

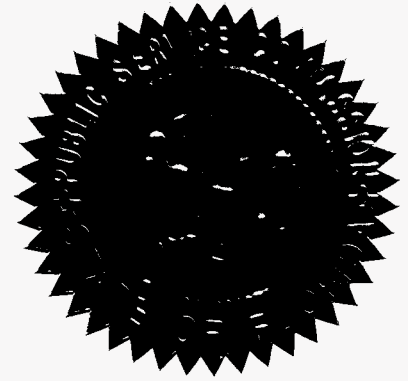
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100104-WU

In the Matter of:

APPLICATION FOR INCREASE IN
WATER RATES IN FRANKLIN COUNTY
BY WATER MANAGEMENT SERVICES,
INC.

_____ /



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 18

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

DATE: Tuesday, December 14, 2010

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

REPORTED BY: LINDA BOLES, RPR, CRR
JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6734/(850) 413-6732

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P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Item Number 18. Item Number
3 18 is a panel of Edgar, Skop and myself, so if you guys
4 would just bear with us for a few minutes as we go
5 through Item 18.

6 **MS. HUDSON:** Commissioners --

7 **CHAIRMAN GRAHAM:** Hold on. Ms. Hudson.

8 **MS. HUDSON:** Commissioners, Shannon Hudson on
9 behalf of Staff.

10 Item Number 18 is Staff's recommendation
11 on the application of Water Management Services'
12 request for a rate increase. The application was
13 filed on May 25th, 2010, and upon request of the
14 Utility was set directly for hearing. The
15 application was assigned to a panel of three
16 Commissioners, and the hearing was held on
17 St. George Island on October 5th and 6th of 2010.

18 Participation is limited to Staff. Staff
19 has an oral modification that has been previously
20 provided to the Commissioners. Staff is ready to go
21 issue by issue or answer any questions the
22 Commissioners may have.

23 **CHAIRMAN GRAHAM:** Let's go issue by issue.
24 Let's start with Issue 1. We'll bring it to the board.

25 **MR. WALDEN:** Commissioners, I'm Tom Walden

1 with Commission Staff.

2 Issue 1 is the quality of service provided
3 by the Utility company. We are recommending that
4 the quality of service is satisfactory based upon
5 the, based upon the record obviously, but customers
6 were pleased with the service they get, they were
7 especially pleased with the response from the
8 company personnel there on the island, and the
9 Department of Environmental Protection is also
10 satisfied with the Utility and its operation.

11 **CHAIRMAN GRAHAM:** To the board -- to the
12 panel.

13 **COMMISSIONER EDGAR:** Mr. Chairman, I would
14 just add that, having been to the community, of course,
15 the wonderful area over there, but we heard a lot of
16 testimony from customers, and I think pretty much to a
17 one they expressed satisfaction with the quality of the
18 water, which means I agree with Staff on this one.

19 **CHAIRMAN GRAHAM:** Is that a move Staff?

20 **COMMISSIONER EDGAR:** See, I wasn't sure. Do
21 you want to have the Staff go through or do you want to
22 take votes issue by issue or issue grouping?

23 **CHAIRMAN GRAHAM:** How would you like to do it?

24 **COMMISSIONER SKOP:** Issue by issue.

25 **CHAIRMAN GRAHAM:** Issue by issue.

1 **COMMISSIONER EDGAR:** Okay. In that case, I
2 would move Staff recommendation on Issue 1.

3 **COMMISSIONER SKOP:** Second.

4 **CHAIRMAN GRAHAM:** It's been moved and
5 seconded. Any discussion? Seeing none, all in favor,
6 say aye.

7 (Vote taken.)

8 Those opposed? By your action, by your action,
9 you've approved Issue 1.

10 Issue 2.

11 **MR. WALDEN:** Issue 2 is the amount of, the
12 correct amount of used and useful percentage to be
13 applied to the transmission and distribution system.
14 Staff is recommending that consistent with the
15 settlement order as specified there in the
16 recommendation, that all of the lines outside the
17 Plantation should be 100 percent used and useful, and
18 those lines inside the Plantation should have a used and
19 useful adjustment and be found 60.9 percent.

20 There was, there was some contention from
21 the witnesses. The Utility advocates a 100 percent
22 allocation to all of the lines on the island. OPC
23 was suggesting a lot-to-lot methodology be used as
24 the Commission has used in, in some past cases.
25 Staff is not persuaded that the Office of Public

1 Counsel's allocation is correct based upon the
2 development, where most of the development is along
3 the perimeters of the island and there's lesser
4 development toward the interior.

5 Part of the, actually a strong part of, of
6 our position, Staff's position is we believe there
7 should be an adjustment inside the Plantation
8 because it's consistent with the last case and also
9 because the owner of the Utility was also involved
10 in the development of the Plantation portion of the
11 service area.

12 **CHAIRMAN GRAHAM:** Panel.

13 **COMMISSIONER EDGAR:** If there are no
14 questions, I would move Staff.

15 **CHAIRMAN GRAHAM:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Just a question to Staff
17 briefly. In terms of the Staff recommendation on this
18 item, the Staff ultimately adopted the position
19 advocated by the Utility, which if I read the Staff
20 recommendation correctly, Public Counsel ultimately kind
21 of concurred with. Is that generally correct?

22 **MR. JAEGER:** I believe, Commissioner Skop --
23 this is Ralph Jaeger, legal counsel. And basically the
24 Utility started out in Mr. Seidman's direct saying, you
25 know, he was trying to be consistent with that last

1 order. And it's not so much being consistent, but with
2 the methodology we -- the Commission approved the
3 methodology of calculating the Plantation different from
4 everything else on the island. But then after OPC came
5 in with a lot-to-lot count, which would have been a
6 significant change, it would be 50 something percent
7 used and useful, the Utility changed their position in
8 their rebuttal testimony saying, it's like, well, if
9 you're going to go lower than the settlement, then we're
10 going to go higher than the settlement.

11 So basically OPC is at 50 percent overall
12 used and useful for the transmission and
13 distribution, and the Utility's ultimate position
14 was that it should all be 100 percent used and
15 useful.

16 **COMMISSIONER SKOP:** Okay. And then but
17 basically the Staff rejected the lot-to-lot based on
18 the, the testimony of the witnesses.

19 **MR. JAEGER:** That's correct.

20 **COMMISSIONER SKOP:** Okay. And then also on
21 page 8 of the Staff recommendation, I think in reading
22 this there might have been a little bit of a typo, but
23 at the paragraph at the bottom of the page, it says,
24 "OPC Witness Seidman," and I think that's --

25 **MR. JAEGER:** Yes. It should have been -- we,

1 we changed it one time and somehow that didn't, that
2 change didn't get made. But, yes, that is a Utility
3 witness.

4 **COMMISSIONER SKOP:** Well, just so you know,
5 that's not the reason I took this off the Move Staff
6 list.

7 But, anyway, I have no problem with that.
8 I think that Staff has listened to the record
9 evidence and made the proper recommendation based on
10 the testimony that we heard at hearing. So I would
11 second the motion.

12 **CHAIRMAN GRAHAM:** It's been moved and
13 seconded. Any further discussion? Seeing none, all in
14 favor, say aye.

15 (Vote taken.)

16 Those opposed? By your action, you've
17 approved Issue 2.

18 Issue 3.

19 **MS. HUDSON:** Issue 3 relates to should there
20 been any additional adjustments to rate base for
21 affiliate assets? OPC had recommended that the, an
22 adjustment be made for a backhoe trailer. Upon review
23 of the general ledger, the backhoe trailer had already
24 been removed from the general ledger. However, there
25 was depreciation expense still on the books, so Staff

1 adjusted the depreciation expense for the backhoe
2 trailer.

3 **CHAIRMAN GRAHAM:** Panel?

4 **COMMISSIONER SKOP:** I'd move the Staff
5 recommendation on Issue 3.

6 **COMMISSIONER EDGAR:** Second.

7 **CHAIRMAN GRAHAM:** It's been moved and
8 seconded, Staff recommendation on Issue 3. Any
9 discussion? All in favor, say aye.

10 (Vote taken.)

11 Those opposed? By your action, you've approved
12 Issue 3.

13 Issue 4.

14 **MS. HUDSON:** Issue 4 relates to should any
15 adjustments be made to rate base for vehicles? Staff is
16 recommending that the vehicle of the vice president be
17 removed, so we made all corresponding adjustments to
18 remove that item from the Utility's books.

19 **COMMISSIONER SKOP:** Question.

20 **CHAIRMAN GRAHAM:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you.

22 To Staff, looking at the Staff analysis --
23 and again this was a point of contention obviously
24 at the hearing for the lengthy analysis that Staff
25 has presented here.

1 On page 15 of the recommendation in terms
2 of Staff's decision or disagreement with Public
3 Counsel that the president's vehicle should be
4 removed, Staff indicates that the mileage driven for
5 the president's vehicle was 22,068 miles, and the
6 Utility purports that 50 percent or 11,034 miles are
7 Utility-related usage. I guess Staff noted there
8 are no vehicle records, there are no, you know,
9 things that Staff has alluded to there to support,
10 you know, the usage of that said vehicle.

11 But apparently Staff indicated the
12 president makes four trips a month to the island for
13 business or Utility-related business, and the
14 Utility estimated the round trip to the island and
15 back is 160 miles. So if we did some math -- it
16 says, Therefore, Staff accepts the Utility's
17 position that 50 percent of the vehicle is
18 Utility-related, and Staff agrees with Public
19 Counsel that the Utility has not sufficiently
20 supported the need for the vehicle for the vice
21 president.

22 I guess the issue I have with the
23 president's vehicle, if you do some quick math,
24 160 miles times four trips times 12 months, you end
25 up with 7,680 miles, which is substantially less

1 than 50 percent of the miles that the Utility claims
2 for Utility-related usage. So it seems to me that
3 that seems to be, support more of a 35 percent
4 Utility-related usage rather than 50 percent,
5 assuming for the sake of discussion that you would
6 accept that argument, notwithstanding the fact that
7 there are no records being kept for the usage of
8 this vehicle.

9 **MS. HUDSON:** Staff was also allowing
10 additional mileage for not just going to the island, but
11 we felt that the remaining, I think it would be about
12 4,000 miles could be usage that he uses in Tallahassee
13 for errands to different things as going to banks and
14 meeting with different officials. So we felt that
15 amount was okay.

16 **COMMISSIONER SKOP:** All right. Well, I have
17 another question on that, and this is, you know, related
18 to the vehicle itself. I think that when we, when we
19 looked at this there was a check to pay for the, I
20 believe it's the -- hold on real quick. Let me make
21 sure I'm talking about the right vehicle here. There's
22 too many vehicles. I believe there was a check to
23 purchase the 2009 vehicle. Can you help refresh my
24 memory on that?

25 **MS. HUDSON:** That check was for the vice

1 president's vehicle.

2 **COMMISSIONER SKOP:** Yes. Okay. And that was
3 money taken from the Utility; is that correct?

4 **MS. HUDSON:** That's correct.

5 **COMMISSIONER SKOP:** For the new vehicle,
6 notwithstanding the existing cash flow problems.

7 **MS. HUDSON:** That's correct.

8 **COMMISSIONER SKOP:** Okay. Commissioners, I
9 cannot in good faith support the Staff recommendation on
10 the president's vehicle. I don't feel it's supported by
11 the record evidence. And notwithstanding the provision
12 for local errands, I think that's my concern here is you
13 have a utility that obviously has cash flow issues as
14 evidenced at hearing. The purchase of a, of a vehicle
15 at that expense, you know, has a tremendous drain on the
16 Utility's resources. And the, notwithstanding the fact
17 of how much of that vehicle is, is used for, for
18 personal use versus Utility use. And I'm all for being
19 fair, but I think that the, the 50 percent seems to be
20 an overestimation in light of the record evidence, so I
21 cannot support the Staff recommendation on Issue 4 in
22 relation to the president's vehicle.

23 **CHAIRMAN GRAHAM:** Would you like to make a
24 motion for something different?

25 **COMMISSIONER SKOP:** You know, it's, it's a --

1 I think the motion I would make, and I'm not so sure how
2 this would flow through infinitely into many other
3 issues, so I think Staff would have the, have to go
4 figure out what issues are affected and make the
5 appropriate adjustment. But I feel that a 35 percent
6 allocation to business use is more appropriate than the
7 50 percent just based on the record evidence.

8 **CHAIRMAN GRAHAM:** We have, part of this case
9 is still coming back to us at a later time on another
10 docket; is that correct?

11 **MR. FLETCHER:** Bart Fletcher. We have in the,
12 in Issue 9 recommended that for the Utility's pro forma
13 plant that it had requested or improvements, that
14 because of the lack of supporting documentation that the
15 Utility come back in a subsequent proceeding to seek
16 recovery of that.

17 **CHAIRMAN GRAHAM:** Well, I think this issue
18 probably fits right into the lack of support
19 documentation because there is no travel log that's
20 here, as Commissioner Skop said. And arbitrarily
21 picking 50 percent, you know, once again is just an
22 arbitrary number that's thrown out there.

23 What would the process be if we just want
24 to hold off, if we want to deny Issue -- do we deny
25 Issue 4 or do we just push this off to another

1 docket?

2 **MR. FLETCHER:** If, if Issue 4 is not voted on,
3 then it will affect other issues as far as the revenue
4 requirement. I have in -- I'd have to calculate the
5 impact real quick to see if it, it materially impacts
6 it. I don't think it will. But definitely it would
7 affect Issues 13, the fallout for rate base; 36, the
8 pre-repression water operating income or loss issue;
9 Issue 37, revenue requirement; and then maybe, I would
10 have to basically look at it real quick and do the
11 calculations for Issue 41, which is what are the
12 appropriate rates? But those, if you, if you make the
13 adjustment other than what's in the recommendation now,
14 then those are the issues it will affect.

15 **CHAIRMAN GRAHAM:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you. And to your
17 point, Commissioner Graham, I think that, again, that's
18 what concerns me is there is no documentation on the
19 vehicle. And I mean it may be more constructive,
20 notwithstanding the fact that it's coming back, but for
21 our proceeding to move forward to just deny Issue 4 on
22 its outright, I mean, and that would be, you know,
23 basically denying the vice president's vehicle for lack
24 of documentation and also the president's vehicle. I
25 mean, it's not really substantial amounts in question.

1 But, again, nit-picking over that, there's either
2 documentation that supports a business use or not. So
3 I'm fine either way, either 35 percent or just deny it
4 and move on.

5 **CHAIRMAN GRAHAM:** Question. Commissioner
6 Skop, I guess a question to you. Is there one of the
7 other issues in here that you have a question with other
8 than Issue 4?

9 **COMMISSIONER SKOP:** Yes. There are numerous
10 issues.

11 **CHAIRMAN GRAHAM:** Okay.

12 **COMMISSIONER SKOP:** So unfortunately we, it
13 seems like we have to go through these.

14 **CHAIRMAN GRAHAM:** All right. Let's, we'll
15 table Issue 4 right now and move on and see how we can
16 deal with this, and we'll decide as we go through if
17 there's something bigger we need to do. If we just need
18 to give you, give a recess and maybe pick this up after
19 lunch, but let's move forward.

20 Issue Number 5.

21 **MS. HUDSON:** Issue Number 5 is a stipulated
22 issue by all parties.

23 **COMMISSIONER SKOP:** Move Staff.

24 **COMMISSIONER EDGAR:** Second.

25 **CHAIRMAN GRAHAM:** And now let's, let's just go

1 for the record, let's move Staff on -- when we move
2 this, we'll issue, we'll move these issues depending on
3 what happens with Issue 4. Because if there's something
4 specific, that if Issue 4 is going to affect all these
5 other issues, then we may have to do some recalculation.
6 But as we approve these, these are all based on
7 depending on what happens on Issue 4. Is that legally
8 possible?

9 **COMMISSIONER SKOP:** Staff has administrative
10 authority to make those changes, I believe, if the
11 Commission grants it.

12 **MR. WILLIS:** Chairman, as we go through these
13 things we can tell you which issues will be affected by
14 Issue 4 prior to your vote.

15 **CHAIRMAN GRAHAM:** Okay. All right. We've got
16 a motion and second. All in favor, say aye.

17 (Vote taken.)

18 Those opposed? By your action, you've approved
19 Issue Number 5

20 Issue Number 6.

21 **MS. HELTON:** Mr. Chairman, I'm sorry to
22 interrupt the flow here. It's my understanding that the
23 stipulated issues, you all have already voted on those,
24 so you don't need to vote on the stipulated issues. Is
25 that correct, Mr. Jaeger?

1 **MR. JAEGER:** The stipulated issues were
2 approved at hearing on the island, so you have already
3 approved all the stipulations.

4 **CHAIRMAN GRAHAM:** Okay. Which are the
5 stipulated issues?

6 **MR. JAEGER:** And each, each issue is
7 designated as we go through, issue has stipulation
8 listed on it. I'm not sure -- let me look.

9 **CHAIRMAN GRAHAM:** Give me a list of all the
10 issues that we've already stipulated and agreed upon and
11 we'll take --

12 **MS. HUDSON:** They're located on page 5 of the
13 recommendation, all the approved stipulations.

14 **CHAIRMAN GRAHAM:** Okay. So -- I don't see
15 issue numbers.

16 **MR. JAEGER:** Unfortunately they do not list
17 the issues.

18 **MR. FLETCHER:** Chairman, if you would look at
19 page 2, it would be Issues 5, 7, 14, 24 and 25. Those
20 are all the stipulated issues. But there are some that
21 are partial stipulations that are reflected on page 5 of
22 the recommendation. Oh, I'm sorry. 47 as well is
23 stipulated.

24 **CHAIRMAN GRAHAM:** Okay. So let's get a motion
25 to approve -- we've already done 5. Let's get a motion

1 to approve 7, 14, 24, 25 and 47.

2 **COMMISSIONER SKOP:** So moved.

3 **COMMISSIONER EDGAR:** To reiterate, I would
4 second that we reapprove all of the stipulated issues.

5 **CHAIRMAN GRAHAM:** All in favor, say aye.

6 (Vote taken.)

7 Those opposed? All right. We've got that
8 taken care of. Is that it, Mary Anne?

9 **MS. HELTON:** For now.

10 **CHAIRMAN GRAHAM:** Thank you. Okay. So we are
11 on Issue Number 6.

12 **MS. HUDSON:** Issue Number 6, Staff is
13 recommending a net increase to plant of \$3,370 and a
14 decrease to accumulated depreciation for \$7,909 and also
15 an increase in depreciation expense for, of \$560, and
16 this relates to plant that was recorded as an O&M
17 expense and Staff just reclassified those amounts to
18 plant.

19 **COMMISSIONER SKOP:** Question.

20 **CHAIRMAN GRAHAM:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you. Just a
22 question to Staff. With respect to the Staff
23 recommendation, at the, near the bottom of the second to
24 last paragraph on page 17 it speaks to the bridge
25 maintenance contract. And if my memory serves me

1 correctly from hearing, although it's not elaborated on,
2 I think there was some concern about the bridge
3 maintenance contract maybe with a related party. Is
4 that correct?

5 **MS. HUDSON:** I believe there was a question to
6 Ms., Witness Withers whether or not she was related to
7 the person that's providing the bridge maintenance, and
8 that's the extent of the record.

9 **COMMISSIONER SKOP:** Okay. But I think the
10 response is yes?

11 **MS. HUDSON:** Yes.

12 **COMMISSIONER SKOP:** Okay. So there was a
13 related party that's performing the bridge maintenance
14 contract.

15 Then on page 18 in the first paragraph,
16 "Even though Staff agrees with the proceeds," or
17 "agrees that the proceeds are not for the
18 maintenance of the bridge, Staff is concerned with
19 the management's use of the funds. And "This
20 concern will be more fully addressed in Issue 50A."
21 So basically in Staff's view 50A addresses the
22 proceeds and how those monies will be used, and the
23 appropriate adjustments for plant in service
24 balances are made within the scope of the other
25 adjustments in Issue 6; is that correct?

1 **MS. HUDSON:** We don't make an adjustment for
2 it. We just felt that maybe the Utility should have
3 maybe used the money to pay down the debt --

4 **COMMISSIONER SKOP:** Okay.

5 **MS. HUDSON:** -- of the loan. That's --

6 **COMMISSIONER SKOP:** All right. Very well. I
7 mean, that's my concern too. I mean, having sat through
8 the hearing and listened, I'm just trying to articulate
9 what I've heard and the Staff's analysis and draw
10 attention. But noting that the concerns are addressed
11 in Issue 50A, I'm fine and would move Staff on Issue 6.

12 **CHAIRMAN GRAHAM:** It's been moved and
13 seconded, Issue 6. All in favor, say aye.

14 (Vote taken.)

15 Those opposed? By your action, you've approved
16 6.

17 We've already done 7. Let's move to 8.

18 **MS. HUDSON:** Issue 8 relates to whether or not
19 improvements have been made consistent with prior
20 Commission orders. Staff believes those improvements
21 have been made.

22 **COMMISSIONER SKOP:** Question.

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

24 **COMMISSIONER SKOP:** Thank on. On Issue 8, and
25 I think this was the issue I was alluding to, it wasn't

1 Issue 2, on page 21 of the Staff recommendation Public
2 Counsel acknowledged that the WMSI has completed the
3 fire flow improvements and provided maps verifying the
4 completion. Previously Public Counsel's concerns
5 stemmed from the fact that they had not received that
6 information in the course of discovery; is that correct?

7 **MS. HUDSON:** That's correct.

8 **COMMISSIONER SKOP:** All right. So Public
9 Counsel is, is basically fine with the Staff
10 recommendation at this point.

11 **MS. HUDSON:** I think they would be fine with
12 the fact that the Utility made the improvements. I
13 think they were more concerned with that the Utility did
14 not provide a list totaling the \$400,000 that they felt
15 the Commission had ordered them to spend on the project.

16 **COMMISSIONER SKOP:** Okay. And that was, and
17 that was tied up with the prior order and the settlement
18 and whether those expenditures were made post-settlement
19 or pre-settlement, I think.

20 **MS. HUDSON:** That's correct.

21 **COMMISSIONER SKOP:** Okay. All right. That's
22 fine. No further questions, and I would move Staff
23 recommendation on Issue 8.

24 **COMMISSIONER EDGAR:** Second.

25 **CHAIRMAN GRAHAM:** Issue 8 has been moved and

1 seconded. All in favor, say aye.

2 (Vote taken.)

3 Those opposed? By your action, you've approved
4 8.

5 Let's move to Issue 9.

6 **MS. HUDSON:** Commissioners, Item 9 relates to
7 whether or not the Utility's pro forma plant projects be
8 approved. Staff is recommending that the Commission,
9 I'm sorry, that the Utility file a subsequent proceeding
10 when they get the sufficient cost justification for
11 those items.

12 **COMMISSIONER SKOP:** Question.

13 **CHAIRMAN GRAHAM:** Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you. This is a
15 primary problem with part of the recommendation that I
16 have in the recommendation on page 22 for Issue 9.
17 "Staff therefore recommends the Commission find in this
18 proceeding that the pro forma projects are prudent." I
19 have grave concerns on that as indicated also on page 23
20 that the improvements are necessary because they are
21 legitimate, prudent and necessary expenses. However,
22 because cost support is insufficient, the Utility should
23 file for another proceeding once it's obtained adequate
24 support documentation to support the cost of the pro
25 forma plant additions.

1 To me, you know, I feel like we're putting
2 the cart before the horse. There may be projects
3 that are, that have substantial merit to move
4 forward, but those don't seem to be fully
5 definitized, notwithstanding the cost and the
6 engineering analysis at this point. That was a
7 point of contention at hearing.

8 And it seems to me that my hardship with
9 approving the Staff recommendation on Issue 9 is the
10 deeming that the pro forma projects are prudent. I
11 have no problem with the Commission stating that,
12 you know, the project seemed to have merit, but
13 prudent seems to me that the Commission may find
14 itself on the hook in the future for blessing these
15 projects that it basically would order the Utility
16 to go forth with at this point subject to coming
17 back with a better cost estimate. And it seems to
18 me that the Utility at hearing did not make its
19 case, that there was substantial testimony, witness
20 testimony that the cost support was not fully
21 defined and inadequate and insufficient. And at
22 this point, you know, I don't like to make prudence
23 determinations until I have all the information
24 before us pursuant to Commission controlling
25 precedent in that regard. But if we can water down

1 the word "prudent" and say the projects may have
2 merit, I could get more comfortable with it. But
3 I'm not giving a prudency determination on something
4 that seems to be ill-defined because it's tantamount
5 in my view to just writing a blank check.

6 **CHAIRMAN GRAHAM:** Legal?

7 **MR. JAEGER:** Chairman Graham, I think Staff
8 was saying that Woodcock and the engineer Scibelli for
9 PBS&J said the projects should go forward. And as
10 Commissioner Skop says, we just don't know the cost.
11 But the projects themselves, we thought there was
12 evidence to say that the projects themselves were
13 prudent. But if -- I don't think it would change if we
14 changed that to merit, if that would give Commissioner
15 Skop comfort.

16 **COMMISSIONER SKOP:** If I may.

17 **CHAIRMAN GRAHAM:** Yes.

18 **COMMISSIONER SKOP:** I'd rather just defer
19 Issue 9 until they bring back the substantial support
20 justifying the cost of the projects and let the
21 Commission make an informed determination at that point.
22 But I think at this point to bless projects as prudent
23 without knowing what the costs are, ill-advised. So
24 that's just in an abundance of caution.

25 **MR. JAEGER:** I think you could, would vote

1 that the pro forma project shall not be included in this
2 rate case and it will be addressed at a later date.

3 **MR. WILLIS:** Chairman?

4 **CHAIRMAN GRAHAM:** Commissioner Edgar.

5 **COMMISSIONER EDGAR:** Thank you. I was just
6 going to say perhaps another way to address the concern
7 that Commissioner Skop has raised would be in the
8 language of the Staff recommendation at the top of page
9 22, the second sentence, just to remove the word
10 "prudent" so it would read, "However, all evidence
11 supports that the proposed projects are reasonable and
12 should improve the quality of service and the system's
13 reliability." And then remove the next sentence that
14 begins, "Staff therefore," which goes on to say,
15 "recommends that the Commission find in this proceeding
16 that the pro forma projects are prudent." And I'd look
17 to Staff to, to see if that, if that gets us there.
18 But, again, to remove the word "prudent" from the second
19 sentence and delete in its entirety the third sentence
20 of the Staff recommendation might address the concern
21 that Commissioner Skop has raised and also recognize the
22 information that we had in the record as to the
23 advisability of this project for the overall system.

24 **CHAIRMAN GRAHAM:** Mr. Willis, then back to
25 Commissioner Skop.

1 **MR. WILLIS:** Thank you, Chairman. I think
2 Commissioner Edgar's idea is a good one and here's why.
3 I'm concerned with not giving the Company enough
4 language in the order to be able to take it to a bank.
5 What Staff is really asking you to do here is say that
6 the project itself is prudent; not the, not the idea of
7 how to get the project done nor the cost of the project.
8 It's just that the project, they need to have some kind
9 of prudence language in there as far as the project they
10 can take to the bank, knowing that if they do the right
11 thing, if they do the project right, that they'll get
12 recovery. And I think the language that Commissioner
13 Edgar has come up with does that.

14 **CHAIRMAN GRAHAM:** Commissioner Skop.

15 **COMMISSIONER SKOP:** I could live with that. I
16 guess, you know, my view would be I don't know when
17 they're planning on bringing this, the, you know, cost
18 estimates back. If that's in the near-term, my
19 preference would be to defer it and just let them bring
20 it back. And then they can take that to the bank and
21 we'll probably have a better handle on the cost and the
22 magnitude of the projects.

23 Alternatively, I can live with watering
24 down the language. The word "prudent" gives me
25 great pause because I don't believe the

1 Commission -- you know, that may be used against the
2 Commission at a future point by saying, hey, you
3 told us to do it. We've seen that before.

4 So I think it's good for the utilities and
5 I support capital projects, but I support capital
6 projects when they're fully definitized and we have
7 a good handle on what we're approving. And prudent
8 is a very, a term of art with substantial import in
9 the legal sense as it pertains to the Commission.

10 **CHAIRMAN GRAHAM:** All right. So it looks like
11 what we're going to do on the Staff recommendation,
12 second line, second to the last word, we're going to
13 strike "prudent." And then on the third, towards the
14 end of the third line, which is the third sentence,
15 "Staff therefore recommends that the Commission find in
16 this proceeding that the pro forma projects are
17 prudent," we're going to strike that sentence in its
18 entirety. And I believe that's Commissioner Edgar's
19 motion.

20 **COMMISSIONER EDGAR:** Yes. Mr. Chairman, I
21 would so move, with just the addition that any other
22 language in the order that would need to be amended to
23 reflect that decision of the Commission be handled in
24 that manner.

25 **COMMISSIONER SKOP:** Second.

1 **CHAIRMAN GRAHAM:** It has been moved and
2 seconded. Any further discussion? Seeing none, all in
3 favor, say aye.

4 (Vote taken.)

5 Those opposed? By your action, you've
6 approved Issue Number 9 as amended.

7 Okay. Issue Number 10.

8 **MS. HUDSON:** Issue 10 is a fallout issue, all
9 adjustments, encompassing all adjustments made in
10 previous issues. However, this would be affected by
11 Issue 3 -- 4. I'm sorry.

12 **CHAIRMAN GRAHAM:** Okay. To the panel. Could
13 I get a motion to approve Issue 10 based on the changes
14 to Item 4?

15 **COMMISSIONER SKOP:** So moved, as may be
16 possibly impacted by Issue 4.

17 **COMMISSIONER EDGAR:** Does that -- can I just
18 ask, does that, does that give Staff what you need? And
19 I'm getting a nod. So in that case, I second it.

20 **CHAIRMAN GRAHAM:** Okay. Did the court
21 reporter get that? Okay. All right. All in favor, say
22 aye.

23 (Vote taken.)

24 Those opposed? By your, by your action,
25 you've approved Issue Number 10, depending on the

1 effects of what we do with Issue Number 4 in the
2 future.

3 Issue Number 11.

4 **MS. HUDSON:** Issue 11 relates to whether any
5 additional adjustments should be made to advances for
6 construction. There was a stipulated issue, a
7 stipulated agreement for \$9,257. \$65,000, Staff was
8 recommending that no additional adjustment be made to
9 incorporate the \$65,000. The Utility had made all the
10 necessary improvements with using the money that the
11 Commission ordered them to do.

12 **CHAIRMAN GRAHAM:** Panel?

13 **COMMISSIONER SKOP:** Just a question to
14 Ms. Hudson. If you could briefly repeat that and just
15 articulate how that relates or is in disagreement with
16 Public Counsel's position on the \$65,000.

17 **MS. HUDSON:** In the Utility's last rate case
18 they were ordered to spend \$65,000 on some capital
19 improvements. The money was advanced to the Utility by
20 Mr. Brown's affiliate. It was not -- the order
21 specifically said that it was not contributions-in-aid-
22 of-construction, CIAC. So Staff believes that the Utility
23 has completed all those projects. And since they're done,
24 we wouldn't think that it still should be recorded in
25 advances for construction. It would, it would be now

1 reflected as whatever plant they spent the money on, so we
2 didn't feel that there was an additional adjustment
3 necessary.

4 **COMMISSIONER SKOP:** All right. Thank you.
5 And then to legal Staff with respect to Public Counsel's
6 contention that the Commission order -- the Company's
7 argument that the Commission order was wrong and
8 untimely and inappropriate, could legal staff briefly
9 speak to that?

10 **MR. JAEGER:** Commissioner Skop, I think what
11 we're saying here is if you accept OPC's, that it's too
12 late to contest the order, we would still zero out the
13 \$65,000 for advances for construction, and so the OPC's
14 argument is actually moot. In any event, the advances
15 for construction will be zeroed out because they did
16 spend the \$65,000.

17 **COMMISSIONER SKOP:** Okay. Thank you. That
18 gives me better clarity. And with that, I'd move Staff
19 recommendation on Issue 11.

20 **COMMISSIONER EDGAR:** Second.

21 **CHAIRMAN GRAHAM:** It's been moved and seconded
22 to move Staff on Issue Number 11. All in favor, say
23 aye.

24 (Vote taken.)

25 Those opposed? By your action, you've

1 approved Issue Number 11.

2 Let's move on to Issue Number 12.

3 **MS. HUDSON:** Issue 12 relates to what is the
4 appropriate working capital allowance? There was two
5 partial adjustments the Utility agreed to. With those
6 adjustments Staff is recommending that working capital
7 be \$39,912.

8 **CHAIRMAN GRAHAM:** Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you. A question for
10 Staff. In the Staff analysis it speaks about the key
11 man life insurance and some of the other expenses that
12 Staff has removed. I guess in Staff's opinion are these
13 the totality of all the adjustments that need to be made
14 to the working capital allowance?

15 **MS. HUDSON:** Yes.

16 **COMMISSIONER SKOP:** All right. Thank you.
17 With that, if there are no further questions, I'd move
18 Staff recommendation on Issue 12.

19 **CHAIRMAN GRAHAM:** Issue 12 has been moved and
20 second. Any further discussion? Seeing none, all in
21 favor, say aye.

22 (Vote taken.)

23 Those opposed? By your action, you've
24 approved Issue Number 12.

25 Issue Number 13.

1 **MS. HUDSON:** Issue 13 is a fallout issue as
2 well, and it also would be affected by the previous
3 issue.

4 **CHAIRMAN GRAHAM:** Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you. I believe it
6 would be affected by previous issues and Issue 4; is
7 that correct?

8 **MS. HUDSON:** Yes.

9 **COMMISSIONER SKOP:** All right. That answered
10 my question. I would move Staff on Issue 13, subject to
11 it being subsequently adjusted by any other adjustments
12 on Issue 4.

13 **COMMISSIONER EDGAR:** Second.

14 **CHAIRMAN GRAHAM:** It's been moved and seconded
15 to approve 13, subject to adjustments depending on what
16 happens on Issue 4 and others. All in favor, say aye.

17 (Vote taken.)

18 Those opposed? By your action, you've
19 approved 13.

20 We've already done 14. Let's go to 15.

21 **MR. FLETCHER:** Commissioners, Item 15 is
22 Staff's recommendation regarding the appropriate amount
23 and cost rate for long-term debt being the amount
24 \$3,623,885 and a rate of 3.79 percent.

25 **CHAIRMAN GRAHAM:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you. This one was
2 the, I guess the kitchen sink of everything that's going
3 on in the rate case. So it took some time to, to read
4 between the positions of the parties and the Staff
5 analysis.

6 I think on page 32 of the Staff
7 recommendation, and this came up at hearing, it was
8 a point of concern, it talks about the WMSI
9 including the projected \$5 million CBS [sic] loan at
10 6.65 percent of the capital structure and remove the
11 \$2,849,020 GSB loan at 4.25 percent, which was
12 expected to be retired with the new loan commitment
13 of \$5 million.

14 Part of that loan commitment on the
15 \$5 million, however, was contingent upon paying off
16 the existing debt except for the DEP State Revolving
17 Loan Fund. But, moreover, the existing loan
18 commitment as articulated at the bottom of page
19 32 required subordination of the State's loan and
20 basically putting the bank as first lien against all
21 of the Utility's assets. So basically agreeing, the
22 Utility agreeing to that would basically put, put
23 the State taxpayer money in, in a subordinate
24 position to that of the bank; is that correct?

25 **MR. FLETCHER:** That is correct. That's what

1 the record reflects. And I would also like to add that
2 this issue will be affected by Issue 4.

3 **COMMISSIONER SKOP:** Okay. And then just
4 finally on that point, I think what Staff did on page
5 33, which although there's a lot of numbers floating
6 around, Staff recommends removing from the test year
7 capital structure the proposed \$5 million loan at 6.65
8 percent from CSB, or, yeah, CSB, and rather including in
9 the capital structure the existing \$2,849,020 loan at
10 4.25 percent from, from GSB. And I think that basically
11 would have the effect of lowing, lowering the cost of
12 capital in terms of the capital structure there, and
13 then also basically recommending removal of the proposed
14 plant additions of 2.2 million from rate base and all
15 the other things that Staff has articulated. But I just
16 want to make sure that Staff seems to prefer using the
17 existing capital structure rather than reverting to the
18 new proposed one; is that correct?

19 **MR. FLETCHER:** That's correct. There are
20 certain conditions within the bank from the GSB, which
21 is that subordination. There's no evidence in the
22 record that DEP would subordinate its debt. The plant
23 improvements, we don't have cost justification. So,
24 yes, that is correct, we're using the existing DEP
25 long-term debt.

1 **COMMISSIONER SKOP:** Okay. Well, I mean, like
2 I say, I think that was a point that came out at
3 hearing. And the conditions and terms from the bank,
4 obviously it's trying to protect its interests in terms
5 of loan commitments. But, you know, the interests of
6 the people of the State of Florida that are holding the
7 note for DEP's revolving loan, the subordination there I
8 think causes issues, and I think Staff addressed it very
9 well in the recommendation. So with that, if there are
10 no further questions, I'd move Staff recommendation on
11 Issue 15.

12 **COMMISSIONER EDGAR:** Second.

13 **CHAIRMAN GRAHAM:** It's been moved and
14 seconded, Staff recommendation on Issue 15. All in
15 favor, say aye.

16 (Vote taken.)

17 Those opposed? By your action, you've
18 approved 15.

19 Let's move on to 16.

20 **MR. FLETCHER:** Commissioners, Item or Issue 16
21 is Staff's recommendation regarding the appropriate
22 return on equity of 10.85 percent, and that is using the
23 Commission's current leverage formula in effect.

24 **CHAIRMAN GRAHAM:** Commissioner Skop.

25 **COMMISSIONER SKOP:** And just a brief question

1 on that. Again, the Utility proposed using the current
2 leverage formula, but Staff substituted the -- I mean,
3 the current leverage formula in place of what the
4 Utility suggested.

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

6 **COMMISSIONER SKOP:** Okay. That's fine. If no
7 further questions, I'll move Staff recommendation on
8 Issue 16.

9 **COMMISSIONER EDGAR:** Second.

10 **CHAIRMAN GRAHAM:** It's been moved and
11 seconded, Issue 16. All in favor, say aye.

12 (Vote taken.)

13 Those opposed? By your action, you've
14 approved 16.

15 Issue 17.

16 **MR. FLETCHER:** Issue 17, Staff recommends that
17 the appropriate weighted average cost of capital for
18 WMSI is 3.85 percent. And this issue will be affected
19 by the Commission's decision in Issue 4.

20 **CHAIRMAN GRAHAM:** Okay. Commissioner Skop.

21 **COMMISSIONER SKOP:** No questions on that. If
22 there are no further questions, I'd move Staff
23 recommendation on Issue 17, noting that it would be
24 impacted by other decisions of the Commission.

25 **COMMISSIONER EDGAR:** Seconded.

1 **CHAIRMAN GRAHAM:** It's been moved and seconded
2 to approve Staff recommendation on Issue 17, subject to
3 the effects of Issue Number 4 and other issues.

4 All in favor, say aye.

5 (Vote taken.)

6 Those opposed? By your action, you've
7 approved 17.

8 Let's move to 18.

9 **COMMISSIONER EDGAR:** Mr. Chairman?

10 **CHAIRMAN GRAHAM:** Yes, ma'am.

11 **COMMISSIONER EDGAR:** I realize that we have a
12 very good flow going and I'm sorry to interrupt that,
13 but I do recognize that we're coming to kind of another
14 grouping of issues. Would it be possible to take just a
15 three- to five-minute break?

16 **CHAIRMAN GRAHAM:** What I'd like to do is see
17 if we can get this thing running to about 11:40, 11:45,
18 and then just break for lunch, if that works.

19 **COMMISSIONER EDGAR:** Okay. Okay.

20 **CHAIRMAN GRAHAM:** Yes?

21 **COMMISSIONER SKOP:** That's fine.

22 **COMMISSIONER EDGAR:** Okay. Yeah. All right.
23 Thank you.

24 **CHAIRMAN GRAHAM:** Okay. 18.

25 **MS. HUDSON:** Issue 18 relates to what -- if

1 any adjustments are made to the requested level of
2 salaries and wages. Staff is recommending a decrease of
3 \$50,424, and the correspondent payroll tax adjustment is
4 a decrease of \$3,857.

5 **COMMISSIONER SKOP:** Just a question.

6 **CHAIRMAN GRAHAM:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you. Just briefly
8 to Staff. It looks to me reading the Staff
9 recommendation that Staff made the adjustments to salary
10 and wages expenses pursuant to the recommendations that
11 were advocated by Public Counsel; is that correct?

12 **MS. HUDSON:** That's correct.

13 **COMMISSIONER SKOP:** Okay. And basically the
14 excessive increases were removed from the rate base.

15 **MS. HUDSON:** That's correct.

16 **COMMISSIONER SKOP:** All right. That's fine.
17 If there are no further questions, move Staff
18 recommendation on Issue 18.

19 **COMMISSIONER EDGAR:** Second.

20 **CHAIRMAN GRAHAM:** Staff has been moved on
21 Issue Number 18 and seconded. All in favor, say aye.

22 (Vote taken.)

23 Those opposed? By your action, you've
24 approved Issue Number 18, which brings us to Issue
25 Number 19.

1 **MS. HUDSON:** Issue Number 19 relates to what
2 are the appropriate adjustments to the Utility's
3 employee pensions and benefits? Particularly this
4 relates to the executive deferred compensation plan the
5 Utility implemented in the test year. Staff is
6 recommending that the \$80,000 cost be removed and also
7 an adjustment relating to an allocation of 12.5 percent
8 to affiliate companies.

9 **CHAIRMAN GRAHAM:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you. And just a
11 quick question to Ms. Hudson. It appears again that
12 Staff recommendation mirrors that advocated by the
13 adjustments by Public Counsel; is that correct?

14 **MS. HUDSON:** That's correct.

15 **COMMISSIONER SKOP:** Okay. I have no problem.
16 It seems that they've removed the questionable deferred
17 compensation plan and some of the other allocations that
18 were involved there. So with that, if there are no
19 further questions, I'd move Staff recommendation on
20 Issue 19.

21 **CHAIRMAN GRAHAM:** It's been moved and seconded
22 to move Staff on 19. All in favor, say aye.

23 (Vote taken.)

24 Those opposed? By your action, you've
25 approved Issue Number 19.

1 Moving on to Issue Number 20.

2 **COMMISSIONER SKOP:** Move Staff on Issue 20. I
3 have no questions, if there are no others.

4 **CHAIRMAN GRAHAM:** Issue 20 has been moved and
5 seconded for Staff recommendation. All in favor, say
6 aye.

7 (Vote taken.)

8 Those opposed? By your action, you've
9 approved Issue Number 20.

10 Issue Number 21.

11 **MS. HUDSON:** Issue 21 relates to adjustments
12 to the requested level of engineering services. Staff
13 has recommended a decrease of \$42,128 to engineering
14 services.

15 **CHAIRMAN GRAHAM:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you. Just a quick
17 question to Ms. Hudson. Apparently in reading the
18 totality of the Staff recommendation it looked at
19 adjustment for and adjustment against, and apparently
20 since there was zero in there in prior years what Staff
21 felt appropriate was to index the engineering service
22 from the last rate case to the current level and
23 determine it should be about five, almost six thousand
24 dollars, and then recorded reduced engineering services
25 by a certain amount. But basically it seems like Staff

1 is trying to be fair for disallowances, but also looking
2 at things that need to be in the, in the base rate; is
3 that correct?

4 **MS. HUDSON:** That's correct.

5 **COMMISSIONER SKOP:** Okay. I have no problem
6 with that and would move Staff recommendation on Issue
7 21.

8 **CHAIRMAN GRAHAM:** It's been moved and seconded
9 Staff recommendation on Issue 21. All in favor, say
10 aye.

11 (Vote taken.)

12 Those opposed? By your action, you've
13 approved Issue Number 21.

14 Issue Number 22.

15 **MS. HUDSON:** Issue Number 22 relates to any
16 adjustments to the Utility's requested level of
17 accounting services. Staff is recommending a decrease
18 of \$14,333.

19 **CHAIRMAN GRAHAM:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you. Just a quick
21 question again to Ms. Hudson. And that adjustment is
22 basically Ms. Withers, who's the CPA, in terms of what
23 Staff thought was appropriate based on requested cost
24 recovery versus what have been historical payments made
25 to the CPA; is that correct?

1 **MS. HUDSON:** That's correct.

2 **COMMISSIONER SKOP:** All right. Thank you. If
3 there are no further questions, I'd move Staff
4 recommendation on Issue 22.

5 **CHAIRMAN GRAHAM:** It's been moved and
6 seconded, Staff recommendation on 22. All in favor, say
7 aye.

8 **COMMISSIONER SKOP:** Aye.

9 **CHAIRMAN GRAHAM:** Aye.

10 **COMMISSIONER EDGAR:** (Microphone off.)

11 **THE COURT REPORTER:** I'm sorry. I couldn't
12 hear that.

13 **COMMISSIONER EDGAR:** I am so sorry. Please
14 show me as voting no on Issue 22.

15 **CHAIRMAN GRAHAM:** Issue 22 is two ayes and one
16 nay. That being the case, Issue Number 22 passed.

17 Issue Number 23.

18 **MS. HUDSON:** Issue 23 relates to should
19 adjustment be made to remove the DEP refinancing cost?
20 Staff, I'm sorry, Staff is recommending that that cost
21 be removed.

22 **CHAIRMAN GRAHAM:** Commissioner Skop.

23 **COMMISSIONER SKOP:** I have no questions. I'd
24 move Staff recommendation on Issue 23, as I feel the
25 adjustment is appropriate.

1 **CHAIRMAN GRAHAM:** Commissioner Edgar.

2 It's been moved and seconded to move Staff
3 on 23. All in favor, say aye.

4 (Vote taken.)

5 Those opposed? By your action, you've
6 approved 23.

7 We've already done 24 and 25. That moves
8 us to Issue Number 26.

9 **MS. HUDSON:** Issue 26 relates to should any
10 adjustments be made to rental of the building or real
11 property? Staff is recommending a \$2,250 reduction, and
12 it's consistent with the 12.5 affiliate adjustments
13 being made in other issues.

14 **CHAIRMAN GRAHAM:** Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you. Just a quick
16 question. I think Staff has made the adjustment based
17 on also too the position that was advocated by Public
18 Counsel, so I'm comfortable with the adjustment there
19 and would move Staff recommendation on Issue 26.

20 **CHAIRMAN GRAHAM:** It's been moved and
21 seconded, Staff recommendation on 26. All in favor, say
22 aye.

23 (Vote taken.)

24 Those opposed? By your action, you've
25 approved Issue Number 26.

1 Move to Issue Number 27.

2 **MS. HUDSON:** Issue 27 relates to any
3 adjustments to transportation expense. Staff is
4 recommending a reduction of \$3,618.

5 **CHAIRMAN GRAHAM:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you. And to Staff
7 on Issue 27, getting into the transportation costs and
8 lack of travel logs, yada, yada, yada, I believe in the
9 recommendation of Public Counsel that I guess they're
10 advocating that the Commission should prescribe specific
11 instructions and details about what should be maintained
12 in travel logs to document the business and personal use
13 of Utility-owned vehicles and personal vehicles by
14 employees who request for reimbursement from utilities.

15 I just want to make sure what we're
16 approving here. Is Staff advocating -- I know they
17 made the adjustments to take out the tires and other
18 things that weren't supported by the substantial
19 documentation. But in terms of practices, I think
20 the message that the Commission is setting in terms
21 of its votes here tends to put the Utility on notice
22 that they're going to be expected to keep some form
23 of business records for, in relation to the
24 transportation usage; is that correct?

25 **MS. HUDSON:** That's correct.

1 **COMMISSIONER SKOP:** Okay. All right. All
2 right. With that, I have no problem with Staff
3 recommendation and would move adoption of the Staff
4 recommendation on Issue 27.

5 **CHAIRMAN GRAHAM:** It's been moved and
6 seconded, Issue Number 27, Staff recommendation. Any --

7 **MR. JAEGER:** Chairman, excuse me. This is
8 Ralph Jaeger of legal Staff. I just wanted to note that
9 this transportation expense was based partly on
10 Mr. Brown's vehicle being allowed at 50 percent, so
11 there will be that fallout on it.

12 **CHAIRMAN GRAHAM:** Commissioner Skop, could you
13 amend that motion?

14 **COMMISSIONER SKOP:** Yes. The motion would be
15 adopt Staff recommendation on Issue 27, noting that the
16 final number may be impacted by the Commission's
17 decision on Issue 4.

18 **CHAIRMAN GRAHAM:** It's been moved and seconded
19 to move, to approve Staff recommendation on 27,
20 depending on the outcome of Issue Number 20 -- Issue
21 Number 4.

22 All in favor, say aye.

23 (Vote taken.)

24 Those opposed? By your action, you've
25 approved Issue Number 27 as stated.

1 Issue Number 28.

2 **MS. HUDSON:** Issue 28 relates to the key man
3 life insurance policy, and Staff is recommending that
4 the cost associated with that policy be removed.

5 **CHAIRMAN GRAHAM:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you. Just a quick
7 question for Ms. Hudson. And that's consistent with the
8 Commission's practice in reviewing other utilities'
9 requests and based on the amount of the policy in
10 question; is that correct?

11 **MS. HUDSON:** Staff's adjustment is based on
12 the fact that we believe that this policy covers the
13 executive deferred compensation plan. Since we're
14 disallowing that amount, we feel that this policy should
15 be disallowed as well.

16 **COMMISSIONER SKOP:** Okay. Very well. Thank
17 you. If there are no further questions, I'd move the
18 Staff recommendation on Issue 28.

19 **CHAIRMAN GRAHAM:** Issue Number 28 to move
20 Staff has been moved and seconded. Any discussion?
21 Seeing none, all in favor, say aye.

22 (Vote taken.)

23 Those opposed? By your action, you've
24 approved Issue Number 28.

25 Issue Number 29.

1 **MS. HUDSON:** Issue 29 relates to what is the
2 appropriate amount of rate case expense? Staff is
3 recommending an appropriate rate case expense to be
4 \$206,632, a four-year amortization of \$51,658.

5 **CHAIRMAN GRAHAM:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you. Just this is
7 probably going to be a little touchy issue on this one.
8 Looking at the Staff recommendation on Issue 9, I mean,
9 29 that deals with rate case expense, this lengthy
10 analysis concluding on Table 29-2 on page 59 of the
11 Staff recommendation showing what final adjustments
12 Staff made, and I'd like to get a little bit better
13 understanding from Staff as to what was driving their
14 recommendation.

15 With respect to the prior legal expenses
16 of Rose, Sundstrom & Bentley, the firm that was
17 initially retained and then they went with a
18 different law firm, it appears on page 59 that those
19 duplicative expenses have been removed in their
20 entirety. Is that correct?

21 **MS. HUDSON:** That's correct.

22 **COMMISSIONER SKOP:** Okay. And with respect to
23 the discussion of the legal expenses incurred in this
24 rate case and the total rate case expense as a whole, I
25 think that's where my question lies.

1 Under legal on page 57, I guess the first
2 order of business was Staff addressed Ms. Clark's
3 charges and the estimated, additional estimated
4 charges and made some adjustments there. And I
5 believe Staff indicated the hours should be 4.75
6 hours. And then they apparently credited the time
7 that was, that Ms. Clark attended, the ten hours at
8 the first day of the hearing, and then they made
9 some different adjustments to Ms. Clark's hourly
10 rate. So I'm going to hold that thought for a
11 moment.

12 Then they go on to Ms. Scoles, who is the
13 primary attorney that prosecuted the case on behalf
14 of the Petitioner, and they looked at her hours and
15 legal costs. And then they proceeded on to the
16 consultant, Mr. Deason, looked at his hours, made
17 some adjustments for Mr. Gauker's testimony not
18 being admitted, and then looked at his hourly rate,
19 which I believe that they have stated is \$300 an
20 hour and I believe Ms. Clark's is \$400, and they
21 made adjustments appropriate to that of what would
22 be incurred by other legal counsel in other water
23 cases.

24 I think the concern I have there is that
25 obviously when, when time is charged, you know, you

1 have Ms. Clark who's, who's, you know, attended the
2 meeting, you have Ms. Scoles who participated in the
3 case and Mr. Deason who participated in the case, it
4 just seems to me that the adjustments being made,
5 you know, certainly Staff should reconcile the
6 amount of time and who's billing what to some degree
7 and test that in the totality of what's fair and
8 reasonable.

9 Where I have a little bit of a concern is
10 on the hourly rate and making those adjustments. I
11 think that, you know, the basic legal principle is
12 that, you know, a utility or any client for that
13 matter is entitled to retain counsel of their
14 choice. Now I do think the Commission functioning
15 as a gatekeeper has some form of duty to ascertain
16 what is fair, just and reasonable and not excessive.
17 But, I mean, it stands to reason that Ms. Clark's
18 rate is \$400 an hour and Mr. Deason's rate is
19 \$300 an hour, but yet Staff has made some
20 adjustments to their hourly rate. But, but I guess
21 I'm trying to reason that out because I understand
22 Ms. Clark attended for ten hours but really didn't
23 participate in the hearing, so it was there in a,
24 you know, pretty much of a to observe fashion.

25 But when we're making adjustments to

1 hourly rates, I'm trying to reconcile that too. I
2 can better understand an adjustment to hours, I
3 guess is what I'm saying, but not so much adjustment
4 to rates. So I just wanted to get Staff to
5 elaborate a little bit on that. Because, again,
6 when we get into setting rates for attorneys, you
7 know, I hope to make \$400 an hour one day when I'm
8 not on the Commission anymore, but, you know, maybe
9 a little bit more. But, anyway, I just wanted to
10 get Staff's analysis on that, and frankly too from
11 legal too.

12 **MS. HUDSON:** So your question is not
13 necessarily hours --

14 **COMMISSIONER SKOP:** Well, I think, I think
15 Staff should look at the hours, okay, because the hours
16 need to be fair and reasonable. I mean, if the hours
17 are excessive, then, by all means, Staff should make
18 adjustments. And I'd like to understand, you know, in
19 terms of the need for in a, in a relatively small rate
20 case the need for two attorneys. I can understand the
21 need for an attorney and a consultant, but bringing in
22 the second attorney to just observe, I'm not so sure
23 there's a whole lot of value there.

24 But when you make adjustments to the
25 hourly rate, I think that that kind of gets into --

1 you know, the rate is what it is and I think you
2 make the adjustments based on, on the billable
3 hours. But for the Commission to step in and say,
4 well, this rate is too high -- I mean, certainly we
5 need to act as gatekeepers and if we see something
6 excessive, what have you. But these are the same
7 rates that have been charged to other clients in
8 other dockets, you know, in rate cases that have
9 come before the Commission.

10 So I just wanted to get Staff's, you know,
11 understand Staff's thought process a little bit.
12 Because the first thing I would question would be
13 not so much the hourly rate but the, the, the value
14 of attending a meeting for ten hours. You know, I
15 can understand one, two, three, maybe four, but ten
16 hours in a, in a, you know, capacity that's not
17 directly involved in the hearing, you know, I just
18 wanted to get Staff's understanding there. Because
19 my biggest concern is slashing the, the hourly rate.
20 And, again, if there's precedent for that, by all
21 means, please, you know, explain it.

22 I know you compared it to other water
23 cases, but, again, it still gets into the fact that
24 a client is still able to retain counsel as they
25 deem appropriate at a rate. And that is the

1 billable rate that those, those individuals charge.

2 So I just wanted to flesh this out a little bit.

3 **MR. FLETCHER:** Commissioner, Bart Fletcher. I
4 think Staff's thoughts here as far as the adjustments to
5 the hourly rates was looking at recognizing the fact
6 that the Utility has every right or it's their decision
7 to hire the expertise of any, you know, lawyer in their,
8 their choosing of counsel or their choosing of a
9 consultant. Our line of thought there was that it
10 doesn't automatically follow that the customers should
11 have to bear the full cost of those services for a
12 particular attorney or consultant.

13 In previous cases, I mean just for legal
14 services, Rose, Sundstrom & Bentley has commonly
15 performed before the Commission for, in water and
16 wastewater cases, as well as other attorneys. And
17 in looking at the hourly rate of recovery through
18 rate case expenses to process by counsel for the
19 water and wastewater industry, it, typically it
20 hasn't reached to that level of \$400, and that was
21 Staff's thoughts there.

22 As far as any precedent as far as other
23 consultants, in the Utility -- Aqua case, which was
24 a post-hearing decision in a 2008 rate case for Aqua
25 Utilities Florida, Staff made a similar adjustment

1 to a Mr. Guastella that was an engineering
2 consultant that Aqua had hired. And noting in that
3 case on page 101 on the Aqua order, Number
4 PSC-090385-FOF-WS, it, it stated that "While AUF's
5 decision to retain Mr. Guastella for his experience
6 is reasonable, it does not automatically follow that
7 the customers should have to bear the full cost of
8 his services. Because Mr. Guastella's hourly rate
9 is high compared to other engineering and rate
10 consultants who have practiced before us, we have
11 previously reduced his hourly rate."

12 And that was kind of the -- just looking
13 at the hourly rate of what in the past through other
14 cases where there was adequate counsel where we went
15 through fruition (phonetic), looking at those hourly
16 rates, that was Staff's basic basis behind those
17 adjustments.

18 **COMMISSIONER SKOP:** Okay. And that gives me a
19 little bit better understanding in terms of precedent.
20 Apparently there's a, must be a different scale of
21 looking at water cases and electric cases differently to
22 where electric bears, but obviously they have a larger
23 customer base. So I think Staff is trying to appreciate
24 the sensitivities in terms of how much cost goes through
25 and is allocated to the customers.

1 It still gives me some pause on making the
2 adjustments, but it seems to be supported by, by
3 past precedent in terms of the adjustments that were
4 made, as least for consultants. I'm not so sure for
5 lawyers.

6 With respect to the participation of two
7 attorneys at the, at the hearing, can Staff offer
8 some basis why the ten hours was allowed, even
9 notwithstanding the fact that that particular
10 attorney didn't appear before the Commission per se?

11 **MR. FLETCHER:** Just given the basis of the
12 description on the invoices is definitely there for
13 oversight for Ms. Clark, and obviously Ms. Scoles and
14 the consultant was there as well.

15 I -- basically other than what's on the
16 invoices, we don't have anything, what happened in,
17 you know, whenever there was breaks, what kind of
18 consulting, we don't have that information of what
19 Ms. Clark exactly, other than what's in the invoices
20 for the lawyers and the attorneys, so I really can't
21 say whether it was duplicative in nature. I'm not
22 sure their attorney/client discussions behind
23 what's, other than the evidence in the record and
24 the basis of the description there.

25 **COMMISSIONER SKOP:** Okay. Like I say, I'll

1 accept Staff's judgment and recommendation in that
2 regard. Again, it seems to me that, you know, if you're
3 just attending a hearing, that may not arise to the full
4 level of cost recovery. You know, I think Ms. Scoles
5 and Mr. Deason did a fine job appearing before the
6 Commission. But, again, it's the Commission's job to
7 look at reasonable expenses and that one kind of stuck
8 out. But I think Staff's justified its position in the
9 recommendation, and if there are no further questions --

10 **COMMISSIONER EDGAR:** I do, Mr. Chairman.

11 Would it be --

12 **CHAIRMAN GRAHAM:** Hold on. Are you done?

13 **COMMISSIONER SKOP:** Well, if Commissioner
14 Edgar has questions. If not, I'm prepared to make a
15 recommendation on Issue 29.

16 **CHAIRMAN GRAHAM:** Commissioner Edgar.

17 **COMMISSIONER EDGAR:** Thank you. And what I
18 was -- and I did not mean to break in. I apologize for
19 that.

20 What I wanted to ask is would it be
21 possible, please, to hold this item similarly as we
22 did to 4 to come back after we have gone through,
23 since we're talking about possibly adjustments to
24 adjustments or not?

25 **CHAIRMAN GRAHAM:** You want to make changes to

1 Item Number 29?

2 **COMMISSIONER EDGAR:** I would like to have a
3 little more time to think about it.

4 **CHAIRMAN GRAHAM:** Okay.

5 **COMMISSIONER EDGAR:** So I'd like to, to not
6 vote on this one now and go on to the others and then
7 come back to it at whatever would be the appropriate
8 time, similarly to what I believe we're doing with
9 Issue 4.

10 **CHAIRMAN GRAHAM:** Actually this is a good
11 time. I've got about a quarter 'til 12:00. Actually
12 let's make it ten 'til 12:00 I have. Let's take about
13 an hour for lunch and then give Staff another half an
14 hour to make the adjustments we need to do about
15 dropping out Item Number 4 and moving on from there.

16 So we'll reconvene at 1:20. So that's an
17 hour for lunch, another half an hour for Staff to do
18 the things they have to do. So we'll be back here
19 in an hour and a half. That all being said, let's
20 take a recess for an hour and a half.

21 (Recess taken.)

22 **CHAIRMAN GRAHAM:** Okay. I want to thank you
23 all for being back here. I've got 1:23, we are going to
24 reconvene. We are on Item Number 18. We are on Issue
25 29, and we had a request to table that. Do you want to

1 move forward with 29, or do you want to come back to 29,
2 Commissioner Edgar?

3 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
4 I would prefer to come back to Issue 29, if we can do
5 that.

6 **CHAIRMAN GRAHAM:** Okay. So we have got Issue
7 Number 4 and Issue Number 29 laying on the table.

8 **COMMISSIONER EDGAR:** Thank you.

9 **CHAIRMAN GRAHAM:** Let's move on to Issue
10 Number 30.

11 **MS. HUDSON:** Issue 30 relates to adjustments
12 to employee training costs. Staff decreased its
13 training costs by 1752 to reflect a three-year average
14 of this expense.

15 **CHAIRMAN GRAHAM:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you. If there are
17 no further questions, I would move staff recommendation
18 on Issue 30.

19 **COMMISSIONER EDGAR:** Second.

20 **CHAIRMAN GRAHAM:** It has been moved and
21 seconded. Any discussion on Issue 30? Seeing none, all
22 in favor say aye.

23 **COMMISSIONER SKOP:** Aye.

24 **COMMISSIONER EDGAR:** Aye.

25 **CHAIRMAN GRAHAM:** Those opposed? By your

1 action you have approved Issue 30. Let's go to Issue
2 31.

3 **MS. HUDSON:** Issue 31, staff is recommending a
4 decrease in miscellaneous expense of \$54,594.

5 **COMMISSIONER SKOP:** Move staff recommendation
6 on Issue 31.

7 **CHAIRMAN GRAHAM:** It has been moved and
8 seconded the staff recommendation on Issue 31. Any
9 discussion?

10 **COMMISSIONER EDGAR:** Excuse me, Mr. Chairman,
11 a question if I may.

12 **CHAIRMAN GRAHAM:** Yes.

13 **COMMISSIONER EDGAR:** Realizing we are talking
14 miscellaneous expenses, does this -- how does this tie,
15 if at all, to Issue 4?

16 **MR. FLETCHER:** As you mentioned, Commissioner,
17 this is Bart Fletcher, on Issue 4, that was staff's
18 recommendation, basically, to capitalize some items that
19 the utility had expensed here in miscellaneous expenses,
20 and they were basically because they were for
21 replacement of pumps and stuff of real capital in
22 nature, that's how it relates to issue -- actually, I'm
23 sorry, Commissioner, that should be Issue 6. Thank you
24 for pointing that out. Actually it was addressed in
25 Issue 6 where we capitalize expenses that should have

1 been -- the utility previously expensed in the test
2 year. I apologize, that is an error. It does not
3 relate to Issue 4. It actually should be related to
4 Issue 6. I apologize, that's an error in the rec.

5 **COMMISSIONER EDGAR:** Thank you. I'm fine.

6 **CHAIRMAN GRAHAM:** Okay. We have been moved
7 and seconded on Issue 31. No further discussion? All
8 in favor signify by saying aye.

9 (Vote taken.)

10 **CHAIRMAN GRAHAM:** Those opposed? By your
11 action you have approved Issue Number 31. That brings
12 us to Issue Number 32.

13 **MS. HUDSON:** Issue 32 relates to additional
14 pro forma expenses the utility was requesting. Staff
15 made additional adjustments to them. We are just
16 recommending that they provide at least two years of
17 canceled checks. Documentation that these expenses are
18 going to continue outside of the test year.

19 **CHAIRMAN GRAHAM:** Okay. Questions?
20 Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you. In terms of
22 Issue 32, and the adjustments that have been made, staff
23 feels that no further adjustments are necessary --

24 **MS. HUDSON:** That's correct.

25 **COMMISSIONER SKOP:** -- that Table 32-1

1 reflects all the appropriate adjustments.

2 **MS. HUDSON:** That's correct.

3 **COMMISSIONER SKOP:** Okay. All right. Thank
4 you. If there are no further questions, I move staff
5 recommendation on Issue 32.

6 **CHAIRMAN GRAHAM:** It has been moved and
7 seconded, Issue 32. Any further discussion? Seeing
8 none, all in favor say aye.

9 **COMMISSIONER SKOP:** Aye.

10 **COMMISSIONER EDGAR:** Aye.

11 **CHAIRMAN GRAHAM:** Those opposed? By your
12 action you have approved Issue Number 32.

13 Issue Number 33.

14 **MS. HUDSON:** Issue 33 is a fallout adjustment
15 of all depreciation expense adjustments.

16 **CHAIRMAN GRAHAM:** Commissioner Skop.

17 **COMMISSIONER SKOP:** I move to adopt staff
18 recommendation on Issue 33, noting that any of the
19 numbers may change by a result of the Commission's
20 decision in Items 4 and 29; probably not 29, probably 4
21 might.

22 **CHAIRMAN GRAHAM:** It has been moved and
23 seconded to move staff recommendation on Issue Number 33
24 pending changes we make to Item 4, and maybe even Item
25 29. Any further discussion?

1 Seeing none, all in favor say aye.

2 **COMMISSIONER SKOP:** Aye.

3 **COMMISSIONER EDGAR:** Aye.

4 **CHAIRMAN GRAHAM:** Those opposed? By your
5 action you have approved Issue Number 33.

6 Issue Number 34.

7 **MS. HUDSON:** In Issue 34, staff is
8 recommending that the utility's amortization of
9 wastewater certificate costs be removed.

10 **CHAIRMAN GRAHAM:** Commissioner Skop.

11 **COMMISSIONER SKOP:** I have no problem with
12 Issue 34, so if there are no further questions, I move
13 to adopt staff recommendation on Issue 34.

14 **CHAIRMAN GRAHAM:** Is has been moved and
15 seconded, Issue 34, to move the staff recommendation.
16 Any other questions or concerns?

17 Seeing none, all in favor say aye.

18 **COMMISSIONER SKOP:** Aye.

19 **COMMISSIONER EDGAR:** Aye.

20 **CHAIRMAN GRAHAM:** Those opposed?

21 By your action you approved Issue Number
22 34.

23 That moves us down to Issue Number 35.

24 **MS. HUDSON:** In Issue 35, staff is
25 recommending that the gains on utility property be

1 amortized over five years. The annual amortization is
2 \$48,408, and our number differs from OPC's number in
3 that we did not include if the amortization would end
4 based on a date that they sold the item, that it would
5 end by the time the rates would have went into effect.

6 **COMMISSIONER SKOP:** Question.

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

8 **COMMISSIONER SKOP:** Thank you.

9 Just with respect to the gain on sale over
10 a five-year amortization period, is that the
11 appropriate amortization period that the Commission
12 staff has typically used?

13 **MR. FLETCHER:** Yes, Commissioner. For the
14 sale of specific assets it has amortized that over five
15 years, and that's consistent with prior Commission
16 practice.

17 **COMMISSIONER SKOP:** All right. Thank you. If
18 there are no further questions on Issue 35, I move to
19 adopt staff recommendation.

20 **CHAIRMAN GRAHAM:** It has been moved and
21 seconded to adopt the staff recommendation on Issue 35.
22 Any further questions?

23 Seeing none, all in favor say aye.

24 **COMMISSIONER SKOP:** Aye.

25 **COMMISSIONER EDGAR:** Aye.

1 **CHAIRMAN GRAHAM:** Those opposed?

2 By your action you have approved Issue 35.

3 On to Issue 36.

4 **MS. HUDSON:** Issue 38 relates to whether --

5 **CHAIRMAN GRAHAM:** 36.

6 **MS. HUDSON:** I'm sorry.

7 **CHAIRMAN GRAHAM:** 36.

8 **MS. HUDSON:** 36, sorry. Issue 36 relates to
9 what is the appropriate water operating income. Staff
10 is recommending 136,572, and this issue will change
11 depending on the outcome of Issue 4.

12 **CHAIRMAN GRAHAM:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you. If there are
14 no questions on Issue 36, I move to adopt the staff
15 recommendation on Issue 36, noting it may be impacted by
16 the Commission's decision on Item 4.

17 **CHAIRMAN GRAHAM:** It has been moved and
18 seconded to adopt staff recommendation on Issue 36
19 pending the outcome of Issue 4. Any further discussion?

20 Seeing none, all in favor say aye.

21 **COMMISSIONER SKOP:** Aye.

22 **COMMISSIONER EDGAR:** Aye.

23 **CHAIRMAN GRAHAM:** Those opposed?

24 By your action you have approved Issue 36.

25 That moves us on to Issue Number 37.

1 **MS. HUDSON:** Issue 37 is what is the
2 appropriate revenue requirement. Staff is recommending
3 1,309,487. This issue is also affected by Issue 4.

4 **CHAIRMAN GRAHAM:** Before we move on --

5 **MR. WILLIS:** Commissioner, that would also
6 encompass Issue 29, too, the rate case expense, if you
7 make changes.

8 **CHAIRMAN GRAHAM:** Have we figured out what the
9 impact is going be for all of these things if we vote
10 down Issue 4 and have them come back with that at a
11 later date?

12 **MR. FLETCHER:** Yes, Commissioner. You should
13 have all received the landscape schedule here, and I
14 would just like to briefly discuss what is in there.
15 Under the scenarios, the first one that you see, Issue
16 4, staff recommendation, 50 percent, that's what's
17 currently in the recommendation. What we only reflected
18 here is basically the rate, the rate base impact here in
19 the first, for plant accumulated depreciation there, and
20 then depreciation expense. However, I will note that
21 for the overall revenue dollar increase and percentage
22 in the overall revenue requirement, that does reflect
23 the additional adjustment related to transportation
24 expense, as well, a flow-through. With the timing here,
25 we didn't add that column, but I just wanted to point

1 out that the adjustment related to the president's
2 salary regarding the fuel expense and anything related
3 to his transportation expense related to his vehicle is
4 adjusted in the overall revenue increase dollar amount
5 and percentage and revenue requirement. And that is
6 what that represents.

7 Commissioner Skop had mentioned 35 percent
8 used and useful for the president's vehicle. That
9 is what the second scenario represents, and then the
10 last one is just no allowance for the president's
11 vehicle, including the transportation expense.

12 **CHAIRMAN GRAHAM:** Which makes it cleaner for
13 us moving forward? Do we go with the -- just go ahead
14 and vote out Issue Number 4 at zero, or do we go with
15 35 percent and then just do a correction, depending on
16 what comes forward in the next docket?

17 **MR. FLETCHER:** Well, because of the magnitude
18 of this, as what's reflected on the revenue increase,
19 the last three columns there, we would still recommend
20 no change in the rates. It has that immaterial impact
21 involved in the revenue requirement, so I would think
22 that it could be dealt with in this case, and it would
23 need to be deferred to a subsequent case. The reason
24 being is just the materiality of it on rates.

25 **CHAIRMAN GRAHAM:** Commission board?

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you. On Issue 4,
3 again, whatever the Commission does, absent adopting the
4 staff recommendation, there is going to be spillover
5 impact. It's not a big deal. The rates are pretty much
6 immaterial, but it will flow through. And typically in
7 the past it has been my experience that the Commission
8 has granted staff administrative authority to make such
9 changes as they flow through the fallout issues, and
10 then the order is issued reflecting the correct numbers.

11 So I'm comfortable with whatever way the
12 panel wants to proceed, whether it denies outright
13 the cost-recovery for the expense of the vehicles,
14 and if there was no justification provided in terms
15 of travel logs and such or, you know, a more
16 appropriate number seems to be 35 percent as opposed
17 to the 50 percent, which doesn't appear to be
18 justified doing some basic math. So it's at the
19 pleasure of the Commission.

20 **CHAIRMAN GRAHAM:** Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

22 I guess Commissioner Skop and I see this
23 item a little differently from one another. We are
24 addressing -- my understanding is we are addressing
25 the need for them or for more detailed travel logs

1 otherwise in this recommendation on a go-forward
2 basis, and I think that is a good and appropriate
3 thing. But the lack of travel logs for this vehicle
4 is not, to me, the same thing as a lack of any
5 justification.

6 And the discussion at hearing and the
7 recommendation of our staff here in the written
8 analysis, I think, recognizes that especially with
9 the disallowance of costs for a vehicle for the
10 vice-president, that a company that is located in
11 one city and operating some distance away, to me,
12 there is justification for a company vehicle, so to
13 speak, and that is what this basically amounts to.

14 We have adjustments in this item made by
15 our staff after careful analysis of the record that
16 goes down to even a quarter of an hour, four
17 dollars, I mean, right down to teeny, tiny amounts.
18 With this recommendation 50 percent is our staff
19 recommendation from the detailed analysis that they
20 have done of the record in toto, and I am
21 comfortable with the staff recommendation, and
22 that's how I will be voting on this item. And I
23 think that that is a way to move forward and is fair
24 and appropriate.

25 **CHAIRMAN GRAHAM:** Commissioner Skop.

1 **COMMISSIONER SKOP:** And I respect Commissioner
2 Edgar's position. I respectfully disagree, and
3 obviously I think that the position of Public Counsel,
4 they took a position that respectfully disagreed with
5 that, also. So, I guess, again, it's the will of the
6 Commission. I'm fine either way. I will just vote my
7 conscience on the issue.

8 It's a small issue, but, again, it seems
9 to me that when the Commission is approving expenses
10 that allegedly occurred in the course of providing
11 service to the customers that those costs need to be
12 fair, just, and reasonable as well as readily
13 verifiable and documented. And in this case there
14 is no such documentation. There is only basically a
15 rule of thumb that 50 percent of the vehicle, a 2009
16 Tahoe, I believe it is, or Sierra, a 2008 Sierra is
17 used for the sole purpose of the president. And
18 nothing against that. I mean, I think there
19 probably is some legitimate business use, and that
20 is why some quick math led me to 35 percent.

21 It does seem to be a more appropriate
22 number supported by staff's own estimates. However,
23 at the end the day, the vehicle as documented in the
24 record evidence was purchased with cash flow from
25 the company and the company has a cash flow issue.

1 So it seems to me that it was a discretionary
2 expenditure in toto of the entire record that really
3 isn't -- it appears to be more to be a luxury and a
4 convenience or a perk than a necessity. And, again,
5 I just call as I see it. I respect staff's
6 analysis, but, again, you know, if we do the math
7 based on four trips at 160 miles, it doesn't come up
8 to anywhere near close to 11,000 miles at the
9 50 percent threshold. So, thank you.

10 **CHAIRMAN GRAHAM:** It's really not a lot of
11 money that we are talking about here, but money is money
12 when you are talking about what the ratepayers are going
13 to have to pay for. Is it possible, and I guess this is
14 more of a legal question than anything else, is it
15 possible to approve current staff recommendation based
16 on forthcoming information to make sure that they need
17 to justify the dollars, justify the miles, and then we
18 can let staff approval move forward with that, or -- do
19 you understand what I'm saying? If they can come and
20 justify the 50 percent mileage, then that approval goes
21 through with the staff recommendation. If they don't
22 come back and justify the 50 percent mileage, then it
23 goes back -- it goes down to zero, or goes to whatever
24 they justify under 50 percent.

25 **MS. HELTON:** Well, it seems to me that that is

1 the whole purpose of the case that is before us now.
2 Was there opportunity to justify it. The company has
3 the burden of proof, and I think it's up to you all
4 today to decide whether they have met that burden or
5 not.

6 Staff believed that they had met the
7 burden for 50 percent. It sounds like Commissioner
8 Skop believes that they have met the burden for
9 35 percent, and it is really where at least two of
10 you can land. I think what you are talking about is
11 making a conditional approval. And I hear you
12 sometimes talk about what is the cleanest way, I'm
13 not sure that that would be the cleanest way.

14 Perhaps if you were to approve staff's
15 recommendation today, and we could -- and at your
16 direction we could include some strong language in
17 the order such that in the future it will
18 be incumbent upon the company to provide complete
19 and total travel records for any vehicles used for
20 utility business.

21 **CHAIRMAN GRAHAM:** Well, I think that's going
22 in the order anyway.

23 **MR. FLETCHER:** Chairman, if I can interject.

24 **CHAIRMAN GRAHAM:** Whoa, whoa. Marshall next,
25 and then you, Mr. Fletcher.

1 **MR. WILLIS:** Chairman, if I could just make a
2 comment here, too. There's no timetable for the second
3 filing to come in. It is all dependent upon the company
4 and how quickly they can get their engineering
5 information together, get to a loan institution and find
6 out what the debt cost is going to be to be able to
7 bring that second filing back.

8 The company can bring back anything it
9 wants in that second filing. I would suggest that
10 you go ahead and vote out what you believe is
11 appropriate today based on the evidence in the
12 record. If they believe they can file more support
13 in the second filing, then they might be able to
14 prove up more than what you are willing to recommend
15 at this point or are willing to vote out at this
16 point.

17 **CHAIRMAN GRAHAM:** Mr. Fletcher.

18 **MR. FLETCHER:** And I just wanted to point out
19 that in Issue 49 there is a staff recommendation that
20 the utility had failed to maintain travel records. And
21 on that point, I think the utility is put on notice that
22 they need to retain travel records for that. And just a
23 further elaboration on the justification for the
24 president's transportation expenses, we were just
25 looking at a bare-bones, what does it take just to get

1 to the island. But the island is, I guess,
2 approximately ten miles or more long, 20 miles long, and
3 the driving within the service territory, that would
4 take up additional mileage. So we felt comfortable, not
5 knowing the travel that would go on as far as to look at
6 the service area. It is 20 miles long. We were just
7 looking at the bare minimum for that 35 percent figure,
8 that percentage that was calculated there and the miles.
9 That was just bare-bones. So we were comfortable with
10 the 50 percent not knowing the additional miles on the
11 island.

12 **MR. JAEGER:** Chairman Graham, Ralph Jaeger,
13 legal staff. Also in Issue 4 itself, the last sentence
14 of the recommendation, "Finally, the utility should be
15 ordered to maintain travel logs for all vehicles and
16 enable staff to evaluate the appropriate level of
17 utility-related usage in future rate case proceedings."

18 So both in the show cause and in Issue 4
19 we are hammering the utility saying we need better
20 records in the future, and I think all we are doing
21 here is 35, 50, or 0 the appropriate point at this
22 point in time.

23 **CHAIRMAN GRAHAM:** Well, 4 is back off the
24 table, so it is in front of us, so I need a motion.

25 **COMMISSIONER EDGAR:** I move the staff

1 recommendation on Issue 4.

2 **CHAIRMAN GRAHAM:** I'll second that.

3 Any other discussion on the motion of
4 staff recommendation on Issue 4.

5 Seeing none, all in favor say aye.

6 **COMMISSIONER EDGAR:** Aye.

7 **CHAIRMAN GRAHAM:** Aye.

8 Those opposed?

9 **COMMISSIONER SKOP:** Aye.

10 **CHAIRMAN GRAHAM:** The staff recommendation on
11 Issue 4 moves forward.

12 Okay. We are back on Issue Number 37.
13 Now, I believe we had moved staff on Issue 37
14 pending -- we no longer have to worry about Issue
15 Number 4, but we have to worry about Issue Number
16 29, is that correct? So, Issue 37, depending on how
17 the outcome is on Issue 39. That has been moved and
18 seconded. Is there any discussion on 37?

19 Seeing none, all in favor say aye.

20 **COMMISSIONER SKOP:** Aye.

21 **COMMISSIONER EDGAR:** Aye.

22 **CHAIRMAN GRAHAM:** Those opposed?

23 By your action you have approved Issue
24 Number 37.

25 Okay. Issue Number 38.

1 **MR. STALLCUP:** Issue 38 deals with the
2 appropriate number of test year billing determinants.
3 Staff recommends adoption of the billing determinants as
4 filed.

5 **CHAIRMAN GRAHAM:** Is there a motion on 38?

6 **COMMISSIONER SKOP:** So moved.

7 **COMMISSIONER EDGAR:** Second.

8 **CHAIRMAN GRAHAM:** It has been moved and
9 seconded, staff recommendation on Issue 38. All in
10 favor say aye.

11 (Vote taken.)

12 **CHAIRMAN GRAHAM:** Those opposed?

13 By your action you have approved Issue
14 Number 38.

15 Issue Number 39.

16 **MR. STALLCUP:** Issue 39 deals with what the
17 appropriate rate structure is for the utility. Staff
18 has recommended continuation of the existing rate
19 structure.

20 **CHAIRMAN GRAHAM:** Do I have a motion on 39, or
21 questions?

22 **COMMISSIONER EDGAR:** Move staff.

23 **CHAIRMAN GRAHAM:** It has been moved and
24 seconded, staff recommendation on Issue 39. Any further
25 discussion?

1 Seeing none, all in favor say aye.

2 **COMMISSIONER SKOP:** Aye.

3 **COMMISSIONER EDGAR:** Aye.

4 **CHAIRMAN GRAHAM:** Those opposed?

5 By your action you have approved Issue
6 Number 39.

7 That moves us to Issue Number 40.

8 **MR. STALLCUP:** Issue 40 deals with the
9 repression adjustment as appropriate. Staff is
10 recommending that no repression adjustment is
11 appropriate in this case.

12 **CHAIRMAN GRAHAM:** Did you say that very
13 quietly or was I just not listening as hard?

14 (Laughter.)

15 **MR. STALLCUP:** I'll take the blame. Issue 40
16 deals with whether or not a repression adjustment is
17 appropriate, and staff is recommending that no
18 repression adjustment is appropriate in this case.

19 **CHAIRMAN GRAHAM:** Thank you, sir. Do we get a
20 motion on Issue 40?

21 **COMMISSIONER EDGAR:** Move staff.

22 **CHAIRMAN GRAHAM:** Moved and seconded on staff
23 recommendation on Issue 40. All in favor say aye.

24 **COMMISSIONER SKOP:** Aye.

25 **COMMISSIONER EDGAR:** Aye.

1 **CHAIRMAN GRAHAM:** Those opposed?
2 By your action you have approved Issue
3 Number 40.

4 Issue Number 41.

5 **MR. STALLCUP:** Issue 41 deals with what the
6 appropriate rates coming out of this case should be
7 because of the very small change in revenue requirements
8 of approximately one-half of one percent. Staff is
9 recommending that there should be no change in the
10 utility's existing rates.

11 **CHAIRMAN GRAHAM:** Do I get a motion on Issue
12 Number 41?

13 **MR. WILLIS:** Commissioners, this will be
14 dependent on Issue 29, too.

15 **CHAIRMAN GRAHAM:** Okay. Thank you, sir.

16 **COMMISSIONER SKOP:** (Inaudible. Microphone
17 off.)

18 **COMMISSIONER EDGAR:** Second.

19 **CHAIRMAN GRAHAM:** It has been moved and
20 seconded to approve Issue Number 41, noting that we
21 still have Issue Number 29 pending that may affect Issue
22 41. Any further discussion?

23 Seeing none, all in favor say aye.

24 **COMMISSIONER SKOP:** Aye.

25 **CHAIRMAN GRAHAM:** Those opposed? By your

1 action -- you are opposed?

2 **COMMISSIONER EDGAR:** No. Sorry. No, I am in
3 favor of it. I was just a little slow at the get-go.

4 **CHAIRMAN GRAHAM:** Gotcha.

5 **COMMISSIONER EDGAR:** Thank you.

6 **CHAIRMAN GRAHAM:** Seeing none opposed, Issue
7 Number 41 passes. Issue Number 41 passes pending Issue
8 Number 29's outcome.

9 We are now on Issue Number 42.

10 **MS. LINGO:** Good afternoon, Commissioners.
11 I'm Jennie Lingo with Commission staff.

12 Issue 42 deals with the utility's proposal
13 to revise its miscellaneous service charges. Staff
14 recommends that the utility's proposed rates are
15 reasonable and should, therefore, be approved.

16 **CHAIRMAN GRAHAM:** Board.

17 **COMMISSIONER SKOP:** A question for staff.

18 **CHAIRMAN GRAHAM:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you.

20 With respect to the proposed charges for
21 business hours and after hours, on the \$42 for the
22 after-hours charge, which appears based on
23 inspection to be double that of during business
24 hours, what was the staff or company's rationale for
25 that? I'm looking on Page 82 of the staff

1 recommendation.

2 **MR. LINGO:** Commissioner, Witness Seidman
3 provided in one of his exhibits the cost justification
4 for that proposed charge. But in addition to that, what
5 staff did is we went and looked back at prior Commission
6 orders to see if we could get some guidance as to what
7 the Commission believed an appropriate range or rate for
8 the after-hour charges would be. We found cases dating
9 back as far as 2006 that indicated that \$42 in the
10 Commission's view were reasonable charges and should be
11 approved.

12 In addition to that, Commissioners, on
13 Table 42-2, which is located on Page 81 of the
14 recommendation, we applied another approach that has
15 been used by Commission staff wherein we applied
16 prior year's approved indexes to the utility's
17 current charges to see whether or not they, in fact,
18 lined up with what we were looking toward
19 recommending. Since the current fallout for current
20 charges was the \$21, the proposed charges of 42 we
21 also recommended approval of because, again, that is
22 what has been consistently done in prior cases.

23 **COMMISSIONER SKOP:** Okay. And then on Page 82
24 of the staff recommendation, Table 42-3, they do an
25 allocation based on the total truck rate to justify the

1 cost expense. Typically, aren't vehicles being
2 depreciated somewhere else and being accounted for, so
3 is this effectively not double-dipping, because I don't
4 understand. In every other justification I have seen we
5 have seen a labor rate, but we haven't seen a truck
6 rate.

7 **MR. LINGO:** Commissioner, I don't -- rather
8 than speak to the double-dipping issue, may I please
9 focus attention on the fact that miscellaneous service
10 charges are designed to recover costs associated with
11 providing those services, and one of those costs would
12 be utilizing a truck.

13 **COMMISSIONER SKOP:** With all due respect, that
14 is not my question. My question is if a truck that is
15 bought by the company and placed in the rate base and is
16 depreciated, it's already being accounted for, okay, and
17 part of this cost driver in establishing cost is now a
18 truck that has already been expensed and being
19 depreciated. So really going off on a tangent doesn't
20 answer my pointed question, is the support justification
21 provided here, because you can't double recover. So,
22 Mr. Willis or Ms. Lingo, maybe you can speak to that. I
23 may be wrong. I was asking a straightforward question.

24 **MR. WILLIS:** Let me answer that.

25 Miscellaneous service charge revenue or

1 revenues derived from miscellaneous service charges
2 actually reduce the revenue requirement.

3 **COMMISSIONER SKOP:** I understand that.

4 **MR. WILLIS:** So, therefore, it is not really a
5 double dip.

6 **COMMISSIONER SKOP:** Okay. I understand that
7 they reduce the revenue requirement. I'm just looking
8 at what is the appropriate level of expense to be paid.
9 And obviously if you are doing an after-hours connection
10 at \$42, that is kind of, you know, getting up there to
11 where it warrants some scrutiny. And I'm not saying it
12 is not justifiable, but I'm trying to understand the
13 numbers before I just rubber stamp something.

14 **MR. WILLIS:** Absolutely.

15 **COMMISSIONER SKOP:** So that's what I'm trying
16 to get at. Now, with respect to the supervisor, why
17 does the supervisor need to be involved in an
18 after-hours reconnection? There's not two people riding
19 in the truck. I mean, I have never shown that before,
20 either.

21 **MR. LINGO:** No, but typically the utility
22 employee would need to contact their supervisor to
23 obtain permission, you know, is this going to be okay to
24 go ahead and cut this person off at this time of night
25 or morning. So the small amount of involvement that the

1 utility supervisor would have is reflected there.

2 **COMMISSIONER SKOP:** I understand that, but it
3 is also at a time and a half labor rate at a fraction of
4 an hour that drives one-fourth of the cost of the
5 reconnection and after hours. So, I mean, I think it's
6 a fair question to ask in light of the fact I have not
7 seen that before. The labor rates I have seen have been
8 for the person that goes in and does the meter
9 reconnection, or cut off, or restoration of service, or
10 what have you. So I'm just trying to understand where
11 the 42 came from. I think I've got a comfort level in
12 it and am ready to move forward at this time point. So
13 I can move -- notwithstanding my concerns, I reluctantly
14 move staff recommendation on Issue 42.

15 **CHAIRMAN GRAHAM:** It has been reluctantly
16 moved and seconded on Issue 42. Any further discussion?
17 Seeing none, all in favor say aye.

18 **COMMISSIONER EDGAR:** Aye.

19 **COMMISSIONER SKOP:** Aye.

20 **CHAIRMAN GRAHAM:** Those opposed? By your
21 action you have approved Issue Number 42.

22 Issue Number 43.

23 **MS. HUDSON:** In Issue 43, staff is
24 recommending that the utility does not have authority to
25 inspect the interior of a customer's property. Staff is

1 recommending that the addendum to its water application
2 that it uses to determine what the initial property use
3 is is appropriate and we are recommending that they
4 incorporate it into their tariff. And we are also
5 recommending that the temporary charge of \$100 appears
6 to be reasonable and should be incorporated into the
7 tariff, as well.

8 **CHAIRMAN GRAHAM:** Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you. I don't
10 believe I have any questions. I think Ms. Hudson
11 adequately covered any concerns I had, and I move staff
12 recommendation on Issue 43.

13 **CHAIRMAN GRAHAM:** It has been moved and
14 seconded to move staff on Issue 43. Any discussion?

15 Seeing none, all in favor say aye.

16 **COMMISSIONER SKOP:** Aye.

17 **COMMISSIONER EDGAR:** Aye.

18 **CHAIRMAN GRAHAM:** Those opposed?

19 By your action you have approved Issue
20 Number 43.

21 That brings us to Issue Number 44.

22 **MS. HUDSON:** Issue 44 relates to the
23 appropriate interim refund. Staff is recommending no
24 change in the utility's existing rates, therefore, any
25 interim collected should be refunded.

1 **CHAIRMAN GRAHAM:** Board.

2 **COMMISSIONER SKOP:** No questions. I would
3 move staff recommendation on Issue 44.

4 **CHAIRMAN GRAHAM:** It has been moved and
5 seconded, staff recommendation on 44.

6 All in favor say aye.

7 **COMMISSIONER SKOP:** Aye.

8 **COMMISSIONER EDGAR:** Aye.

9 **CHAIRMAN GRAHAM:** Those opposed?

10 By your action you have approved Issue
11 Number 44.

12 That moves us to Issue 45.

13 **MS. HUDSON:** Issue 45 is what is the
14 appropriate amount of four-year rate reduction, and that
15 issue could be affected by 29 -- will be.

16 **CHAIRMAN GRAHAM:** Board.

17 **COMMISSIONER SKOP:** Move staff recommendation
18 on Issue 45, noting that it may be impacted by the rate
19 case expense in Item 29.

20 **COMMISSIONER EDGAR:** Second, just noting that
21 this is basically a fallout from the decision in Issue
22 44.

23 **CHAIRMAN GRAHAM:** Okay. It has been moved and
24 seconded to approve staff recommendation on Issue Number
25 45, and noting that it may have -- Issue Number 29 when

1 we get to it may have an effect on this issue. And what
2 did you mention about 44?

3 **COMMISSIONER EDGAR:** Just that it was pretty
4 much a fallout issue from the previous decision.

5 **CHAIRMAN GRAHAM:** Okay. Moved and seconded.
6 Any further discussion?

7 Seeing none, all in favor say aye.

8 **COMMISSIONER EDGAR:** Aye.

9 **COMMISSIONER SKOP:** Aye.

10 **CHAIRMAN GRAHAM:** Those opposed?

11 By your action you have approved Issue
12 Number 45.

13 We are on Issue Number 46 now.

14 **MS. HUDSON:** Issue 46 is what are the
15 appropriate service availability charges. Staff is
16 recommending no change to the utility's existing tariff.
17 Their proposed charges was based on their pro forma
18 projects, and since at this time we don't have the right
19 costs for those items, we are recommending that the
20 tariff remain unchanged.

21 **CHAIRMAN GRAHAM:** Board.

22 **COMMISSIONER SKOP:** Move staff recommendation
23 on Issue 46.

24 **CHAIRMAN GRAHAM:** It has been moved and
25 seconded, staff recommendation on Issue 46. Any further

1 discussion?

2 Seeing none, all in favor say aye.

3 **COMMISSIONER EDGAR:** Aye.

4 **COMMISSIONER SKOP:** Aye.

5 **CHAIRMAN GRAHAM:** Those opposed?

6 By your action you have approved Issue
7 Number 46.

8 We have already done Issue Number 47.
9 That pushes us to Issue Number 48.

10 **MS. HUDSON:** Issue 48 relates to whether or
11 not customer deposit refunds were necessary. The
12 parties stipulated to the appropriate amount of customer
13 deposits, therefore, no refunds are necessary.

14 **CHAIRMAN GRAHAM:** Board.

15 **COMMISSIONER SKOP:** Move staff recommendation
16 on Issue 48.

17 **CHAIRMAN GRAHAM:** It has been moved and
18 second, staff recommendation on 48.. Any further
19 discussion?

20 Seeing none, all in favor say aye.

21 **COMMISSIONER EDGAR:** Aye.

22 **COMMISSIONER SKOP:** Aye.

23 **CHAIRMAN GRAHAM:** Those opposed?

24 By your action you have approved Issue 48.
25 Issue Number 49.

1 **MR. JAEGER:** Yes, Commissioners. In Issue 49,
2 staff is recommending that it appears the utility failed
3 to maintain field employee travel records in compliance
4 with the requirements of Order Number 941383 and should
5 be ordered to show cause why it should not be fined
6 \$1,000 pursuant to Section 367.161.

7 **CHAIRMAN GRAHAM:** Back up and explain that to
8 me a little bit better.

9 **MR. JAEGER:** In that order we referred to it
10 as a 1994 order, and I quote fairly extensively on Page
11 94. It's talking about keeping travel records, and in
12 the body of the order it says, "However, the employees
13 shall maintain travel records prospectively so that we
14 may adequately consider the level of such expenses in
15 future proceedings." And then it talks later in the
16 next paragraph about administrative staff.

17 In the ordering paragraph, the ordering
18 paragraph said -- it's Number 15 of the order --
19 ordered that SGI Utility Company shall hereinafter
20 keep accurate mileage records. So all day today we
21 have been discussing the problems we have had with
22 mileage records, and we thought we had corrected it
23 in the 1994 order.

24 And the utility did -- what happens, it
25 used to be that the field employees used their own

1 vehicles and they didn't keep records for that.
2 Now, the field employees any time they do use their
3 vehicles they do keep accurate records. So they did
4 improve. They did get better, but we still think
5 they have not complied with the intent of the 1994
6 order. And, therefore, any show cause is to sort of
7 get their attention, and the main goal of a show
8 cause is to enforce -- or ensure compliance, and
9 that's what we are doing here.

10 We think the \$1,000 will get their
11 attention, and we have set it both in Issue 4 and in
12 the show cause issue that you really do need to keep
13 better records on this travel. So that is the
14 reason we are recommending that they be made to show
15 cause why they should not be fined \$1,000.

16 **CHAIRMAN GRAHAM:** Okay. Board.

17 **COMMISSIONER EDGAR:** Move staff.

18 **COMMISSIONER SKOP:** Second.

19 **CHAIRMAN GRAHAM:** It has been moved and
20 seconded on the staff recommendation on Issue Number 49.
21 Any further discussion? Seeing none, all in favor say
22 aye.

23 **COMMISSIONER EDGAR:** Aye.

24 **COMMISSIONER SKOP:** Aye.

25 **CHAIRMAN GRAHAM:** Those opposed?

1 By your action you have approved Issue
2 Number 49.

3 That brings us to Issue 50. 50A.

4 **MS. HUDSON:** Issue 50A relates to what is the
5 appropriate level of investment in associated companies.
6 Staff is recommending at this time that based on the
7 evidence in the record we do not have enough information
8 to make that determination. During the time that the
9 utility is gathering the information for the pro forma
10 project, we're going to have our staff conduct a cash
11 flow audit of the utility's books and records to give us
12 more information as to whether or not the level is
13 appropriate.

14 **CHAIRMAN GRAHAM:** Panel.

15 **COMMISSIONER SKOP:** Question.

16 **CHAIRMAN GRAHAM:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you.

18 To staff, again, the issue with the level
19 of investment in affiliated companies is the cash
20 flow implications or cash drain that it has on the
21 utility's operations and their ability to remain a
22 going concern, for lack of a better word, based on
23 the record evidence. I guess the staff
24 recommendation, if I understand it correctly on Page
25 99 of the staff recommendation, indicates that

1 before the next filing by this utility, staff will
2 initiate a cash flow audit to explore this issue in
3 greater detail.

4 I need to get a better understanding of
5 that, because, again, you know, Public Counsel had a
6 different position. Obviously the company has a
7 different position. Staff is taking a wait-and-see
8 approach. But it seems to me that, you know, what
9 the level of investment in associated companies is
10 or is not appropriate, as well as the seemingly
11 endless flow of transactions that go from affiliate
12 company to the utility and back to affiliate
13 company, I mean, I was even hard pressed to follow
14 that.

15 And, you know, I can dig out the
16 transcript if I need to at hearing, but we spent a
17 substantial part of the hearing discussing that very
18 detail on, you know, why is cash flowing in and out
19 of the company. And it appears to be used at --
20 and, frankly, it appears that, with all due respect,
21 that the owner of the company seems to think there
22 is entitlement to use the utility's funds because in
23 the last rate case, or as the record evidence
24 suggests, and, again, I can dig out the transcript,
25 they didn't get what they asked for.

1 So I have a lot of concerns, because I
2 think Public Counsel and the testimony they put on,
3 as well as my own questioning on the record brought
4 forth some significant concerns as to if the cash is
5 somewhere else and continues to be drained from the
6 utility, you know, how is the utility supposed to
7 continue to operate without additional recovery in
8 rates. And I'm all for granting, you know, fair
9 rate increases when they are evidence based. I
10 mean, even many people have said that. But, you
11 know, in this case, that issue seems to be germane
12 to the fiscal issues and predicament that the
13 utility company finds itself in.

14 And how are we to know that the rates
15 granted by the Commission here are just not going to
16 be swept out into these affiliates again, and that
17 the things that the Commission is moving forward and
18 trying to enable the company to get done are going
19 to get done. I mean, that is a valid concern. It
20 just seems like staff is -- and I don't want to
21 critical, because maybe I'm missing something here,
22 because this is a lengthy recommendation, but it
23 appears to me that staff may be just kind of
24 side-stepping this whole issue. And that is, you
25 know, a fair question to ask. Not being critical,

1 but I need to get to the bottom of this one. This
2 is a real important one.

3 **MR. MAUREY:** Andrew Maurey, Commission staff.

4 Yes, Commissioners, staff agrees that this
5 is a confusing issue the way it was presented, the
6 discussion at hearing. What we believe a cash flow
7 audit will do is allow staff and the Commission to
8 see where the cash is going. There were allegations
9 by the company that the owner as well as BMG were
10 paying bills for the utility, and we need to
11 determine if that is, in fact, the case.

12 We would prefer to see all of the
13 utility's operations recorded on its books. And
14 evidence was presented that that may not be the case
15 with this company. And we believe a cash-flow audit
16 will facilitate the Commission's understanding and
17 staff's understanding of this issue further.

18 **CHAIRMAN GRAHAM:** Commissioner Skop.

19 **COMMISSIONER SKOP:** As a follow-up, I mean,
20 not taking sides, because, again, I respect the
21 company's position in terms of being able to, you know,
22 have the burden of proof to demonstrate that Public
23 Counsel's contentions are not warranted. But I have not
24 seen that in the record evidence. I see what seems to
25 be endless cash calls made by affiliates from the

1 utility, and I'm kind of wondering from staff's
2 perspective in reading the summary of the Public Counsel
3 recommendation on Page 99, which states, "Given the
4 level of mixing of utility and nonutility funds and the
5 cash and financial constraints, it is imprudent. The
6 Commission should, one, bar WMSI from further investment
7 in associated companies; two, require WMSI to demand
8 return of its affiliate investments prior to the next
9 rate case to increase funding of operations and
10 strengthen WMSI's financial position; and, three, if
11 repayment is not made by the next rate case, impute a
12 return on the outstanding investment."

13 It seems to me that absent rebuttal from
14 the company that, you know, I'm trying to understand
15 from staff what the harm in taking that position
16 would be. Because, again, each of those items seems
17 to protect the ratepayers, you know, I don't want to
18 say investment in the company, but it protects the
19 ratepayers from unnecessary expenses or hardship on
20 the utility. But, moreover, you know, would allow a
21 strengthened financial position for the company or a
22 strengthened balance sheet would allow the company
23 to overcome some of its borrowing issues that it
24 seems to have.

25 I mean, the laundry list provided in the

1 loan commitment letter were pretty stringent. The
2 bank is worried about getting its money. And I
3 can't help to wonder, you know, subject, again, to
4 rebuttal by the company, why those protective
5 measures are not necessary.

6 **MR. MAUREY:** Well, a couple of points. The
7 company agreed that it has difficulty raising capital.
8 I think the testimony in the record was that it has been
9 unable to raise capital for over three years on its own
10 accord due to negative equity and recurring cumulative
11 losses.

12 Now, returning to OPC's list of remedies,
13 staff's concern that the Commission doesn't have
14 statutory authority for the first two items. It
15 cannot prohibit a regulated company from investing
16 in an associated company. Where the Commission does
17 have authority is in the setting of rates, and
18 staff's recommendation in these other issues, we
19 believe that we have addressed a lot of the concerns
20 that OPC raised about possible affiliate
21 transactions that may be undermining the performance
22 of the utility. We believe we are recommending
23 rates that go to assist in the provision of
24 regulated water service, that we are addressing
25 those concerns in the rates that we have recommended

1 be approved.

2 The second item on the list, to return the
3 money, we talk about that a little more from a legal
4 standpoint. The Commission didn't put that money
5 subject to refund going forward. They spent that
6 money. We don't believe we can require them to
7 return it. But we do not include it in the setting
8 of rates. That amount is removed from rate base.
9 It's not included in the rates that we are
10 recommending be approved today. And, also, this
11 discussion that we are having here, we are putting
12 the company on notice that when it comes before this
13 body and alleges a revenue deficiency that its whole
14 business and financial operations are going to be
15 reviewed. And if there are more questions raised,
16 then we are going to look into those situations
17 seriously.

18 **COMMISSIONER SKOP:** Follow up.

19 **CHAIRMAN GRAHAM:** Yes.

20 **COMMISSIONER SKOP:** Thank you.

21 Thank you, Mr. Maurey, and I tend to
22 concur in some regards with the ability of the
23 Commission under the jurisdiction it has and the
24 legal authority it has to implement some of what has
25 been suggested.

1 However, to your comments about the
2 Commission's power in financing orders, such as some
3 of which we approved today, particularly for
4 electric utilities, the Commission has the
5 jurisdiction to prevent monies raised or company
6 funds, you know, from being invested in affiliates
7 or out-of-state affiliates, and it seems to follow
8 from that that, you know, the Commission at a
9 minimum might have some authority to prevent, you
10 know, cash from just flowing out and bleeding the
11 utility as a result of this rate increase.

12 Because the money needs to stay at the
13 utility level, not be swept out to any affiliates,
14 or we are going to find ourselves right back in the
15 same situation. So, Mr. Willis, I think you raised
16 your hand if you have something to add.

17 **CHAIRMAN GRAHAM:** Marshall.

18 **MR. WILLIS:** I just want to add to this. What
19 Public Counsel has put forth in their first and second
20 items in their list are what financial institutions
21 refer to as part of ring fencing, where you actually
22 fence off the utility company from its affiliates. We
23 don't have that statutory authority in the state of
24 Florida to do that. It would be impossible for us to do
25 that. And like Part 3, which Mr. Maurey talked about, I

1 would agree completely with him, we haven't put that
2 subject to refund. There would be no way for us to say
3 return that money at this point, even if we found it
4 should have been taken out.

5 As far as approving debt, we do have that
6 authority to do that for electric and gas companies
7 by statute. We do not have that authority for water
8 and wastewater to approve debt costs. We have to go
9 about other ways in rate cases by looking at the
10 prudence of the cost of debt. If we found that the
11 owner of this company, for instance, had imprudently
12 taken money out of the company, you would have to
13 look at other means of taking action against the
14 company.

15 In the past we have done things, for
16 instance in Aloha where we reduced the president's
17 salary by 50 percent to basically say you didn't do
18 something right. So, I mean, that's something that
19 the Commission has the option of doing. But as far
20 as what Public Counsel wants to do, I don't think we
21 have statutory authority to do that.

22 **COMMISSIONER SKOP:** Thank you.

23 And just a follow up to that, again,
24 because we need to remain within the bounds of our
25 jurisdiction and legal authority. But obviously

1 there are a lot of transactions out, cash calls,
2 whatever you want to call them going from the
3 utility to affiliates, and that is not constructive
4 in terms of the financial health and integrity of
5 the regulated utility.

6 I think that one of the things that has
7 been done in Aloha in the past, and correct me if
8 I'm wrong, because I wasn't here through the
9 entirety of that, but I believe on the Aloha
10 settlement wasn't there some sort of escrow account
11 that required the Commission to sign off on any, you
12 know, sweeps of cash being used for certain
13 purposes? I don't want to micromanage, but I don't
14 want to see the regulated utility bled dry through,
15 you know, questionable cash withdrawals, you know,
16 without proper documentation.

17 **MR. WILLIS:** I don't recall in Aloha where we
18 had set aside escrowed funds where we required the
19 Commission to sign off. I do recall in a much earlier
20 water management rate case, the same utility we are
21 dealing with here, the Commission escrowed contributions
22 in aid of construction coming into the company, because
23 the company was having an extreme cash flow problem, and
24 they did have a desire when they put up the high storage
25 tank on the island that there would be money available

1 to do that construction and basically to pay that off.

2 **COMMISSIONER SKOP:** And that may be the very
3 story I was thinking. I know that you and I had had the
4 discussion, and maybe something got lost over the years.
5 But, you know, like I said, my concern is that what
6 appears to be happening on the ledger lacks
7 transparency, lacks sufficient justification, and just
8 appears to me that, you know, the utility is just an
9 instrumentality for taking money out and moving it in
10 other places.

11 I mean, I don't want to be critical, but I
12 have heard the record and the testimony, and, you
13 know, I'm free to draw my own conclusions based on
14 the record evidence. But I am not all too happy
15 with what I see, because whatever flows out of the
16 utility comes at the expense of the utility and its
17 ratepayers at the end of the day.

18 So I don't know how I feel about 50A, but
19 I wish that we were taking a more proactive approach
20 or initiating a cash flow audit, you know,
21 concurrent with approving this recommendation and
22 not just waiting. Because I think that there is
23 likely something to be found there, although I don't
24 know at the end of the day whether it would be in
25 our jurisdiction to correct it.

1 **MR. WILLIS:** If I could just add to that, and
2 Mr. Maurey can add anything else he wishes. The staff
3 was very concerned when we looked at this issue on just
4 how far the evidence would take us as far as taking any
5 action against the company, and the more and more we
6 looked at this issue the more uncomfortable we got with
7 that based on the evidence in the record. That's why we
8 came down with the recommendation that said allow us to
9 go out and conduct a complete thorough cash flow audit
10 of this company to determine where the cash flow is
11 coming from. So that if you desire in that second
12 come-back filing with this company, we would have that
13 evidence to submit and put into the record through sworn
14 testimony of the witness exactly where that cash came
15 and went. And at that point you would have much better
16 evidence to take action, if it's warranted.

17 **COMMISSIONER SKOP:** Thank you.

18 **CHAIRMAN GRAHAM:** Anything else from the
19 board?

20 Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

22 I would just add, and I think Commissioner
23 Skop and I do agree on this, that this issue is
24 quite germane to the case as a whole, to the
25 financial health and viability of the company on a

1 go-forward basis. There was great deal of testimony
2 during hearing on this point, and I know I tried to
3 ask some questions to get additional clarity, and
4 even with that, I still was not clear at the end of
5 the hearing, nor since then.

6 So with all of that, I think that the
7 staff recommendation to initiate a cash flow audit
8 with the hope and expectation that that is a process
9 that will bring additional clarity and give the
10 Commission and the company some better information
11 to utilize is right on target, and I would move the
12 staff recommendation on Issue 50A.

13 **CHAIRMAN GRAHAM:** It has been moved and
14 seconded, staff recommendation on Issue 50A. Any
15 further questions?

16 **COMMISSIONER SKOP:** Discussion.

17 **CHAIRMAN GRAHAM:** Discussion. Commissioner
18 Skop.

19 **COMMISSIONER SKOP:** Thank you.

20 I, again, will be voting against 50A on
21 the basis that I feel that the cash flow audit
22 should be initiated immediately and not wait to
23 explore this before the next filing by the utility.
24 I think it ought to be within the purview of the
25 Commission on its own motion to have staff go forth

1 and do that audit that needs to be done. Thank you.

2 **CHAIRMAN GRAHAM:** The question I have, does
3 this recommendation of approval of Issue 58, does that
4 give staff authority to do a cash flow audit?

5 **MR. WILLIS:** Chairman, we can do a cash flow
6 audit any time we want. It's our intention to go
7 forward now. We don't intend to wait. In response to
8 Commissioner Skop, it's not our intention to wait. We
9 will be pursuing that right after this case. Right
10 after the agenda, probably, we will be drafting up an
11 audit service request.

12 **COMMISSIONER SKOP:** Then, Commissioner Edgar,
13 would you look for a friendly motion to modify the staff
14 recommendation in your motion to get rid of the --
15 before the next filing by the utility, and just make it
16 staff will initiate a cash-flow audit to explore this
17 issue in greater detail?

18 **COMMISSIONER EDGAR:** Mr. Chairman, if I may,
19 yes, I agree with that. In fact, when I made the motion
20 it was my understanding that this was a task that the
21 staff would be undertaking as soon as reasonably
22 possible, so I think that is all consistent.

23 **COMMISSIONER SKOP:** All right. And if the
24 revised motion is seconded, that will change my position
25 on the issue.

1 **CHAIRMAN GRAHAM:** Okay. Do we need to restate
2 this, or do you -- Ms. Helton, do we need to restate
3 that or do you know pretty much what we are saying?

4 **MS. HELTON:** I do, and I think Ms. Cole
5 probably does, too. I think we have enough on the
6 record to work it out.

7 **CHAIRMAN GRAHAM:** Okay. Well, it has been
8 moved and seconded. Any further discussion? Seeing
9 none, all in favor say aye.

10 **COMMISSIONER SKOP:** Aye.

11 **COMMISSIONER EDGAR:** Aye.

12 **CHAIRMAN GRAHAM:** Those opposed? By your
13 action you have approved 50A.

14 50B.

15 **MS. HUDSON:** In Issue 50B, staff is
16 recommending that all nonutility adjustments have been
17 taken into account in previous issues.

18 **CHAIRMAN GRAHAM:** Board.

19 **COMMISSIONER SKOP:** I have no questions on
20 50B. I would just move staff recommendation on Issue
21 50B, noting that if anything changes by Commission
22 decision that staff would have administrative authority
23 to make those changes.

24 **CHAIRMAN GRAHAM:** It was moved to approve
25 Issue 50B as staff recommendation pending the outcome of

1 Issue Number 29 and giving staff the ability to make
2 those changes. And seconded. Any further discussion on
3 Issue 50B. Seeing none, all in favor say aye.

4 **COMMISSIONER EDGAR:** Aye.

5 **COMMISSIONER SKOP:** Aye.

6 **CHAIRMAN GRAHAM:** Those opposed? By your
7 action you have approved 50B as amended.

8 Okay. That brings is to 51, which is the
9 last one, and then after that we will go back to 29.
10 So, 51.

11 **COMMISSIONER SKOP:** I move staff
12 recommendation on Issue 51.

13 **CHAIRMAN GRAHAM:** It has been moved and
14 seconded, staff recommendation on Issue 51. Can we
15 close the docket before we finish 29, or does that
16 really matter?

17 **MS. HELTON:** I think everybody understands
18 that you still need to finish 29. I think that is okay.

19 **CHAIRMAN GRAHAM:** All in favor say aye.

20 **COMMISSIONER SKOP:** Aye.

21 **COMMISSIONER EDGAR:** Aye.

22 **CHAIRMAN GRAHAM:** Those opposed? By your
23 action you have approved Issue Number 51. And we are
24 now turning back to Page 55, which is Issue Number 29.

25 Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
2 And I appreciate to you and to Commissioner Skop the
3 willingness to take a little more time and come back to
4 this, and to have allowed us to move forward on the
5 other items prior to this additional discussion.

6 I candidly am still struggling with this
7 one a little bit. And I don't need to take a lot of
8 time, but if I can ask staff, just so I am clear,
9 the staff recommendation does make adjustments to
10 both hourly rate and to number of hours spent for
11 legal assistance and also for other consultants, is
12 that correct?

13 **MS. HUDSON:** That's correct.

14 **COMMISSIONER EDGAR:** And in my briefing with
15 staff the other day I mentioned this concern, and now I
16 will mention it on the record, which is I have pause at
17 the Commission utilizing any, it doesn't matter who it
18 is, personality is not the least bit involved in my
19 thinking on this, but for the Commission to utilize any
20 one consultant, whether that be an engineer, an
21 accountant, an auditor, an attorney, other anything
22 else, but any one individual as a contractor as to be
23 held up as an example of what we will or will not
24 approve for cost-recovery, or will -- and one of my
25 reasons for that is I don't think that that's a good

1 practice.

2 And, secondly, I do have a concern that
3 from that we could, perhaps, be inadvertently
4 influencing some decisions in the marketplace. That
5 may be a stretch, but it still does give me concern
6 for us to say Person X has charged this amount. We
7 have heard testimony from Person X before,
8 therefore, that is the amount that this Commission
9 deems as the proper amount.

10 And I had this conversation with staff,
11 and it was a very, very good discussion. But
12 because of my concern on that point, then that takes
13 me to the next step of having some concern, perhaps,
14 with some of the adjustments that are recommended by
15 staff on that basis. That a certain individual
16 charges a certain amount and, therefore -- and that
17 person has presented to the Commission before, and
18 so, therefore, that's the amount that we are going
19 to adjust to.

20 I do recognize, or at least I think I
21 recognize that there may have been some overestimate
22 in the hours that were given for the amount of time
23 that it would, perhaps, take to process this rate
24 case. And that makes sense to me because an
25 estimate is an estimate and sometimes estimates are

1 going to be higher and sometimes they are going to
2 be lower, but they are estimates. And then after
3 the fact there is the ability to have more
4 information and make adjustments. So for this case
5 that is before us, I'm comfortable with the
6 adjustments to the time spent to the hours, but I
7 still am having some difficulty getting comfortable
8 with the adjustments to per hour, as I read them as
9 based upon one firm and/or one other individual
10 expert.

11 So, with that, Commissioner Skop, I know
12 before the lunch break you had asked some questions
13 and had some discussions, I think maybe expressing
14 some similar concern about adjustments to hourly
15 rate. I don't know if they are along the same lines
16 that I have tried to outline here, but with that --
17 and I did not do the math, so I would need to look
18 to staff. But what I am leaning towards being
19 supportive of on this instance, realizing that every
20 case is unique, would be to be supportive of the
21 staff adjustments to the hours spent for rate case
22 expense, but not supportive of the adjustments per
23 rate for the underlying reasons that I've discussed.

24 **CHAIRMAN GRAHAM:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you. Just a

1 question and comment. I understand that. I think that
2 when I had asked staff's, you know, justification for
3 what they did initially, I had the same concern
4 particularly with respect to the consultant and also
5 with the attorneys.

6 I think staff justified its position, but
7 I do have some concerns about singling one person
8 out over another. For instance, one expert or
9 consultant may have vast more number of years than
10 another consultant that warrants different treatment
11 in rates. So, you know, as an attorney, I wouldn't
12 want anyone kind of nit-picking what I choose to
13 charge a client. But, again, I think that any
14 reduction should be made in the number of hours.
15 The numbers of hours are excessive, and I certainly
16 think it's fair game for the Commission staff to
17 take a look at that, or if legal fees are, like,
18 double what they normally are. Say an attorney is
19 charging \$1,000 in one case, and 500, or 400 in
20 another. That might be a basis for cutting into the
21 hourly rate.

22 But, you know, I have seen these rates
23 before. They don't shock the conscience. They are
24 high, but, you know, in the legal realm you get what
25 you pay for. But, you know, in a context of a water

1 case, there appears to be a difference in staff's
2 view as to what is the appropriate hourly rate. And
3 in a water case, staff is willing to make those
4 adjustments, but in an electric case they seem to be
5 fine with some of the same costs that have been
6 incurred in terms of the individuals and the rates
7 that they charge.

8 I think my bigger concern, though, is
9 duplication of legal services, particularly the
10 staff allowance of ten hours for Ms. Clark's
11 attendance at the hearing. I'm not saying that
12 there weren't some billable legal services there,
13 but ten hours appears to be somewhat duplicative and
14 redundant. I mean, typically when we have attorneys
15 present in a water case, one attorneys billing, two
16 attorneys billing in this case, I'm not so sure that
17 the ten hours is not, you know, ripe for taking a
18 more critical look at.

19 But that's the primary concern,
20 notwithstanding the concern that I previously raised
21 about making those adjustments. I don't know where
22 that leaves us, but what gives me uncomfort is the
23 adjustment to the hourly rates, but moreover, the
24 staff allowance of the ten hours for the attendance
25 at the hearing. And I think that, you know, if that

1 were a smaller number, I could probably get
2 comfortable with it. But to afford the full ten
3 hours for, you know, the attendance of an attorney
4 at a high billable rate that did not really
5 participate in the hearing, per se, other than
6 perhaps at the breaks, as staff has alluded to,
7 seems to be -- I just can't get comfortable with the
8 staff's thought process on that particular one.

9 **CHAIRMAN GRAHAM:** I have a question for staff.
10 Do we have published rates, or what are considered
11 acceptable rates for both the legal profession and
12 engineering profession?

13 **MR. FLETCHER:** Commissioners, nothing
14 published. Basically, we just do a review of other
15 consultants working on water and wastewater cases, and
16 that's what we try to mention in staff's recommendation,
17 which is on Page 58, which is basically the hourly rate
18 compared to other engineering and rate consultants who
19 practice before the Commission. We were trying to
20 concentrate on those consultants who process water and
21 wastewater rate cases. There's nothing published, but
22 we did look at that, what others charge, and we felt
23 that the hourly rates needed to be adjusted here.

24 **CHAIRMAN GRAHAM:** Would it be more effective
25 to be proactive and as they come forward say this is

1 what the rates are? You know, now granted you can go
2 get an engineer that charged twice this, and you're
3 subject to that, or you can go get someone that is half
4 this, but this is pretty much what the rate is going to
5 be. Or this is what is acceptable to us, and then if
6 there is any change to that, then the burden is upon
7 them to justify why they had to go get Einstein as
8 compared to somebody else.

9 **MR. FLETCHER:** That is definitely what staff
10 can do in the future with regards to rate case expense.

11 **MR. KISER:** Mr. Chairman.

12 **CHAIRMAN GRAHAM:** Yes.

13 **MR. KISER:** Mr. Chairman, in this whole area,
14 let me just give you a little bit of background. When I
15 first started practicing law, starting in 1970, probably
16 two-thirds to three-fourths of the work that I did and
17 other lawyers I worked with was flat fee. It really
18 wasn't until the middle '70s that law firms started
19 moving to the hourly rate thing.

20 The founder of the law firm I was with,
21 Holland and Knight, Chesterfield Smith, once -- he
22 was also Chairman of the American Bar Association --
23 he once told us at a firm meeting that he was sorry
24 the he ever started pushing the hourly rate.

25 He thought it was not fair. That he

1 really wished there was more balance between flat
2 fee and hourly rate; that he still really would like
3 to see more legal work done under a flat rate. And
4 by that, I mean, just in case somebody doesn't know
5 what I mean by that, back in those days when you
6 wanted an uncontested divorce the flat rate was 300
7 or \$350. If you had a contested divorce, it was 500
8 or 550. If you were representing somebody in a
9 criminal case, it was a flat amount for a
10 misdemeanor case, a flat amount for a felony case.

11 What happened, though, over the years,
12 lawyers found out they would make a whole lot more
13 money by doing the hourly rate. And there have been
14 a number of articles written in the last four or
15 five years kind of challenging that notion saying,
16 you know, when someone really is an expert, they
17 really should know how much work it's going to take
18 to handle a particular case. And when a client
19 comes in and talks to them about being their lawyer,
20 they really -- in most cases, there are unique
21 cases, but in most situations they really ought to
22 be able to say I'm going to charge 5,000 for that
23 kind of a case, or I'm going to charge, you know,
24 2,000.

25 And so, the Commission, I think, has a

1 wide latitude about which approach you want to take.
2 And if you want to set up some flat fees for what
3 you are willing to pay, you can certainly do that.
4 Now, just remember that even though the lawyer might
5 charge double that, the client is going to have to
6 absorb that. That is all they are going to get
7 credit for, but they may very well, with an
8 agreement with the particular client, to go ahead
9 and pay twice that amount because you want that
10 particular person.

11 The only other thing I would tell you is
12 that whatever course you take in this, just remember
13 that if it gets challenged, it's going to be
14 challenged by lawyers and judges, and judges are
15 lawyers. So just keep that part in mind.

16 But that may be something that you want to
17 direct staff to take a look at, and whether or not
18 in other regulatory bodies, not just PSCs, but other
19 type regulatory bodies around the country, well, not
20 anybody has explored going back to flat fees. And
21 say, okay, if you are going to handle a case of this
22 magnitude, the flat legal fee for this is going to
23 be X, and that is all we are going to allow. That
24 is what we think the case is worth for someone to
25 do, and that is what the going rate is. Just to see

1 if anybody has moved in that direction, or any
2 articles have been written about it.

3 But it is an area that is changing a
4 little bit. I understand a few more people are
5 starting to do things with flat fees again. I think
6 there needs to be a healthy mix, frankly, because,
7 again, sometimes on that hourly rate they can sure
8 run that clock a long time.

9 The other thing I would like to comment on
10 in terms of the lawyers sitting through a hearing
11 and may not ever get up to say a word, just remember
12 that part of what you are paying for is you are
13 paying for that lawyer's undivided attention. If he
14 or she were not in this hearing sitting in the back
15 or whatever, sitting with their client listening,
16 they are out of the office. They are not back there
17 being able to bill somebody else doing the work
18 because they are here. So that is another reason
19 why a lot of times just the attendance at a meeting
20 may draw or be worth more money than what you might
21 think it is. You just have to remember that they
22 are here, which means that they are not back in the
23 office billing somebody else.

24 **CHAIRMAN GRAHAM:** Thank you, Mr. Kiser.

25 My concern is here, being an engineer and

1 surrounded by attorneys on both sides of me, that --

2 **MR. KISER:** That's not fatal having one on
3 each side.

4 (Laughter.)

5 **CHAIRMAN GRAHAM:** I guess the concern is, and
6 not necessarily in this case, but other cases where you
7 have an engineer that comes out and he bills his hours,
8 and, you know, everything is agreed upon and it goes
9 forward. And this board makes a determination that, you
10 know, you shouldn't be paid \$500 an hour, you should
11 have been paid 250 an hour. And now the utility owner
12 goes back to the engineering company and says that is
13 all I can pay you. That is all they said I could pay.
14 And so now this guy gets, you know, put out of whatever
15 it was that was already agreed upon.

16 But if you had going into this entire
17 process a dollar amount that, you know, okay, this
18 is what they pay, and so you can go to the different
19 engineering companies and you can say, hey, I need
20 to get this done and this is what they agreed to
21 pay. And if you can't do it for that, I have got to
22 go find somebody else. So there is a lot to be said
23 for knowing in advance of, you know, what the rate
24 is and what the market is.

25 I mean, I'm sure this is something we can

1 probably look at it in Internal Affairs coming up.
2 Something that we are not necessarily going to fix
3 here, but it may be some conversation to have.

4 That all being said -- Commissioner Edgar.

5 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

6 I appreciate the comments that everyone
7 has made, and the work that staff did, and the
8 discussions that I was able to have with staff
9 during my own briefing. I know that all of this is
10 very thoughtful.

11 But with some of the questions that have
12 come up, what I would suggest, and I will put this
13 now into the form of a motion, which is that for
14 this issue we would move forward as such, adopting
15 the staff adjustments that are recommended -- or
16 adopting the adjustments that are recommended by
17 staff as far as changes to the number of hours that
18 will be approved for cost-recovery, but rejecting
19 the staff's recommendation for adjustments as to the
20 rate charged. And I believe that -- I think, and I
21 will look to staff that that gives enough
22 clarification for you all to do the math.

23 And then, while they are looking at that
24 or thinking about that, what I would add, Mr.
25 Chairman, is that in light of the discussion that we

1 have had, that we ask staff to take a look at some
2 of the issues that have been raised as far as
3 amounts that come before us, and how they come
4 before us, and how we look at it and analyze it, and
5 recommendations that are made as far as
6 cost-recovery for rate expense. This goes a little
7 bit along -- hand-in-hand, perhaps, with the
8 discussion that we had on an earlier item about rate
9 case expense for small companies, and that working
10 with the technical staff, the Executive Director,
11 General Counsel, and the Chairman's Office come up
12 with a way to tee this issue up for further
13 discussion at some point in the future.

14 And so I guess with that, which was the
15 form of a very long motion, I would ask from the way
16 I phrased it if the staff would have, then, the
17 information to be able to do the math so that we
18 could go forward. And I will look to the Chair,
19 but, Mr. Willis, do you have --

20 **MR. WILLIS:** No, I was just going to reply.
21 Yes, we do. With your motion, we do have enough
22 information. I would ask that if that is the vote that
23 you give us administrative authority to follow that
24 through to the rates. I would tell you that it is
25 probably going to produce a rate increase now because

1 that is a substantial increase where it would affect
2 rates.

3 **MR. STALLCUP:** Well, Commissioners, in the
4 prior vote you had on rates, you had went along with
5 staff recommendation not to change the rates because the
6 change in revenue requirements was very small.

7 Typically, what staff does is if the
8 change in revenue requirements is less than one
9 percent, we will always come in and say we recommend
10 no change in rates. If the change is greater than
11 one percent, in this particular case we would
12 probably recommend an across-the-board increase to
13 the PFC (phonetic) and gallonage charges. If you
14 give us the administrative authority to make those
15 changes, if the change in revenue requirements is
16 greater than one percent, we can go ahead and do
17 that. If you think a different threshold than one
18 percent is appropriate, you just need to tell us
19 what that threshold should be, and then we can make
20 the changes if the change in revenue requirements is
21 greater than that percentage.

22 **CHAIRMAN GRAHAM:** Well, where we are right
23 now, because I haven't heard a second yet, and I have an
24 issue, I guess, with the motion that is out there. I
25 just have a problem with getting in there and starting

1 adjusting people's hours. I guess it's just the
2 opposite of where Commissioner Edgar is coming from.
3 You know, my rate is my rate, but, damn it, if I worked
4 ten hours, I worked ten hours, and you can't tell me I
5 only worked five.

6 So is there another motion? Commissioner
7 Skop.

8 **COMMISSIONER SKOP:** I don't necessarily have a
9 motion. And, again, I think my concern primarily with
10 respect to the legal expenses stems upon adjustments to
11 hourly rate. But, again, I take exception on the ten
12 hours allowed for attendance at a hearing. There may be
13 some value there. I know our General Counsel mentioned
14 that, but, it comes at the end the day is what is fair,
15 just, and reasonable in the Commission's mind and the
16 level of effort that one needs to bring.

17 I mean, just because somebody decides
18 that, you know, you have ten attorneys in the room
19 doesn't necessarily mean that all of those costs
20 should be recovered. It is a matter of what is
21 necessary to do the litigation. And, you know, if
22 you have got two attorneys and a consultant there,
23 but the attorney and the consultant are billing the
24 whole time and doing the majority of the case, I can
25 understand some work by the partner in terms of

1 reviewing things, or litigation strategy, but, you
2 know, attendance at a hearing, I'm kind of surprised
3 that staff kind of let that one through without some
4 adjustment on that one. So that is my biggest
5 concern. Not to nit-pick, but that one just kind of
6 seems a little bit extraordinary.

7 So that's my point of view on the thing.
8 But whatever the will of the Commission is going to
9 be it's going to be. So I'm not to sure that there
10 is not an impasse here, because Commissioner Edgar
11 is going one way, I thought I heard Commissioner
12 Graham indicate that he doesn't like reductions to
13 hours. But I think my concern is aligned with kind
14 of both. I'm hesitant to just arbitrarily cut
15 somebody's hourly rate, but approve -- you know, I'm
16 not willing to not cut hours that just seem to be,
17 you know, put in there and, you know, just get
18 passed along to the ratepayers.

19 I think there needs to be some divining
20 rod there as to what is reasonable in light of the
21 circumstances. And I know we do things differently
22 in the electric realm, but just because we're in a
23 water case doesn't mean that the rates for
24 traditional rates billed by, you know, the same
25 people shouldn't remain the same to some degree.

1 But I appreciate staff looking at other consultants
2 and what have you. So I am less inclined to support
3 a slashing of the hourly rate. I am more inclined
4 to support disallowing billable hours when those
5 hours appear to be duplicative or redundant to what
6 the Commission feels is reasonable.

7 **CHAIRMAN GRAHAM:** So was that move staff?

8 **COMMISSIONER SKOP:** (Inaudible.)

9 (Laughter.)

10 **COMMISSIONER SKOP:** There was no motion on my
11 part. So maybe Commissioner Edgar can reframe it, but
12 this one I have got a little bit of -- you know, from an
13 attorney's perspective, I understand the need to, you
14 know, your rate is your rate and that is the value you
15 provide to your client.

16 I think the role of the Commission is to
17 serve as a gatekeeper and say, okay, is the rate
18 doubling from what it was in the case we just saw
19 the same counsel appear, in which case, yes, that
20 might support a rate reduction.

21 But if the rate remains the same, that is
22 the value that the consultant, the attorney, the
23 partner provides to the client. But what I do find
24 to be questionable is what is the need to, you know,
25 have ten hours of one attorney when they are just

1 merely observing and there is not a whole lot of
2 value there. There may be some value, but not ten
3 hours worth of billable hours that should go through
4 to cost-recovery. I think that that is the point
5 that is giving me some consternation there.

6 **CHAIRMAN GRAHAM:** Mr. Willis.

7 **MR. WILLIS:** Commissioners, I don't know if
8 this will help or not, but the legislature many years
9 ago decided to look at the issue of rate case expense.
10 And they only looked at it in the water and wastewater
11 industry, because that's the industry that the problem
12 persists in, and that is because of the size of the
13 companies we regulate and the cost of putting on rate
14 cases.

15 They did so by putting in a portion of
16 Chapter 367 Sub 7, which basically says the
17 Commission shall determine the reasonableness of
18 rate case expense and shall disallow all rate case
19 expenses determined to be unreasonable. No rate
20 case expense determined to be unreasonable shall be
21 paid by a consumer. In determining the reasonable
22 level of rate case expense, the Commission shall
23 consider the extent to which the utility has
24 utilized the indexing and pass-through provisions --
25 I paraphrased that because it gives the statutory

1 cites -- and such other criteria as it may establish
2 by rule.

3 The only reason I bring that up is to me,
4 as a laymen and not an attorney, it is interesting
5 to me that they didn't use the word prudent in
6 there; they used the word reasonable. And to me
7 that gives the Commission great latitude in deciding
8 what amount of rate case is reasonable for customers
9 to pay in a water and wastewater rate case.

10 You will not find that statutory provision
11 in the electric and gas statutes, because in
12 electric and gas rate cases the amount of revenue
13 that you are looking at is in millions and billions.
14 Rate case expense is so immaterial you can't even
15 set rates to recover it normally. I don't know if
16 that helps or not.

17 **CHAIRMAN GRAHAM:** Mr. Fletcher.

18 **MR. FLETCHER:** And I just wanted to provide
19 some revenue requirement impacts to the proposal that
20 has been made. With Commissioner Edgar as far as not
21 making an adjustment to the hourly rate amount, that has
22 a revenue impact amount of \$6,089. And as for
23 Commissioner Skop's, I guess, discussion regarding the
24 ten hours for Ms. Clark, that would equate to a revenue
25 requirement impact of 4,188. So when you offset the

1 two, you are looking at a difference between both
2 proposals of about \$1,900 from staff's recommendation.
3 And that would not cause, in Issue 41, rates to be
4 impacted. It would fall below the one percent that Mr.
5 Stallcup mentioned earlier.

6 **COMMISSIONER EDGAR:** Thank you.

7 Mr. Chairman, I'm not sure where we want
8 to go here. I think -- let me see if I've got this
9 right. I have expressed some concern with the
10 adjustments that are recommended on this item, and I
11 want to be sure that from my perspective I'm clear
12 that I'm speaking about this item and how it is
13 presented today. So I have expressed some concern
14 about the adjustments to rate.

15 Mr. Chairman, I believe you have expressed
16 some concern about the adjustments to time. And,
17 Commissioner Skop, I hope I have this right, you
18 have expressed some concern to both, but more
19 particularly to one particular item as far as time
20 spent. Is that kind of the sum of where we are?

21 **COMMISSIONER SKOP:** I think that's a fair
22 assessment. I mean, if I had to go with the staff
23 recommendation, I would be looking to modify it to
24 probably cut out a few of those ten hours that staff
25 allowed. But, again, that doesn't preserve both of our

1 concerns about the reduction of hourly rates. So I
2 don't know. I don't know if I have much to add other
3 than I think the ten hours is probably excessive. And I
4 have some opposition to hourly rates, but I know that if
5 we don't slash hourly rates the rate case goes up
6 substantially, as indicated by Mr. Fletcher in response
7 to your question.

8 **MR. WILLIS:** Chairman, could we have like five
9 minutes just to assure the numbers are correct that we
10 gave you for the difference?

11 **CHAIRMAN GRAHAM:** I have 2:42 on my clock.
12 Let's go to 2:50. Let's take a recess.

13 (Recess.)

14 **CHAIRMAN GRAHAM:** Okay. We are on Item 29,
15 and I think Mr. Willis or somebody on staff has some
16 great words of wisdom to share with this panel.

17 **MR. WILLIS:** We do have a correct number, and
18 I'll let Mr. Fletcher --

19 **MR. FLETCHER:** Yes. The previous number I
20 gave out as far as the revenue impact for not making an
21 adjustment to the hourly rate, the correct number is
22 \$6,977. The original amount that I gave you was about
23 \$900 less. But that is the revenue requirement impact
24 for not making an adjustment to Clark or the
25 consultant's hourly rate.

1 And then, Commissioner Skop's proposal
2 about regarding the ten hours for Clark for the
3 hearing, the grossed up amount for that that I
4 previously gave is \$4,188, if you were to remove
5 Ms. Clark's time for the hearing. Now, the offset
6 there is \$2,789.

7 If you were to increase, the revenue
8 increase that is in staff's recommendation, that
9 would result in a percentage increase of .76 percent
10 revenue increase. If you were to go with both
11 proposals, if that was what the Commission decided.
12 That is still below the limit that Mr. Stallcup
13 mentioned earlier, which is the one percent
14 threshold to change rates. So if the Commission
15 were to go that route, we would not recommend a
16 change in rates for both proposals.

17 **CHAIRMAN GRAHAM:** Mr. Willis, did you have
18 anything you wanted to add?

19 **MR. WILLIS:** Exactly what Mr. Fletcher said.
20 Either proposal or staff's recommendation does not
21 change rates.

22 **CHAIRMAN GRAHAM:** So it sounds like if Ms.
23 Edgar were to restate her motion, including Skop's
24 request for the duplicativeness of the second attorney
25 for ten hours, the removal of that, it sounds like you

1 may have a second. I'm just guessing, though.

2 **COMMISSIONER EDGAR:** Well, then, Mr. Chairman,
3 reluctantly I will make the motion that we amend the
4 staff recommendation on Issue 29 such that the
5 recommended adjustments to rate not be included in what
6 we adopt, and that there be an adjustment to remove
7 cost-recovery for ten hours of Attorney Clark.

8 **COMMISSIONER SKOP:** Second.

9 **CHAIRMAN GRAHAM:** It has been moved and
10 seconded, the motion as Commissioner Edgar has stated.
11 Any further discussion on that motion?

12 Seeing none, all in favor say aye.

13 **COMMISSIONER EDGAR:** Aye.

14 **COMMISSIONER SKOP:** Aye.

15 **CHAIRMAN GRAHAM:** Those opposed? Nay. That
16 being the case, it does pass.

17 **COMMISSIONER EDGAR:** Mr. Chairman.

18 **CHAIRMAN GRAHAM:** Yes.

19 **COMMISSIONER EDGAR:** I just wanted to --
20 realizing that we are now done with that item, but I
21 would ask, if you could, to follow up with staff and see
22 if there is a way to sort of tee up further discussion
23 on some of the general issues that have sort of come out
24 from our discussion for follow-up at a later date.

25 **CHAIRMAN GRAHAM:** Mr. Willis.

1 **MR. WILLIS:** I would just like to add one more
2 thing. If you can give us administrative authority to
3 go ahead and run those rates all the way through so that
4 we don't have to bring it back to the Commission.

5 **CHAIRMAN GRAHAM:** Yes.

6 **MR. WILLIS:** We can do that.

7 **CHAIRMAN GRAHAM:** Do we have to vote on that,
8 or do you just like to see a head vote?

9 **MR. WILLIS:** I think you have to vote on that.

10 **COMMISSIONER EDGAR:** Mr. Chairman, I would ask
11 that we give -- that we delegate to our staff the
12 administrative ability to adjust the numbers in keeping
13 with the decisions that we have made today and take
14 appropriate actions therefrom.

15 **COMMISSIONER SKOP:** Second.

16 **CHAIRMAN GRAHAM:** It has been moved and
17 seconded to give the staff that authority.

18 **MR. WILLIS:** Thank you.

19 **CHAIRMAN GRAHAM:** All in favor say aye.

20 **COMMISSIONER SKOP:** Aye.

21 **COMMISSIONER EDGAR:** Aye.

22 **CHAIRMAN GRAHAM:** Those opposed?

23 By your action you have granted staff that
24 authority. Okay. That concludes, I guess it's Item
25 Number 18.

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COUNTY OF LEON)

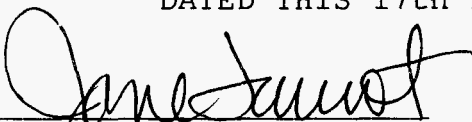
CERTIFICATE OF REPORTERS

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.


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

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

DATED THIS 17th DAY OF DECEMBER, 2010.



JANE FAUROT, RPR
Commission Reporter
(850) 413-6732



LINDA BOLES, RPR, CRR
Commission Reporter
(850) 413-6734

Water Management Services, Inc.
Docket No. 100104-WU

Item 18 - December 14, 2010, Commission Conference

<u>Scenarios</u>	<u>Plant</u>	<u>Accum. Depr.</u>	<u>Depr. Exp.</u>	<u>Overall Revenue \$ Increase (\$ Decrease)</u>	<u>Overall Revenue % Increase (\$ Decrease)</u>	<u>Overall Revenue Requirement</u>
Issue 4 - Staff Recomm. 50%	(\$20,935)	\$7,560	(\$3,489)	\$7,124	0.55%	\$1,309,487
Issue 4 - Proposed 35%	(\$27,216)	\$9,828	(\$4,536)	\$3,570	0.27%	\$1,305,932
Issue 4 - Proposed 0%	(\$41,870)	\$15,120	(\$6,978)	(\$749)	(0.06%)	\$1,301,613

Parties ~~Staff~~ Handout
Internal Affairs ~~Agenda~~
on 12/14/10
Item No. 18
100104-WU