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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20230083-WS

Application for increase in water and
wastewater rates in Orange County by
Pluris Wedgefield, LLC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, December 5, 2023

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
(850) 894-0828

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

2 CHAIRMAN FAY: We will next move to Item No.
3 7. We will give everybody just a quick second to
4 get set up on that item.

5 All right. I will give everybody a chance to
6 get set up and then I will hold for -- Commissioner
7 Clark, I will just add for Commissioner La Rosa.
8 If we just want to go ahead and bump anything
9 controversial for the next 30 days, then I would be
10 happy to support that for Item No. 7 too, so --

11 COMMISSIONER LA ROSA: You got a 24-month
12 window.

13 CHAIRMAN FAY: All right. Commissioners, with
14 that, we will proceed forward with the presentation
15 of Item No. 7.

16 Mr. Thurmond, whenever you are ready, you can
17 present the item.

18 MR. THURMOND: Thank you, Mr. Chairman.

19 Good morning, Commissioners. I am Wesley
20 Thurmond with Commission staff.

21 Item 7 addresses Pluris Wedgefield, a Class A
22 utility serving approximately 1,700 water customers
23 and 1,700 wastewater customers in Orange County.

24 This is staff's recommendation to suspend the
25 final requested rates of Pluris Wedgefield and to

1 approve interim rate increases of approximately
2 \$410,000 for the water system, and \$244,000 for the
3 wastewater system.

4 The Commission has received numerous
5 complaints regarding this docket. Additionally,
6 the Commission has received correspondence from the
7 Office of Public Counsel detailing concerns with
8 the utility's filing and staff's recommendation.

9 Staff would like to note that all interim
10 adjustments recommended have been made in
11 accordance with Section 367.082, Florida Statutes,
12 longstanding Commission practice, and the
13 methodology established in Pluris' previous rate
14 case.

15 Staff would also like to note that if an
16 interim increase in rates is approved today, the
17 revenue would be collected subject to refund with
18 interest, and will be returned to the customers in
19 the event that it is determined that Pluris was not
20 entitled to this increase in rates.

21 Staff has an oral modification to its
22 recommendation that has been approved -- that has
23 been provided to the Commissioners and included in
24 the docket file.

25 The utility and its representatives are

1 present, as well as the Office of Public Counsel.
2 OPC has requested the opportunity to address the
3 Commission.

4 Staff is prepared to answer any questions that
5 you may have.

6 CHAIRMAN FAY: Okay. Great. Mr. Thurmond.
7 Thank you.

8 All right. Let's see, Mr. Rehwinkel, I am
9 going to go ahead and allow you. And Mr. Friedman,
10 I guess is here too to address the Commission. I
11 would just ask to be mindful of the time for your
12 presentation. I don't know how many minutes you
13 have to address us on maybe one, or more than one
14 item. I know we have letters in the record from
15 OPC, so is that -- that's what you would be
16 speaking on, I am presuming?

17 MR. REHWINKEL: Yes.

18 CHAIRMAN FAY: Okay. Great. All right. You
19 are recognized. And then, Mr. Friedman, I will
20 also recognize you if you have something to add.

21 Go ahead.

22 MR. REHWINKEL: Yeah, Mr. Chairman, Charles
23 Rehwinkel with the Office of Public Counsel. I am
24 here with Bart Fletcher, one of our accountants.
25 And I have a couple of exhibits to pass out to aid

1 in my presentation to you.

2 CHAIRMAN FAY: Thank you.

3 Okay. Mr. Rehwinkel, so the first thing
4 that's been submitted, I believe -- so all of this
5 is in the record already, the letter -- I see three
6 letters, 30th --

7 MR. REHWINKEL: The letters are, yes. I just
8 passed those out in abundance of caution --

9 CHAIRMAN FAY: Okay.

10 MR. REHWINKEL: -- I didn't know if the
11 Commission --

12 CHAIRMAN FAY: And then Mr. Friedman's
13 response also in here, so I mean --

14 MR. REHWINKEL: No, his -- that's -- that's
15 from -- that has to do with pass-through
16 adjustments.

17 CHAIRMAN FAY: Your saying we don't need it --
18 we don't need this?

19 MR. REHWINKEL: That's an attachment to the
20 letter that we filed.

21 CHAIRMAN FAY: Okay.

22 MR. REHWINKEL: Yeah. I did not include any
23 response from Mr. Friedman.

24 CHAIRMAN FAY: Okay. I just meant that this
25 -- the letter and the attachment that you have

1 included in here is from Mr. Friedman, so that --

2 MR. REHWINKEL: There is an attachment from
3 Mr. Friedman --

4 CHAIRMAN FAY: Okay.

5 MR. REHWINKEL: -- in the letter.

6 So the second exhibit -- just for the record,
7 the first exhibit that I passed out is the November
8 30th letter. And attached to it are the November
9 13th and November 15th letter that we filed with
10 the Commission.

11 CHAIRMAN FAY: Okay. That's on the all in the
12 record.

13 And then the second part, Mr. Rehwinkel?

14 MR. REHWINKEL: The second exhibit is
15 partially in the record. There are some MFR
16 schedules. There are some definitional sections
17 related to balance sheet accounting under the USOA.
18 There is an order from the last rate case and
19 schedule. And then we have a provided our
20 calculation of interim rates for -- under the
21 interim statute. So that would be a second
22 exhibit. And I have hand numbered it in the lower
23 right-hand corner. It's 21 total pages.

24 CHAIRMAN FAY: So has any of this not been
25 submitted into the record for this docket already,

1 Mr. Rehwinkel?

2 MR. REHWINKEL: The MFRs are part of the
3 record. The USOA definitions are not part of the
4 record, but they are subsumed in your Uniform
5 System of Accounts rule.

6 The last rate case order, 20130187, is an
7 official Commission document. There is an MFR
8 schedule from that last case. It's not part the
9 record. And then, of course, your schedules
10 beginning on page 15 through 21 have not been part
11 of the record, but they support the numbers that
12 show up in our November 13th and 15th letters.

13 CHAIRMAN FAY: Okay. So let me -- Mary Anne,
14 I just want to double check with you procedurally
15 to make sure we are in the right posture here. I
16 know this is just -- this is an interim rate issue.
17 It's not the actual final decision on the rates for
18 this utility, but I am happy to allow Mr. Rehwinkel
19 to present some of his comments. As far as the
20 materials that aren't currently in the docket, what
21 would you recommend?

22 MS. HELTON: Well, Mr. Chairman, I don't have
23 a copy of the materials that were handed out, so I
24 -- it's hard for me to say. I would have
25 appreciated having --

1 CHAIRMAN FAY: Yeah, we'll --

2 MS. HELTON: -- extra copies.

3 This is -- you know, this is the -- we are
4 following the interim statute here. And so as I
5 understand the operation of the interim statute,
6 it's prescriptive, and it tells the Commission how
7 to go forward.

8 The purpose, as I understand the interim
9 statute -- and Ms. Crawford might have a little bit
10 better understanding than me -- is this is just
11 kind of a -- we are not meant to have a hearing
12 here. We are meant to have the -- to make a
13 decision on the best way to go forward to --
14 because of regulatory lag. And understanding that
15 this is an interim decision, such that any rates
16 that are set here are held subject to refund, and
17 the final rates are set at the end of the
18 proceeding.

19 I don't have -- I am a little bit concerned
20 about what's being done here, but I don't know that
21 I have a reason to say not to hear OPC out. And I
22 would love to hear Ms. Crawford to see if she
23 disagrees.

24 CHAIRMAN FAY: Sure. Ms. Crawford, we will
25 give you a second to get a chair. We've got a full

1 desk up there, so --

2 MS. CRAWFORD: Again, I am familiar with the
3 November 30th letter. I think we've all here at
4 this bench probably either have a copy with us or
5 we've looked at it previously.

6 I haven't had an opportunity -- if I
7 understand correctly, the information in the second
8 exhibit are things that OPC looked at and relied
9 upon in coming up with its proposed calculation of
10 interim. Is that -- okay, to the extent it's not
11 involved with the calculation of interim, I am not
12 sure the relevance to today's proceeding, as Ms.
13 Helton --

14 CHAIRMAN FAY: Yeah.

15 MS. CRAWFORD: -- described.

16 CHAIRMAN FAY: So, Mr. Rehwinkel, what I
17 would like to do is I am happy to give you the time
18 to present on -- to participate on this item and
19 present your comments. It does seem to impede sort
20 of the whole intent of the interim if we are going
21 to go ahead and fully litigate, like, each
22 component of this before we, you know, make a
23 decision on it.

24 So if I were to allow you 10 minutes to
25 present your comments and your information, I think

1 that's more than gracious, and abnormal for
2 something like this, but it seems like you spent a
3 lot of time putting this information together, and
4 so at least give you the opportunity to present
5 what you would like to.

6 And then, Mr. Friedman, I would allow you the
7 same amount of time to present your comments. Just
8 with the -- okay, you don't need that amount of
9 time, but just, you know, based on due process and
10 fairness, I want to make sure that you are
11 recognized, we give you that time.

12 So, Mr. Rehwinkel, you are welcome to go ahead
13 and present your comments. And I think Ms.
14 Crawford mentioned something that you have probably
15 already probably got back in your mind, the
16 relevance components of these things. We, of
17 course, as the Commission, can digest them and give
18 them the weight we think approval, assuming they
19 don't touch on any form of prejudicial statements
20 here. Based on what you have provided me here, I
21 am not worried that you are going to go down that
22 route, and so allow you the time to present your
23 comments. And then if we have any questions or
24 follow-up, we will ask you at that time, and then
25 Mr. Friedman can provide his comments.

1 MR. REHWINKEL: Thank you, Mr. Chairman. And
2 every -- all the comments that I have heard so far
3 are well taken.

4 We are here today on a matter of law. This is
5 not a hearing on the interim statute and the
6 interim rates that are recommended. We are
7 objecting to the application of the statute by the
8 Commission staff. And it's easy to say that the
9 statute is prescriptive. It's much harder to apply
10 the statute correctly at times.

11 And one of the reasons we are here today at
12 this point in time -- and I do appreciate greatly
13 your indulgence to hear from me -- is there was a
14 recent Florida Supreme Court decision that said
15 that we have an obligation to advise the Commission
16 if they are making an error in order to preserve
17 our appellate rights. We do not believe that
18 placing these revenues subject to refund and then
19 trueing them up, if the rates are established
20 unlawfully, will protect the customers, because if
21 you are allowing costs to be recovered on an
22 interim basis that the interim statute does not
23 allow, the true-up process will allow those costs
24 if the permanent rates recognize those costs for
25 future recovery. And the key here is that the

1 interim statute recognizes two separate periods.

2 The interim statute, as your orders say, it is
3 intended to be quick and dirty, and it is intended
4 to rely on an objective, historical earnings
5 achieved by the company that prospective setting of
6 rates can have proforma adjustments that recognize
7 costs that don't exist in the historical period but
8 are appropriate for the future period.

9 When you measure the future period against a
10 historical period that is unlawfully set, you are
11 going to cause customers to bear costs in the
12 interim period that are not allowed by the statute,
13 and that's why we are here today.

14 One of the reasons we are bringing our
15 comments to you now is that there is Commission
16 precedent that says a reconsideration is not
17 appropriate for interim statutes -- for interim
18 awards. And in that regard, we are here because
19 the Supreme Court said to preserve our appellate
20 rights, we have to tell you what we think you did
21 wrong. So that's what we are here doing today,
22 with all due respect.

23 We know the staff has put a lot of effort into
24 this. They are good people on staff working on
25 this and trying to do their best, but every now and

1 then they don't get it right, and so we think that
2 it needs to be brought to your attention.

3 We've already gone over what are in the
4 exhibits, but we are objecting on behalf of the
5 current customers of Wedgefield that the rates
6 proposed by the staff are unlawfully derived and in
7 derogation of Section 367.082, Florida Statutes;
8 and that the customers of Wedgefield are without a
9 remedy to vindicate their rights if the rates are
10 unlawfully set today but measured against the
11 future establishment of rates on a permanent basis,
12 either through a PAA or a protested PAA process.

13 Section 367.082 requires this commission to
14 use the most recent 12-month historical achieved
15 return of Wedgefield with adjustments that are made
16 consistent with the last rate case. The rates
17 proposed by Wedgefield and adjusted by staff will
18 be unlawful if approved by this commission as in
19 this recommendation.

20 The reason for this unlawfulness is that your
21 staff is recommending a proforma adjustment to the
22 balance sheet for the historical period to
23 effectively restate the 13-month average balance
24 for three specific accounts to portray asset and
25 investment balances that do not meet the statutory

1 requirement that an interim deficiency must be
2 calculated based on the most recent 12-month
3 period.

4 Now, what I have passed out to you is an
5 exhibit that, on pages -- hand-numbered pages three
6 and six shows the balance sheet for the 13-month
7 period of December -- I should say five and six --
8 shows the balance sheet for the 13-month period of
9 December 2021 through December 2022. Actually,
10 pages three through six show the entire balance
11 sheet. Pages five and six are the liabilities that
12 I want to focus on in making my legal argument
13 about the application of the statute.

14 If you turn to page five, there are three
15 lines that I want to draw to the Commission's
16 attention to. Line six, which is total equity
17 capital, line 14 and line 19. 14 is in the current
18 liabilities section and is accounts payable
19 associated companies, and line 19 is miscellaneous
20 current and accrued liabilities. This page five is
21 the first six -- is December through June of 2022.
22 And page six is the balance of the year.

23 You can see on line six for the first 12
24 months of this period, that the monthly balance for
25 total equity capital fluctuates, but it ranges

1 between 1.3 million and 1.8 million for that
2 12-month period. And lines one through five show
3 the subsets of the shareholders investment in the
4 company known as equity.

5 On lines -- and I would point to you, and I am
6 going to talk about it later, I didn't highlight
7 it, but line nine is something called advances from
8 associated companies. That's in the long-term
9 liabilities section.

10 On lines 14 and 19, under the equity and debt
11 investment accounts are eight types of current
12 liabilities amounts due in one year or later. And
13 I have just included on pages seven and eight the
14 definitions of account 223, advances from
15 associated companies, and on page eight, account
16 233, accounts payable to associated companies, as
17 well as on page nine, the miscellaneous current and
18 accrued liabilities. Those are the definitions
19 that apply to the balance sheet that is from the
20 MFRs of the company that is on hand-numbered pages
21 five and six.

22 You can see, on lines 14 and 19, the balances
23 of these current liabilities, accounts payable
24 associated companies and miscellaneous accrued --
25 and accrued liabilities. They approximate four and

1 \$3 million for each of these accounts for the 12
2 months respectively. You can see the balance for
3 line 14 is roughly in the three to \$4 million
4 range, and on line 19 is in the 3.3, it looks like
5 it's fairly fixed at \$3.3 million.

6 When you go to line -- back up to line nine,
7 advances from associated companies is an entirely
8 different animal from these current liabilities.
9 It represents a long-term liability that is treated
10 by the Commission under your adoption of the USOA
11 as an investment by the owners. And in your
12 policy, if it is an affiliated transaction with
13 zero cost rate, it is treated as common equity.

14 In fact, this same, or very close to this same
15 balance amount of \$250,000 was reclassified as
16 equity in the last case. That adjustment was not
17 made in this case. And you can see on pages 10, 11
18 and 12, the excerpts from the last rate case order,
19 and specifically on page 12, there is the \$252,431
20 of this same balance in the last rate case, it was
21 converted to equity, and you can see on the
22 schedule that is line 13, in the specific
23 adjustments column, you can see that 252,431 was
24 reclassified as from advances from associated
25 companies to common equity.

1 And then on page 14, the MFR schedule from
2 that last case, you can see that line nine,
3 advances from associated companies, there is that
4 \$250,000. And then you can see on line 14,
5 accounts payable associated companies, 341,627 at
6 the end of 2011, and then the end of the historical
7 test year 258,951, there is no balance for
8 miscellaneous current and accrued liabilities.
9 Those --

10 CHAIRMAN FAY: Mr. Rehwinkel, I think you are
11 getting there because you are going in order of
12 your pages, but you are over your time a little
13 bit, just if you can bring it in for a landing.

14 MR. REHWINKEL: Well, I have got a bit more to
15 say, Mr. Chairman. And, you know, we said in our
16 letter that we intend to seek interlocutory relief
17 in this case. And if you want me to stop now, I
18 will, but I would be deprived of my opportunity to
19 inform you of what I think you have done wrong. So
20 I don't want -- I want the record to be clear that
21 we have intended -- we have attempted to discharge
22 that obligation that the Supreme Court has recently
23 said we have. So I am happy to stop. If this is a
24 good stopping place, I am happy to make it here.

25 CHAIRMAN FAY: Yeah. I was going to give you

1 a minute to close, Mr. Rehwinkel, not go
2 significantly beyond that. I think I was very
3 clear at the beginning of the time you were
4 allotted and your opportunity. I think you have
5 stated multiple times your, you know, right to
6 preserve your appellate action in an interlocutory
7 appeal. I think that's all on the record. And so
8 you sent a number of letters -- your office has
9 sent a number of letters to us stating some of
10 these points that we have reviewed and looked
11 through, and so if you have something that you
12 would like to close with --

13 MR. REHWINKEL: Okay.

14 CHAIRMAN FAY: -- you are welcome to do so,
15 but --

16 MR. REHWINKEL: Thank you.

17 CHAIRMAN FAY: -- otherwise, I am not going to
18 extend beyond much.

19 MR. REHWINKEL: Okay. So the last part of
20 this exhibit shows that we have calculated the
21 interim rate for water should be one -- no more
22 than 178.

23 CHAIRMAN FAY: What page, Mr. Rehwinkel? What
24 page are you on? I am sorry.

25 MR. REHWINKEL: If you -- this is on page 19

1 and 20 of this exhibit. You will see for water, we
2 have recommended that the statute allows you to
3 charge the customers no more than \$178,319 compared
4 to the 410,299 that's in the staff rec for water.
5 And for wastewater, 142,786, versus the 244,186
6 that is in the staff recommendation.

7 We believe this is the case because the staff
8 recommendation effectively proformas and restates
9 the historical period in violation of the statute,
10 and comparing them on a -- at the end of the case
11 would not allow this unlawfulness to be remedied,
12 and so the customers would be irreparably harmed if
13 they had to wait and have it measured on that
14 basis. So --

15 CHAIRMAN FAY: Okay.

16 MR. REHWINKEL: Thank you, Mr. Chairman. I
17 would urge that the Commission defer this and allow
18 further discussions with staff and company.

19 MR. FLETCHER: Can I make a comment?

20 CHAIRMAN FAY: Mr. Fletcher, I have allowed, I
21 think, more than -- more than enough time at this
22 point.

23 So, Mr. Friedman, you are recognized.

24 MR. FRIEDMAN: Thank you, Mr. Chairman and
25 Commissioners. I am Marty Friedman, attorney for

1 Pluris Wedgefield.

2 You know, keep in mind is that if Public
3 Counsel is correct, then the customers will be
4 refunded with interest. If the Public Counsel is
5 incorrect, there is no methodology for the utility
6 to make up for that lost revenue, and it's been 10
7 full years since Wedgefield has had a full rate
8 case.

9 OPC's argument on capital structure to me
10 appears to be a matter of semantics. The money,
11 the \$7.9 million that was infused into the company,
12 no matter what it was booked as, carries no
13 interest, no intent to repay it. In fact, the
14 utility would have no way to repay \$7.9 million
15 with a loan even at no interest.

16 So -- and it's not uncommon for the Commission
17 to reclassify entries in books from one thing to
18 another. I mean, obviously, it's often done
19 reclassifying expenses to capital. And it's my
20 understanding that when there is a loan to a
21 related party, an intercompany loan that doesn't
22 carry interest and is not going to be repaid, that,
23 under NARUC, gets treated as equity. And I think
24 that the OPC's position is taking form over
25 substance.

1 And I would remind you of something
2 Shakespeare wrote, "What's in a name? That which
3 we call a rose by any other name would still smell
4 as sweet." And what that means to us simple people
5 is that it matters what something is, not what it's
6 called. And these book entries are clearly equity
7 infused by the parent company, no matter what you
8 call them.

9 Thank you.

10 CHAIRMAN FAY: Okay. Great. Thank you, Mr.
11 Friedman.

12 All right. Commissioners, what I would like
13 is just to get some initial response maybe both
14 from legal and then, Mr. Cicchetti, also to you. I
15 know we are -- I know the basis of OPC is more sort
16 of towards this legal component, but I think it's
17 just technical in nature by the very complexity of
18 what this includes.

19 And so maybe, Ms. Crawford, if I could have
20 you go first just with some clarity. And you might
21 be the right person, or somebody else in legal
22 might be the right person, but what I -- I would
23 also like you to address the realities of this
24 interim mandate as a timeline.

25 So I think my -- my concern with this -- I

1 don't -- I don't love the interim statute to begin
2 with, but I think there is a mandate in there, and
3 I don't know similar to electric or gas, where you
4 have got the mandate for the implementation of
5 rates. I don't even know what that mandate would
6 include. But I just want to know what that looks
7 like, because I believe -- and I could be wrong on,
8 is that, but I believe the utility has waived that
9 once already, and so if we exceed that timeline, I,
10 you know -- and I apologize because I gave you that
11 question on the back end, but if you could address
12 that first maybe and then some of the comments.

13 MS. CRAWFORD: Absolutely. Thank you,
14 Chairman.

15 367.082, as Ms. Helton has already observed,
16 is very prescriptive. And one of the ways that it
17 is prescriptive is in terms of the statutory
18 deadlines that are involved in that statute.

19 The statute requires that the Commission shall
20 authorize within 60 days of the filing of such
21 relief the collection of rates sufficient to earn,
22 so on and so forth, provided they put forth the
23 necessary prima facie showing for interim relief.
24 The 60 days enures to the benefit of the company.
25 It helps prevent regulatory lag for a company that

1 is needing a significant cash inflow.

2 Mr. Friedman has already deferred interim
3 determination once to allow staff to bring it to
4 this Agenda versus the previous Agenda. It is his
5 client who -- to whom's benefit that statute the 60
6 days enures. It's up to him to whether he would
7 like to defer or not.

8 There is nothing in the statute that gives the
9 Commission the discretion to defer the item. I
10 think it indicates that if a prima facie showing,
11 then the Commission should -- or shall authorize
12 those interim rates. And certainly, that has been
13 the Commission's practice much longer than I have
14 been here, as far as authorizing interim within 60
15 days. So I don't think a deferral is appropriate.

16 I would also like to correct one thing. If I
17 understood correctly, Mr. Rehwinkel said that
18 reconsideration is not available in interim, and we
19 took a moment to pull the ending language to
20 interim orders for the Commission. It does provide
21 for reconsideration. I am certainly not
22 encouraging reconsideration as a prospect, but it
23 is available to OPC.

24 It is also an interlocutory appellate order.
25 It is not a final order of the Commission. That

1 was determined by the Supreme Court in, I think it
2 was '75 in the Citizens V Mayo case.

3 The idea is to let that that interim go into
4 effect subject to refund, which protects the
5 customers. And then once the final order issues,
6 if we -- if somebody believes we got not only the
7 final order wrong, but the interim wrong, then they
8 can bring forth whatever appellate case they
9 believe is appropriate.

10 CHAIRMAN FAY: Okay. And then just -- just
11 if, hypothetically, there were to be the end result
12 of the rate, not the interim portion, the end
13 result of the rate was less, is there any component
14 of this that would prohibit the refund, and I think
15 it would be a refund with interest to the
16 customers?

17 MS. CRAWFORD: Pursuant to our rules, that's
18 correct. And I -- although I appreciate Public
19 Counsel's concerns about getting the pot right now.
20 I am unclear on why, if the calculation isn't quite
21 correct, how we can't go back and refund it. If
22 there is a significant difference owed to the
23 customers, then our rules provide for that.

24 So again, if you were looking to appeal an
25 interim order like interim, you would have to show

1 irreparable harm on appeal, and I am not clear on
2 what that irreparable harm would be. OPC seems to
3 be arguing that, as a pure legal matter, the harm
4 is such that it compels some higher standard on
5 appeal, but I --

6 CHAIRMAN FAY: Based on --

7 MS. CRAWFORD: -- if that's case, I don't
8 agree.

9 CHAIRMAN FAY: Okay. Based on your
10 recommendation, there is no prohibition of that to
11 be able to be right -- I understand the argument
12 might be a different one as it relates to the
13 interim, but as far as the concluding order of the
14 rate, there is no prohibition that we would see
15 based on the decision?

16 MS. CRAWFORD: That's my understanding,
17 correct.

18 CHAIRMAN FAY: Okay. And then, Mr. Cicchetti,
19 did you have anything that you wanted to add on the
20 technical side?

21 MR. CICHETTI: Yes, Mr. Chairman.

22 CHAIRMAN FAY: Okay. You are recognized. Go
23 ahead.

24 MR. CICHETTI: The company made a substantial
25 investment of \$7.9 million in order to deal with

1 the legal fees and the judgment against them. They
2 had to make substantial investment in order to keep
3 the company operating, and that investment is
4 represented on lines 14 and 19 that Mr. --

5 CHAIRMAN FAY: What page are you on, Mr.
6 Cicchetti?

7 MR. CICCHETTI: It's the balance sheet that
8 was provided by Mr. Rehwinkel.

9 CHAIRMAN FAY: If you look at the bottom
10 right, there as circled number on that page.

11 MR. CICCHETTI: I don't have a copy of that.
12 It would be five and six -- pages five and six.

13 CHAIRMAN FAY: Okay. Just make sure we have
14 everybody -- give everybody a chance to have that
15 in front of them before you give that explanation.

16 So, Commissioners, do you have that
17 information? Okay.

18 Go ahead, Mr. Cicchetti.

19 MR. CICCHETTI: Okay. And then in December of
20 '22, those accounts were restated as equity, as you
21 can see on line five on page six. And the staff
22 used this 13-month average, these 13-month average
23 amounts to arrive at the average amount of equity.

24 Now, Public Counsel is recommending that you
25 treat these as current liabilities. Well, current

1 liabilities are that -- or other obligations that
2 are expected to be paid within one year.
3 Obviously, if this has been reclassified to equity,
4 it is not an amount that's expected to be paid
5 within one year. And so the appropriate treatment
6 of this is to recognize it for what it is, an
7 amount of equity.

8 Staff did not use a proforma amount, and we
9 did not restate anything in violation of the
10 statutes. In fact, it has been common Commission
11 practice to recognize intercompany payables as
12 equity. And it's not unusual for companies to book
13 it this way in the water and wastewater industry,
14 and for staff and the Commission come back and
15 correct those entries and restate them as is
16 appropriate.

17 In fact, in the Commission's standard
18 operating procedure manual, with regard to
19 corrections and adjustments to the interim request,
20 it says, adjustments to correct errors in interim
21 test year data are appropriate. So we --

22 CHAIRMAN FAY: Mr. Cicchetti, would it --
23 would the -- and I apologize for interrupting you,
24 but would it also be consistent with standard GAAP
25 accounting principles? I mean, is that -- you are

1 saying our precedent, which is relevant, but I just
2 want to understand, is this --

3 MR. CICCHETTI: Yes, to have intercompany
4 payables treated as equity is in compliance with
5 GAAP.

6 CHAIRMAN FAY: Okay. Commissioners --

7 MR. CICCHETTI: Like, this would be for
8 ratemaking purposes, and I would -- the final thing
9 I would point out is if you look at how Public
10 Counsel came up with their revenue requirement --
11 interim revenue requirement, they had to impute
12 debt to the company. So you have a balance sheet
13 that balances, and yet you have to impute debt to
14 the company. That's not something that was done in
15 the last rate case. So staff stands by its
16 recommendation, and we believe we have done this
17 correctly.

18 CHAIRMAN FAY: Okay. Great.

19 Commissioners, I want to make sure you are --
20 if you have any of questions for Ms. Crawford or
21 Mr. Cicchetti.

22 Commissioner Clark, you are recognized first.

23 COMMISSIONER CLARK: Mr. Cicchetti, just a
24 quick question. If you convert -- y'all have
25 confused me really good today. Congratulations.

1 CHAIRMAN FAY: It's the bow ties.

2 COMMISSIONER CLARK: The bow ties have got the
3 oxygen cut off or something.

4 You converted long debt -- long-term debt into
5 equity. What is the effect on the revenue
6 requirement, and how would that -- if you made the
7 -- if you did not make this adjustment, conversion
8 from debt to equity, how would that effect the
9 interim rate in terms of the percentage of increase
10 that Wedgefield is proposing?

11 MR. CICHETTI: Commissioner Clark, we did not
12 convert long-term debt to equity. We simply
13 changed recognizing what was booked in current
14 liability accounts as equity, as consistent with
15 past Commission practice.

16 If we did not make this adjustment and we
17 proceeded as Public Counsel is recommending, it
18 would be a substantial difference in the interim
19 request. I am not sure exactly what that number is
20 because I haven't sat down and calculated that yet.

21 But you would also have to follow the Public
22 Counsel's recommendation to impute debt to the
23 company in order to get a weighted average cost of
24 capital, because you would have less capital than
25 you have rate base, which is another sign that

1 there is a problem. Something is not being treated
2 correctly. And so they have addressed that by
3 imputing debt.

4 COMMISSIONER CLARK: Is there a scenario that
5 staff would, after reviewing this, come to that
6 same conclusion? I mean, I realize we are kind of
7 in a short -- real quick time turnaround here, but
8 after any type of analysis, do you think staff is
9 going to come back and agree that that's the way it
10 should have been treated all along?

11 MR. CICCHETTI: Absolutely not. The way we've
12 recommended, yes. The way Public Counsel is
13 recommending, no.

14 COMMISSIONER CLARK: Right. That's what I am
15 asking. Is that there is no, hey, we may need to
16 look at this. Hey, maybe it would help if we did
17 this or this, or there is another way, you are
18 saying that based on the surface, there is no way
19 staff is going to come back and say that OPC is
20 correct, this is --

21 MR. CICCHETTI: Correct.

22 COMMISSIONER CLARK: Okay.

23 CHAIRMAN FAY: Okay. Questions?

24 Commissioner Graham.

25 COMMISSIONER GRAHAM: Mr. Chairman, I

1 apologize. I am going to do something that is just
2 beyond me, but I see Mr. Rehwinkel over there
3 chomping at the bit. If we could give him one more
4 minute.

5 CHAIRMAN FAY: Commissioner Graham, yeah, it
6 must be the bow tie. I love it.

7 Yeah, Mr. Rehwinkel, you are recognized if you
8 have any further clarification. I just --
9 Commissioner Graham, I think we've given the
10 appropriate time it. Is there something specific
11 that --

12 COMMISSIONER GRAHAM: I saw him getting ready
13 to come out of his seat a couple of times so --

14 CHAIRMAN FAY: Gotcha.

15 Mr. Rehwinkel, if you could be brief.

16 MR. REHWINKEL: Would you allow me to let Mr.
17 Fletcher address it?

18 CHAIRMAN FAY: Sure.

19 MR. REHWINKEL: Thank you.

20 MR. FLETCHER: I think to address Commissioner
21 Clark's question, if you were to hand out, I think
22 it's page 18, that is OPC's cost of capital, and
23 you compare that to page 14 of staff's
24 recommendation, you can see the differences.

25 To address part of your question, this will --

1 if you look at page 14 of the recommendation, staff
2 had came up with 8.83 percent overall cost of
3 capital on line 14. You look at that same number
4 on the handout on page 18. This is OPC's
5 recalculation of revenue requirement, line 14.
6 It's 5.68. The reason there -- you can see the
7 differences really highlight.

8 On staff's total capital, they started with
9 the adjusted balance off of the MFR Schedule D-1a.
10 Well, you are supposed to use MFR Schedule D-2a.
11 And if you can look at my schedule to really
12 reflect the accurate, 13-month average balance of
13 equity was negative \$1 million. And there was a
14 specific adjustment that the utility made and staff
15 made as well.

16 You can -- you don't really see this on the
17 schedule. I was able to see it on the Excel file.
18 In order to get to staff's 5,894,387 on line 11,
19 how you had to get there is through the -- starting
20 off with a negative 103 million of equity, and then
21 -- and then there was a specific adjustment in the
22 Excel file that you could see. You can't see it on
23 page 14. You can only see this if you look at the
24 Excel file. There was a specific adjustment of
25 \$6.8 million plus in order to get to staff's

1 positive on line 11 in the recommendation, that
2 positive 5.8 million. So you don't even see pro
3 rata adjustments on staff or the utility -- on the
4 utility's from line one through seven. You see --
5 on page 18 you can see the pro rata adjustments
6 that should have been made.

7 You are supposed to reconcile down to rate
8 base. What is reflected on line seven, and then
9 reconciled down to rate base on the per utility is
10 7.2 million. No, if you look at the rate base
11 schedule and also on Schedule B-2a, it reflects
12 what we have on our page 18, that reconciled down
13 to rate base, line seven, of 6.1 million for rate
14 base. That is a \$1.1 million difference as what
15 the company reflected on staff's page 14.

16 So on line -- you can see on line 11 on the
17 common equity, that negative zeroing out, that
18 includes, consistent with the last rate case, the
19 advances from associated companies, in that last
20 case that's also in this handout, where the
21 Commission transferred that from long-term debt to
22 equity. That shows up in on my schedule. You
23 don't see that on the specific adjustments on line
24 eight or 11 on staff's schedule on page 14. It's
25 not there. That is an adjustment consistent with

1 the last rate case that's not reflective here, and
2 I just wanted to point those out.

3 And to really see it reflected on line, that's
4 equivalent to a normalization adjustment from an
5 actual, what they actually reflected in the
6 13-month average balance to convert -- to use those
7 specific adjustments that you see on my schedule on
8 page 18, that's no different than staff's
9 recommendation to remove the management fees of
10 237,000 a piece for water and wastewater as being
11 proforma. And the Commission has historically
12 disallowed proforma adjustments to the historical
13 balance.

14 CHAIRMAN FAY: And, Mr. Fletcher, just for
15 clarity, is -- based on what you have pointed out
16 higher, presuming all the -- all of what you
17 presented is accurate, do you see those decisions
18 creating a prohibition for riding it when the rates
19 are approved for finalization? I mean, like, none
20 of these things are curable in your opinion, then?

21 MR. FLETCHER: It can. If you look at -- on
22 November 30th letter --

23 CHAIRMAN FAY: I don't mean to go back into
24 it.

25 MR. FLETCHER: -- that right there, it cannot

1 -- if you approve a rate higher for interim, if it
2 -- if the statute says it's supposed to be here and
3 you approve a higher number, at the end, based on
4 the utility -- the Commission's longstanding
5 interim refund methodology, they can never be made
6 whole. This is something that you don't look at.
7 It doesn't capture that in the refund methodology.

8 CHAIRMAN FAY: Okay. That answers my
9 question. Thank you.

10 COMMISSIONER CLARK: Mr. Chairman, I would
11 like staff to respond to that, because that doesn't
12 seem -- that goes totally against the whole idea
13 with refunding with interest. You are going back
14 and you are recapturing the overpayment to the
15 consumer and paying them back with interest, is
16 that not a fair statement?

17 CHAIRMAN FAY: I think -- I think Mr. Fletcher
18 has presented his opinion on it. I agree with you.
19 If staff would like to opine further as to how
20 that's interpreted. I think the big question
21 obviously -- well, you don't want to speak for
22 Commissioner Clark and my colleagues.

23 The big question because of the nature of this
24 interim structure, the prescriptiveness of it, and
25 then the timeframe that's occurred, which has

1 already been waived once by the utility, some of
2 what Mr. Fletcher is touching on, the big question
3 as a commission is if the whole prescriptive nature
4 of that is interim and what it opines, then can
5 that be, quote/unquote, cured -- I mean, there
6 is -- I think any term could be used, but for the
7 final rate portion? And that's where, I think to
8 Commissioner Clark's point, since I have been here,
9 I have never seen something that couldn't be
10 calculated right that was potentially over or
11 under, or whatever it may be. But I think the
12 claim by OPC is that it can't be, and so do you
13 have anything to add, I guess either you, Mr.
14 Cicchetti, or legal before, as a commission, we
15 take up a vote on this?

16 MR. CICHETTI: That's a function of the
17 interim statute. It's a quick and dirty. And then
18 when the Commission gets to its final vote, it
19 would say, this is -- these are the rates that
20 should be used going forward.

21 In this instance, the interim test period is
22 the same as the permanent rates period test year.
23 And so if the interim rate was greater than the
24 final rate, that amount would be refunded with
25 interest, but the presumption would be, once the

1 Commission makes that permanent rate decision, that
2 could have been appropriate from the beginning of
3 the case forward. And just the fact that there
4 would not be any further adjustment, is just that.
5 We did a quick and dirty to get the company up to
6 the bottom of the range, then a hearing was held,
7 and the Commission comes up with a final rate.

8 So if the Commission comes up with a final
9 rate that's above the interim rate, there is no
10 harm to anyone, in my opinion. And I think that's
11 the idea of how the whole process is supposed to
12 work.

13 CHAIRMAN FAY: And just for clarity, they are
14 -- assuming all that's true, and at the end you are
15 able to -- let's say it's over and you are able to
16 adjust for it. Although, these numbers don't seem
17 like the total would be over, because only a
18 percentage of what's been asked to be recoverable
19 and the interim is being allowed on the
20 recommendation, but just presume that it is over at
21 that time, that -- that interim amount essentially
22 is, in some shape or form, absorbed, or negated at
23 that time, and so the question then becomes is the
24 customer harmed by that interim component where
25 that collection occurs?

1 And if that can't be fixed, including with
2 interest, then I think it's a real concern. If it
3 is able to be, quote/unquote, cured or fixed in
4 that -- in that total, that final rate decision,
5 then I think we kind of have gotten ourselves into
6 a position where I think sound minds can disagree,
7 this interim statute isn't great, and maybe it's
8 putting us in a posture where, you know, we are
9 relying on it to be cured, but maybe that's not the
10 best sort of process that we have in front of us.

11 So, I mean, you at least concede, I guess,
12 that those numbers could change, and there could be
13 a scenario where it could be an over -- an overage?

14 MR. CICCHETTI: Yes --

15 CHAIRMAN FAY: Okay.

16 MR. CICCHETTI: -- I agree with your
17 interpretation.

18 CHAIRMAN FAY: Yeah. Any follow-up?
19 Commissioner Clark.

20 COMMISSIONER CLARK: Yeah, just a final
21 observation.

22 This is a little bit unusual. I mean, I am
23 going just go out here on a limb and say I am a
24 little confused.

25 This is an interim -- we are proposed interim

1 rates here, and we've technically had a miniature
2 rate hearing today in looking at these numbers. I
3 don't know that this is the correct forum. I am --
4 you have given me so much information.

5 I don't discounts anything you guys have said
6 in terms of what is fact or true. I don't know
7 yet. But I don't think that this commission has --
8 and these guys are a lot smarter than me, they may
9 have figured it out already, but I don't think we
10 have time to digest this information and make a
11 determination. And I just want to know how we
12 remedy this kind of issue from happening again that
13 we are having a, quote, miniature hearing inside of
14 an interim rate discussion.

15 CHAIRMAN FAY: Yeah, I agree, Commissioner
16 Clark. We don't see the interim a lot. I mean,
17 when I was briefing, it's a rare situation, but I
18 think the mandate is what it is on that timeframe.

19 So, Ms. Crawford, I mean, I guess the only
20 thing going forward, to address Commissioner
21 Clark's concern, and I sort of jokingly mentioned
22 passing everything controversial to Commissioner La
23 Rosa, but just from a procedural standpoint, the
24 only option going forward, to get in the posture
25 maybe that some Commissioners would be fully

1 comfortable with, it would require the utility
2 essentially to waive further that timeframe, which
3 the Legislature put in there pretty prescriptively,
4 correct? Is that --

5 MS. CRAWFORD: Correct. And I -- again, I
6 don't think the interim statute affords that kind
7 of discretion for the Commission. The utility may
8 grant, but I don't believe it can be required to
9 waive --

10 CHAIRMAN FAY: Okay.

11 MS. CRAWFORD: -- the 60 days.

12 COMMISSIONER CLARK: Valid point.

13 CHAIRMAN FAY: Okay. And, Mr. Friedman,
14 anything to add on that note? I don't know if you
15 would discuss this with your client, or have
16 discussed it in the posture that we are in, because
17 you did waive that timeline once, but is that
18 something that would, you know, be a potential for
19 you and your client?

20 MR. FRIEDMAN: Yeah, Mr. Chairman, I am not
21 sure there is anything that can be gained by
22 extending it. I mean, Public Counsel has weighed
23 in on their position. My experience is that's
24 going to be their position if I sat down and talked
25 to them for the next month until this came back up,

1 my guess is they are going to stick with this, and
2 say, this is the way it is, take it or leave it.

3 And so I mean, I can go into details on where
4 I think they made a mistake when they came up with
5 what they think the revenue requirement is, the way
6 they took this intercompany debt, and you don't
7 want to hear all of that --

8 CHAIRMAN FAY: Correct.

9 MR. FRIEDMAN: -- and this isn't a perfect
10 process.

11 CHAIRMAN FAY: Right, but I do want to hear if
12 you believe that an extension would be appropriate
13 or not.

14 MR. FRIEDMAN: No. My client has not
15 authorized me to grant an extension.

16 CHAIRMAN FAY: Okay. Great.

17 Commissioners, any other questions for --
18 Commissioner Passidomo, you are recognized.

19 COMMISSIONER PASSIDOMO: Thank you, Mr.
20 Chairman.

21 It just sounds like we are starting to sort of
22 tee up a vote here, and I just want to, before we
23 do.

24 I am supportive of staff's recommendation
25 purely on the interim rate statute, 367.082, really

1 that's just what we are here today to talk about,
2 is interim rates. And so again, with Commissioner
3 Clark, so that's -- I would just, moving forward, I
4 support staff's recommendation on that basis.

5 CHAIRMAN FAY: Okay.

6 COMMISSIONER GRAHAM: Is that a motion?

7 CHAIRMAN FAY: Commissioner Graham said, is
8 that a motion?

9 COMMISSIONER PASSIDOMO: Yeah. Sure. That's
10 a motion.

11 CHAIRMAN FAY: Do we have a motion a second?

12 COMMISSIONER GRAHAM: Second.

13 CHAIRMAN FAY: A motion and a second.

14 Okay. All that approve say aye.

15 (Chorus of ayes.)

16 CHAIRMAN FAY: Okay. Show that passing
17 unanimously.

18 All right, Commissioners, that addresses Item
19 No. 7.

20 MR. REHWINKEL: Thank you, Mr. Chairman. I
21 just want to thank you for two years of stewardship
22 at the agency. I have enjoyed practicing before
23 you as Chairman.

24 CHAIRMAN FAY: Thank you, Mr. Rehwinkel. I
25 appreciate that.

1 All right. Commissioners, that -- Item 7 was
2 the last item on our agenda for today. That will
3 conclude our Agenda.

4 We will move into Special Agenda at 10:15,
5 which right now -- excuse me, 11:15. Right now, I
6 have 11:06, so 11:15.

7 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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DATED this 19th day of December, 2023.



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