BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110153-SU

APPLICATION FOR INCREASE IN WASTEWATER RATES IN LEE COUNTY BY UTILITIES, INC. OF EAGLE RIDGE.
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PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 9

COMMISSIONERS PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, November 22, 2011

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

CHAIRMAN GRAHAM: We need to go Item Number 9. We are going a little off the agenda. Item Number 9.

Mr. Fletcher.

MR. FLETCHER: Commissioner, I'm Bart Fletcher with Commission staff.

Item 9 is staff's recommendation to approve a rate increase for Utilities, Inc. of Eagle Ridge. The Office of Public Counsel and the utility are here to address the Commission. Staff is prepared to answer any questions the Commission may have.

CHAIRMAN GRAHAM: Thank you.

Public Counsel, I apologize for not getting to this before 11:00. As you were here, you saw.

Please.

MR. REILLY: Chairman Graham, Commissioners, I'm Steve Reilly. With me is Tricia Merchant. We are with the Office of Public Counsel appearing on behalf of the ratepayers. While we would have made a few more adjustments to the company's request, taken as a whole, the Office of Public Counsel does support the recommendation, and we would like to reserve our comments to respond to any particular issues that the company might make today. Thank you.

CHAIRMAN GRAHAM: Okay. Thank you.

Mr. Friedman.

MR. FRIEDMAN: Thank you. Mr. Chairman and Commissioners, my name is Marty Friedman of the law firm of Rose Sundstrom and Bentley. We are attorneys for Eagle Ridge Utilities, Inc. Also with me to address the Commission is Mr. Patrick Flynn, who is the Regional Director, and John Williams, who is the Director of Public Affairs. And we are going to address -- would like to address three issues in the staff recommendation.

The first issue is Issue Number 3. This is the adjustment that was made by the staff to amortize the cost of the Project Phoenix, which is basically the computer system that Utilities, Inc. at the parent level put into place a couple of years ago. The company allocates the amortization of the computer equipment among all of its systems. Since the system was put in place, the company has sold a number of systems, has several thousand customers less than it had when it put the system in effect. The staff is basically not reallocating among all of the customers of the utility, but basically allocating among the customers of the utilities that existed when the system was put in place.

The justification for the staff doing this is that it says, well, you have done it in half a dozen other cases previously, and it wouldn't be fair to change now. And, basically, that is an argument that says maybe we made a mistake before, but let's keep perpetuating that mistake. And I would suggest to you that just because you did something in a prior case, doesn't mean you can't correct it if you find there is a mistake.

And I'm going to, in a couple of these other issues that we are going address, you will see where there is an inconsistency in the way the staff treats changing what was done in prior cases. It seems like sometimes they think you can change it, and sometimes they think you shouldn't change it. And that inconsistency, I think, is clear.

As you well know, Section 367.0831, the Legislature has determined that the gain or loss on sale of any utility system goes to the shareholders. What the staff is effectively doing in this case by making a reallocation is giving that portion of the allocation of these, to these divested systems, is to basically give that to the existing customers. I would suggest to you that if there was a loss on sale of those systems that you wouldn't see the staff recommending that the allocation be increased because the company lost money on the sale of the systems. And I think you have got to look at it fairly. What is good when you go one way ought to be good when you go the other way. And I think that consistently the staff doesn't see it that way, and I think that we now need to really focus on this and make right the wrong that has been out there.

Two undisputed facts. The first undisputed fact is none of the assets of Project Phoenix were sold in any of these sales. Nobody can question that. The computer system, all of it that was put into place remains with Utilities, Inc.

The second undisputed fact is, as I mentioned, none of the -- is that the statute is clear, 367.0813 is clear that any gain or sale belongs to the shareholders. And what effectively the staff's position does is it gives the remaining customers the benefit of whatever gain that the utility made on that sale contrary to the Legislature's directive in 367.0813.

Now, the staff is going to give you the absurd hypothetical like they have said before, what if Eagle Ridge is the only utility, should they have to pay, you know, the $26 million for this computer system. That's absurd. Obviously, we wouldn't take that position. But we're not talking about one system paying the whole cost of it, we're talking about several thousand customers that aren't with the system anymore that were when the system went into place. And that is a big difference.

I mean, obviously, when you get down to a point you say is it prudent to have a computer system this sophisticated for this few customers. And I think every one of us, including myself, would say no. But until we make that evaluation, we don't just arbitrarily say, well, they sold some customers, so the allocation of that portion of the computer system directed to those customers is lost. They can't ever get it back. Stranded capital, gone, that is not -- that is not the way to do it. It's inconsistent with law and should be inconsistent with sound regulatory policy.

What you need to look at is is that computer system a reasonable expenditure, capital expenditure for the customers that it serves at the point in time you make the decision. And so the appropriate regulatory treatment of this should be as you sit here today is that computer system a reasonable expenditure of funds, and I think that the staff has not addressed that. And that's the determination that needs to be made, not some arbitrary, well, the company made money when it sold these systems, so the current customers should benefit.

I mean, you could take the staff's position. They are kind of like saying, well, you know, they designed the computer system for -- I don't know how many customers the company has got, 100,000 customers, let's say, and now they have only got 95,000, so you don't need the whole computer system. And that's not the way software works. It's not the way computer systems work. It's not the way businesses work.

You could take that same argument and apply it to the postage meter or the copier that the company has got. Utilities, Inc. has got a postage meter and it has got a copier. If it has got less customers, it's probably using those things a little less than it was before. Does that mean that you should make an adjustment to the capital that the company has expended in its copier and postage machines because it may have a couple of less customers? That's not sound regulatory policy. You need to look and see does the company need the asset that it has. Just like a building, just like a car, just like a stamp machine, just like an office.

You know, those are determinations you need to make at the point in time that the determination is made. And so the analysis should be, as we sit here today, is that a prudent investment for the number of customers they have? And there has been no analysis like that made by the staff. They have arbitrarily made this determination a long time ago, and they are just sticking with this error, and the error is perpetuating itself. And we are at the point where you need to give it some consideration and deal with it from a sound regulatory practice standpoint, instead of some arbitrary adjustment that the staff has made. So we would suggest to you that you deny the portion of the staff recommendation that made the negative adjustment for the Project Phoenix cost.

The second issue that I'm going to have Mr. Flynn deal with is Issue Number 5, which is the issue of used and useful of the water treatment plant.

MR. FLYNN: Thank you, Mr. Chairman.

Utilities, Inc. of Eagle Ridge is comprised of two parts, two separate collection systems and two wastewater plants. Cross Creek is the name of one side and Eagle Ridge the other across -- the opposite side of Dana Boulevard in Fort Myers. The staff recommendation identified that the Cross Creek wastewater plant ought to be 100 percent used and useful, and we don't disagree with that. The staff recommendation was contrary to our request that the Eagle Ridge wastewater plant also be 100 percent used and useful. Staff recommended 80 percent. My understanding is that's based on the ratio of the average daily flow through the treatment plant compared to the capacity, wastewater water treatment capacity permitted for that facility at Eagle Ridge.

However, it is also the case in the staff rec, and in our documents we identified there are only four single-family lots remaining in the Eagle Ridge collection system to offer service to out of about 1,700 homes and dwelling units. There is one commercial lot undeveloped comprising about three acres that may also be served at some future time. However, in the total picture of the wastewater facilities, the 80 percent used and useful calculation, in essence, identifies that there is about 20 percent, or about 62,000 gallons of wastewater capacity per day that is considered non-used and useful, and that's supposedly in alignment with service to four single-family lots and one three-acre commercial property. It's out of balance from my perspective.

It should be the case that, in essence, the system is built out. We have no customer growth factor built into our MFRs because, in fact, there is no growth in customers. We have had maybe an average of one per year at the most over the last five years. There just isn't any growth. We are essentially a built-out system. And in that context it seems appropriate to consider the Eagle Ridge wastewater plant 100 percent used and useful just as the Cross Creek plant is considered 100 percent used and useful. And there is no growth occurring or has occurred on the Cross Creek side since we bought the system. So from that perspective, it seems to me prudent to identify 100 percent used and useful for both wastewater plants.

MR. FRIEDMAN: And I would point out that in your rules, 25-30.430 specifically allows the Commission to consider factors such as the extent to which the area served by the plant is built out in making a determination as to the used and usefulness of a wastewater treatment plant. And as Mr. Flynn has pointed out, this system has only got four vacant lots and one commercial lot left. And so if you look at the way the staff has calculated it, basically under the staff's position those four single-family lots, and I think the houses down there use probably 150 gallons a day, perhaps, that those four houses and one commercial property account for 20 percent of the unused and useful portion of the plant. So you have got 20 percent of it being held for four lots -- four residential lots and one commercial lot, and then you have the other 80 percent being used by 1700 units. That just defies any logic that you would allocate 80 percent to 1700 units, and then allocate 20 percent to four units plus a commercial piece of property.

The second aspect -- and we filed this, we filed this application with the argument that it is 100 percent used and useful for the reasons that Mr. Flynn has pointed out. And so as a result we didn't put any margin of reserve in. If you are 100 percent built-out, obviously you don't have any margin of reserve. So we didn't put a margin of reserve in.

Obviously, if the staff was going to say we are 80 percent used and useful, then it would be logical to say then we must have unused capacity. If we have got unused capacity and unused development out there, we would have to add a margin of reserve factor. So if the staff was going to be true to regulatory principles and say you've got extra capacity, then they should go to the other side of that and say but we need to add some used and usefulness to account for the margin of reserve. They have kind of done a double whammy in this case and said, oh, Utility, we are going to decrease your used and usefulness from 100 down to 80, and we are not giving you any margin of reserve. That's kind of like a double whammy. I mean, it adds insult to injury. So we think that the staff recommendation is in error, and that the wastewater treatment plants should be 100 percent used and useful.

The final issue is on rate case expense. I'm going to address part of it, and I'm going to have

Mr. Williams address the portion dealing with the in-house consultants. The staff made two major adjustments to rate case expense. One was that they made an almost $20,000 decrease in the outside consultants portion of the rate case expense, the outside financial consultant, accounting for about 133 hours of work because what the staff said it, quote, believes, end quote, that many of the hours were spent on review of the company's roll-forward adjustments, and then complains about the lack of description in the time slips of the financial consultant.

Now, it's the same time -- the financial consultant is the same one that has put together the MFRs in most of the utility and subsidiary cases. They have done their time slips exactly like they did before, and so there is no -- the staff is inconsistent with the way that it has treated this in the past in making some, quote, belief that a certain amount of time was spent doing something that they thought didn't need to be done.

And to add, again, insult to injury is that the staff says, all right, let's figure out how we can guesstimate what that amount of time is. And so what they do is they go back and look at the Lake Utility Services rate case we just finished a couple of months ago, which is a big water and sewer system, whereas this is just a sewer system. And so they looked at that and they said, okay, well, based on that, it was so many hours, and so since those cases -- or we just finished that case, it's kind of like this one, so let's make an adjustment of 133 hours. Just completely arbitrary.

It's not like they had this in their mind and asked in a data request. I mean, a lot of these things are just, you know, the companies do things the way they did them before unless somebody tells them, hey, you know, maybe we're going to change the way we want you to do things. But you need to tell them in advance that we are changing the rules, not after you do it, and then say, oh, by the way, you didn't do what we wanted you to do, even though what you did was satisfactory in the past.

And no regulated entity or industry should have to guess that the staff is going to change the way that it wants you to do things, and then as a result the company gets penalized for doing it the way they have always done it before. And that is kind of what happened on this issue is that the staff has just decided arbitrarily that, well, you know, they shouldn't spend time on these roll-forwards without any asking how much time did you spend on roll-forwards. What is involved by the financial consultant in doing a roll-forward? Never asked any of those questions. They just waited until they wrote the staff recommendation and wrote it the way they wanted to write it.

And their analysis in saying, well, this is what you did in Lucie, so, you know, let's use that as an analogy is wrong, because Lucie has got water and wastewater and this has water. If you just want to be arbitrary you say, well, arbitrarily you would probably have half as many roll-forwards in a wastewater only than you would in a water and wastewater. Again, that is arbitrary, but at least you have given some consideration to the fact that the two systems are different. You can't necessarily equate what's done in one with what is done in the other.

And every one of these cases are different. I mean, the time that any person expends in these cases varies drastically depending upon the nuances of the case, and you really don't know that going into it. And so all we can do is do things the way we have done them in the past, and all we ask is that if the rules change, we know about them in advance.

The staff is great about looking back and saying, hey, we want to see what we did in the past. Well, if you look at rate case expense in the last case for Eagle Ridge, which was three or four years ago, the staff is recommending rate case expense in this case 22 percent less than what they recommended in the prior case. And if you look at the analysis of how they do that, I mean, they zapped out all of the in-house time that Mr. Williams is going to address. They took every bit of that out, again, just arbitrarily. They hadn't done that in the past. They didn't make this same arbitrary adjustment in past rate cases, but they just decided in this one -- a light went off in somebody's head, and they said, hey, why don't we do it this way from now on and to penalize the utility. So, you know, even if you look at the last case, the amount of rate case expense is substantially less, and that kind of belays that this is an arbitrary adjustment that the staff has made.

And I'm going to ask Mr. Williams to explain to you the in-house aspect of this rate case expense, because he's in there with it; he's part of that rate case expense.

MR. WILLIAMS: The majority of our company's expenses in a rate case are done in-house. It is time spent by our employees to prepare the data and get it, you know, put together in the format required by the Commission. And, you know, if I'm working on a specific case, I code that time to this rate case. The same is true of Mr. Flynn and our accountants. And in this particular case for the first time ever, the staff is recommending disallowing all of our in-house rate case expense saying we are already paid salaries. But this is different. This is capitalized time related specifically to this rate case. And when we calculate our total salaries, the cap time is deducted from the salary expense. So it is not being double counted. And, again, this has never been done, and I can't understand why it would be disallowed.

MR. FRIEDMAN: Just to summarize what Mr. Williams said, when they do the salary calculation for the MFRs they take out the portion of the salary allocation that's related to, quote, what we call rate case expense. So the portion of the salaries that are allocated don't include the same things that are included in the rate case expense.

That's all the comments we have, and we are certainly available to answer any questions.

CHAIRMAN GRAHAM: Staff?

MR. FLETCHER: Commissioners, I'd like to address Issue 3, the Phoenix Project that the utility raised. First of all, staff has relied on previous Commission decisions, and in those decisions as far as taking into account the divested systems of this utility, as we relied on basically Statute 367.081, which is setting fair, just, and reasonable rates in our recommendations, that the utility or the Commission should acknowledge that the share -- the allocated share of those divested systems for the Phoenix Project.

To date, the company in their divested systems, as Mr. Friedman mentioned, has been several thousand reduction in their customers. To take a backdrop to tee this up a little bit is this company, their corporate strategy in the past, and it has been so for decades, was to acquire small systems, develop their own systems and to grow their customer base. And this Phoenix Project was placed into service in 2008, and at that time a certain amount of customer base was designed by DeLoitte & Touche to match those customers.

As of the date of this agenda we see about 10 percent of the total investment, $21.6 million, 10 percent of that, over 2.3 million is associated with the divested systems. We don't think it is fair, just, and reasonable to reallocate that $2.3 million to the surviving customers. We don't think that's fair or just or reasonable as contemplated in 367.081.

I would defer to staff engineer, Tom Walden, on Issue 5.

MR. WALDEN: Commissioners, I'm Tom Walden from Commission staff.

In our recommendation in Issue 5 we have relied upon Commission rule that dictates how used and useful is to be calculated for a wastewater treatment plant. I believe the company brings up a good point that while there are a few lots yet to be developed, there really hasn't been any growth, and obviously the company would like to have 100 percent used and useful allocation on their plant.

I think the real question is is the system really built out? With only four lots left out of 1,700 homes, if we were to do a comparison using a lot ratio, there would be a very small amount of treatment plant capacity that would be needed to serve the remaining lots. Using the rule as we did in our recommendation, obviously it causes a used and useful adjustment.

I am comfortable using the rule, but certainly as an alternative if we were to rely on just the lot ratio, that would essentially make this Eagle Ridge plant 100 percent used and useful with only four vacant lots. And if we were to approach this circumstance using that alternate approach, recognizing essentially a built-out condition, that would make the wastewater treatment plants 100 percent built-out.

CHAIRMAN GRAHAM: Item Number 14.

MR. FLETCHER: Yes. Commissioner, Item 14, particularly on Page 24 of the rec, the accounting consultant fees, initially staff had sent the utility a data request on July 26th of this year and which the utility responded on August 25th of this year. And it is basically the second paragraph on Page 25 of staff's recommendation is delineated below that second Paragraph A through C of the information that staff had required, and this is for each person and each firm providing services, consulting services to the applicant.

Originally, we did not see -- in the utility's response in August we didn't receive the detail. Normally in the past for accounting -- this accounting firm in past cases, we received job detail reports or time sheet reports associated with the invoices. And the level of detail that we have seen in the past was not in the detailed report that we saw.

An example of the detail that we usually see in past cases is Maria Bravo, which is the accounting associate on August 12th spent one hour, and the detail was review staff's interim recommendation and provide commends to clients. Now, that detail was not provided that specific with the time worked prior to that regarding the MFRs. It just -- the only comments that were made is review MFRs, and some of them have 19 hours. It is not specifically what you worked on in your MFR preparation or what were you working on that day. Was it the rate base schedules of the MFRs, was it to audit the utility's roll-forward adjustments? We did not have that detail provided in the response.

And I will say that because it wasn't originally asked -- provided in the August response, we did inquire of the utility immediately prior to staff finalizing its revenue requirement, and the utility did provide that job detail report on October 24th. But, again, it didn't have the specificity of detail to isolate what time was spent on roll-forward adjustments.

In trying to be consistent with the Commission's decision in its -- at the October 4th agenda for a sister company, Lucie, where they had provided the detail not only for the consulting firm, but also for the WSC in-house employees where we actually had the detailed descriptions and the hours associated with each task. We did not have that in this case, so we relied on the percentage of WSC employees' time where we had the detail regarding the roll-forward adjustments.

And that is addressed on Page 25 of our recommendation, and you see in the third paragraph in that case we relied on that percentage to come up with our 133 hours. It is the second to the last sentence of the third paragraph on Page 25. We applied the percentage that the WSC house employees spent on roll-forward adjustments in order to apply that to the hours that the accounting consultant worked on the MFRs.

The Commission practice is when something is not supported, that it has previously disallowed all or a portion of rate case expense where there has been lack of support documentation. This was -- again, we don't believe it was arbitrary because we did a follow-up with the utility and asked again for the level of detail that was not previously provided in August. It is detail that we have received in prior cases that has been on those job detail reports, and it just was not provided in this instant case.

CHAIRMAN GRAHAM: So staff specifically asked for that detail and it just wasn't provided?

MR. FLETCHER: Yes, Commissioner. And I guess the only other one is the in-house employees. To respond to that, as you can see on Page 27 on Table 14-2, staff had looked at the job duties and responsibilities of those who worked to process this case. And in doing so, we wanted to make sure that there was no double recovery in this case as far as --

because processing those cases are part of their job duties and descriptions, that is akin to the allocated salaries that not only flow to Eagle Ridge, but all of its sister companies, we looked at the confidential information that the utility supplied in this case. And taking it from the total salary dollars associated with all of these positions and tracking it down to make sure that 100 percent was being allocated down based on the ERC percentage methodologies for the respective positions here, all of it is being allocated down to Eagle Ridge and its sister companies.

So we disagree that just a cap, the capitalize time is not being double recovery. I believe it is, because 100 percent of their salary, based on the confidential information, is being allocated down to Eagle Ridge and all of its affiliates. And I guess that concludes staff's comments.

CHAIRMAN GRAHAM: Public Counsel.

MR. REILLY: With regard to the Phoenix Project, OPC agrees with the recommendation and the recent previous orders of the Commission to allocate the Phoenix Project costs according to ERCs, but that the Phoenix Project costs previously allocated to divested subsidiaries should not be reallocated to the surviving utilities, because no added benefit is realized by the remaining subsidiaries.

We also concur with the recommendation and prior Commission orders that it is not fair, just, or reasonable for the ratepayers to bear additional allocated Phoenix costs just because the company decides to sell some of their subsidiaries. We also agree with the recommendation and recent Commission orders that the divested subsidiaries allocated amounts should be deducted from the total cost of the Phoenix Project before any costs should be allocated to the remaining subsidiaries. And really to do otherwise at this point would be -- and to depart from this recommended methodology would result in an unfair and inconsistent treatment with Utilities, Inc.'s other subsidiaries.

Now, the company makes the argument that the recommended methodology violates 367.0813, Florida Statutes, by using gains received by the shareholders on the sale of divested systems to reduce rate base of the remaining systems. We respectively disagree with that argument. This methodology has nothing to do with using gains on sale. It has everything to do with assessing the benefit to the ratepayers. It makes no difference whether the sale results in a gain or a loss. If the sale results in a reduction of ERCs served by the Phoenix, it would be unfair to increase Eagle Ridge's allocated cost for this system.

I'm going to speak briefly to the used and useful issue, as well as to the rate case expense issue, and then I'm going to yield to Ms. Merchant who will talk on two of the issues.

Briefly on the used and useful issue, I thought what staff did was a reasonable compromise. When you really look at the actual used and useful calculation for both of the two wastewater treatment plants, you get an 80.13 percent used and useful percentage on the Eagle Ridge system and only a 70.13 percent on the Cross Creek system. And what I thought staff did was they acknowledged that although there were only four lots there, which don't add up to a great deal, there was, unlike Cross Creek, a commercial property which could have the potential of substantial additional ERCs on top of those four lots. So it was kind of an acknowledgment that there really was a potential of growth on the one system, so therefore they went ahead and used the actual.

But then when they went to Cross Creek, it didn't have the same circumstances. So, in effect, they basically discounted the 70.13 percent and basically imputed or deemed it to be 100 percent. So what staff did was merge the two together, put the 100 percent with the 80 percent and really produced a pretty darn high 87.38 percent. And I think it would be far fairer to the customers to at least acknowledge that it is not built out and there is some real potential of ERC usage in that system, and to somehow will be able in the future to capture that excess capacity. And so I do support primary staff recommendation. It seems that today that may have shifted somewhat to a secondary position, which we certainly do not support.

Thirdly, on the issue of rate case expense, we agree with staff that the company's requested rate case expense was in large measure unsupported and unreasonable. We support each and every adjustment that staff made. The two -- only the big ones that I talk about would be the accounting consulting fees which staff determined was excessive, unreasonable, and unsupported. Apparently driven primarily from what staff could determine and we could determine was to account for all these numerous roll-forward accounting adjustments to the company's MFR because of the company's failure to properly make adjustments to the company's books in accordance with the adjustments ordered in the company's last rate case and failure of the company to really properly maintain its books in accordance with NARUC system of accounts.

And with regard to the WSC in-house fees, OPC agrees with the recommendation that UI proposed rate case expense for 2,106 hours for $97,534 of WSC in-house fees to complete this single PAA at this point uncontested is unreasonable and unsupported. Not only was the detailed support for these WSC fees virtually nonexistent, but they appear to represent double recovery of the allocated compensation for positions listed in the recommendation. Positions, if you look at those described duties, closely track the very duties that the company seeks from our view as a double recovery from the Eagle Ridge ratepayers in the form of rate case expense. So we do support the staff's adjustments, and I would yield to Ms. Merchant for more detail.

CHAIRMAN GRAHAM: Ms. Merchant.

MS. MERCHANT: Good morning. Tricia Merchant with the Office of Public Counsel.

I will tell you that Mr. Reilly took a lot of my words here, so -- and staff and the company -- but one of the things I wanted to point out regarding the accounting fees is that if you look at the legal fees and if you look at the engineering fees, the detail provided is much more voluminous. And, you know, you can tell. He wrote a letter to staff; they had a meeting with staff; you don't get that with the accounting fees. And that has been a long-standing Commission practice to document and support your estimate to complete. So I disagree with Mr. Friedman that this is a change in the middle of the road.

The second thing I want to talk about is the WSC cost. And Mr. Reilly already pointed out a lot of things, but I want to give you a little history about rate case expense for most of the Utilities, Inc. systems. About ten years ago the WSC costs requested by the company were a pretty small component of the total rate case expense. Then about eight years ago the costs started going up dramatically. They started filing rate cases every four years. And recently, in the last couple of years, you see companies filing every two years. This case was -- the final order in the last case for Eagle Ridge was in April of 2009. So it's pretty close together.

Over the last eight years, Utilities, Inc.'s rate case expense requests have ballooned from those more than eight years ago. The number and the hours of the WSC employees have also more than doubled in the rate case expense requests that they have submitted.

Additionally, at the conclusion of each rate case, the company is required to submit an actual accounting of all of its rate case expense incurred as of the date when they filed. That's 90 days after the end of the rate case. Looking back at the Eagle Ridge last rate case, the company actually spent $5,000 less than what the Commission approved in the order. And you're thinking, well, that's pretty close. But the estimate that they included in their -- before staff filed its PAA recommendation was $133,000 higher than their final actual numbers. So that's a telling fact right there. I have done an analysis of a lot of the different systems of Utilities, Inc., and that's very common. I'm seeing that over and over again in a lot of the different systems.

I think that OPC believes that we should stop allowing them to overestimate their rate case expenses. Essentially, what overstated rate case expense is is just higher revenues for them. It doesn't get booked on their accounting records. It's higher rates and charges for them.

The other point I wanted to bring out was about the Phoenix system, and I'm having to cut my notes here because everybody put in some other comments. But in 2009 the company told the Commission that the Phoenix would improve accounting, customer service, customer billing, and financial and regulatory reporting functions of Utilities, Inc. and all of its subsidiaries. OPC questions how implementing the new computer system has provided savings and efficiencies to the regulated operations of Utilities, Inc. Rate case expense requested has doubled. Regulatory reporting costs have not improved, and for each and every rate case Utilities, Inc. has to reconcile its books with its MFRs, and it also has to reconcile its MFRs with its annual report. This immediately is an increased rate case cost.

OPC argues that Utilities, Inc. should promptly and fully fix these deficiencies in its regulatory reporting requirements. And we talked about this at the Lucie rate case in the last agenda where Lucie was. We fully support staff's adjustment to allocate Phoenix costs. And as Mr. Reilly said, that that didn't have anything to do with whether a gain or loss was incurred on the sale, it had to do with the fairness of those costs. But we also think that the adjustments, the Commission approved adjustments should be made in every single case. And that's one of the later issues in the case. But we haven't seen -- since Lucie, we haven't seen those adjustments being proved that they have been made. So certainly we want to focus the Commission's attention on that, that they need to submit proof that they have made the Commission-ordered adjustments and fix these problems so that rate case expense can be lowered in the future. And with that, that concludes my comments. Thank you.

CHAIRMAN GRAHAM: Mr. Walden, in Issue Number 5 you said with there only being four lots not built out, you are fine with going to 100 percent used and useful?

MR. WALDEN: If we are to recognize the built-out condition of the service area, yes, sir, we would move to 100 percent used and useful.

CHAIRMAN GRAHAM: Commission board, can we get a motion on Issue Number 5, or are there any questions on Issue Number 5?

Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman. And I did have a question on that point.

CHAIRMAN GRAHAM: Please.

COMMISSIONER EDGAR: Thank you.

I don't know if you are able to do it precisely, but if the Commission were to choose that other way of calculating used and useful, what would be the result to Issue, I think it's 18. Yes, 18.

MR. WALDEN: I believe Mr. Fletcher could provide some information in that area. You can see in the recommendation on Issue 5 we made reductions to rate base and adjusted depreciation expense and property taxes. Mr. Fletcher could a better job of --

COMMISSIONER EDGAR: I wasn't sure if that was a straight-out calculation or if there were other factors.

MR. FLETCHER: If you give me just one moment, I can give it in 30 seconds.

COMMISSIONER EDGAR: Sure.

CHAIRMAN GRAHAM: Mr. Walden, where is your name tag?

MR. WALDEN: My name tag is on my desk. (Laughter.) I do have my ID badge. (Laughter.)

CHAIRMAN GRAHAM: Take your time, Mr. Fletcher.

COMMISSIONER EDGAR: It does not have to be precise. And, Commissioners, it is my approach that the decisions that we make on the individual facts before us on all of the issues, 18 is certainly a fallout of that, and not the beginning point. But yet for context, because there are so many calculations and formulas involved it is helpful, to me anyway in my thought process, to have a feel for what that impact would be.

MR. FLETCHER: Right. The effect on Issue 18 for the interim refund, it would bring it down to approximately 3 percent from the 4.23.

COMMISSIONER EDGAR: Thank you. I appreciate you doing that so quickly. This issue, the used and useful, I absolutely see the rationale in both types of calculation and believe, as our staff has said, that each is logical. I had a question as we were beginning our discussion today as to the information that we have before us that on the one portion of the utility that from the information I understand there really is either no or miniscule growth potential. To me that makes sense for a finding of used and useful on that which would then be of 100 percent for both pieces. That is something that I see the rationale for. I did want to have a feel for what that would impact the other calculations, and I would be interested in the thoughts of my colleagues.

CHAIRMAN GRAHAM: Commissioner Brown.

COMMISSIONER BROWN: Thank you.

And actually I happen to be familiar with both Eagle Ridge and Cross Creek having grown up in Fort Myers and think of them as very similar, although Eagle Ridge is a larger subdivision. But I was curious about the commercial lot, because I know Eagle Ridge has some mixed use and there are some condos. What is the scale of that commercial lot?

MR. FLYNN: The commercial is a three-acre parcel that abuts Tango Boulevard (phonetic). It has on it a single story --

COMMISSIONER BROWN: In the front.

MR. FLYNN: Right. It's a vacant sales office. It has been vacant for years. It's on a septic tank, that particular building. It has been that way for long before I was familiar with Eagle Ridge.

COMMISSIONER BROWN: Thank you.

MR. FLYNN: It hasn't been used for awhile.

COMMISSIONER BROWN: And, again, I think they are both -- having, you know, personal knowledge, they are both very similar and they are both very built out, as evidenced by the four residential parcels. Additionally, that commercial lot, I am familiar with that. That has been vacant since I was born, I think. So I would be amenable to hear the other Commissioners on considering that as 100 percent used and useful.

CHAIRMAN GRAHAM: Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

And I have a question for the utility following up on Commissioner Brown's question on the remaining lot. The last thing I would want to do is set a precedent where a developer could leave the last remaining lot that is selling for a 25-story high-rise, et cetera. You mentioned it was three acres in size. What is it zoned for? What is the floor-area ratio that is approved? What do you anticipate the development of that parcel to result in?

MR. FLYNN: I have no information at my disposal today on what its zoning is. I think Commissioner Brown probably has more information than I do on that topic, actually. I guess it has been vacant for a long time, and its use going forward is who knows. I have no idea. It's not -- it's commercial property on a highway frontage, a four-lane or six-lane highway, and its likelihood of being anything other than light commercial is unlikely.

COMMISSIONER BALBIS: So then regardless of what is built there, I mean, obviously the remaining capacity is the limitation on the wastewater flow to the facility, correct?

MR. FLYNN: Insignificant. There are 62,000 gallons of non-used and useful capacity by staff's rec for four lots that would comprise less than a thousand gallons per day, and this commercial lot, which I'm sure will have minimal volume. In my experience light commercial just does not generate much flow.

COMMISSIONER BRISÉ: Okay. Thank you. And based on this specific circumstance where we know what the development is, we know the remaining parcel, and we don't have the risk of setting a precedent of allowing other utilities to leave their high consumption or demand parcels for the last amount to play games with this, I would move that we revise staff's recommendation to make Eagle Ridge 100 percent used and useful.

COMMISSIONER EDGAR: I second it.

CHAIRMAN GRAHAM: It has been moved and seconded to move staff's recommendation to 100 percent used and useful.

Any further discussion on Item Number 5? I'm sorry, Issue Number 5. Seeing none, all in favor say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action you have approved Issue Number 5.

All right. We still have Issue Number 3 and Issue Number 14 to deal with. Let's start with 3.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

And fortunately I believe all of us on this Commission have dealt with this issue previously, and I disagree with the attorney for the utility indicating that we made a mistake in the past. I feel we made the right decision in the past. And I see that -- I haven't seen anything that changes my opinion as to whether or not the portion of the Phoenix system project should now be reallocated to remaining systems. I think the analogy of taking it to the extreme is a good one, because what is to stop them from divesting more and more and using our decision as a basis to now reallocating the cost.

So, again, I haven't heard anything today to change my thoughts on that issue, so I would move we move forward with staff's recommendation on Issue 3.

CHAIRMAN GRAHAM: It has been moved and seconded, the staff recommendation on Issue 3. Any further discussion?

Seeing none, all in favor say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action you have approved staff recommendation on Issue 3.

Issue 14.

Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman.

I know that we have had pretty full information and some discussion on this already, but I would like to ask the utility to elaborate a bit on one of the points that was raised.

I believe in your earlier comments on this item you made the comment that in a staff analysis adjustments that are made reflect a -- I believe you said a change in the rules from the way those costs have been considered in the past. And I would like you to elaborate on -- if indeed I heard you right, what it is, what rules or practice you think is changed in this analysis versus that in the past.

MR. FRIEDMAN: Thank you, Commissioner Edgar.

And if I used the term rule, I apologize, because obviously in the legal sense we think of a rule as having a particular meaning and sacrament. And it certainly isn't the rule, it's the practice of the staff in analyzing rate case expense filings. And with this particular financial consultant, you know, the rate case -- the rate case is the MFRs have got Schedule A, Schedule B, Schedule C. You know, it's just a bunch of different schedules. And so if you look at the time slips that Milian, Swain and Associates uses it just says work on MFRs, prepare MFRs. And it doesn't say Schedule A, you know, worked on Schedule A today or Schedule B.

Because the way the MFRs are, as Commissioner

Edgar mentioned, when you make an adjustment on one schedule, you know, it automatically is going to affect other schedules. And so it is basically impossible to have the kind of detail that we as lawyers have, or Mr. Seidman as the engineer has. It is easy for us to put a lot of detail in what we do. But when it comes to -- when you are dealing with spending hours going over financial information and putting it into miscellaneous schedules, you can't really put more detail in it than to say we worked on the MFRs. And that's the kind of detail I think that they have used forever.

Now, you noticed that Mr. Fletcher mentioned that they put -- they had something that had more detail that said discuss interim rates or something. I mean, that is different than preparing the MFRs. And this roll-forward adjustment is related to the preparing MFRs portion of the financial rate case expense, not the portion of rate case expense after that. Because as Mr. Fletcher pointed out, when they did the projected or after the MFRs, you know, it was related to a specific thing, and it was easy to say we had a conference call with so and so and addressed such and such. That is easy to do. But when you are sitting there for virtually days, you know, I don't know how they do it, you know, working for days going through financial schedules, you just can't get more detail than just I was working on these MFRs and these financial schedules.

And so the suggestion that the roll-forwards took up a lot of that time, you know, is just wrong, because it doesn't. The roll-forwards work is done by the company, and it is just financial information that the outside consultants take and disseminate when they compile the MFRs. And so to suggest that the amount of time that the financial consultants spent in the issue of roll-forwards is the same as the amount of time that the company spent in addressing roll-forwards, which is what the staff does in its recommendation, is just pulling it out of the air. And that's all they have done.

I mean, there is no way to say how much time, or the relationship between roll-forwards prepared by the company versus roll-forwards prepared by the outside consultant. And then to say let's look at Lucie and make that analysis when you have got a water and wastewater case versus just a wastewater case, I mean, even if you use the staff's analysis to compare Lucie, the adjustment shouldn't be a $20,000 negative number, it ought to only be ten, because you have got a -- if you are going to presume that the time spent on roll-forwards is the same, you ought to presume then that half of them are on water and half of them are on wastewater. So you still only make half the adjustment the staff made, even if you buy their pulling it out of the air. So worst-case scenario is the adjustment ought to be 10 instead of 20.

I hope that answered your question, Commissioner Edgar. I know I tend to get long-winded sometimes.

COMMISSIONER EDGAR: That's all right. And, yes, you did. Thank you. I would like to ask our staff to speak to this item. Again, you know, the issue of rate case expense for wastewater or water or water and wastewater in small, generally, service areas is one that comes before us frequently. More and more frequently it seems like, and it is one that always gives me some additional pause.

We had a long discussion on an earlier item about trying to reduce subjectivity, and sometimes I wonder as careful as we try be when we are reviewing rate case expense and the documents that come with it how much subjectivity enters in, although I know we try very hard to be objective and to look to the documentation. But it seems like at some point the more detail that is provided, perhaps that just provides more opportunity to parse and pare, but yet that sometimes if there is more general documentation that can be helpful or be a concern. So with all of that, and I know it is time to get moving, but I would like to ask the staff to speak to this point of how does the analysis here comport with similar analysis and how we have looked at this type of issue in the past.

MR. FLETCHER: Commissioner, we, again, request in every case the items that are listed on Page 25 of the recommendation, we ask for that detail of task because you try to make -- or staff strives to make consistent decisions as far as many benchmarks, if you will, to look at items. What time was spent on a particular task and that is one the reasons why we have to have that detail.

And I would submit to you in the past that we had that detail for this firm. What time was spent on an audit, what time was spent to prepare the rate base schedule, what time for the NOI schedules, what time was it to analyze and review the utility's reconciliation of their general ledger to the MFR amounts. So we rely on that detail in order -- so we can make the analysis to compare what the Commission has approved in the past as far as amount of time spent on a particular task.

It simply was not provided in this case.

Therefore, we were reached with recommending to the Commission whether we deny -- recommend denying all of it because of lack of support documentation, or knowing that we felt that this was the best approach without having any of that detail is to reach out to a similar company and to basically apply that percentage in this case regarding the roll-forward adjustments. We felt that was best because to remove all of the hours associated with the MFRs, that would -- I don't think that that would have been reasonable, because it is a minimum filing requirement pursuant to Commission rules, so we thought that was a conservative approach in order to deal with the lack of support documentation.

And if I may, at the appropriate time, I did want to correct my prior calculation. I hope it doesn't call for another vote on Issue 5. But on Issue 18, I had forgot to take into account the non-used and useful depreciation expense adjustment and the property tax portion. It would reduce the percentage for interim refund on Issue 18 to half a percent from the 4.23 percent. And at the appropriate time, assuming the fallouts of the -- if nothing is to change from the rec other than Issue 5, I would recommend that that would just be credited to CIAC. It is such a small percentage, and whenever the Commission has dealt with such small percentages of interim refunds in the past that the Commission has decided to credit CIAC for those rather than avoid the administrative cost of refunding those to the customers.

CHAIRMAN GRAHAM: Commissioner Edgar, you still have the floor.

COMMISSIONER EDGAR: Just to follow up on the discussion -- and thank you -- that we were having on Issue 14, I would just hope and ask on a go-forward basis if there is anything that we can do or should do as a Commission so when these types of cases continue to come in, as I know there will be more, not necessarily for this utility, but for others across the state, that we are as clear as we can be as to the documentation that is required and expected, and the analytical approach that will be taken to considering allowances and disallowances for rate case expense, including in-house staff and outside consultants.

Thank you, Mr. Chairman.

CHAIRMAN GRAHAM: Thank you.

I don't have any lights on. My feeling is specifically to make sure that we are reaching out to supporting staff. The staff is asking for details. If staff is asking for a report, if staff is asking for something, I think staff needs to get that information so staff can do the best they can moving forward. And I commend staff for, even when they didn't get the specificity that they wanted, they were still able to come forward with a recommendation other than zero. Zero is an easy number to come to. And believe it or not, zero is a number I probably would have supported because, you know, when you ask for some information you need to get it, and there needs to be that supporting documentation.

I think that's one of the things that us as a board can do for staff to make sure that, you know, for you to do your job, you need to get the details that you're asking for. If you're not getting those details you're asking for, there is all kinds of speculation of why you're not getting those details. But I think our job to support you guys is to make sure that you get that authority.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I couldn't agree with you more on those statements. I agree that staff needs to get the information and backup it needs to provide a good and sound recommendation to us. And I think that staff came up with a good compromise. It certainly could have disallowed additional rate case expense, and I think this is a good compromise. And, hopefully, that message is sent not only to this utility but others that we need appropriate detail to determine if expenditures are appropriate and prudent. So with that, I would support staff's recommendation on Issue 14.

CHAIRMAN GRAHAM: It has been moved and seconded, staff recommendation on Issue 14. Is there any further discussion on Issue 14? Seeing none, all in favor, say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

Now, let's just wrap this Item Number 9 all up as one big whole. If we could move staff recommendation on all issues on Item Number 9, except for Issue Number Issue 5, and fallout issues from the change in Issue 5.

MR. FLETCHER: Yes, administrative approval for all the fallout issues. And also with regard to Issue 18, whether the Commission's desire is to credit CIAC or go forward with the refund to the customers, the less than a half a percent.

CHAIRMAN GRAHAM: Commissioner Edgar, I will go to you on your recommendation.

COMMISSIONER EDGAR: Mr. Chairman, thank you. As I said when we were discussing this item, this issue of this item a few minutes ago, it is my understanding from the information that we have that there is a logic and a rationale for the calculation of used and useful that could come, basically, to two different numbers. Although a result of three or four or five percent refund certainly is a nicer sounding number than half, I remain comfortable that the analysis that we used in our vote for the calculation of used and useful is appropriate. And I also agree with staff from the numbers that they are sharing with us now, realizing that it's kind of a back-of-the-envelope calculation, that if it is half a percent, that to go to CIAC would be appropriate.

CHAIRMAN GRAHAM: And for some reason if it goes higher than that when you do the official number, then you may want to consider another path. But just as long as you are as low as you are, I agree with Commissioner Edgar.

MR. FLETCHER: Okay, Commissioner. We will do just do that administrative thing. If it's still a minimal amount, as a half percent, as I have stated here, then it would still be credited to CIAC. If it goes above that based on the mathematical calculations, then we will credit it to -- recommend or have in the order that it be refunded to the customers.

CHAIRMAN GRAHAM: Okay. So we have a motion on the floor to approve Item Number 9, the staff recommendation on all items except for Issue Number 5, and then the fallouts from the change in Issue Number 5. That has been moved and seconded.

Any further discussion? Seeing none, all in favor say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action, you have approved Item Number 9.

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 29th day of December, 2011.

Jane Faurot

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