9 in this case.

10 So I have a feeling that, that the Commission
11 is going to go ahead and authorize temporary rates
12 because you can do it, because you have these other
13 PAA-based precedents that say you can do it. But I
14 don't think it's fair to these customers that when the
15 Company makes a choice about filing for a limited
16 increase, that they have a temporary rate increase that
17 the Company did not ask for in this case, it doesn't
18 measure up to any standards of, of propriety. In fact,
19 if you had authorized temporary rates out of the last
20 recommendation that we now see was higher than it should
21 have been, the customers would have had rates that went
22 into effect that would have been higher than what they
23 really should have been. And of course it's subject to
24 refund and the customers can get it back if, if you have
25 a proceeding that, that looks at things.

1 But if, if, if we had not come to the
2 Commission, the customers had not come to the Commission
3 at the last agenda and said here are some problems and
4 you had voted out that PAA, the chances of the customers
5 being able to go and file a protest and get the
6 adjustments that were made between the last
7 recommendation and this recommendation would have been
8 very small because rate case expense is a big
9 disincentive to filing for a PAA, filing for a hearing.
10 So they would have had, they would have had though to
11 face the situation of asking for a protest with these
12 higher than they should have been rates going into
13 effect. We just think it's not good policy to create a
14 temporary rate mechanism without a rule or some more
15 specificity or guidelines about what should go into the
16 determination of temporary rates.

17 I think that's, that's where I'll leave it
18 right now.

19 **CHAIRMAN GRAHAM:** Thank you, sir.

20 Commission board, what I think I'm going to do
21 is I'm going to let Staff reply to that, I'll let
22 Mr. Friedman reply to that, and then come back to you,
23 unless there's some questions you want to ask right now.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you, Mr. Chair.

1 And what you have described is exactly what I would have
2 asked for, to hear from our Staff and to hear from
3 Mr. Friedman. What I am hoping though, recognizing that
4 I'm on about my -- could we maybe take a five-minute
5 break after that?

6 **CHAIRMAN GRAHAM:** After that?

7 **COMMISSIONER EDGAR:** Yes, sir.

8 **CHAIRMAN GRAHAM:** Okay. Staff.

9 **MS. KLANCKE:** As Mr. Rehwinkel specified, he
10 did raise these arguments previously, and Staff did go
11 back and, in our recommendation, did address all of the
12 concerns which he just voiced at this moment.

13 It is Staff's belief that although the
14 statute, which is very broad, which affords this
15 Commission with very broad authority in limited
16 proceedings, does not expressly allow for the granting
17 of temporary rates in the event of a protest, it is well
18 established Commission precedent, and Staff cites six
19 cases, many of which, three of which are not small
20 utilities but in fact are larger utilities, either two
21 that are Class A and one that is Class B that I can see
22 right here, in which this Commission authorized,
23 pursuant to its authority granted via Section 367.081,
24 wherein which it is, it is charged with granting rates
25 that are fair, just, reasonable, compensatory and not

1 unfairly discriminatory.

2 In the event of a protest, the delay -- it may
3 create a regulatory lag or delay during the pendency of
4 that protest adjudication in which it may take up to a
5 year. The Commission in these cases, and most recently
6 in the *Alafaya* case, which was mentioned by
7 Mr. Rehwinkel which does involve a Class A utility,
8 recognized that this regulatory lag may result in
9 unrecoverable losses of revenue to the utility. And as
10 such, they have allowed for the granting of temporary
11 rates, all of which are subject to refund.

12 It affords the customers of the utilities with
13 adequate protection in the instant case where we've
14 analyzed, beginning on page 33, that there will be a
15 corporate undertaking which will afford the customers
16 with protection. In the event that this is protested
17 and it is determined that those rates are not
18 reasonable, those customers will be afforded that, those
19 fees back.

20 Staff believes that in the instant case it's
21 equally applicable and that as a result we believe that
22 the granting of temporary rates is appropriate and
23 supported by Commission precedent.

24 **CHAIRMAN GRAHAM:** Thank you.

25 Mr. Friedman.

1 **MR. FRIEDMAN:** Thank you, again. It's Marty
2 Friedman on behalf of the Utility.

3 I think that Mr. Rehwinkel's argument would
4 have more validity if it were made when the case was
5 originally filed and not after the PAA is being entered,
6 and I think that's a substantial difference.

7 If you accept Public Counsel's argument,
8 several things happen. One is that you tremendously
9 discourage the use of limited proceedings, which are,
10 are cost-effective ways of dealing with limited issues
11 that need to be addressed in a rate proceeding. A
12 utility certainly will be hesitant to bring those, at
13 least certainly my clients will be hesitant to bring
14 those if, if they're not allowed to implement rates even
15 after the Commission has issued a PAA.

16 As, as was pointed out by Staff, it is subject
17 to refund, and so the customers are not harmed by it.
18 There's -- it is a reasonable and legal way to address
19 the regulatory lag that you have between the time your,
20 a utility is entitled to a particular increase and the
21 utility, the time the utility is actually able to
22 implement that increase.

23 And I would, I would also suggest to you that
24 if you accept the Public Counsel's argument, it's going
25 to encourage spurious protests by customers. And even

1 in this case, not that these customers or OPC would do
2 it in this case, but if you look at the economics of it,
3 if I were sitting in the customers' shoes, you look at
4 the economics of it, there's a rate increase of
5 \$230,000. It would make sense for the customers to
6 protest it, go to a hearing in nine, nine months to a
7 year, and even that, the rate case expense, even if the
8 rate case expense was \$100,000, it would be divided
9 over, \$100,000 or more, it would be divided over four
10 years, it would be \$25,000. Those customers would say,
11 shoot, I'll pay \$25,000 and it'll save me \$230,000 in
12 the next year.

13 This is what they used to do in the
14 certificate of need business all the time is they would
15 get protests by, by competing hospitals and other
16 providers because just keeping them out of business made
17 sense from an economic standpoint. They kept the
18 competition out and it was cheaper for them to pay their
19 lawyer to fight it.

20 And that's similar to what we have here. If
21 you look at the economics of this, it makes sense. If I
22 were a customer, I'd say why not? Let's file a protest,
23 even if it's not a valid protest, and pay the additional
24 rate case expense and we still save ourselves \$100,000
25 or \$200,000. And we certainly don't want to encourage

1 that.

2 And I would suggest to you that the Staff has
3 prepared a very well reasoned analysis of this issue.
4 And as they point out, a number of the cases that, that
5 Mr. Rehwinkel said are small utilities are Aloha and
6 Alafaya, which are certainly not small utilities. And I
7 would suggest to you that, that the, the policy that
8 this Commission ought to do, and it just balances
9 between the customers and the Utility. You're not
10 giving any rate increase until you've made a preliminary
11 determination in PAA that one is entitled to. Then
12 you're going -- if the customers protest it, not if the
13 utility, if the customers protest it, then, then those
14 rates are put into effect.

15 We still have a tremendous amount of
16 regulatory lag that I think needs to be addressed, but
17 it needs to be addressed over in the Legislature and not
18 over here. And that is during the whole process, not
19 having interim rates during a limited proceeding, but
20 that's not what we asked for. It's only after you've
21 made a preliminary determination after reviewing the,
22 the information that the Utility is entitled that you're
23 correcting the regulatory lag by allowing it to be
24 implemented if someone other than the Utility protests
25 it. Thank you.

1 **CHAIRMAN GRAHAM:** Thank you, sir.

2 **MR. REHWINKEL:** Mr. Chairman, may I briefly
3 respond?

4 **CHAIRMAN GRAHAM:** Sure.

5 **MR. REHWINKEL:** I certainly appreciate where
6 Mr. Friedman is coming from with respect to his clients.
7 But I think the way I heard the Staff's presentation is
8 I think it is well intentioned and I think it is with
9 the best intentions, and I think it's the right way to
10 approach it, if you're going to do it at all, which is a
11 matter of fairness with respect to regulatory lag.

12 Limited or temporary rates should not be,
13 however, used as a, as a weapon against the customers to
14 discourage protests. That's not the purpose of it. So
15 I, I would hope that the Commission would not consider
16 that, well, it helps keep spurious filings down by, by
17 having something for them to worry about; i.e., rates
18 going into effect if they, if they file for a protest.

19 It can't be stated enough, this company could
20 have filed using the statutory formula that would have
21 allowed them to have legal rates that go into effect in
22 the event of a protest, and that is a PAA rate case
23 situation.

24 This case, the limited proceeding statute is
25 intended to allow clean, limited adjustments to rates to

1 go into effect, not controversial cases that call into
2 question bigger issues like a used and useful that
3 applies to the entire utility services or service
4 availability charges that might apply beyond what's,
5 what's requested by the company. So I think that's
6 something the Commission needs to keep in mind is that
7 they made the choice. It was their choice in the first
8 place.

9 *Venture Associates and Sports Shinko,*
10 *S-H-I-N-K-O, Utility doing business as Green Leaf*
11 *Utilities,* those are the two cases that had the precise
12 language that the *Alafaya* case adopted that is being
13 replicated in this case. That's the, that's the line or
14 the genealogy of the case that the Commission, that the
15 Staff is saying you should look to for authorization of
16 temporary rates in this case.

17 *Venture Associates,* an Ocala area case, there
18 were 93 customers being served and they weren't paying
19 anything. And the Commission authorized rates so that
20 the company could collect money for a service they were
21 providing. It was really a matter of, of fundamental
22 property rights that this company not be required to
23 serve customers for free.

24 The other case was a grandfather certificate
25 case where essentially customers were getting free

1 service. And, and so these two cases have to do with,
2 with establishment of rates that were a matter of
3 fundamental fairness, not a matter of just whether the
4 company made a choice of form whether to go limited
5 proceeding or, or a full-blown rate case or a PAA rate
6 case where they have statutory authorized temporary rate
7 remedies.

8 So if a company wants to choose to file a,
9 what really is kind of a borderline rate case and try to
10 cram it into a limited proceeding filing like this has
11 been done here -- and I say that because they came in,
12 as your Staff pointed out, with a bunch of other PAA
13 rate case filings and they kind of just picked this one
14 not to do. And they didn't let people look at the --
15 you heard the customers raise issues about, you know,
16 about looking outside of 2008 to look at what's really
17 the right thing to do going forward. Those are the kind
18 of issues that you're precluded from doing if you're
19 strictly limited to a limited proceeding formula. And
20 having made that choice, they've got to live with the
21 ramifications of that, which are that you are not
22 authorized under the statute to get temporary rates in
23 the event of a protest. If you want something else, use
24 another mechanism, but don't use limited and have the
25 best of both worlds.

1 I went down to this, to this development.
2 There's an American flag and there's a Canadian flag
3 there, and there, I'm sure there are people that live in
4 this development that fought for this country in World
5 War II from both countries. And I believe they're
6 entitled to have this body, their government treat them
7 fairly too. It's not all based on what's best in the
8 Company's interest, but what's, what's, what's a
9 balanced and fair thing to do.

10 This company did not ask for temporary rates,
11 they did not make any showing, they refused to give the
12 information that would allow the Commission to look at
13 their entire earnings picture, so I think they should be
14 left with the ramifications of the choices that they
15 made. So those are all the comments I have. Thank you.

16 **CHAIRMAN GRAHAM:** Thank you, Mr. Rehwinkel.

17 We are going to take about a five-minute
18 break. That should be --

19 **MR. FRIEDMAN:** Can I make about a two-minute
20 comment real quick before, while this is still fresh in
21 everybody's mind before you take your ten-minute break?

22 **CHAIRMAN GRAHAM:** You have two seconds.

23 (Laughter.)

24 Go ahead, sir, please.

25 **MR. FRIEDMAN:** You know, Mr. Rehwinkel, you

1 know, talks about it being, being, you know, not, being
2 into customers, not the customers' interest. You know,
3 it is a balancing; your job is to balance between the
4 two, between what's best to the customers' interest and
5 what's best to the Utility's interest. And, frankly,
6 this process does that. We're not allowed to put in any
7 rates into effect during a limited proceeding until the
8 PAA is entered. I think that's a good balancing act
9 myself. And it's only after you make your preliminary
10 determination that you're entitled to, that the Utility
11 would be entitled to them.

12 And as I say, you know, Mr. Rehwinkel tries to
13 make this case different by saying, you know, there are
14 a lot of issues, there are a lot of issues in the case,
15 and we should have probably filed a full rate case
16 instead. While I disagree with him, the problem is that
17 what you're doing is you're not dealing with just that
18 rate case. This particular -- you're dealing with in
19 the future a policy on all limited proceedings that are
20 filed. And if Mr. Rehwinkel thinks this one is
21 different because it should be, it should not have been
22 one, that's a whole different issue. It is a limited
23 proceeding, and the decision that you make is going, is
24 going to apply to all limited proceedings and will have,
25 have, if you adopt the Public Counsel's position, will

1 have a devastating effect on the limited proceeding
2 process. Thank you.

3 **CHAIRMAN GRAHAM:** Thank you, sir.

4 We're going to take about a ten-minute break.
5 We'll be back here at 11:25. Thank you.

6 (Recess taken.)

7 I want to thank everybody for giving us that
8 quick recess time.

9 We are back here at the Commission board, and
10 I guess we'll open it up for any comments or any
11 questions or any motions.

12 Commissioner Edgar.

13 **COMMISSIONER EDGAR:** Thank you, Mr. Chair.

14 As I have said many times and has been the
15 case all along and remains the case and will forever be
16 the case, I am not an accountant. So let me start with,
17 very briefly to come back to some of the more technical
18 accounting issues that were raised.

19 The customers raised three issues, I believe,
20 in particular that they had concerns about having to do
21 with the property tax, the -- and if I could find my
22 notes, hold on, thank you -- the property tax, the
23 income tax on gross revenue and then also the sludge
24 hauling costs. And I know that Mr. Fletcher responded
25 to each those. So I guess if I can come back in a

1 second -- I was going to ask Mr. Rehwinkel a question,
2 so I'm going to give him a moment.

3 **CHAIRMAN GRAHAM:** Sure.

4 **COMMISSIONER EDGAR:** Okay. Mr. Rehwinkel, I
5 was just touching on the fact that the customers had
6 raised a couple more specific accounting issues
7 regarding the property tax, the sludge hauling costs and
8 the income tax on gross revenue that our Staff responded
9 to. And I am not an accountant, not an accountant, but
10 the responses that our Staff gave seemed to be clear and
11 logical to me. And so I realize that you have the
12 larger legal issue, and we will touch on that, I think,
13 in a few moments.

14 But as to those more specific accounting
15 issues, from virtue of the perspective of your office,
16 is there a concern or an objection with the explanation
17 that Staff has given to us?

18 **MR. REHWINKEL:** Let me just say this, is that
19 I believe that the Staff recommendation represents an
20 improvement from the original one. And I think although
21 you're not an accountant, you have experience and a
22 sensibility that we can't ever get it perfect. I think
23 the improvement is something that, that we think is
24 good. We probably -- I, I have not had a chance to sit
25 there and run through the numbers, especially with the

1 income tax adjustment.

2 Our issue that we raised before was that there
3 should not be an income tax expense calculated on
4 anything other than the return associated with the
5 equity component of, of the, the, the Company's balance
6 sheet. So to that extent, we think the Staff has gotten
7 it right in that regard.

8 I have not had a chance to look further at the
9 adjustments that Dr. Halleen has raised. The sludge
10 hauling, again, we share the concerns that, that because
11 the limited proceeding is somewhat static and it doesn't
12 really allow kind of a forward-looking approach, that
13 that number may still need some improvement to it. But
14 the improvement is there and we appreciate that from the
15 Staff's consideration.

16 **COMMISSIONER EDGAR:** Thank you. Thank you. I
17 appreciate those comments, Mr. Rehwinkel.

18 I also note from the discussion that we've had
19 and has been acknowledged that this, this particular
20 docket and related issues has gone through a process,
21 there has been give and take, there has been
22 negotiation, the customers have been very, very
23 involved, which we always appreciate, and I thank you
24 for that. And I do think that, that the process has
25 taken us to a pretty good balance of interest, noting

1 that, as Mr. Rehwinkel has said, we may not always get
2 it exactly, exactly right or have the information to be
3 able to do so.

4 I think much of the -- there are the
5 individual issues, of course, but much of the case
6 basically revolves around what before us comes down to
7 Issue 9, which kind of encompasses where we go from here
8 in light of some of the concerns about the requirements
9 of the statute and how we apply our discretion.

10 I do believe that in certain instances there
11 are benefits to limited proceedings, there are benefits
12 to PAA for all parties, for customers and also for
13 helping to move an issue through the process. I believe
14 that the Commission has the discretion in this instance
15 to go forward as, as the Staff has recommended. And I
16 do believe that, although again probably not a perfect
17 process, that there are protections to the customers
18 built in with the temporary rate process.

19 So with that, I think I'm comfortable moving
20 forward with the Staff recommendation, recognizing that
21 there will still be opportunities for input and
22 discussion and concerns to be raised. But I welcome any
23 other questions or comments.

24 **CHAIRMAN GRAHAM:** Thank you, Commissioner
25 Edgar.

1 Anything else from the board? Can I get a
2 motion?

3 **COMMISSIONER EDGAR:** Mr. Chair, then I would
4 move the Staff recommendation on all issues for Item 15.

5 **CHAIRMAN GRAHAM:** It's been moved. Do I have
6 a second?

7 **COMMISSIONER BRISE'**: I think I will second
8 that.

9 **CHAIRMAN GRAHAM:** It's been moved and seconded
10 to move Staff recommendations on all, on all issues
11 under Item 15.

12 Any further discussion? Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you. I support the
14 Staff recommendation on all issues except Issue 9 to
15 which I'll be dissenting.

16 **CHAIRMAN GRAHAM:** Okay. Any other
17 discussions? Seeing none, let's move the Staff
18 recommendation on all issues 1 through 8 and
19 10 through -- 1 through 8 and 10. All in favor, signify
20 by saying aye.

21 (Unanimous vote.)

22 Those opposed. Okay. Now let's move to Issue
23 Number 9. All in favor, say aye.

24 **COMMISSIONER EDGAR:** Aye.

25 **COMMISSIONER BRISE'**: Aye.

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CHAIRMAN GRAHAM: Those opposed.

COMMISSIONER SKOP: Aye.

CHAIRMAN GRAHAM: Let the record show that we have passed the entire Item Number 15, Issues 1 through 10.

(Agenda item concluded.)

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

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

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

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

DATED THIS 1st day of November, 2010.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

October 26, 2010

Public Service Commission
State of Florida

090349-WS
Parties (Staff) Handout
Internal Affairs (Agenda)
on 10/26/10
Item No. 15

Attention: Public Service Commission Members at Agenda Hearing

Subject: Cypress Lakes Homeowners Association Response to PSC Staff recommendations at Agenda Hearing

In order to assure that **our concerns with the current PSC Staff recommendations are clearly stated**, we are presenting them in document form. We will present these comments to the Commissioners orally so they interject comments or questions as we proceed.

The first major issue we will address is the failure to receive answers to questions posed to the OPC and Cypress Lakes Utility dealing with the Wastewater Treatment Plant [WWTP] expansion, a major issue at the last Agenda Hearing.

Since the Agenda Hearing, we have requested details of the Settlement Agreement from the Office of Public Counsel and expansion cost details from the Utility, including a listing of the bidders and their bids. The Utility has responded with its assessment of the expansion costs, **but not the list of bidders and their bids. There has been no response from the Office of Public Counsel on the details underlying the Settlement Agreement. We believe that the information requested is necessary to resolve the revenue recommendations relative to the WWTP expansion.**

At the last Agenda Hearing as documented in ORDER NO.PSC-07-0199-PAA-WS, there was no discussion of any wastewater treatment plant expansion and the Utility stated that there were no plans for expansion of the water treatment plant for Phase 12. At that Hearing, the Office of Public Counsel [OPC] recommended that a serviceability fee for future water and wastewater connections be added to the tariff schedule. The OPC further recommended and the PSC Commissioners adopted a fee structure of \$ 1,500 each for water and wastewater connections. Later, we were advised by the OPC that the developer had protested the fees and that the OPC, the developer and the Utility would meet to resolve the issue and that the CLHA would not be invited as the matter did not concern them.

To our surprise, when a copy of the Settlement Agreement as approved by the PSC Commissioners was sent to us, the Agreement revealed a previous agreement concerning the expansion to the wastewater treatment plant [WWTP] negotiated in 2006 prior to the Agenda hearing. Further, the fee structure was significantly reduced for some undocumented reason and further reduced, for wastewater, for some developer work already accomplished. The Settlement Agreement contained a cost number for the WWTP expansion of \$ 250,000 (also undocumented). The developer/utility 2006 agreement called for an up-front payment by the developer of \$ 125,000 with no reference as to how the remainder would be paid. The agreement also stated that if the cost exceeded \$ 250,000, the developer was required to pay half of the final

cost, but again there was no reference as to who was responsible for the other 50 %.

Since the Limited Proceeding filing places the final cost at \$ 1,049,000, we anticipated that the revenue recommendation by the PSC Staff would reflect a developer cost of \$ 524, 500 and a recommendation of how the remainder would be paid. Since the original recommendation did not reflect this expectation, we have attempted to ascertain information from OPC and PSC on the development and status of the elements of the Settlement Agreement. To date, the only response we have received on the subject is a letter from the PSC Staff Attorney, Ms. Brubaker, stating that "Commission staff cannot offer a legal opinion regarding the "Legality" of the developer agreement between the Parties.". Our concern is not the "Legality" of the agreement, but rather, is that developer/ Utility agreement negated by the Settlement Agreement as contended by the Utility. Therefore, our question to the Commissioners is "Are we being told that to obtain such information on the elements of the Settlement Agreement in order to develop an understanding of the responsibilities for cost in the WWPT expansion, we must utilize legal means outside the PSC Commission?"

Since the previous Agenda Hearing on June 1, 2010, there has been other extensive discussion to resolve additional issues that arose at the last hearing. These have been in the form of face-to-face meetings, telephone conference calls and data request letters as well as individual telephone conversations. **The Quality issue has been improved** through the CLU/ CLHA meeting in June. Follow-on work to relocate automatic blow-off valves and unidirectional flushing should improve quality and discussions with Lakeland Water suggest possible reduction in sulfide content, but eliminated possible water connections. **Other revenue recommendations issues remain. These are a) Property tax, b) Sludge hauling fee and c) Income tax calculation.**

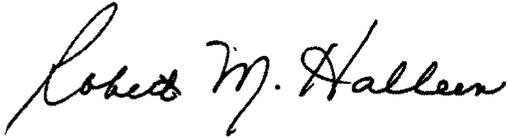
Although recorded in the annual report as property tax, the tax is a tangible tax based on Market Assessed Value. That tax related to the Cypress Lakes Utility property in the Cypress lakes community for the years 2005 through 2010 is presented in Table 1. As compared to the staff recommended increase of \$ 37,421, the total increase between 2005 and 2010 is \$ 21,068. This does not include any adjustment made in the tax as part of the 2005 rate case; data for the total TOTI in that rate case showed an increase of \$ 8,372 (\$ 1929 + \$ 6443) as recorded in the aforementioned PSC ORDER. **This suggests that the TOTI increase should be reduced.**

Cypress Lakes Utility provided Sludge hauling fee data through PSC Staff Data Request No. 7; the data are incomplete for any formal analysis. Staff's recommendation was to simply reduce the level to equivalent to the cost listed in the 2009 annual report. Our analysis attempted to include the greatly reduced fees booked after the expansion was completed in June 2009; it resulted in a smaller number for the projected 2010 sludge hauling cost. Unfortunately, only five invoices were provided by the Utility which precludes any significant analysis for 2010.

The most surprising recommendation is concerned with the income tax calculation. The amount of revenue increase recommended is based on the gross revenue of the non-expense items – the Phoenix project allocation, the piping change and the wastewater treatment plant expansion. Income tax is normally based on net income, which is the difference between gross revenue and expenses. Certainly, there are expenses involved with all of the items listed. We would like an

explanation as to why the PSC methodology deviates from normal practices.

We appreciate the action of the PSC Commissioners at the last Agenda Hearing in deferring action on the original recommendations; it allowed further investigation that has resulted in a reduced revenue recommendation. **However, we still very frustrated that each household in our community will pay more than \$ 600 for an expansion of a facility that will provide them with minimal, if any, benefit if you adopted the recommendations as presented.**

A handwritten signature in cursive script that reads "Robert M. Halleen".

R. M. Halleen, President
Cypress Lakes HomeOwners Association
10000 US 98 N
Lakeland, FL 33809

CYPRESS LAKES UTILITY
PROPERTY TAX

TABLE 1

YEAR	ASSESSED MARKET VALUE	EXEMPTION	TAXABLE MARKET VALUE	TOTAL TAX	COMMENTS
2005		\$0		\$17,417	PER ANNUAL REPORT
2006	\$1,280,107	\$0	\$1,280,107	\$22,478	PER TAX RECORD
2007	\$2,514,645	\$0	\$2,514,645	\$39,360	PER TAX RECORD
2008	\$2,579,670	\$25,000	\$2,554,670	\$40,298	PER TAX RECORD
2009	\$2,370,503	\$25,000	\$2,345,503	\$36,857	PER TAX RECORD
2010	\$2,444,279	\$25,000	\$2,419,279	\$38,485	PER TAX RECORD
	MAXIMUM TOTI		2010 TAX - 2005 TAX		
	MAXIMUM TOTI		\$38,485 -	\$17,417	
			\$21,068		
	STAFF RECOMMENDATION		\$37,421		