



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

1  
2           **CHAIRMAN GRAHAM:** Let's move to Item  
3 Number 9.

4           Mr. Mouring.

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

7           Item 9 is staff's interim recommendation  
8 regarding Aqua Utilities Florida, Inc.'s application  
9 for an increase in water and wastewater rates in  
10 multiple counties. Charlie Beck from the Office of  
11 Public Counsel is here and wishes to make a few  
12 brief comments, and staff is prepared to answer any  
13 questions that the Commission may have.

14           **CHAIRMAN GRAHAM:** Thank you, Mr. Mouring.

15           Mr. Beck.

16           **MR. BECK:** Thank you, Mr. Chairman.

17           Good morning. My name is Charlie Beck  
18 with the Office of Public Counsel. I want to thank  
19 you for letting me make some brief comments this  
20 morning, because I know you don't always do that on  
21 interim cases.

22           Commissioners, we recognize that in an  
23 interim increase you don't take customer testimony  
24 into account and quality of service into account.  
25 But in about three months, the staff will be

1 bringing you a recommendation for a Proposed Agency  
2 Action where you will be taking that into account.

3           Commissioners, we have had eight customer  
4 meetings so far. They have and been attended by  
5 hundreds of customers, by many legislators, many  
6 local officials have attend. What we would like to  
7 request of you before the February meeting is to  
8 listen to the audio tapes that are available. Staff  
9 has these. They are available from the Clerk's  
10 Office. A number of customers have asked me to ask  
11 you that.

12           There has been testimony on quality of  
13 service, very dramatic testimony. People are very  
14 concerned about their treatment by customer service  
15 representatives; they are concerned about billing  
16 issues. In fact, in every meeting we have had there  
17 have been billing issues. Many of the customers  
18 won't drink the water. They're paying a premium  
19 price and they won't even drink it. So quality of  
20 service is every big of an issue in this case as it  
21 was last time, if not bigger, and we would  
22 appreciate the Commissioners listening to the audio  
23 tapes to get a flavor of what happened at these  
24 hearings before voting in February.

25           With that, I thank you for letting me

1 speak this morning.

2 **CHAIRMAN GRAHAM:** Thank you, Mr. Beck.

3 Mr. May, did you have any words you wanted  
4 to say?

5 **MR. MAY:** Thank you, Mr. Chairman.

6 Bruce May with the law firm Holland and  
7 Knight, appearing on behalf of Aqua. Just a follow  
8 up on what Mr. Beck said. Aqua takes very seriously  
9 the customer comments during these customer service  
10 meetings. The company will be filing a written  
11 report on each one of the customer meetings, and you  
12 certainly -- it's certainly within your prerogative,  
13 and my experience is you have always considered  
14 customer concerns at customer meetings before voting  
15 on final rates, and that vote will occur next March,  
16 I believe, and we certainly have no problem in you  
17 reviewing the audio tapes, and believe that that  
18 would be important for you to do. Thank you.

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

20 Commission board, any questions or  
21 concerns?

22 Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you.

24 Just a question for staff. On Page 6 of  
25 the staff recommendation, staff is recommending that



1 the respective system interim rates should be lower,  
2 staff's unlimited calculated rates or the utility's  
3 limited rates as shown on Schedules Number 4A and  
4 4B. And I just want to briefly reflect on -- when I  
5 read that, I looked at the schedules, and apparently  
6 on Page 12 there is an exception to that. And I  
7 just want to make sure that I'm clear in my mind,  
8 because -- and I believe that there may, also, in  
9 the second to last paragraph on Page 12, be a  
10 clarification that's required. I guess it says  
11 staff notes that the water rate band three and  
12 wastewater rate band two and four, the unlimited  
13 interim rates would result in a reduction of rates  
14 over the current rates. But it seems to me that  
15 those are the staff calculated interim rates, is  
16 that correct, that staff is talking about there?

17 **MR. FLETCHER:** That is correct.

18 **COMMISSIONER SKOP:** Okay. Because in some  
19 exceptions the lower rate is not adopted, and I  
20 think if we look on three -- let me flip to that  
21 page -- on water rate band three on Page 29 of the  
22 staff recommendation, instead of adopting the staff  
23 calculated unlimited at the lower rate, they adopted  
24 the higher utility requested limited interim, is  
25 that correct?

1                   **MR. FLETCHER:** For those systems,  
2 Commissioner -- Bart Fletcher, Commission staff --  
3 there's three systems where there was a recommended  
4 revenue decrease, and for those systems we actually  
5 used the maximum of the last utility's last ROE, and  
6 it reflected a revenue decrease.

7                   Now, the reason why staff recommended the  
8 utility's present rates is actually -- their present  
9 rates before their interim request is staff's  
10 recommended rate in the far column on Page 29 that  
11 you were referring to, and there it is just because  
12 the Commission during the interim proceeding, we  
13 basically don't change the rate structure and we  
14 don't want to find our -- get in a situation where  
15 we lower the rates and after the case proceeds on we  
16 do an interim refund calculation and it is  
17 determined that not only their present rates were  
18 appropriate, but maybe something higher.

19                   We don't want to get in a situation where  
20 there might be a potential surcharge. So in the  
21 cases where the revenue decrease is reflected, we  
22 recommend that the present rates continue and they  
23 be held subject to refund with interest. And that's  
24 what staff's recommendation is for that water band  
25 three.

1                   **COMMISSIONER SKOP:** Okay. And on Page  
2 6 of the staff recommendation, the last paragraph,  
3 or second to last sentence, it says proposed  
4 regulatory asset treatment by the utility is  
5 consistent with the interim methodology approved in  
6 the last rate case.

7                   Is that -- there wasn't a footnote or  
8 anything to that. Are we talking about the one  
9 in --

10                   **MS. FLEMING:** Commissioner, yes. We are  
11 speaking to Docket Number 080121. In particular,  
12 the order number is PSC-08-0534-FOF-WS. That was  
13 the 2008 rate case with the interim recommendation  
14 and the interim order that the Commission issued.

15                   **COMMISSIONER SKOP:** Thank you, Ms.  
16 Fleming.

17                   Just two more questions. With respect to  
18 the typical bill that has come up time and time  
19 again at the customer hearings that I attended, the  
20 typical bill is based on 5,000 gallons for water  
21 usage and 4,000 gallons of wastewater usage, is that  
22 correct, backing into the numbers?

23                   **MR. MOURING:** Commissioner, are you  
24 referring to the special report?

25                   **COMMISSIONER SKOP:** Yes.

1                   **MR. MOURING:** I believe those numbers are  
2 based off the average consumption for each  
3 individual rate band or standalone system.

4                   **COMMISSIONER SKOP:** Okay. Well, again, I  
5 can try and redo the math that I was doing hastily  
6 last night, but it seemed to me that the number I  
7 got to come into, you know, trying to drive into the  
8 typical bill for the utility's requested final rates  
9 reflected a consumption charge of 5,000 gallons of  
10 water and only 4,000 gallons of wastewater.

11                   Mr. Willis, is that --

12                   **MR. WILLIS:** Commissioner, it's  
13 system-wide across all rate bands is what it is, the  
14 average.

15                   **COMMISSIONER SKOP:** Okay. Well, I guess  
16 because of uniform rates, it just works out like  
17 that in terms of the final rates. So that's what I  
18 was looking at. All right. I think that's the only  
19 questions I have.

20                   Thank you.

21                   **CHAIRMAN GRAHAM:** Thank you, Commissioner  
22 Skop.

23                   Any other questions? Seeing none, can I  
24 get a motion?

25                   **COMMISSIONER EDGAR:** Move staff.

1           **CHAIRMAN GRAHAM:** It has been moved.

2           I'll second it.

3           It has been moved and seconded, the move  
4 staff recommendation. Any further discussion?  
5 Seeing none, all in favor say aye.

6           **COMMISSIONER SKOP:** Excuse me. I'm sorry.

7           **CHAIRMAN GRAHAM:** Yes, Commissioner Skop.

8           **COMMISSIONER SKOP:** Thank you.

9           I will, on the motion to adopt the staff  
10 recommendation to apply interim rates, I'll be  
11 dissenting or voting no on Issues 2, 3, and 4. And,  
12 briefly articulating the reason for that -- and,  
13 again, this is no reflection on the company. It has  
14 made a lot of progress. No reflection on the  
15 excellent legal counsel they received, it pertains  
16 solely to the situation before us and the  
17 sustainability of what appears to be the business  
18 model which does not seem to be affordable.

19           I know what the respective statutes say  
20 for the procedure for fixing interim rates under  
21 367.082, but also the requirements under 367.081,  
22 that the Commission shall fix rates which are fair,  
23 just, and reasonable, compensatory and not unfairly  
24 discriminatory. I think, just some background for  
25 the new Commissioners -- the Commission previously

1 rejected standalone rates. I guess the, if you  
2 wanted to take a look at some reading, is PSC Order  
3 09-0385-FOF-WS, Pages -- generally 124 through 145  
4 has some discussion in it.

5 Previously standalone rates were rejected  
6 by the Commission because the maximum bill for water  
7 and wastewater for some systems would exceed \$500  
8 per month for a residential customer. As a result  
9 of that, the -- and standalone rates show the true  
10 cost of service, which, you know, obviously, the  
11 staff had some concerns about the affordability.

12 Fully consolidated rates, staff previously  
13 rejected based upon the company's request, and what  
14 the Commission adopted was some affordability and  
15 subsidy guidelines. And those affordability and  
16 subsidy guidelines were basically -- let's see if I  
17 can find them real quick because I don't want to  
18 hold this up. But, basically -- wait for one  
19 second. I believe it was 65.25 for water and 82.25  
20 for wastewater, and that was the affordability in  
21 terms of maximum bill.

22 The subsidy level previously was, I  
23 believe, if my memory serves me correctly, \$5.63,  
24 but apparently when the numbers were run, that  
25 subsidy level didn't work and we had to go to a

1 higher subsidy. And the maximum subsidy that the  
2 Commission adopted was \$12.50.

3 Now, staff by its own testimony that I had  
4 marked here basically said that for water and  
5 wastewater systems, or at least wastewater systems,  
6 on standalone rates you would have subsidies over  
7 \$25, which would make it unaffordable.

8 So the Commission was caught in a rock and  
9 a hard place. The Commission staff had previously  
10 rejected standalone rates. They rejected the  
11 fully -- the uniform rate, and they were stuck with  
12 a cap band that couldn't meet both the criteria,  
13 either affordability or subsidy at the same time.

14 So what staff previously recommended and  
15 the Commission adopted is you had to move almost  
16 \$600,000 of revenue requirement from wastewater over  
17 to water. So basically you were taking what the  
18 true cost of wastewater service is and putting it in  
19 water, making water more expensive to make  
20 everything work.

21 I guess just in a nutshell, based on the  
22 numbers that I reviewed, in terms of prior staff  
23 documents and the issues before us, I just don't see  
24 how the numbers would work. And, again, applying  
25 them in the manner in which we seem to be going

1 seems to camouflage the true cost of service, which  
2 only puts a Band-aid on the underlying issue of  
3 affordability. And the subsidy levels, just to take  
4 a look at standalone rates, based upon the March 18,  
5 2009, order, standalone rates have no subsidies, but  
6 the customer bill, in some cases, would have been  
7 over \$500 a month. Okay.

8           So for fully consolidated rates, you had a  
9 subsidy of almost \$500 a month, in some instances.  
10 And for the cap band that was adopted, you had a  
11 subsidy of about \$463, \$465 for water and wastewater  
12 services. So it seems to me that, you know, in my  
13 mind, looking at the statutes, they are in conflict  
14 with each other, and I'm not sure that, you know, if  
15 we, as a Commission, had to move forward in making  
16 this work last time and still could not make it work  
17 without taking wastewater revenue requirement and  
18 transferring it to water, and now both water and  
19 wastewater rates are going up at the interim and in  
20 the requested final uniform rates, I just don't see  
21 how it can happen.

22           So, you know, maybe there's a way to make  
23 it happen. I won't be here. But, you know, until I  
24 see those numbers -- and everything I have done I  
25 have struggled with this. I just, in good faith,



1 can't see how we can approve the interim rates,  
2 given the statutory constraints and without  
3 violating what the Commission set forth for  
4 affordability and subsidy limits. So I will  
5 respectfully vote no on Issues 2, 3, and 4.

6 Thank you.

7 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
8 Skop.

9 Commission board, I will pull back my  
10 second on the move staff for 1 through 6, if  
11 Commissioner Edgar will pull back her motion, and  
12 I'll ask for a motion on Issues 1, 5, and 6.

13 **COMMISSIONER EDGAR:** Then, Mr. Chairman,  
14 per your thoughtful direction, I will take back my  
15 original motion and move staff on Issues 1, 5, and  
16 6 as a substitute motion.

17 **CHAIRMAN GRAHAM:** Can I get a second?

18 **COMMISSIONER BRISÉ:** Second.

19 **CHAIRMAN GRAHAM:** It has been moved and  
20 seconded. All in favor of Issues 1, 5, and  
21 6 signify by saying aye.

22 (Vote taken.)

23 **CHAIRMAN GRAHAM:** Those opposed?

24 By your action, you have approved 1, 5,  
25 and 6.

1           Let's bring up Issue Number 2.

2           I guess, to Commissioner Skop, do you have  
3 a recommendation on Issue Number 2?

4           **COMMISSIONER SKOP:** I do not have a  
5 recommendation other than just denying staff  
6 recommendation. And, again, I will be voting no in  
7 terms of should the Commission approve the utility's  
8 limited interim rate methodology.

9           **CHAIRMAN GRAHAM:** The rest of the board,  
10 is there another recommendation or are we going to  
11 move staff on Issue Number 2?

12           **COMMISSIONER EDGAR:** If staff could speak  
13 to us -- excuse me, I'm sorry -- if staff could  
14 speak to us briefly as to the legal rationale for  
15 the recommendation on Issue 2 and 3. Or 2, and then  
16 if that flows to 3.

17           **MS. FLEMING:** The legal rationale for  
18 Issue 2 flows into 3, as you stated, Commissioner.  
19 Essentially, this is an interim request. The  
20 Commission needs to make a decision on the interim  
21 rates within 60 days of the filing. That has been  
22 waived by the utility until today. The statute  
23 clearly says that to establish a prima facie  
24 entitlement for interim rate relief, the utility  
25 shall demonstrate that it is earning outside the

1 range of reasonableness on the rate of return  
2 calculated.

3 The utility has done so in the four  
4 corners of its petition, and thus it's essentially a  
5 formula approach to determine the interim rates.  
6 The utility has met its burden with respect to  
7 interim rates, and thus staff is recommending the  
8 approval of interim rates.

9 The interim rates we would note are  
10 subject to refund as staff has previously stated.  
11 The staff will continue to look at all of these  
12 issues that have been raised by the Office of Public  
13 Counsel with respect to quality of service, with  
14 respect to the rates, with respect to whether a cap  
15 band rate structure is appropriate, with respect to  
16 affordability and subsidy, and that is something the  
17 staff will look at and bring forward to the  
18 Commission in its PAA recommendation in March.

19 **CHAIRMAN GRAHAM:** Ms. Fleming, how much  
20 flexibility do we have as far as setting of these  
21 interim rates?

22 **MS. FLEMING:** The interim rates,  
23 unfortunately the statute states that if the utility  
24 has shown that it's earning outside its range of  
25 reasonableness, it is entitled to interim rate

1 relief, and the interim rates are based -- the  
2 calculations are based on its last rate case, and  
3 that's what staff has before you today.

4 **CHAIRMAN GRAHAM:** Commission board?

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you.

7 And, Ms. Fleming, I appreciate your  
8 analysis and I understand the statute, but I also  
9 understand the competing statute in terms of fair,  
10 just, and reasonable and not unduly discriminatory.  
11 I know that rates need to be compensatory. And,  
12 again, I'm very pro business, but this boils down to  
13 the fairness of the subsidies involved as well as  
14 the affordability.

15 And, again, the Commission took an action  
16 based on what was before it last time. As staff  
17 even acknowledged, it was not a perfect solution,  
18 but, you know, if the Commission struggled with it  
19 at that point, at what point are we going to, as  
20 policymakers, grab the bull by the horns and address  
21 the issue head on?

22 Because on a standalone basis, you would  
23 have people paying \$500 or more in some systems for  
24 their water and wastewater bill on a monthly basis.  
25 Now, that would even be higher today under interim

1 and the requested uniform rates, because the rates  
2 keep going on, and all we're doing is -- it's like a  
3 shell game to move the money around and camouflage  
4 the true cost of service for some of these  
5 standalone systems.

6 It seems to me that, you know, in  
7 capitalism you compete on a quality cost basis, and,  
8 you know, if you can't compete on a quality cost  
9 basis, you need to look at other alternatives,  
10 whether it be divestiture or, you know, public  
11 policy interests looking at what is affordable, or,  
12 you know, looking at, you know, even at some of the  
13 things that have arisen, you know, there have been a  
14 lot of customer concerns that can't come into this,  
15 but I'm looking at it strictly on the data before  
16 me, the statutes that guide the Commission as well  
17 as the Commission's prior decision, and noting the  
18 impact of our decision here today.

19 And in terms of implementing the interim  
20 rates, I'm not opposed to affording the company  
21 revenue requirement that it may be legally entitled  
22 to, but the application of how that revenue  
23 requirement and underearnings is allocated to me  
24 does not comport with the statutes before us. So,  
25 again, I can't in good faith approve it under the

1 manner in which it is distributed.

2 So, thank you.

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

4 Mr. May.

5 **MR. MAY:** Thank you, Mr. Chairman.

6 I don't want to belabor the point, but I  
7 do think it is important to reflect on what is and  
8 what is not before you today. With all due respect,  
9 Commissioner Skop, you raised, I think, some very  
10 important points, but those points are directed to  
11 the permanent rate issue. That issue will be voted  
12 on by you as a body in March of next year.

13 What is before you is temporary interim  
14 rates. And the issue, again, as Ms. Fleming points  
15 out, is largely dictated by a formulistic approach  
16 which the Florida Legislature has established, and  
17 which the Florida Supreme Court on at least four  
18 separate occasions has determined that once the  
19 utility, whether it be a water and wastewater  
20 utility, a gas utility or an electric utility, once  
21 the utility establishes on the face of its pleadings  
22 that it is earning below the minimum authorized  
23 return, then the formula in the statute takes effect  
24 and it gives the utility the opportunity to achieve  
25 or attain temporary interim rate relief.

1           In keeping with those Florida Supreme  
2 Court decisions, you have recognized, and I quote,  
3 "The determination of the appropriate interim amount  
4 is one strictly made following the formula found in  
5 Section 367.082." Interim rates, quote, protect  
6 utilities from regulatory lag associated with a full  
7 blown rate proceeding. These rates provide a  
8 utility relief pending our final decisions on rates  
9 requiring only a prima facie showing of entitlement  
10 to relief.

11           Again, as Ms. Fleming points out, your own  
12 staff, your experts have determined that my client  
13 has made a prima facie showing. The Florida Supreme  
14 Court in Southern Bell v. Bevis has provided direct  
15 guidance as to what constitutes a prima facie case.  
16 The court in that case made it clear that once a  
17 utility submits a filing that on its face shows that  
18 its achieved rate of return falls below the minimum  
19 authorized rate of return by the Commission, then  
20 the utility is entitled to interim rate relief.  
21 That is precisely what my client's filings have done  
22 in this case.

23           As reflected in your staff's  
24 recommendation, AUF has filed MFRs that clearly show  
25 its achieved rate of return during the test year is

1 approximately 1 percent. That is 775 basis points  
2 below the minimum authorized return authorized by  
3 you in the last case.

4 Again, based upon that long line of  
5 Supreme Court decisions, I respectfully submit that  
6 there is no doubt that Aqua has made a prima facie  
7 showing for entitlement to interim relief, and we  
8 would respectfully request that you approve your  
9 Staff recommendation.

10 Let me point out one other thing. The  
11 Florida interim rate statutes are not designed just  
12 to protect utilities from regulatory lag. The  
13 Supreme Court of this state has recognized that  
14 customers are fully protected under your interim  
15 statutes by the fact that interim revenues collected  
16 are subject to refund with interest. I'd like you  
17 to consider that and, again, I ask that you approve  
18 staff's recommendation.

19 Thank you, sir.

20 **CHAIRMAN GRAHAM:** Thank you, Mr. May.

21 Mr. Beck.

22 **MR. BECK:** Thank you, Mr. Chairman.

23 We have argued on a number of occasions  
24 that the interim statute is permissive by the  
25 Commission. It begins on 367.082. It says the



1 Commission may, during any proceeding for a change  
2 of rates and so on, approve or authorize the  
3 collection of interim rates, and then the subsequent  
4 sections use the word shall. We argued this  
5 probably for a couple of hours in the last case. I  
6 still agree or still would propose that it is  
7 permissive but not mandatory on the Commission's  
8 part.

9 Commissioner Skop raises an excellent  
10 issue on the tension between this statute and other  
11 sections about reasonable and affordable rates.  
12 Clearly, from the meetings we have had, the rates  
13 are unaffordable, and the interim rate just  
14 increases it above what is already an affordable  
15 level.

16 So we support Commissioner Skop's  
17 comments. Thank you.

18 **CHAIRMAN GRAHAM:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you.

20 And just not to belabor the point, Mr.  
21 May, I think, raised some excellent issues in terms  
22 of court precedent. And, again, I do believe, in  
23 terms of the showing for the revenue requirement  
24 that's necessary, that's not what I'm opposed to.  
25 I'm opposed to the manner in which it's spread. I

1 know staff discusses that on Page 5 of the staff  
2 recommendation a little bit. But, again, there are  
3 tensions here that won't be resolved in the issue  
4 before us today. But, again, I just need to, you  
5 know, base my decision based on the statutes before  
6 me, the comments made, and looking at what the true  
7 cost of service would be if not for the fact that  
8 it's being disguised by the rate methodology that is  
9 in effect now, which required a revenue transfer  
10 from wastewater to water to make the whole thing  
11 work to begin with. And if rates are going up above  
12 that, does that mean more revenue transfers are  
13 going to be required between water and wastewater?  
14 I mean, those are questions that remain unanswered.

15 So I respect the comments made by Mr. May  
16 very much, but, again, I think that the policy issue  
17 and the public interest issue, as well as the  
18 statutory guidelines are very important here to  
19 consider.

20 Thank you.

21 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
22 Skop.

23 Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Thank you, Mr.  
25 Chairman. I agree that Commissioner Skop has raised

1 some important issues, and with Mr. Beck as well,  
2 that we spent a lot of time discussing them. This  
3 is, I think, the third time in the last three to  
4 four years that a large rate case for Aqua is in the  
5 process of coming before us. And we spent a lot of  
6 time in the last rate case discussing this issue of  
7 subsidy and reasonableness and affordableness and  
8 trying to balance those equities.

9 I'm pretty sure that I made some comments  
10 on the record at the time of the vote that what was  
11 before us was not a perfect solution, but was an  
12 effort to try to reach that balance. And I don't  
13 think that any of us who participated in that rate  
14 case at that time are surprised that some of those  
15 issues are before us again in this case, and will be  
16 in others with other companies that will come before  
17 us.

18 There are certainly tensions in this case  
19 and in others. However, I do agree that some of the  
20 issues that have been raised are beyond the scope of  
21 the issues that are before us today. I know that we  
22 will have more discussions on them when a full  
23 recommendation comes forward. I look forward to  
24 those discussions. But at this point I believe that  
25 the staff recommendation on Issues 2, 3, and 4 is

1 what the law directs and is in keeping with the  
2 four-to-one decision that this Commission made in  
3 the last rate case.

4 And so with that, Mr. Chairman, I would  
5 move approval of the staff recommendation on Issues  
6 2, 3, and 4, recognizing that it does build in  
7 protections for the customers, and that the larger  
8 issues will come before us in a matter of months.

9 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
10 Edgar.

11 Do I get a second?

12 I will second that for discussion.

13 For staff, you said that there is a 60-day  
14 time frame on this? Is that what I heard correctly?

15 Not everybody at once.

16 **MR. WILLIS:** Yes, Commissioner, the  
17 statute does have a 60-day time frame.

18 **CHAIRMAN GRAHAM:** And where are we in that  
19 time frame on that?

20 **MR. WILLIS:** This is the last agenda.

21 **MS. FLEMING:** This is the last agenda.  
22 The utility waived the 60-day time frame until  
23 today. So, technically, we are beyond the 60-day  
24 time frame, but the utility has allowed the  
25 Commission to decide it today.

1                   **CHAIRMAN GRAHAM:** Okay. Anything else?

2                   Yes, Ms. Helton.

3                   **MS. HELTON:** Kind of reading the tealeaves  
4 maybe a little bit. Let me suggest that if you do  
5 not approve the interim rates here, I'm not sure  
6 what would happen. And I think that you may be  
7 raising the issue of surcharges for customers if the  
8 court were to determine that interim rates were  
9 appropriate under the statute, and so we would be in  
10 a situation where we would have to go back and  
11 surcharge the customers. I just wanted to make sure  
12 that that was clear to everyone.

13                   **CHAIRMAN GRAHAM:** I don't think we need  
14 any fear at this time. All right. We have been  
15 moved and seconded.

16                   Seeing no further discussion --  
17 Commissioner Skop.

18                   **COMMISSIONER SKOP:** Thank you.

19                   To the point just raised by Ms. Helton,  
20 the regulatory asset, creating that asset creates,  
21 in effect, somewhat of a surcharge. If it doesn't  
22 work out in the end, customers are still going to  
23 pay. So it is just another prophylactic measure  
24 that's put on top of the rates to not embody what  
25 the true cost of service would be as evidenced in

1 the staff recommendation.

2 But I respect the decision of my  
3 colleagues. I respect the comments made, but,  
4 again, I think my concern is whether, under the  
5 sister statute, 367.081(2)(a)1., whether the rates  
6 that the Commission is setting are fair, just, and  
7 reasonable and are not unduly discriminatory with  
8 respect to the subsidies that are now being  
9 recognized as a result of additional interim rate  
10 increase. Thank you.

11 **CHAIRMAN GRAHAM:** The motion before us is  
12 move staff on Issue 2, 3, and 4. All in favor say  
13 aye.

14 (Vote taken.)

15 **CHAIRMAN GRAHAM:** Those opposed?

16 **COMMISSIONER SKOP:** Aye.

17 **CHAIRMAN GRAHAM:** By your action you have  
18 approved Issue 2, 3, and 4.

19 \* \* \* \* \*

