

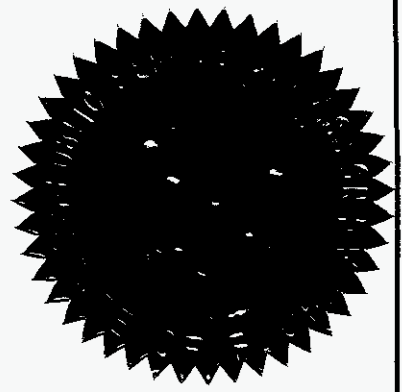
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080121-WS

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In the Matter of:

APPLICATION FOR INCREASE IN WATER AND
WASTEWATER RATES IN ALACHUA, BREVARD,
DESOTO, HIGHLANDS, LAKE, LEE, MARION,
ORANGE, PALM BEACH, PASCO, POLK, PUTNAM,
SEMINOLE, SUMTER, VOLUSIA, AND WASHINGTON
COUNTIES BY AQUA UTILITIES FLORIDA, INC.



VOLUME 1

Pages 1 through 128

PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, February 24, 2009

TIME: Commenced at 9:30 a.m.

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

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Good morning. I would like to call
3 this special agenda to order.

4 Commissioners, this is a special agenda. It's a
5 post-hearing decision and participation is limited to
6 Commissioners and staff. Before we go, just kind of a
7 preliminary statement. Mr. Willis, you're recognized.

8 **MR. WILLIS:** Thank you, Chairman. My name is
9 Marshall Willis, with the Division of Economic Regulation.

10 We are here today for staff's final recommendation on
11 the final revenue requirement for Aqua Utilities' water and
12 wastewater rate increase. I have prepared a sheet which has
13 been distributed to the Commissioners which basically goes
14 through on the first two pages and lists the issues that are
15 still at contention for the revenue requirement agenda.

16 If you turn to the very last page on that, you will
17 see there are two tables there. The first table lists the
18 stipulated issues that were actually approved at the hearing,
19 so those issues are already taken out of contention at the
20 agenda. And the bottom half are the issues to be taken up at
21 the March 17th rate agenda, so those will not be taken up today
22 at all.

23 I thought this would help facilitate the
24 Commissioners in going through the deliberations today, so you
25 can go right down this list as far as the issues that need to

1 be discussed. With that, we have a modification to three of
2 the issues that Mr. Fletcher is going to go over right now, so
3 I will turn that over to him.

4 **CHAIRMAN CARTER:** Mr. Fletcher, you're recognized.

5 **MR. FLETCHER:** Good morning, Commissioners.

6 Staff has modifications to Issue 58 and 59, which are
7 fallout issues for operating loss, and then the revenue
8 requirement; Issue 69, which relates to the interim refund; and
9 Issue 73, which relates to the regulatory asset. And also
10 there are fallout modifications to the API schedules as well as
11 Schedule 4A, 4B, and 4C for Palm Terrace Water and Wastewater
12 Systems. These modifications have been provided to all
13 Commissioners previously, and staff is prepared to answer any
14 questions the Commissioners may have.

15 **CHAIRMAN CARTER:** Commissioners, any questions before
16 we proceed?

17 **COMMISSIONER ARGENZIANO:** I have a question in
18 general.

19 **CHAIRMAN CARTER:** A question in general. You're
20 recognized.

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

22 I have several questions and comments, I guess, but I
23 will start with the questions. And let me get my papers in
24 order, if you would give me a minute here. Sorry.

25 On Issue 1, I'll start with Issue 1, and that is what

1 I have concern with is calling, I guess, or what is written is
2 it says the overall quality of service is marginal. And let me
3 see where it continues. Where it says quality of the product
4 is satisfactory except at the Chuluota and The Woods water
5 system where the product is marginal.

6 How is that water marginal? How do you consider it
7 marginal, and what is your definition of marginal? Because the
8 Chuluota plant, especially, is where most the problems seem to
9 be occurring in the under consent order at that particular
10 facility, and I don't know how that is marginal.

11 **MR. WALDEN:** Commissioner, I'm Tom Walden on the
12 Commission staff.

13 **COMMISSIONER ARGENZIANO:** Sorry, I was looking at
14 Marshall.

15 **MR. WALDEN:** That's okay.

16 When we are looking at a water system that has got
17 some issues with the water or the wastewater, obviously we have
18 several systems involved in this case that have consent orders,
19 we are looking for the goal of compliance. Just like the DEP,
20 they are looking for that goal, also. In the Chuluota system,
21 the consent order addresses the trihalomethane issue that that
22 system has, and the testimony in the case shows that the
23 utility has installed some equipment, and they are -- with the
24 submittals that have been made to DEP, the quarterly submittals
25 of testing, they are on the road to correcting that problem.

1 Now, there are some other problems, too. There was
2 extensive testimony about hydrogen sulfide in the water and
3 taste, odor, the corrosion of some of the plumbing, but what we
4 have focused on here for Chuluota is the consent order and the
5 steps that the utility is making to meet the standard for
6 trihalomethanes. And when we reviewed that -- specifically
7 that, the compliance with the consent order, the company still
8 needs one more quarter of testing, and along with the other
9 issues, that's how we came up with a marginal conclusion.

10 **COMMISSIONER ARGENZIANO:** But my understanding of the
11 definition of marginal is it has to meet some type of standard,
12 and if you are off that standard, or you can't meet that
13 standard with the trihalomethanes, I don't know how it can be
14 considered marginal. And with all due respect, I consider it
15 below marginal. It's not marginal because it doesn't meet the
16 standard. And I just have a real hard time calling Chuluota
17 marginal. And I understand, and I have said it at the
18 meetings, public hearings that in Florida we have a lot of
19 hydrogen sulfide, and I understand that. And that may not be
20 the company's fault, it may or may not be. In that area,
21 particularly, there hasn't been good potable water in that area
22 since probably the 1940s. So that is a peculiar problem in
23 itself.

24 But with the trihalomethanes not meeting the standard
25 that DEP sets, the minimum standard that DEP sets, I just don't

1 see it as marginal. I see it as unsatisfactory. And if it met
2 that standard -- and I do appreciate that they are moving and
3 trying to get that taken care of, but at the time it is still
4 under a consent order, it has not changed. It still did not
5 meet the standard that was set forward by DEP. So I object to
6 calling it marginal. I think it is below standards, and that
7 just is -- to me, it bothers me.

8 I understand staff's use -- I guess I don't
9 understand the use of the word is what I'm saying. And I
10 understand that they are trying very hard to change that, but
11 the biggest problems I have seen since I have been here at the
12 PSC come from that area. And quality of service definitely was
13 a real issue in Chuluota and The Woods. So, that's number one.

14 And I appreciate your definition, and I do understand
15 they have been trying. And as I said, I understand that
16 sometimes just because it is hydrogen sulfide doesn't mean that
17 the company is not doing the best they can. And, of course,
18 correcting that problem could be very costly.

19 I have several other issues, and I guess, I have no
20 other way of saying this, and I mean it with all due respect,
21 but I have a real problem with the test year. Many times I
22 have sat here and looked at what was before me, and it said, or
23 I read is the test year acceptable, and I don't see that
24 anywhere here, and it was decided someplace else. It wasn't
25 decided by me. And I didn't have the opportunity to decide on

1 the test year if I thought it was acceptable or not, and I
2 really with all due respect didn't delegate my authority to
3 staff to do that, either.

4 So I'm having a hard time. Because I have questions
5 about the test year. And now I'm boxed in a corner because
6 that was selected for me without having the questions answered.
7 And I had to just do a little homework on my own. And I
8 realize that some of it is not evidence, so now I can't use it,
9 but I am very suspect as to the reliability and the
10 representative nature of the test year, and with good concern.
11 So, with that said, I would like an explanation of why the
12 Commission did not get a chance to sign off on the test year.

13 **MR. WILLIS:** I will be happy to give that.

14 In the formal hearing mode, the staff conducts issue
15 identification meetings with all parties that are a party to a
16 case. The issues that come before the Commission normally come
17 up from issues that are raised by parties. And no party, the
18 Office of Public Counsel, the Attorney General's Office, no one
19 desired to raise the issue of the test year in this case as an
20 issue. Everyone seemed to be satisfied with the test year.
21 And that is why it is not one of the issues being heard by the
22 Commission is it is not one that the parties decided to bring
23 up. There are issues that staff will bring up, too, but we
24 were at that point satisfied with the test year, too.

25 **COMMISSIONER ARGENZIANO:** But I think it would have

1 been -- and as I said before, I have seen it before where there
2 have been no -- no one has argued about a test year, and it was
3 before me anyway to agree to sign off on it before this
4 Commission. And in this particular case, it wasn't. And I
5 understand that maybe no one had signed off -- I mean, everyone
6 had no problems with it, but I would have liked the opportunity
7 to be able to make that decision.

8 **MR. WILLIS:** I understand.

9 **COMMISSIONER ARGENZIANO:** Because now I'm stuck, and
10 I do have problems with the test year. And also, on the -- I
11 guess, let me ask this this way. The company first came in and
12 asked to use the leverage graph -- in using the leverage graph.
13 First, let me ask, isn't the leverage graph basically used for
14 smaller -- small companies?

15 **MR. WILLIS:** No, Commissioner, the statute basically
16 allows the Commission to develop the leverage graph, and the
17 leverage graph has been used consistently since the legislature
18 allowed us to implement it for all utilities, water and
19 wastewater utilities, no matter what the size.

20 **COMMISSIONER ARGENZIANO:** Right. And the statutes
21 indicates that we may use it.

22 **MR. WILLIS:** That's correct.

23 **COMMISSIONER ARGENZIANO:** We don't have to.

24 **MR. WILLIS:** You may use it, you don't have to.

25 **COMMISSIONER ARGENZIANO:** I was under the

1 understanding that that is really designed for smaller, much
2 smaller companies, and Aqua is not a small company by any
3 means.

4 **MR. WILLIS:** You're correct as far as the total
5 company is not small, but the way staff used Aqua is the
6 company, Aqua Florida, is a very small percentage of the total
7 Aqua Utility Systems all over the United States. So if you
8 look at how much they actually have invested in Florida, even
9 though it is in the millions, that you might consider them a
10 small company, but --

11 **COMMISSIONER ARGENZIANO:** I don't consider them a
12 small company at all, even with their 80 -- is it 82 or 88?

13 **MR. WILLIS:** 82 systems, I believe.

14 But I will tell you we have a record complete in this
15 case to do either one. So, the Commission can go with the
16 leverage formula or they can go with the evidence to do
17 whatever they please to do.

18 **COMMISSIONER ARGENZIANO:** The company -- when the
19 company came in originally to ask, didn't they -- wasn't their
20 number lower than what staff is recommending now?

21 **MR. WILLIS:** That's correct. When they filed the
22 rate case filed using the leverage formula that was then in
23 existence. But, they also filed asking for the updated
24 leverage graph when that came into effect. And that has been
25 the Commission's practice in the past is to update them for any

1 leverage formula that has come out as of the hearing date.

2 **COMMISSIONER ARGENZIANO:** So you are giving the
3 company -- actually the company is getting more than what they
4 asked for in the staff's recommendation.

5 **MR. WILLIS:** That they originally asked for.

6 **COMMISSIONER ARGENZIANO:** What they originally asked
7 for and because you updated the leverage graph.

8 **MR. WILLIS:** Yes.

9 **COMMISSIONER ARGENZIANO:** Okay. Are those numbers
10 reflecting today's risk free treasury rates?

11 **MR. WILLIS:** I'm going to have to defer to Mr. Maurey
12 on that.

13 **COMMISSIONER ARGENZIANO:** Okay.

14 **MR. MAUREY:** No, the leverage formula is based on the
15 evidence in the record when it was determined.

16 **COMMISSIONER ARGENZIANO:** So not only are we
17 recommending, or is staff recommending giving them more than
18 what they originally asked for, but now we're giving them a
19 higher -- allowing or not updating the information and not
20 using the most current risk free treasury rates, which are
21 lower.

22 **MR. MAUREY:** Well, not necessarily. While the
23 treasury rate has fallen since the time the leverage formula
24 was set, other variables that go into the leverage formula have
25 increased. So, if you looked at the sum of the parts, the

1 indicated return could be higher than what is indicated by the
2 current leverage formula.

3 **COMMISSIONER ARGENZIANO:** Well, then I would like an
4 explanation of the higher variables and how we are doing that.
5 Because I don't see that, and as I say, now I can't even go
6 back into discussion on what I found on the test year because
7 it's not part of the evidence, so I really have to scrutinize
8 everything now. And I would like to understand how we are
9 using a higher risk free rate, or how that doesn't effect -- as
10 what you are saying, there are other variables. I would like
11 to know what they are.

12 **MR. MAUREY:** Certainly. There is a market return on
13 equity that goes into the leverage formula which the risk-free
14 rate is subtracted from to determine the market premium. If
15 the return on equity for the market in general has gone up,
16 even with the risk premium coming down, that incremental spread
17 could be wider. Also, a beta coefficient is used in the CAPM
18 analysis. The beta coefficient could be higher now than it was
19 when the leverage formula was crafted.

20 We do not have the leverage formula as of today. We
21 update that once a year, and we will be bringing a
22 recommendation to the Commission in May on the new leverage
23 formula.

24 **COMMISSIONER ARGENZIANO:** Excuse me one second. So
25 we are back into beta language. So we're talking about a beta

1 coefficient that is -- how was that determined?

2 **MR. MAUREY:** In this case, it's a five-year average
3 of the variability in the stock price of a particular group of
4 companies related to the market as a whole. In our case, we
5 get Value Line from -- the beta from Value Line.

6 **COMMISSIONER ARGENZIANO:** So, basically, beta is a
7 guess.

8 **MR. MAUREY:** No, it's a statistical calculation.

9 **COMMISSIONER ARGENZIANO:** I love the way y'all talk
10 here, because it goes around in circles, it really does. And
11 I'm trying to be as respectful as I can, and I seem to get --
12 how do you call -- what do you call it? Not double-talk, but
13 talk that is not clear. And anybody out there looking at this
14 proceeding doesn't understand. And I'm trying to make it as
15 clear as possible, even so I can understand it. And trust me,
16 we are going to stay here as long as we have to until I
17 understand it.

18 **MR. MAUREY:** Well, this morning we brought your
19 office a copy of the leverage formula approved for 2008. And
20 maybe if I took you to that and we could walk through it, I
21 could explain it perhaps in more walking-around language.

22 **COMMISSIONER ARGENZIANO:** I just find -- when we use
23 beta, and as I mentioned before here, that it really is a
24 number that is subjective. And I understand that you've done
25 this this way for many years, but understand that it comes down

1 to the few things that I started off with are I'm quite
2 irritated about the test year, I really am. And it bothers me
3 because I really now cannot use what's not in evidence here
4 today, because I didn't have the opportunity to, I guess, sign
5 off on the test year. Staff did that for me. That irritates
6 me.

7 And I'm not saying that staff did it intentionally,
8 but I didn't delegate that authority to staff to do that. And
9 I'm sitting here now with a lot of problems with the way this
10 was done, and I'm sitting here even wondering, you know, if
11 Chuluota should be in this, and if it is taken out, if we were
12 to move it out now, what would that do to this whole formula?
13 What would happen when we come back later? You know, how does
14 this work if we did? And there are four of you who have to
15 vote on it, too, if we went that way, but now I'm boxed into a
16 corner, Mr. Chair, and my colleagues, and I'm just not real
17 comfortable with any of the way this went down.

18 And I just -- I don't know. I think what I would
19 like to ask is if I could take a five-minute break. I need to
20 digest what I just heard from staff, and see if it can help me
21 in any way.

22 **CHAIRMAN CARTER:** Okay, Commissioners. Let's do
23 this. We will take a five-minute recess. We will be back on
24 five after.

25 (Recess.)

1 **CHAIRMAN CARTER:** We are back on the record. And
2 when we last left we were in our questioning phase.

3 Commissioner Argenziano, you're recognized.

4 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chairman.

5 Okay. And I understand that your test year is a
6 snapshot you are trying to get. And in using the test year for
7 2007, I guess you went outside that test year to the 2008 for
8 the leverage graph. So what else -- or what other elements
9 have changed? What else did you adjust? Did you change the
10 fuel, or what other numbers were changed? If you are going
11 outside of the 2007 --

12 **MR. MAUREY:** Let me address the leverage formula
13 first, and then I will turn to Mr. Fletcher for some of these
14 other -- we did not go out of the test year for the leverage
15 formula.

16 **COMMISSIONER ARGENZIANO:** How is that if the test
17 year is 2007 and you went to the 2008 leverage graph?

18 **MR. MAUREY:** Well, sometimes the Commission will
19 recognize a projected test year and that is in the future. But
20 the test year, once it's determined, is the period over which
21 the investments are measured. The leverage formula that is
22 used is -- the convention is to the use the leverage formula in
23 effect at the time the Commission votes.

24 **COMMISSIONER ARGENZIANO:** Now, that sounds like
25 double-talk to me, and I'm not saying it is, but it sounds like

1 it to me, so let's take a step back. You're using 2007 as a
2 test year, is that correct?

3 **MR. WILLIS:** Yes, Commissioner, that's correct.

4 **COMMISSIONER ARGENZIANO:** Okay. And now you're going
5 to 2008 and changing something because something has changed in
6 2008. That's not outside of the test year?

7 **MR. MAUREY:** With respect to the leverage formula,
8 no. It is the leverage formula. This is the point in time at
9 which we are setting the return on equity and this is the
10 appropriate leverage formula to use. The return on equity is a
11 forward-looking cost rate. All of the other cost rates are
12 specifically based on the test year, but they're based on
13 embedded costs and they are tied to the 2007 test year. Return
14 on equity is a marginal cost, and it is based on the leverage
15 formula at this point in time, and this is consistent with
16 Commission practice.

17 **COMMISSIONER ARGENZIANO:** I respectfully disagree. I
18 think you have gone outside the test year.

19 Let me ask you this: If it were May of 2009, and we
20 had an established 2009 leverage graph, would you use the
21 current treasury rate?

22 **MR. MAUREY:** We would use the leverage formula that
23 is in effect at that time. The leverage formula is updated
24 once a year, and time passes, and we still use that same
25 leverage formula whether it is one month after it has been

1 approved or eleven months after it has been approved. We would
2 employ the same leverage formula to determine the return on
3 equity.

4 When I mentioned earlier that we will be filing a
5 recommendation in May for a new leverage formula, that will be
6 based on financial information that is current at that time,
7 and it will be applied for all cases decided for the following
8 year.

9 **COMMISSIONER ARGENZIANO:** Would you use the current
10 treasury rate?

11 **MR. MAUREY:** Yes.

12 **COMMISSIONER ARGENZIANO:** How does that match up with
13 the 2007 numbers?

14 **MR. MAUREY:** I'm sorry, I don't understand your
15 question.

16 **COMMISSIONER ARGENZIANO:** Okay, let's do this. I
17 just don't agree. I don't agree. I think you went outside the
18 test year, and let me go on to a different question.

19 About maintenance, have you adjusted -- or have you
20 adjusted or looked at maintenance in prior years, prior than
21 the test year, prior to the test year?

22 **MR. FLETCHER:** Commissioner, we have had our auditors
23 look at the test year expenses, and we do look for
24 nonrecurring, and in some cases -- in this case like for bad
25 debt expense, we employed a three-year average for that to

1 determine the appropriate level for test year bad debt
2 expenses. For certain ones we will look at that in the
3 auditors sampling. They will look at prior periods in order to
4 determine whether the test year expenses are appropriate or if
5 there are any abnormalities in the amount.

6 **COMMISSIONER ARGENZIANO:** Let me ask the question
7 again. Have you looked at prior maintenance prior to the test
8 year?

9 **MR. FLETCHER:** Specifically for certain --

10 **COMMISSIONER ARGENZIANO:** Maintenance.

11 **MR. FLETCHER:** -- maintenance projects?

12 **COMMISSIONER ARGENZIANO:** Not operations,
13 maintenance.

14 **MR. FLETCHER:** Maintenance. It would have just been
15 an overall review by primary account, just looking at it -- not
16 maintenance specifically --

17 **COMMISSIONER ARGENZIANO:** So the answer is no.

18 Let me give a scenario and tell you why I'm asking
19 the question. It could be, and I'm not saying the company has,
20 but it could be that a company coming in for a rate case would
21 want to start spending money just before, or puff it up. Like
22 you are going to sell a car, you do extra maintenance right
23 before you sell it, and that's what I'm trying to look at. And
24 in using the word prudence that we toss around a lot here and
25 is a tool for this Commission, I think it's important to find

1 out if a company, maybe not this company, and I'm not saying
2 that this has occurred, but I wouldn't know because I wasn't
3 allowed to select the test year and ask the questions. But a
4 company could not be prudent, or be imprudent in the prior
5 years, and then suddenly start spending money so that it gives
6 them a better case, couldn't they?

7 **MR. FLETCHER:** That's possible for a utility to do
8 that. If our audit process, maintenance expense could be
9 recorded in numerous accounts. It could be in materials and
10 supplies, miscellaneous expense, or contractual services other.

11 **COMMISSIONER ARGENZIANO:** In the real world, we're
12 talking about maintenance like you would in a car. Are you
13 taking care of your plant type maintenance, and that is what
14 I'm looking for. And it is common sense to ask that, and it is
15 common sense to want to if the company had properly taken care
16 of their facilities. Because to me, if they haven't, then it
17 could cost the ratepayer a lot more.

18 Let's go back to the oiling of the car. If you don't
19 change your oil in your car frequently enough, guess what, the
20 engine won't go as far, and it won't last, or it will blow up.
21 One of those things if there is no oil.

22 So if the company decided to not oil their car for a
23 number of years and all of a sudden has the life been
24 shortened -- and I understand that engineers look at things,
25 but in my, I guess, little bit of research that I have done, I

1 just find that it is very hard to extrapolate, or that the
2 Commission staff doesn't really extrapolate the maintenance,
3 and I'm just wondering why.

4 So I guess you've answered no, you did not look in
5 prior years to maintenance. And I don't understand how you get
6 a test year without looking if it is representative of the
7 prior years, or if it has just been fluffed up for that time.
8 Again, I'm not saying that's what the company did, but that
9 would be a logical question that you would ask.

10 So I guess instead of asking a whole line of
11 questions, those are the ones that stand out to me the most.
12 And I am guess that -- I think this case has a lot of
13 peculiarities to the extent that it gives me little confidence
14 in the proceeding. And I feel like that, you know, things were
15 agreed to by Staff, and I'm not saying you guys don't do a
16 great job most of the time, and you have got to understand
17 where I'm coming from, that were agreed to by Staff on behalf,
18 I guess, of the Commission without the Commission's
19 deliberation, which is disturbing to me.

20 And the recommendation by Staff of an ROE which
21 ignores -- which is significantly higher than the company asked
22 for to begin with is concerning to me, especially at a time
23 when there is such a global economic meltdown. And then the
24 treasury rate issue is of concern to me, that it is not
25 current, and we are using a treasury rate that is old in making

1 the determination. And if that is the way it is done, it needs
2 to change, or we need to figure out how you get it to the real
3 world, because the test year seems to have changed from 2007 to
4 2008. And then if we go to 2009, we would use the current
5 rate. And, of course, the issue that I first brought up, the
6 word marginal. I don't think you can use marginal in
7 describing Chuluota by any means.

8 So, Mr. Chairman, with that, I have a ton of other
9 questions, and it's just going to go around and around, and I
10 think I have little confidence in the proceeding. The only
11 thing I could suggest at this time, and I don't want to cut off
12 anybody's questions, and I don't know that anybody is going to
13 agree with me or not, but that is not why I do things. I'm
14 hoping that everybody can come to consensus, but I just have a
15 real problem with going forward the way things have happened.
16 And at the proper time, I would like to make a motion.

17 **CHAIRMAN CARTER:** Let's do this, let's continue. And
18 other Commissioners may have questions and concerns, and we'll
19 go from there and see how things work.

20 Let me do this: First of all, kind of get us in our
21 posture. One of the questions asked was in relation to the
22 test year. Mr. Willis, could you just touch on it briefly in
23 terms of the process of coming up with the test year?

24 **MR. WILLIS:** Yes, Chairman.

25 Chairman, the test year process is a little different

1 for water and wastewater than it is for electric and gas. If
2 you remember in the electric and gas cases, the test year
3 concept is more of an acknowledgment, and the company gets to
4 file what it wants to file. In that way the test year, the
5 proper test year is always an issue in an electric and gas case
6 because there is no say-so in what they file.

7 Back in the '70s and '80s there were tremendous
8 problems in the water and wastewater arena where companies were
9 filing with test years that could not in any way be determined
10 representative. Because of that, there was a rule drafted for
11 water and wastewater that basically looked at an approval
12 process up front. Not just an acknowledgment, but it allowed
13 for information to be filed up front to show whether or not the
14 test year that the company wanted to file was more or less
15 representative, or could be representative of a future time
16 when the rates would be in effect, which is why we do a test
17 year concept. It is basically to put forth the year which we
18 can make representative of when rates are going to be in
19 effect.

20 In water and wastewater, the company will file that
21 information, we will make a recommendation to the Chairman at
22 that time on whether or not the test year should be denied and
23 the company told to refile some other test year, or the test
24 year should be approved for filing at that point.

25 In this case that was done. The approval process

1 went through the normal course. The letter was prepared and it
2 was sent out by the Chairman as far as approving the test year
3 itself to be filed. That doesn't make the test year automatic.
4 It just means that there is a higher level of importance put on
5 the test year itself in that normally, and I don't -- I can't
6 recall a single case in which the test year itself has been
7 looked at as being not representative since the test year
8 concept rule came into effect. And that kind of eliminated the
9 problems we were seeing where we were having case after case
10 thrown out because there were stale test years being filed or
11 --

12 **COMMISSIONER ARGENZIANO:** Excuse me, Mr. Chairman.

13 Can you repeat that? Did you say you cannot remember
14 when there was a test year that was not representative?

15 **MR. WILLIS:** No. What I say is there hasn't been a
16 case -- I can't remember a case that has been dismissed because
17 of a bad test year since the test year rule came into effect.

18 Now, we have had cases that have been dismissed
19 because of bad information, because the company's books and
20 records were not complete and, therefore, we could not move
21 forward.

22 **COMMISSIONER ARGENZIANO:** But, see, there is a
23 difference there. There is a difference there.

24 **MR. WILLIS:** Yes, there is.

25 **COMMISSIONER ARGENZIANO:** And I understand that

1 difference. And If something is not looked at to be brought
2 out, and maybe others may find it and may not, but when you're
3 looking at the test year -- I don't now how to articulate it.
4 If you don't look -- I mean, you could look forward, obviously
5 that is part of it, but you need to look backwards, also, to
6 make sure it is representative. And I don't know if it has
7 never been that way before, but it seems to me that it is
8 designed to allow a misrepresentation if you don't look
9 backwards.

10 So, I mean, I don't know if that makes me feel more
11 comfortable that no one has ever found it or no one has ever
12 dismissed a case, but I would just think it is logical and
13 paramount in deciding if prudence occurred.

14 **MR. WILLIS:** Uh-huh.

15 **COMMISSIONER ARGENZIANO:** And by not looking at
16 maintenance, I don't know how you could say that you feel
17 confident that prudence did occur when you don't know what
18 maintenance was, when you don't know if the numbers were
19 fluffed up. So, you know -- and I'm not saying, again, that
20 the company is doing that, but a logical question for me to ask
21 is looking at that, and when I find out it's not looked at, I
22 don't understand how you come to the conclusion that it is
23 representative.

24 **MR. WILLIS:** One of the requirements the utility has
25 to file in our minimum filing requirements is a benchmarking

1 test where they have to basically benchmark the last five years
2 so we can look at that benchmark to see if any of the years are
3 out of line as far as the categories go. That's part of the
4 test they have to file.

5 **COMMISSIONER ARGENZIANO:** Now, you're saying there is
6 a benchmark.

7 **MR. WILLIS:** There is a benchmark, yes.

8 **COMMISSIONER ARGENZIANO:** And a test. Okay. Where
9 does that get to the maintenance, or how does -- tell me about
10 the benchmark.

11 **MR. WILLIS:** Well, it looks at the different areas of
12 expenses of the company, and it basically will tell us up front
13 whether or not some of those things are higher than the normal
14 CPI, whether they are higher than a benchmark percentage. And
15 if they are, those are going to cause some problems that we are
16 going to have to look into.

17 **COMMISSIONER ARGENZIANO:** Give me an example,
18 Marshall, if you would. If you're saying that they come up
19 with a -- are you looking at something from the company that
20 says --

21 **MR. WILLIS:** We are looking at the utility company's
22 accounting system. We are looking at the accounts of the
23 utility, the NARUC system of accounts for expenses.

24 **COMMISSIONER ARGENZIANO:** But you're not looking at
25 the maintenance expenses.

1 **MR. WILLIS:** Well, we do not have a specific account
2 that says all maintenance goes into this one account. We have
3 to look at the actual labor, salaries, labor, electricity,
4 right down the line, chemicals, contractual services, those are
5 the accounts that we are looking at to see if those accounts
6 show any kind of abnormal situation that needs to be looked
7 into for those prior years prior to the test year.

8 **COMMISSIONER ARGENZIANO:** But, see, I did have to do
9 some research that I can't use today, but I had to do that.
10 And it is possible to look for maintenance and then compare
11 numbers and see if they are in line. And I'm not hearing that
12 that's what occurred. So I'm not sure what you mean by a
13 benchmark and what you're looking at, because you didn't look
14 at maintenance. And because the company says that, you know,
15 we spent such and such on chemicals, that's not what I'm
16 talking about. I'm talking about upkeep of the plant, and if
17 it was prudent -- if they were prudent in their decisions to,
18 you know, oil the car.

19 **MR. WILLIS:** What the benchmark is going to look
20 at is -- let's just take chemicals, for example. This company
21 has been owned for four years, so it would take that very
22 beginning year, since it's within the five, it would look at
23 that one year, compare it to the next year, the next year, and
24 the next year to see how that chemical account has increased
25 over those years up to the test year.

1 **COMMISSIONER ARGENZIANO:** Okay. Then you're telling
2 me that you looked at a benchmark for maintenance?

3 **MR. WILLIS:** Not maintenance specifically.

4 **COMMISSIONER ARGENZIANO:** Okay. I don't want to hear
5 about the chemicals or anything else, with all due respect,
6 it's the maintenance. That's how you tell whether a company
7 has been prudent in their upkeep of the plant, and that's what
8 I was getting heartburn over. And whether they have or they
9 haven't, and I hate to use the company as an example right now,
10 but that is a component to me that is logical in a case like
11 this, and it is logical to look at to determine whether there
12 was prudence, whether you have oiled the car all along or not.

13 Now, you are looking at chemicals to see if chemicals
14 are out of line -- did they suddenly change the cost -- I can
15 understand that, but I would think that maintenance would be
16 just as important, if not more important, and you didn't do
17 that. So I guess we can get off of that, and it has just not
18 been looked at, and that is the point I'm making.

19 **CHAIRMAN CARTER:** Thank you.

20 Also, in the context of where we are, I think that
21 the questions about Chuluota and The Woods in terms of being
22 marginal, if we were to decide -- we could actually -- this is
23 my terminology, and it is really a question, look at Chuluota
24 and The Woods separate and apart from the other systems that
25 are part of this case.

1 **MR. WILLIS:** Absolutely. There is no rhyme or
2 reason on -- just because the company filed 82 systems, you
3 could look at these as 82 separate rate cases, and you can come
4 up with 82 separate revenue requirements and 82 separate rates.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Mr. Chair, that is
7 something I would like to see. I would like to see Chuluota
8 out of this. But how does that -- when you have these numbers
9 and this formula, how is that going to work out down the line
10 when you are actually coming in? Doesn't everything have to be
11 redone if the rest stay consolidated and you take out Chuluota
12 or Woods --

13 **MR. WILLIS:** No, Commissioner, it does not.

14 **COMMISSIONER ARGENZIANO:** Well, then how does that
15 effect the numbers?

16 **MR. WILLIS:** Well, if you look at the schedules we
17 had back here --

18 **COMMISSIONER ARGENZIANO:** Uh-huh, I have.

19 **MR. WILLIS:** -- we have taken Chuluota and we have
20 developed a complete revenue requirement for the Chuluota
21 systems independently of the others.

22 **COMMISSIONER ARGENZIANO:** So then you're telling me
23 if we were to remove Chuluota, and possibly Woods, or whatever,
24 Chuluota from this, from the rest of this now, the numbers that
25 you came up with on your leverage graph and your revenue

1 numbers, wouldn't you have to go and rework all of those
2 because you are now excluding Chuluota which has most of the
3 people, a lot of people in that system? How does that effect
4 the rest of the cases?

5 **MR. WILLIS:** I understand what your question is. The
6 leverage formula itself has been done for all of Aqua Florida.
7 So the actual formula itself would not change for any of the
8 systems, even if you did those independently.

9 Each system would receive a portion of the
10 debt/equity ratio as well as what the leverage graph would
11 produce on that. It would be basically -- each system would
12 get its portion of Chuluota's necessary debt and equity and it
13 would be given out at the same ratio to each system. So the
14 debt and equity ratio wouldn't change by system because they
15 are all part of Aqua Florida itself.

16 But as far as separating out Chuluota, it could be
17 done by itself. That has already been done as far as this
18 recommendation goes, and it is something we have had to do for
19 all 82 systems in here. All 82 systems have a separate revenue
20 requirement.

21 **CHAIRMAN CARTER:** I think we all had a lot of
22 questions on the Chuluota. Let's kind of go to that right now
23 and kind of flesh that out and just kind of talk about that,
24 because I think all of us had some questions particularly as it
25 related to Chuluota and that particular system. Not only did

1 we have a lot of questions about that, you know, we extended
2 and we had two hearings over there because of the nature of
3 what was happening there, water quality issues and things of
4 that nature, and we appreciate the opportunity to visit with
5 Representative Adams on that.

6 So let's kind of go there and look at that, because
7 that was one of the questions, Commissioners, that I had, too,
8 in terms of how do we look at Chuluota because of the problems
9 and concerns we had for that. So at this time I'm going to ask
10 staff to go directly to that so we can kind of look at that.

11 **COMMISSIONER ARGENZIANO:** Can I ask one question?

12 **CHAIRMAN CARTER:** Commissioner Argenziano.

13 **COMMISSIONER ARGENZIANO:** I guess what I was trying
14 to get at was if we separate Chuluota, would it cause an undue
15 burden on the rest of the customers in the other areas, in the
16 other plants, systems?

17 **MR. WILLIS:** Oh, I see. What you are talking about
18 is if ultimately we look at some kind of consolidation portion
19 of the rates?

20 **COMMISSIONER ARGENZIANO:** Right.

21 **MR. WILLIS:** I would have to talk to my rate people
22 to find out whether or not Chuluota is actually one who
23 receives subsidies or not. At one point they were.

24 **CHAIRMAN CARTER:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

1 I guess the direction is turning towards Chuluota and
2 also The Woods. I think I have a quick question on that, and
3 then at the appropriate time I would like to go back and try to
4 gain a better appreciation of some of the staff comments that
5 were made with respect to the leverage formula.

6 But with respect to Chuluota, and also The Woods,
7 staff has noted that the water quality or the customer service
8 is marginal in those areas, or actually the water quality is
9 marginal in those areas. It has been a big source of
10 contention. There has been some positive steps that have been
11 taken, but, again, there is no end result in terms of a
12 purchase or interconnection to improve water quality in those
13 subdivisions.

14 But with respect to the question that arose, and I
15 think Commissioner Argenziano raised it and Chairman Carter
16 seconded it, but basically the nature of bifurcating Chuluota
17 out of the rest of the separate service areas, I think that
18 that is something that Legal needs to be prepared to render a
19 direction to the Commission on to the extent of whether that is
20 possible.

21 And also, too, to staff, I think Commissioner
22 Argenziano just raised this comment, but some of the proposed
23 wastewater rates on a system consolidated basis would be over
24 \$300 a month just for wastewater. And if Chuluota were taken
25 out and considered separately, again, I think it's very

1 important to understand the spillover effect in terms of the
2 rate impacts that would happen to the other system areas.

3 Again, I think that the primary concern here, and it
4 is going to be a concern on a forward-going basis as far as I
5 can see it, is affordability of rates for consumers. And I
6 know the Commission is tasked with ensuring the affordability
7 of rates. And some of the numbers that I am seeing here,
8 again, I feel like our hands as a Commission are tied, because,
9 again, we are mandated by statute and Supreme Court precedent
10 in terms of what we have to do in approving rates and fair
11 return on funds that are prudently invested for the public
12 good.

13 But some of these numbers get very, very close to
14 shocking the conscience. I mean, they are double in most cases
15 the people's power bills. And so, again, affordability, I
16 think, is a key concern. And I think that from a policy
17 perspective, the Commission is ultimately going to have to grab
18 the bull by the horns on that one and take a hard look at how
19 we are going to constrain costs and make a basic necessity
20 affordable for Florida consumers.

21 Thank you.

22 **CHAIRMAN CARTER:** Commissioner Argenziano.

23 **COMMISSIONER ARGENZIANO:** And I guess I'm only
24 listening with one ear, so I apologize. As far as the rates, I
25 mean, there are things that we are statutorily, of course,

1 mandated to do, and to be fair to the company as well as the
2 consumer, but have you looked at some of the increases? And
3 we're talking about some very small 20 people, you know, we're
4 talking increases of, let me see here, 494 percent. That's
5 just for the wastewater. And then for water, 209 percent. I
6 mean, these are unbelievable amounts of increases.

7 And I wonder, I can't help but wonder at some point,
8 and that's -- I think there is even higher than that, but I
9 can't help but wonder at some point if the company came in and
10 bought these facilities knowing that a lot of these were in
11 need of a lot of work, what the ratio was, or if we have any
12 understanding of what the ratio was at the time that they
13 purchased these facilities. And I know there was no ROE, but
14 they were making whatever their -- I am looking for the term
15 again, whatever their profit was at the time, what the ratio
16 was and maybe go back to that ratio.

17 If it was acceptable to buy them at that time under
18 that ratio from 2004, I guess, what that would do to the
19 numbers and the increases today. And I don't know if I'm
20 articulating that well enough.

21 **CHAIRMAN CARTER:** I understood perfectly what you
22 said.

23 **COMMISSIONER ARGENZIANO:** But I am very, very
24 concerned with the amount, the type of increases we are talking
25 about. And as you go -- and I love the statutes most of the

1 time, there is a lot of bad stuff in there, too, but it does --
2 under 367.081 it does say the Commission shall either upon
3 request or upon its own motion fix rates which are just,
4 reasonable, compensatory, and not unfairly discriminatory.
5 That works both ways. It works for the company and for the
6 consumer. And so with that said, and I think that was what
7 Commissioner Skop was talking about, the amounts of increases,
8 they are just incredible.

9 I mean, as I said, 494 percent plus 209 percent.
10 Some of them are -- you know, I just think that they are just
11 too high. It's something -- we need to be looking at something
12 where you can compensate the company and still not lose your
13 customers.

14 This is life-sustaining water, you know, and it's
15 just -- I don't know. Here is another one here that is just --
16 it is just -- Sebring Lakes, 547 percent increase. I mean, I
17 don't know how you not look at every detail, including the
18 prudence of years before, in determining whether the numbers
19 are so right. Because this is an impact upon people's lives,
20 and for something that is a necessity, you know. And at other
21 times -- I mean, I have been asked by legislators, you know,
22 when is this going to end, and have told them, well, you also
23 need to think about some policy changes because companies need
24 to make facility changes, they need to be reimbursed, but at
25 what point does it -- you know, do we allow delapidated

1 facilities to be bought instead of rebuilt or allow people to
2 sink a well.

3 **CHAIRMAN CARTER:** That is really the crux of the
4 matter, Commissioner, in the context of where we find ourselves
5 today, is that we had these ailing systems out there, for
6 whatever reason, because of obsolescence or whatever the case
7 may be, and the company came in and bought these systems. And
8 as the -- and then once they bought them, of course, the DEP
9 and the water management districts have changed in terms of the
10 water quality and service, and then people demand and they
11 deserve better quality water have come into play. So now
12 everything has gone up.

13 So the question is how do we balance that in the
14 context of within our statutory authority, how do we balance
15 that to where we don't give the ratepayers sticker shock, but
16 by the same token allow the companies to be able to invest the
17 necessary capital to improve the infrastructure for that. And
18 one thing in particular, and, I mean, before I lose my train of
19 thought, is that the wastewater costs, I'm still shaking my
20 head on that, but the other thing in terms of water quality
21 issues like Chuluota and The Woods is -- you know, sometimes I
22 don't have the right words to say, but, I tell you, it is a
23 perspective that puts us in -- and I think the question that
24 you asked was such that these companies were at a Point A when
25 they were purchased, and once they were purchased, the company

1 wanted to bring them from Point A to Point -- let's say Point
2 C. And in order to get to Point C, they said it cost X plus,
3 let's say X plus, because that's really what it is, X plus. Is
4 there a way for us -- in our regulatory authority, is there a
5 way to -- instead of going to X plus, is there a way to either
6 lessen the impact over time, or reduce the amount in toto, or
7 whatever the case may be. I think those are some of the kind
8 of concerns that we have here, and we are probably going to
9 have to discuss them and come to some kind of agreement on.

10 **COMMISSIONER ARGENZIANO:** It just -- and I guess from
11 way back when I was in the House of Representatives there were
12 wastewaters -- SSU, and then Florida Water, and I fought -- I
13 fought certain legislation that I thought was unfair. And
14 whether I thought it was or not, it passed.

15 And it seems to me that, you know, if we are not
16 really scrutinizing everything to the point where you feel
17 confident, and you are following the statutes, whether you like
18 them or not, you're following the statutes, but if we don't use
19 the tools that we have, and I look at prudence as a real tool,
20 maybe one of the few that we really have, because the statutes
21 are going to mandate, and then you look and you just go by what
22 the statute tells you. But if you have a tool that says
23 prudence is important, then we best be looking at all the
24 particulars.

25 And it seems the system is designed from the get-go

1 that you can bypass some of those particulars. But we still
2 have that tool and we shouldn't bypass that. I mean, the
3 statute does also say that the Commission shall consider the
4 value and the quality of service and the cost of providing the
5 service. Well, that is a tool, also. Is there a value in
6 getting crappy water? I don't think so. Having to pay for it
7 and not being able to drink it? I don't consider that
8 valuable. Quality of service? Well, not all the systems have
9 that, but I think that's something we look at. And the cost of
10 providing the service. At what point does it get beyond, you
11 know, the cost is unbearable or just not to be supported.

12 And I guess what I was asking for before, and I don't
13 know, maybe, Marshall, you can answer this, is there some way
14 of determining what that ratio was when the company bought
15 those systems back then of, you know, the money that they had
16 to spend and the money that they were making at the time. Does
17 that make sense to you?

18 **MR. WILLIS:** Not quite. I'm sorry.

19 **CHAIRMAN CARTER:** Let me see if I can help you out.
20 I think what she's saying is that before these companies were
21 purchased by Aqua, they were operating.

22 **MR. WILLIS:** Yes.

23 **CHAIRMAN CARTER:** And they were operating based upon
24 their financial perspective at that point in time. And I guess
25 she is asking can you determine the basis of the operation at

1 that point in time. I mean, were they losing money; if so, how
2 much were they losing? Were they making money; if so, how much
3 were they making?

4 **MR. WILLIS:** I think I understand where you're coming
5 from now.

6 **COMMISSIONER ARGENZIANO:** If it was acceptable for
7 the company at that point to have that kind of spread, why
8 isn't it now, and what would it look like now?

9 **MR. WILLIS:** I think I need to back up here and go
10 back to when these things were transferred, when Florida Water
11 sold off its systems and maybe that will help some.

12 **COMMISSIONER ARGENZIANO:** It may make things worse.
13 Because I found out they had a sister company, and the sister
14 company -- it sounded so convoluted that if anybody listening
15 to that would think they were all so full of -- full of it.
16 Full of wastewater.

17 **MR. WILLIS:** I understand. But it's the only way I
18 can explain where the costs were at that time.

19 **COMMISSIONER ARGENZIANO:** Okay.

20 **MR. WILLIS:** In Florida Waters' last case, they owned
21 I think it was 127 systems. It might have been more than that,
22 but they were under what was called a cap band rate structure
23 back then where systems were actually combined. There were
24 systems that were very high cost, some were very low cost, they
25 were combined into bands of utilities where there were

1 subsidies flowing back and forth between those bands. So those
2 systems that were very high cost, like The Woods, were being
3 subsidized by other systems.

4 Unfortunately, when Florida Waters sold all of the
5 very large systems that were economically run like Deltona,
6 Spring Hills, Citrus Springs, Marco Island, they are all gone.
7 They were sold to Cities. Cities ran in and purchased all of
8 the large systems. What was left are these 82 systems, and
9 these systems are very small. They are not economical to run.
10 They are very high cost. And that's what we are left with
11 today to try to regulate.

12 **COMMISSIONER ARGENZIANO:** Right. But, Marshall, the
13 company knew that. They decided to purchase those systems.
14 They knew they weren't the cream of the crop.

15 **MR. WILLIS:** That's correct.

16 **THE WITNESS:** So they decided -- they thought it was
17 acceptable at that time. And, now, if they thought it was
18 acceptable at that time and that spread that they had, that's
19 what I'm trying to get to. Why is it not acceptable today to
20 move forward with that spread? Or I'm not saying it is, but I
21 would like to know what it was and what it would be today if we
22 were looking at it today. What changed those numbers?

23 I mean, if it was okay for the company to buy at that
24 time. They knew that it wasn't the bigger plants. They knew
25 what they were getting. And I'm sure that they made a decision

1 that it was okay to buy them because they felt whatever spread
2 they had there that they could make their profit on was okay.
3 And that's with what I'm just trying to figure out. Do we
4 know, not before, I'm talking about when they actually bought
5 them, those 82 systems, what those numbers were and what that
6 spread was.

7 **MR. WILLIS:** We could go back to the company's annual
8 filing and look at each system's costs at that point. Now, I
9 can assure you that some of these systems were losing money
10 because of the cap band rate structure, because it was just
11 unwound when all the other systems were sold off. Their costs
12 were being subsidized by other companies that are no longer
13 under our regulation. So we can look at that, but the revenues
14 that were there to make up for the costs aren't there. What
15 I'm saying is we can look at it. I'm not sure how that can be
16 brought forward because you would be bringing a lot of losing
17 ratios forward if I understand what you are talking about.

18 **COMMISSIONER ARGENZIANO:** Well, why would they buy
19 facilities that were losing?

20 **MR. WILLIS:** Well, I believe at that point they
21 believed they could bring those systems in -- do whatever
22 repairs they had to do to those systems and bring those in for
23 rate cases to have them either on stand-alone, or their intent
24 was to bring them in as a uniform rate.

25 **COMMISSIONER ARGENZIANO:** Okay. Well, then that begs

1 the question that according to the statute cost is cost to
2 provide and value and quality of service is all that we would
3 consider. Not all, but it's part of what we would consider.
4 At what point -- or let me ask it this way. Has the Commission
5 ever said, sorry, that the plant, that this plant is just too
6 far gone, it would cost too much to keep upgrading a system
7 that is so bad. Has that ever happened? Is it so depreciated
8 or so defunct that it's not worth it anymore? Have we ever
9 looked at that as being a value or cost? Is it valuable to
10 hold on to something that's going to cost too much to get
11 there?

12 **MR. WILLIS:** Well, at that point if a system has out
13 used its usefulness, if it is fully depreciated, it would have
14 to be replaced. What the company is having to deal with with
15 these inefficient systems to operate and own is having to deal
16 with -- if I put something in and replace an asset, is that
17 asset going to cost me five times more than what I have in
18 there, and is it cheaper for me to actually keep running this
19 thing and maintaining it as long as I can.

20 **COMMISSIONER ARGENZIANO:** Well, now there you go have
21 with maintaining, and that gets back to where we were before.
22 Maybe it's cheaper not to really maintain. Maybe it's cheaper
23 to get most of your profit out of a system that you are not
24 putting anything back into, or not putting much back into until
25 it hits the fan, so to speak, and then you come in and say,

1 okay, now is what -- maybe that is the best way when you really
2 have a broken down system to make as much profit as possible.

3 Couldn't that be a train of business thought? We are
4 going to buy these systems, they are the worse of them out
5 there, that is why nobody else wanted them. And, you know, we
6 may upgrade them, but not right now. Maybe down the road
7 because the regulatory scheme in Florida says that we probably
8 can hold on to these, make a profit, and then later on come in
9 for rate increases to keep them going. So that's where we go
10 back to maintenance, again, and saying maybe there wasn't the
11 right kind of maintenance. And I'm not saying the company
12 didn't, I'm just saying that could be a possibility, couldn't
13 it?

14 **MR. WILLIS:** Well, anything is a possibility, I
15 imagine. I will tell you that if you look back at the earnings
16 level from the annual reports for the last four years, I
17 believe the first year they owned these systems they had some
18 income at that point and they have lost money the other three
19 years. So the income hasn't been there for them. They
20 basically had to put money into the system without any ability
21 to get that money back as far as maintenance. Once you perform
22 maintenance it's gone. You can't go back and recapture that
23 and now come forward and say I spent money, I didn't get
24 recovery of it in the last two years, I now want recovery.
25 They can't get that. It's retroactive ratemaking, and they

1 have lost that. Any dollars they have put into maintenance in
2 the last years, it's gone, it's not recoverable.

3 **COMMISSIONER ARGENZIANO:** Right, but we don't have
4 that in front of us, do we?

5 **MR. WILLIS:** No, we don't.

6 **COMMISSIONER ARGENZIANO:** So I don't know about any
7 maintenance. Well, that's my whole point. If the company
8 says, you know, we are not going to put any money into these
9 facilities because they stink and we would only lose money, and
10 the only way to make money on them or come out even on these
11 systems is not to put anything in them. And then you come for
12 a rate case and you go to a test year where suddenly you put
13 something in it, and it's not representative of the past years.
14 So I guess that just makes my point even more so.

15 Thank you.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

19 Having listened to the discussion, I want to make a
20 couple of observations. I think, unfortunately, this case
21 illustrates a bigger problem facing our state, and that is
22 affordability. And at some point in time, again, as I have
23 said previously, we are going to have to grab the bull by the
24 horns and Florida is going to have to adopt a comprehensive
25 solution to ensure affordability of the small but essential

1 water and wastewater providers within our state.

2 In the interim, however, we still need companies to
3 operate those essential services. And I guess past Commission
4 practice has been to incentivize via negative acquisition
5 adjustments, or not doing those, companies to come in and try
6 and provide this essential service and maintain or improve the
7 quality.

8 Again, in this case, my major heartburn seems to
9 focus around the customer service issues, Chuluota and The
10 Woods, the quality of water service there, and the
11 affordability issues. I think that's the resonating themes
12 that I seem to hear from the comments that have been made so
13 far this morning. But, again, I think that there has been some
14 improvement, but others, again, I have some significant
15 heartburn with.

16 I just want to go briefly back to a point that was
17 raised earlier to get clarification from staff, and that
18 concerned the test year and the ROE, because I'm trying to have
19 a full appreciation of what was said. It's my understanding,
20 and I will direct it to Marshall, my understanding that the
21 test year is 2007 that was selected by the Commission, is that
22 correct?

23 **MR. WILLIS:** That's correct.

24 **COMMISSIONER SKOP:** Okay. And to Mr. Maurey, with
25 respect to the leverage formula that is being used in this

1 case, I believe if I heard it correctly it's Commission
2 practice to use the leverage formula that is in effect when the
3 rates would go into effect, is that correct?

4 **MR. MAUREY:** At the time of the vote, that's correct.

5 **COMMISSIONER SKOP:** Okay. And with respect to the
6 current leverage formula, I guess staff has calculated what the
7 ROE would be in 2008, and that's, I believe, 10.77, is that
8 correct?

9 **MR. MAUREY:** That's correct.

10 **COMMISSIONER SKOP:** Okay. What would the ROE under
11 the same capitalist structure have been had the 2007 leverage
12 formula been used?

13 **MR. MAUREY:** 10.25.

14 **COMMISSIONER SKOP:** Okay. So it would have been
15 lower, is that correct?

16 **MR. MAUREY:** Yes.

17 **COMMISSIONER SKOP:** Now, you said that this was
18 Commission practice, and, again, I'm a very strong advocate of
19 following past precedent and practice, again, but I'm trying to
20 discern is that Commission practice discretionary or is it
21 governed by rule or statute?

22 **MR. MAUREY:** My understanding is technical staff --
23 that has been the practice. I don't believe it's prescribed by
24 statute.

25 **COMMISSIONER SKOP:** Okay. So the Commission is not

1 bound to that convention or practice, then.

2 **CHAIRMAN CARTER:** We probably want to ask one of the
3 lawyers that.

4 **MR. JAEGER:** Commissioner Skop, Ralph Jaeger, legal
5 staff.

6 Basically, if you are going to depart from practice
7 of the Commission, I think that cases in Florida Water
8 Services, and Palm Coast, and Utilities Inc., the courts have
9 spoken, you have to give a basis for that departure. You know,
10 it has to be in the record in evidence. And I think what
11 Mr. Maurey had said earlier was that you are setting rates for
12 a going-forward basis, and so you set the differential on the
13 return on equity looking forward. And so that's the reason we
14 used the deal, and so to change our practice there we have to
15 have a basis in the record.

16 **COMMISSIONER SKOP:** And I'm not suggesting that we
17 change the practice. However, staff has alluded to the fact
18 that rate setting is a forward-looking exercise. I think that
19 it has been mentioned that -- and I think it would be fair,
20 staff, if the leverage formula were calculated today for 2009
21 based on current risk free rates and current interest rates or
22 treasury yields would staff concur that it would be a little
23 bit lower than what would be current at the same capital
24 structure?

25 **MR. MAUREY:** Well, without having done that analysis,

1 I have a high degree of confidence it would be different. I
2 can't tell you if it would be higher or lower.

3 **COMMISSIONER SKOP:** Okay. I'm not going to go with
4 some of the other comments that have been made, but would the
5 Commission, again, in trying to address ratemaking in uncertain
6 times in terms of there is not a lot of stability in the
7 financial markets, there is not a lot of stability in what the
8 CAPM or DCF would predict on any given day using whatever
9 inputs could be, and that was the subject of a discussion to
10 the extent that, you know, sometimes in current mode where the
11 market is in turmoil that both the CAPM and the DCF models are
12 predicting returns that in some instances may be actually lower
13 than the cost of debt for some companies.

14 So, again, everything is in turmoil. But, looking
15 forward, if ratemaking is supposed to be a forward-looking
16 exercise, could the Commission in its discretion perhaps apply
17 or amend, for instance, maybe rates that went into effect on a
18 2008 leverage formula, but could the Commission condition that
19 on if the leverage formula were to suggest a substantial
20 reduction in return in 2009?

21 I guess I'm looking for options. Because, again,
22 some of the quality of service issues here are still concerning
23 to me, and I don't believe that those have been fully addressed
24 by the company. I'm trying to be fair to the company, because,
25 again, I want to incentivize that investment, that economic

1 investment in our state and improve the quality, and I think
2 some positive steps have been made there. But there is still a
3 significant amount of discrepancy. So I'm trying to understand
4 and have a full appreciation across the spectrum, as I think my
5 colleagues would, of what all of our respective options could
6 be to try and set rates in very trying times.

7 **MR. MAUREY:** I'll try to answer that. There's a
8 couple of points in there I would like to touch on.

9 With respect to the models that go into estimating
10 return on equity, these models aren't the end all. They are
11 information on which informed judgment can be made and
12 determine a return on equity. The question was raised earlier
13 about subjectivity. Many of the variables that go into these
14 models are statistical calculations. The subjectivity comes in
15 when the analyst employs those measures in the models
16 themselves. Not the measurements of the variables, but the
17 employment of those variables in the various models.

18 And as you also alluded to, there was a great deal of
19 testimony in this record. The Commission would be supported if
20 it approved a return on equity between 8.75 and 11.3. There is
21 testimony in this record that the ROE for this company is
22 somewhere in that range. Because this is a water company, and
23 traditionally we have used the leverage formula to determine
24 return on equity, that's the basis for staff's 10.77 percent
25 return. And that return on its face is not unreasonable.

1 **COMMISSIONER SKOP:** Can I stop you there just for one
2 second? With respect to that -- and I appreciate that, and I
3 could be wrong, but in terms of sensitivity analysis and
4 looking at the range of reasonableness for the ROE, it doesn't
5 seem, at least to me, that the ROE is the driving factor behind
6 the system revenue requirements and the resulting rates in this
7 case.

8 **MR. MAUREY:** Oh, that's absolutely correct.

9 **COMMISSIONER SKOP:** Okay. I mean, ROE, we could pick
10 10, we could pick 7, and in terms of changing the reality of
11 the affordability issue facing Florida consumers, it wouldn't
12 really mean a whole lot in this particular case.

13 **MR. MAUREY:** In this particular case, return on
14 equity is not moving the needle, no.

15 **COMMISSIONER SKOP:** Okay. And then just one more.
16 And, again, I want to distinguish this, because, again, based
17 on what I am seeing here, to me, and I think it is very
18 important to make this distinguishing comment, for me
19 affordability for water and wastewater seems to be much more,
20 much more of an issue than it is for our electric providers.
21 Because, again, in the instant case some of the potential
22 customers are facing water and wastewater bills that are
23 probably double their electric bill.

24 So, again, I don't want my comments to transcend over
25 to what views, you know, I may or may not have on the electric,

1 but this affordability issue is one that is very concerning to
2 me. So you can continue, and I appreciate it.

3 **MR. MAUREY:** The other point I wanted to make was
4 going back to the discussion about a 2007 test year using the
5 2008 leverage formula cost of capital in general. The overall
6 cost of capital staff has recommended in this case includes a
7 5.1 percent cost rate for long-term debt. That system you
8 alluded to with 20 customers, on a stand-alone basis I can tell
9 you unconditionally they could not get 5.1 percent long-term
10 debt to fund their operations.

11 So by combining these small systems that, as Mr.
12 Willis attested, are not economically run presently, they can
13 still gain some economies of scale by being bound together in
14 this group. And this cost of capital recognizes that. But if
15 we were to look at these individual systems, this cost of
16 capital is higher than any of those could support on an
17 independent basis.

18 **COMMISSIONER SKOP:** And, Mr. Chair, just one more
19 quick question. I think this would be to Legal. Again, I
20 think many of the concerns I have heard this morning concern
21 Chuluota and The Woods. And, again, the cost of capital here,
22 the return on equity, certainly there is a range of
23 reasonableness. The ranges I don't think shock the conscience.
24 But, again, I don't think that, as Mr. Maurey has alluded to,
25 is driving the needle in any way in terms of the affordability

1 concern.

2 But, again, when we have significant rate increases,
3 or the potential for those in light of quality issues, I think
4 it is important for the Commission to be able to use its
5 discretion to address those. I think the staff has recommended
6 some adjustments, and, again, in making sure that the
7 Commission has full heightened awareness of all of its options,
8 if the Commission were to establish a finding of fact, and I'm
9 not saying we would or wouldn't, but, again, I'm trying to not
10 hint at how I might rule or view something. I'm just trying to
11 better understand what options I have on the table so I can
12 make the best decision in terms of us and the Commission.

13 But if a finding of fact was found by the Commission
14 that the quality of water in Chuluota and The Woods was
15 marginal or was not satisfactory, would that support any legal
16 basis for withholding a rate increase for those particular
17 service areas? I know that gets into -- very close to a taking
18 or what have you, but, again, I'm trying to understand what
19 discretion we have so that we can send a clear message that
20 water quality either needs to improve in those areas, or
21 perhaps even as a condition of a rate increase require an
22 interconnection.

23 **MR. JAEGER:** Commissioner Skop, I think that the Gulf
24 Power Company v. Wilson case governs. And basically what the
25 court said, as long as you leave them in the range of

1 reasonableness of return -- and what you do, you set the
2 midpoint for equity, and what we have done as a practice is 100
3 basis, and I think we have done that for the last I don't know
4 how many years. I don't know of any case in water and
5 wastewater when we didn't do the 100 basis points around the
6 return on equity.

7 And so what Wilson says is you have got to give them
8 that opportunity to earn a fair rate of return. So you can
9 take them to the bottom. You can do that. You know, you have
10 got to find where the midpoint is, and then you can go all the
11 way back to the 100 basis points, and that is as low as you can
12 reduce the return on equity pursuant to that case in my reading
13 of that case.

14 **COMMISSIONER SKOP:** And I'm familiar with that case,
15 and I appreciate that. And, again, I'm not suggesting that we
16 burn them at the cross, because, again, I tend to think I
17 probably have the most liberal views on ROE on the Commission.
18 I often get chastised on that. But in this particular case, I
19 think we need to take a look. And, again, I think the staff
20 recommendation certainly is within the zone of reasonableness.
21 And, again, I'm just trying to have a better appreciation of
22 what specific options may be available to address the
23 problematic areas and send a clear message, if the Commission
24 deems appropriate to do so, that remedial action is required.
25 And just quickly to that one point is that point of granting

1 any rate increase for Chuluota, could the Commission require
2 interconnection?

3 **MR. JAEGER:** I believe Mr. Willis was talking about
4 some cases where we threw out or we didn't allow it. But in
5 Labrador there was a deal with the meter readings, and in this
6 last filing, 060368, we said the billing determinants and
7 everything was so messed up we could not calculate it. And I
8 think what staff is saying here is we don't have that here. We
9 have a problem with quality of service, but we have --

10 **COMMISSIONER SKOP:** Well, the quality of service is
11 systemwide. The quality of water is marginal for the Chuluota
12 and The Woods, as staff has determined. I'm sure some
13 Commissioners might disagree with the assessment, but what I'm
14 looking for is in an effort to improve water quality for the
15 consumers that are impacted, they are being asked to pay
16 hundreds of dollars a month in proposed future rates, whether
17 as a condition for granting an increase for Chuluota that the
18 Commission could require a best effort basis to interconnect
19 with perhaps the City of Oviedo in Seminole County to bring
20 improved water quality to those consumers in the foreseeable
21 future?

22 **MR. WALDEN:** Commissioner Skop, let me offer a couple
23 of comments.

24 I think one of the threshold questions would be,
25 specifically for Chuluota, what water source is available? For

1 instance, if we are talking about the City of Oviedo, how much
2 excess capacity does Oviedo have that it can provide to the
3 Chuluota system?

4 **COMMISSIONER SKOP:** Can I stop you there?

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

6 **COMMISSIONER SKOP:** Not to cut you off, but you hit
7 exactly on my point, and I'm trying to find the page. On Issue
8 1 on Page 14, basically, the third paragraph from the bottom,
9 it says that -- and this is in the record. It says the utility
10 has offered the system for sale at rate base to the City of
11 Oviedo. However, the city has not expressed much interest in
12 the purchase. Other discussions include purchased water from
13 the city, but that discussion is still in progress. CHP
14 engineers have been retained by AUF to review the option of
15 purchased water.

16 Again, those discussions, I think, would be paramount
17 in concluding those discussions favorably towards bringing some
18 better quality water to the consumers, perhaps in ridding them
19 of the hydrogen sulfide issue. Again, I think the Commission's
20 other water providers in Florida have looked at that, and I'm
21 not getting into details.

22 But also, too, it's interesting to me on that
23 particular point why AUF, having a large company, a national
24 company that has expertise in water would have to go hire CHP
25 engineers to review the option to purchase water. It seems to

1 me that could be done, something readily in-house, or by Mr. --
2 I believe it's Franklin, who is the local vice-president, to
3 just sit down in good faith negotiations to hammer out an
4 interconnect agreement. I mean, I don't understand why we need
5 to bring in a third party. Maybe there is some consulting
6 engineering, but, again, it seems to be something that could be
7 worked out in an MOU, memorandum of understanding, or
8 something, or what have you.

9 So, I mean, I'm very interested in the progress
10 that's being made there. Because, again, even staff has noted
11 the level of water quality in Chuluota and The Woods is
12 marginal, and I think Commissioner Argenziano would probably go
13 so far as -- and I don't want to puts words in her mouth, but
14 saying it is unsatisfactory. But, again, I think those are
15 issues that need to be addressed. I want to incentivize our
16 utilities. I want to attract investment in the state of
17 Florida. I have very liberal views on what we need to do to
18 encourage that investment; however, I'm not afraid to hold
19 someone accountable when we need to do so.

20 And, again, what I'm not seeing here is quantum leaps
21 in improvement that need to be accomplished. What I see here
22 is a renewed effort to punch a rate case through this
23 Commission. The first time the Attorney General intervened, as
24 well as OPC, and they withdrew the case. And then, you know, I
25 thought there would be a lengthy period of time before they

1 would come, you know, do that, giving them time to improve
2 their service quality and the water quality. But, lo and
3 behold, it was just a quick dash right back to file another
4 rate case, and some of the same inherent problems are latent in
5 this case that's before us today.

6 So I'm looking for a good faith effort to address the
7 issues that are facing consumers when they are being asked to
8 pay hundreds of dollars a month for their water and wastewater
9 service under the proposed rates that may result from this rate
10 increase. So, again, I think those are the issues that need to
11 be further explored. And at some point -- you know, I have
12 been very open and commended Aqua on the initial progress and
13 steps they have taken to address the issues. The RF meters
14 will make great strides in increasing and improving billing
15 accuracy; but, again, there's other customer service issues
16 that are frankly unsatisfactory. I heard from Ms. Haas
17 (phonetic), who had sent a letter in saying that she had not
18 gotten a written response from Aqua. That it had been
19 forwarded to staff in the correspondence record.

20 But, again, those customer service issues, those
21 water quality issues, to me it's very -- legally, it's -- and I
22 feel like my hands are tied. I am a lawyer, I follow the law,
23 there is Supreme Court precedent, U.S. Supreme Court precedent,
24 and state statutes that tell me I have to do things. If I were
25 a more activist Commissioner, again, I might have different

1 views, but I follow the law. But, in the same time, I'm trying
2 to make sure that we compel and force the utility to do the
3 right things to improve the service area. Because, again, my
4 biggest heartburn is the customer service, the affordability in
5 Chuluota and The Woods, and beyond that not much in here.

6 Staff has scrubbed the numbers. There is always room
7 for discussion. But, again, we need to focus on how we can
8 send a direct and clear message. I think, and maybe I'm not
9 misspeaking, anyone chime in, but how do we address these
10 problem issues and get them resolved. Because, again, this
11 affordability issue gives me great pains. Because I'm a
12 lifelong Floridian, I'm 42 years old, but I can't phantom
13 somebody being asked to pay \$400 a month for water and
14 wastewater service, and that be more expensive than the
15 electric bill. That just doesn't make any sense to me.

16 And I think if we continue down this path it is just
17 going to promote clandestine installation of septic tanks and
18 well drilling in the middle of the night. Because I don't
19 think that in good faith -- I think I would take my chances on
20 that one. And I might be breaking the law, but --

21 **CHAIRMAN CARTER:** One second, Commissioner. Hang on.
22 I've got to go to Commissioner McMurrian. She has been
23 waiting.

24 But let me let -- Commissioners, in all fairness, let
25 me let staff finish their point, and then we will come back.

1 Commissioner McMurrian and then Commissioner Argenziano.

2 **MR. WALDEN:** Just very generally, Commissioner Skop.
3 When you are looking at an interconnect, especially one of a
4 significant volume, which is what you would see at Chuluota,
5 where all the water would be purchased, I think it's common for
6 the utility to have someone from their firm to sit in on
7 negotiations. You need an engineer to help you design what
8 kind of pipeline you are going to need. You also need to work
9 with the water management district because there could be
10 withdrawal issues. It's a fairly complicated process when you
11 are buying all of your water. For just an emergency
12 interconnect, not such a big deal, but if you are looking to
13 purchase water, yes, sir, it is a big deal.

14 **CHAIRMAN CARTER:** Commissioner McMurrian and then
15 Commissioner Argenziano.

16 **MR. MURPHY:** Thank you. And just first, I will say
17 that I agree with a lot of what has been said about the
18 customer service and the affordability, and I think we are
19 going to have a lot more discussion about that going forward.
20 But I wanted to go back to the discussion about the test year
21 and the leverage formula, and I think a lot of the questions
22 that have been asked have helped me in just sort of going back
23 to what is the test year, it's 2007, and the leverage formula
24 is based on the most current leverage formula we have in place
25 at the time, and that is generally our practice.

1 But I guess I'm trying to make sure I understand what
2 is the problem with the test year, and I will direct this
3 somewhat to Commissioner Argenziano, but also to staff, is I'm
4 trying to make sure I understand the concern you have. Is the
5 problem with the test year being 2007, and that's a historical
6 test year, or it is more that the leverage formula doesn't
7 match up with that test year? And I will complete kind of a
8 thought I'm having, because I know in an earlier -- in the
9 earlier case we had, I believe there was an issue with the
10 projected test year. I believe it was originally proposed as a
11 projected test year when we had the last case for Aqua, is that
12 correct? Let me just jump in and ask that.

13 **MR. FLETCHER:** That was correct.

14 **COMMISSIONER McMURRIAN:** Okay. And weren't there
15 significant concerns of the parties with the projected test
16 year, and what did we ultimately do about that?

17 **MR. FLETCHER:** Yes, there were concerns regarding the
18 projected test year, and I think that's one of the reasons why
19 in this case they actually had proposed the historical test
20 year in order to address those concerns.

21 **COMMISSIONER McMURRIAN:** And I'm not really organized
22 as much as I have been thinking about this to lead up to it,
23 but I guess what I was thinking and hearing some of what you
24 were saying, Commissioner Argenziano, is that perhaps with a
25 projected test year -- and, again, this kind of goes back to is

1 the problem with the test year, or is it really with the
2 leverage formula.

3 If we had a projected test year -- I will try to be
4 real careful about how I say this. In a projected test year it
5 seems like you have more of the problem of a utility perhaps
6 padding what it might ask for with respect to its rate request,
7 because it would be based on what they would want going forward
8 estimating. And I'm not saying the utility has done that here,
9 or any other utility has done that, and the same cautions that
10 you were sharing.

11 But it seems like in a projected test year you would
12 have more concerns about that and then you would go back and
13 look at some of the expenses that have been used historically
14 anyway to try to see if this is generally what they have been
15 using for maintenance, or are they asking for something much
16 greater than that. And if they are, not that that is
17 necessarily bad, but if they are asking for something much
18 greater than that, that they have a good reason for why they
19 need to do that much more maintenance or whatever it is going
20 forward.

21 **COMMISSIONER ARGENZIANO:** Can I jump in?

22 **COMMISSIONER McMURRIAN:** Sure.

23 **COMMISSIONER ARGENZIANO:** No, the real problem is,
24 number one, that as a Commissioner I didn't get to deliberate
25 at all or ask questions ahead of time. And now I'm boxed in

1 with a test year. And things that I may have cared about or
2 have found, I can't enter into the record.

3 The real problem is not what they spent or didn't. I
4 have no clue; neither do you, with the information you have in
5 this book, on did the company prudently upkeep and maintain the
6 company. I mean, the system. And to me that's an incredible
7 factor to look at when we use prudence as a tool. And at a
8 time when the economy is hurting, at a time when the rates --
9 you see some of the increases, 500-and-something percent, you
10 have got to use every tool you have. You don't want to cheat
11 the company, and you don't want to cheat the customer out of
12 doing due diligence.

13 And to me due diligence is finding out did the
14 company in those past years, did they apply any maintenance?
15 Maybe they didn't, because maybe the best way -- not saying
16 they did or didn't, even though I did look back a few years.
17 If they didn't maintain and upkeep, it may have been a way --
18 and, again, I'm not saying they did this -- it may have been a
19 way for them to recoup all of their dollars on these bad
20 systems as they could and not lose any more if they were using
21 in some of them, and not put any money into it. And that could
22 have contributed to now needing much more.

23 As I say, if you don't put oil in the car, guess what
24 happens? You have to buy a new car or a new engine. And to me
25 that's the part that gives me the most heartburn other than not

1 being able to up front make a decision on the test year. Not
2 so much as it is projected and how much they have spent and
3 will need, because obviously sometimes they are going to need
4 more for certain upgrades. Did they do anything, that's what I
5 want -- and they could have, but we don't have that in front of
6 us.

7 So to me that's a big void on determining, you know,
8 could it be that a company would come in and maybe do nothing
9 or do as little as possible and contribute to having to all of
10 a sudden now put a new engine in the car when they could have
11 maybe put little pieces, you know, a new distributor cap or
12 whatever the case was. I don't know what goes along with the
13 oil, but I know the motor burns out if you don't put oil in it.

14 You know, could they have done something, or could
15 they have been imprudent in their upkeep of the plant? And
16 that is really what I'm trying to find out. And without that,
17 to me, I have, like I say, this very large void in
18 understanding. And they may have done just fine, but that
19 should be considered because that is part of the tools that we
20 have to try to make sure it is fair for both sides.

21 **COMMISSIONER McMURRIAN:** Okay. That helps. But I
22 guess what I was trying to understand, too, and something that
23 Mr. Willis was saying earlier about the chemicals, and I know
24 we were talking about whether the chemicals was included. I
25 think what he was trying to say was that maintenance includes

1 things like chemicals and other things, it's just we don't
2 have, necessarily, one account that says maintenance, but that
3 chemicals would be part of it. And that there is a way to look
4 back at the chemicals expenditures in prior periods in order to
5 gauge whether or not in their test year they have somehow
6 inflated that amount for chemicals when they really haven't
7 needed that in the past. But I'm not sure if I'm putting words
8 in his mouth or not.

9 **COMMISSIONER ARGENZIANO:** Well, that's right, you
10 can't. But you can also look back -- which was not done here
11 -- you can look back and look at maintenance other than
12 chemicals.

13 **COMMISSIONER McMURRIAN:** Right.

14 **COMMISSIONER ARGENZIANO:** You can look at the whole
15 numbers and you could back, and that's not done here, so that
16 is my concern. Of course I would want to look and see if
17 chemicals all of a sudden they are paying ten times more for
18 chemicals than they were the prior years. That is something
19 you need to do. But I also think you need to look back, and
20 you can extrapolate the maintenance that was done in prior
21 years. And for the life of me I can't figure out why that
22 wasn't done.

23 **COMMISSIONER McMURRIAN:** Well, I think that is -- and
24 that is what I wanted to go back and clarify with Mr. Willis,
25 because I thought I heard him saying that you would be looking

1 back at other things besides chemicals. He was using the
2 chemicals as one example of the kinds of things you would look
3 at to get a feel for how maintenance had been done in the past.
4 But I'm maybe confused, so --

5 **COMMISSIONER ARGENZIANO:** If I could, Marshall had
6 answered that for maintenance they did not. They did not look
7 at maintenance.

8 **COMMISSIONER McMURRIAN:** Okay. Mr. Willis, can
9 you --

10 **MR. WILLIS:** Commissioner Argenziano is correct about
11 that. We don't have a maintenance account, per se. We don't
12 have an account that says this is maintenance.

13 And Commissioner McMurrian is correct, too, in that
14 the maintenance is spread between several accounts. All the
15 salaries, whether it's for operations or maintenance is in one
16 account.

17 **COMMISSIONER ARGENZIANO:** But, excuse me. But,
18 excuse me, you can extrapolate that. It can be done. Because
19 I did it, so it can be done. You don't have an account, you
20 have something that goes operations and maintenance, but you
21 can get in. It is far more detailed. You have to get into
22 every annual report and start picking out and then figuring
23 out, but it needs to be done.

24 **COMMISSIONER McMURRIAN:** So, Mr. Willis, we don't
25 have that -- I mean, in a rate case we are taking a snapshot of

1 the company's entire operations for that year period and then
2 we may look back at periods before that period in order to
3 gauge whether or not it seems like a reasonable number for that
4 snapshot we're looking at, correct? I mean, aren't we --

5 **MR. WILLIS:** That is what the CPI benchmarking does.
6 The benchmarking looks back at individual accounts to see how
7 those accounts have fluctuated in the past five years. In this
8 case four, because that's how long this company has owned it.
9 It doesn't break down maintenance, per se, by itself, but it
10 looks at all the accounts that make up that, and others as far
11 as operations go, too.

12 **COMMISSIONER McMURRIAN:** That's where I think we are
13 talking past each other. I mean, I keep hearing you say --
14 and, again, maybe I'm confused, but I keep hearing you saying
15 that we are looking at maintenance, it just doesn't have a
16 label maintenance on it. That we are looking at the things
17 that comprise maintenance.

18 **MR. WILLIS:** It doesn't have an account called
19 maintenance. But we look at all the components of it that you
20 have to combine to get operations and maintenance together.

21 **COMMISSIONER ARGENZIANO:** And can I add something?
22 By looking at it that way and not extrapolating what is really
23 maintenance and upkeep, you have no clear picture of what was
24 really spent on upkeep and maintenance. You are looking at a
25 whole number and you have no idea. You cannot go in and look

1 at your benchmarks the way you are looking at it and determine
2 if that was done on maintenance or not. There is no way. You
3 have to go in and extrapolate that. So the benchmarks that
4 they use is an overall number, but you have no idea as a
5 Commissioner whether any of that was spent on maintenance or
6 chemicals, only chemicals.

7 You cannot look at that and see and feel confident
8 that, okay, that was the maintenance for those years, because
9 it's so broad. But you can do it the way I did it and find out
10 if it was spent on maintenance or chemicals or the others. So
11 while it is under one title, you have no clue looking at it
12 that way that or confidence that it was spent on maintenance.
13 You just can't do it that way.

14 **MR. WILLIS:** Can I add something else to that?

15 **CHAIRMAN CARTER:** Mr. Willis.

16 **MR. WILLIS:** I don't know if this gives anybody
17 comfort or not, but DEP has requirements that they go out and
18 they review these systems on an annual, or more than an annual
19 basis. But they conduct inspections to look at whether or not
20 the company is maintaining its facilities. And that is part of
21 what they are charged to do, to look and see if those things
22 are maintained. If they are not, they are going to get written
23 up. They are going to get letters, and we are going to see
24 those letters. And that is part of why we present all that DEP
25 testimony at the hearings is to see where those citations have

1 come out, where there are problems in maintaining the utility
2 or problems with the quality, two different reasons.

3 **COMMISSIONER ARGENZIANO:** Okay. But now,
4 Mr. Chairman, if I can respond to that. And I have -- I had
5 DEP and some of that section under my control when I was in the
6 House of Representatives a long time ago and determining costs
7 for different, different areas, and that was one of them. And,
8 and DEP comes out and they do not, they do not come out -- they
9 will look for environmental safeguards and making sure that
10 they're maintaining the environmental aspects to that, but
11 they're not going to come out and do full -- are you, are you
12 oiling the engine? They don't do that. They will look for the
13 environmental portions of that, what they're charged with only.
14 So you will only know whether they kept upkeep on their
15 chemicals, the temperatures or whatever they have to do, those
16 type of maintenance items. But all the other type of
17 maintenance items that I would have questions about, oiling the
18 engine and the other parts, you can't get from DEP.

19 So that doesn't, that doesn't -- I understand what
20 you're saying. For that small component of it, yes, they do
21 that. But you don't get the rest of the maintenance, which is
22 really upkeeping the rest of the entire plant other than the
23 environmental part to that.

24 **CHAIRMAN CARTER:** Okay. Commissioners, let's do
25 this, kind of get a, let me see if I can kind of get a feel for

1 where we are and where we need to go.

2 I know we probably have some more questions on
3 Chuluota and The Woods and other things, and I just kind of
4 wanted to see what those other things are so I can kind of get
5 a feel for where we're headed and, and how to proceed further.
6 Before I give the court reporter a break, I wanted to kind of
7 see if I can get an ascertain, an ascertainment from you in
8 terms of where we are and what we need to do.

9 And I think probably when we come back I'm just going
10 to ask staff to kind of do a general overview and we'll just go
11 down and start taking it line by line or issue by issue and go
12 from there. I think we've had some general comments and some
13 general questions and all like that. Of course I'm open if you
14 guys have got some suggestions on how we should proceed
15 further.

16 Okay. Then when we come back, we'll have staff kind
17 of take it issue by issue and we'll go from there. We'll give
18 the court reporters a break and we'll come back at ten of.
19 We're on recess.

20 (Recess taken.)

21 We are back on the record. And, Commissioners, what
22 I thought we'd do is kind of have staff give us a
23 recommendation on how to proceed further.

24 Mr. Willis, you're recognized, sir.

25 **MR. WILLIS:** Chairman, what I would suggest is maybe

1 it would be appropriate and we could see how far we get if we
2 kind of leave quality of service for last at this point because
3 that has no bearing until the final revenue requirement
4 calculation as to what happens with that one issue.

5 **CHAIRMAN CARTER:** That would be Issue 1?

6 **MR. WILLIS:** That would be Issue 1. So maybe if we
7 could start with A and then go to 2 and work our way down.
8 Then if you, if you, when you get to the cost of equity, if you
9 want to defer that one to the tail end, we can do that too or
10 move through it. Whatever the pleasure of the Commission is at
11 that point.

12 **CHAIRMAN CARTER:** Commissioners, is that fine with
13 everyone? Okay.

14 You're recognized. You may proceed.

15 **COMMISSIONER EDGAR:** I just had a question.

16 **CHAIRMAN CARTER:** One second. Commissioner Edgar.

17 **COMMISSIONER EDGAR:** Thank you.

18 Mr. Willis, when you said when we get to the cost of
19 equity issue, did you mean 28 or were you speaking about a
20 different one?

21 **MR. WILLIS:** Well, that would be Issue 28, return on
22 equity.

23 **COMMISSIONER EDGAR:** Okay. Okay. I just wanted to
24 make sure my, my read of your description was correct. Thank
25 you.

1 **CHAIRMAN CARTER:** So we'll just, so we'll skip 1
2 and --

3 **MR. WILLIS:** I'd suggest we start with Issue A first.

4 **CHAIRMAN CARTER:** Okay.

5 **MR. WILLIS:** Which is, would be Mr. Jaeger.

6 **MR. JAEGER:** Yes, Chairman Carter. In Issue A staff
7 is recommending that the Commission acknowledge that Exhibit
8 65, Tab 19, include Bate stamp pages 3202 through 7905.

9 **CHAIRMAN CARTER:** Okay.

10 **COMMISSIONER EDGAR:** Mr. Chairman, do you want to
11 take votes individually as we go or are you just taking
12 questions and then we'll come back for votes at the end? I
13 just wasn't, wasn't sure.

14 **CHAIRMAN CARTER:** Well, I suppose we could do it in
15 groups. Let's, why don't we just kind of -- since we're going
16 to take Issue 1 out, we can do this first group, go maybe A
17 through 13, Mr. Willis. Do you think that's a good breaking
18 point or --

19 **MR. WILLIS:** We could do that. It's just as easy to
20 go issue by issue if it's your pleasure. But we can, we can go
21 through the complete used and useful and plant adjustments, if
22 you'd like.

23 **CHAIRMAN CARTER:** Would you rather do issue by issue,
24 Commissioners?

25 **COMMISSIONER McMURRIAN:** I think so. I think, if I

1 understood Commissioner Edgar correctly, I think she just meant
2 are we at the point of voting on each individual -- as we take
3 them up one by one, do you want to take motions on them one by
4 one?

5 **CHAIRMAN CARTER:** Yes. Yes, I do.

6 **COMMISSIONER McMURRIAN:** I don't think she was asking
7 for grouping, but I'm not sure.

8 **CHAIRMAN CARTER:** Oh, okay. No group hugs?

9 **COMMISSIONER EDGAR:** I was just thinking, I mean,
10 we've done it a variety of ways. And we can, you know, hear
11 descriptions from staff and then see if, if there's, if your
12 pleasure is to take a motion after each one, or sometimes just
13 see if there are questions on each one and then hold motions to
14 the end, which is kind of my preference. But, Mr. Chairman, it
15 is your call on however you want to do it. I just want to make
16 sure that I'm on the same page.

17 **CHAIRMAN CARTER:** Okay. Let's do this then. Let's
18 take -- we'll take A and then we'll go, we'll group them from
19 2 through 13 and then we'll take those as a group.

20 Mr. Willis, is that pretty much a good breaking point
21 there?

22 **MR. WILLIS:** Yes, Commissioner, that works for me.

23 **CHAIRMAN CARTER:** And then we'll go from 14 through
24 27, Mr. Willis?

25 **MR. WILLIS:** I would go --

1 **CHAIRMAN CARTER:** Give me a recommendation on that.

2 **MR. WILLIS:** I would go 14 through 23 actually.

3 **CHAIRMAN CARTER:** 14 through 23?

4 **MR. WILLIS:** But there are some fallout issues which
5 are 21 and 23 which you might want to hold off on.

6 **CHAIRMAN CARTER:** Okay. Okay. And then we'll
7 revisit it when we get there. But, Commissioners, just --
8 Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

10 Like I say, I'm trying to understand where the
11 particular break points would be. I just might reasonably
12 suggest that perhaps the 1 through 13 I think we can get
13 through quickly. But in the following one, maybe we can take
14 them in groups of five to look at as an isolated thing.

15 **CHAIRMAN CARTER:** Okay. That's fine. Any objection,
16 Commissioners? We'll take them in groups of five. Okay.
17 Let's do this, let's take Issue A. We've got a motion,
18 Commissioner Edgar?

19 **COMMISSIONER EDGAR:** Yes. Motion in support of staff
20 recommendation on Issue A.

21 **COMMISSIONER SKOP:** Second.

22 **CHAIRMAN CARTER:** Moved and properly seconded. Any
23 discussion? Any debate? Hearing none, all those in favor, let
24 it be known by the sign of aye. All those opposed, like sign.
25 Show it done.

1 (Unanimous affirmative vote.)

2 Now we're -- staff, would you kind of lead us through
3 Issues 2 through 13? You're recognized.

4 And, Commissioners, as we go through them, any
5 questions or concerns as we go through that, we'll take them up
6 at that point in time. You're recognized.

7 **MR. WRIGHT:** Issue 2, staff is recommending
8 adjustments to plant-in-service to Lake Suzy, Lake Josephine
9 and Sebring water systems, as well as to the Lake Suzy
10 wastewater systems as shown on the table in the recommendation
11 for Issue 2.

12 **CHAIRMAN CARTER:** As you're going, as you guys are
13 going through the tables, go ahead on and mention which table
14 you're talking about so we can all be on the same page.

15 **MR. WRIGHT:** Okay. This would be the table on
16 recommendation, Issue 2, just in the recommendation statement.

17 **MR. WILLIS:** Page 29.

18 **CHAIRMAN CARTER:** Okay. Thank you very much. You
19 broke the code, Mr. Willis.

20 Commissioner Skop.

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

22 Just with respect to 29 to AUF's position, I guess in
23 their position with respect to Issue 2, they asserted the
24 principles of res judicata, fairness and administrative
25 finality. I think that's going to come up in another issue.

1 But with respect to this particular issue, Issue 2, staff did
2 not find those arguments to be persuasive; is that correct?

3 **MR. WRIGHT:** Well, we did recognize the order and
4 adjusted the numbers to recognize the numbers that were in that
5 order that they cited.

6 **COMMISSIONER SKOP:** Okay. All right. So adjustment
7 was made based upon the argument that was advanced by AUF?

8 **MR. WRIGHT:** Yes, sir.

9 **COMMISSIONER SKOP:** All right. Thank you.

10 **CHAIRMAN CARTER:** Commissioners, any further
11 questions on Issue 2?

12 Commissioner Argenziano.

13 **COMMISSIONER ARGENZIANO:** No, Mr. Chairman, it's not
14 on Issue 2. It's just a question that I wanted to ask before
15 we went into --

16 **CHAIRMAN CARTER:** You're recognized.

17 **COMMISSIONER ARGENZIANO:** Just for staff, has, has
18 staff addressed all of the Intervenor's objections to their
19 satisfaction or have they been answered?

20 **MR. WILLIS:** Generically I believe we have. We have
21 looked at all of Public Counsel's positions in this and I
22 believe we've addressed every one of those.

23 **COMMISSIONER ARGENZIANO:** Okay. They've all been
24 addressed?

25 **MR. WILLIS:** Yes.

1 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

2 **CHAIRMAN CARTER:** Thank you, Commissioner.

3 Okay. With that, staff, we're now on Issue 3.

4 You're recognized.

5 **MR. WRIGHT:** Issue 3, staff is recommending an
6 adjustment to land of \$229,259 for the Lake Suzy wastewater
7 system to reflect a balance of \$200,200 in the land account at
8 December of 2007.

9 **CHAIRMAN CARTER:** Commissioners, any questions on the
10 land account? Again, just for sake of clarity, as you're going
11 through the issues, just kind of let's make sure we're all on
12 the same page. So as we continue, let's, let's remember that.

13 **MR. WRIGHT:** That would be Page 32.

14 **CHAIRMAN CARTER:** Page 32. Okay? Commissioners, any
15 questions? Any questions on Issue 3 as related to on Page 32,
16 any questions or concerns?

17 Okay. You may proceed. Issue 4.

18 **COMMISSIONER ARGENZIANO:** Mr. Chair.

19 **CHAIRMAN CARTER:** One second. Commissioner
20 Argenziano.

21 **COMMISSIONER ARGENZIANO:** I'm sorry. Before we get
22 to 4, I think 4, 5 and 6 and maybe 7, I think it's 4, 5 and
23 6 include Chuluota. And I don't know if, where -- you know, I
24 don't know what the Commission desires, but I wanted to see if
25 we could exclude Chuluota. And I don't know what that would do

1 if we, if we okay those without deciding whether the Commission
2 wants to include Chuluota or not.

3 **CHAIRMAN CARTER:** Let's do this. Staff, I think we
4 talked about that early on, Mr. Willis, in the context of
5 looking at Chuluota separately. Did we say Chuluota and The
6 Woods or just Chuluota?

7 **COMMISSIONER ARGENZIANO:** Chuluota.

8 **CHAIRMAN CARTER:** Chuluota, looking at it separately.
9 Mr. Willis, as these issues pertain to Chuluota, what impact
10 would it have if we go, was it --

11 **COMMISSIONER ARGENZIANO:** 6 -- 4 through 6? 7 and 9.
12 Okay.

13 **CHAIRMAN CARTER:** The issues, is it 7 and 9? 4
14 through --

15 **COMMISSIONER ARGENZIANO:** 4, 5, 7 and 9.

16 **CHAIRMAN CARTER:** 4, 5, 7 and 9, if we were to make a
17 decision on these issues excluding Chuluota, what impact would
18 that have?

19 **MR. WILLIS:** Excluding Chuluota?

20 **COMMISSIONER ARGENZIANO:** Well --

21 **CHAIRMAN CARTER:** Or just -- Commissioner Argenziano.

22 **COMMISSIONER ARGENZIANO:** I guess we'd have to make a
23 decision whether we want to exclude Chuluota or not, that would
24 be a Commission decision, and find out one way or the other.
25 Because if we don't and we vote on these, we're including

1 Chuluota in these numbers here.

2 **MR. WILLIS:** Well, any adjustments that relate to
3 Chuluota, you would be approving those adjustments. I'm not --
4 do you mean by exclude that you want to completely eliminate
5 Chuluota out of this completely?

6 **COMMISSIONER ARGENZIANO:** Well, that may be my
7 desire. I can't speak for the other Commissioners. But we
8 haven't decided that yet if it's, if it's separate.

9 **MR. WILLIS:** Well, I understand. And then we would
10 come back later and talk about Chuluota by itself, is that the
11 idea? I'm just trying to understand.

12 **COMMISSIONER ARGENZIANO:** If Chuluota is excluded
13 from --

14 **CHAIRMAN CARTER:** That's what I was thinking, that we
15 would talk about it by itself. But if it's, if it's impacting
16 on this, then maybe we need to hold the phone and just talk
17 about it now.

18 **COMMISSIONER ARGENZIANO:** That's my thoughts.

19 **CHAIRMAN CARTER:** Commissioner Edgar.

20 **COMMISSIONER EDGAR:** Mr. Chairman, just a suggestion
21 to, to maybe see if this would accommodate the concerns that
22 Commissioner Argenziano has raised.

23 If as the staff kind of briefly walks us through each
24 issue, if they'd point out if this is one that pertains to
25 Chuluota or would affect that would be one suggestion. And

1 then again, I, I want to follow your will, but I suggest again
2 because the issues are so interrelated it really might be
3 simpler and clearer if we voted at the end as a whole rather
4 than individually simply because there are so many fallout
5 issues, one building on another.

6 **CHAIRMAN CARTER:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** Mr. Chair, that's my
8 question is, is, from staff, how does it affect if we wait 'til
9 the end, or do we, would we need to make a decision as a
10 Commission now? How does it affect -- if we were to separate
11 Chuluota out of this, let's say at the end of the discussion we
12 go and talk about Chuluota and say let's take it out of this,
13 this whole, let's not consolidate it with these others and yet
14 we vote on these individual 4, 5, 7 and 9 and then we make a
15 determination later, and I'm not saying we are, but if we do to
16 remove Chuluota, how does that, how does that work?

17 **COMMISSIONER SKOP:** Mr. Chair.

18 **CHAIRMAN CARTER:** One second, Commissioner.
19 Go ahead.

20 **MR. WILLIS:** Well, it's going to make it a little
21 more tedious to go through because we'll have to go through and
22 take the time, staff will, to try and pull out those separate
23 Chuluota adjustments. So it's going to take a little bit
24 longer to do that. And then at the tail end we can go back
25 through and pick those adjustments up if that's the

1 Commission's desire or talk about whether Chuluota should be
2 totally excluded, I guess, from any revenue increase is what
3 I'm gathering.

4 I would point out that Issue 5 though is a stipulated
5 issue. I know, Commissioner Argenziano, you talked about Issue
6 5. That was stipulated and approved by the Commissioners at
7 the hearing itself.

8 **COMMISSIONER ARGENZIANO:** Uh-huh.

9 **MR. WILLIS:** And I don't know that we can revisit
10 that unless there's a motion to revisit that issue.

11 **COMMISSIONER ARGENZIANO:** Right. Well, excluding
12 then 5.

13 **MR. WILLIS:** Okay. But we can do that,
14 Commissioners. It's just going to take longer. We'll have to
15 take some time here for staff to sit here and try and strip out
16 Chuluota-specific issues.

17 **CHAIRMAN CARTER:** Okay. Hang on a second. Let me
18 kind of think this through.

19 Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

21 I guess trying to, you know, understand the concerns,
22 it would seem to me that with respect to going through the
23 issues, again, I see merits of doing it either way. As
24 Commissioner Edgar suggested, we could take it up all at the
25 end or we could do it item by item, you know. I guess my

1 preference is I kind of like the item by item so I can keep it
2 straight.

3 But with respect to Chuluota being embedded with each
4 of the respective issues, most of the issues deal with
5 adjustments and the adjustments are in favor of the consumer to
6 the extent that they're actually lacking what was submitted and
7 it actually has benefit to Chuluota by considering the issues.
8 There may be some additional expenses that, again, I can't read
9 Commissioner Argenziano's mind or concerns that she may have to
10 the extent that maybe some adjustments for Chuluota were not as
11 much as they should be.

12 But, again, it seems to me that any adjustments being
13 made in each of the issues we're considering are positives
14 towards reducing the rate impact on, on Chuluota and the other
15 systems.

16 **CHAIRMAN CARTER:** Let me, let me do this, kind of
17 think this through.

18 **COMMISSIONER ARGENZIANO:** Mr. Chair, just if I may.

19 **CHAIRMAN CARTER:** You're recognized.

20 **COMMISSIONER ARGENZIANO:** Some of these adjustments
21 increase.

22 **COMMISSIONER SKOP:** Okay.

23 **CHAIRMAN CARTER:** Let me, let me, let me ask this
24 question before I have one of my over 50 moments. And since I
25 had a birthday, I'm not going to say how much over 50.

1 **COMMISSIONER ARGENZIANO:** You're not going to tell
2 us, are you?

3 **CHAIRMAN CARTER:** No. No. No. Let's just say that
4 this is not dye, this is for real gray.

5 **COMMISSIONER ARGENZIANO:** So is this.

6 **CHAIRMAN CARTER:** Mr. Willis, I'm trying to get my
7 head, my head around this issue.

8 I asked, I was kind of piggybacking on what
9 Commissioner Argenziano had said earlier, but I really asked
10 about the Chuluota. Is there a way for us to take Chuluota out
11 of this and handle it as a separate stand-alone case?

12 **MR. WILLIS:** The -- Chuluota itself right now as far
13 as the other 81 systems are all calculated in here as
14 stand-alone systems. That's why we have a separate rate base
15 and a separate income statement for every one of these systems.
16 They're all calculated as stand-alone for us to come up with a
17 revenue requirement for the total company. That involves
18 having a revenue requirement calculation by system. So
19 everything you see back here as far as our calculations are all
20 stand-alone systems. That's how they're calculated.

21 **CHAIRMAN CARTER:** Okay.

22 **MR. WILLIS:** So as we go through here, all we're
23 doing in the issues are combining adjustments by system so we
24 can take up that category for all systems, which will encompass
25 any adjustment of those systems. Now we can handle -- I guess

1 we could do it either way. I think the quicker way would be
2 for, maybe for us to identify what the Chuluota adjustments are
3 in here as we go through each issue. I think we could arrive
4 at the same place.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Would it be simple, can it
7 be done, if we waited to the end, that then if it were decided
8 that Chuluota, something changed with Chuluota that we weren't
9 going to allow Chuluota to be -- whatever happens, can you go
10 back then to these issues and readjust? If we were to disallow
11 Chuluota at the end, can you go back to these recommendations,
12 these positions later and readjust to eliminate Chuluota?

13 **MR. WILLIS:** I guess I need to get a better
14 understanding about what you mean by disallow. You mean like
15 disallow any increase whatsoever for Chuluota?

16 **COMMISSIONER ARGENZIANO:** Right. I'm not saying
17 that's going to happen. I'm just saying what if it does? Then
18 can you then later go back and readjust or should we just
19 decide on that now?

20 **MR. WILLIS:** Well, I think in the Commission's own
21 motion they can, they can go back and undo previous --

22 **COMMISSIONER ARGENZIANO:** Okay. Well, then --

23 **MR. WILLIS:** There could be -- it's been done before
24 where the Commissioners on their own motion can do that.

25 **CHAIRMAN CARTER:** I'm going to go to Commissioner

1 McMurrin, then Commissioner Skop. And I'll come back to you,
2 Commissioner, just in case.

3 Commissioner McMurrin, you're recognized.

4 **COMMISSIONER McMURRIAN:** I think some of what I was
5 going to ask has just been answered because I think we're all
6 kind of talking past each other. I think when I hear some
7 Commissioners talk about excluding Chuluota what we're thinking
8 about is looking at it as a separate number, which, as Marshall
9 has pointed out, that we have those numbers within the rec for
10 each of the systems, we have the stand-alone. And, of course,
11 at some point we'll be talking about whether or not we're
12 looking at rates on a stand-alone basis or some kind of banding
13 and very complicated stuff.

14 But I think what Commissioner Argenziano said was,
15 the way I understood it when she, when she raised it, which is
16 a big thing -- and I guess my concern is that if we go past --
17 I guess I'm kind of going back toward maybe we ought to be
18 looking at Issue 1 first. Because if we go through all of
19 these and then we decide that we're going to somehow exclude
20 it, then we have to go back through all of them again to decide
21 how we put, how we excluded. So it seems like we have to make
22 that decision up-front to me. So it almost seems like we're,
23 in trying to avoid Issue 1 because it's so tough, we're just
24 making it tougher on ourselves in the end.

25 **CHAIRMAN CARTER:** Are you trying to call me a wimp or

1 something like that?

2 **COMMISSIONER McMURRIAN:** No.

3 **CHAIRMAN CARTER:** That's what it sounds like to me.

4 **COMMISSIONER McMURRIAN:** Me too, because it seemed
5 like a good idea to go ahead and go through 2, 3, et cetera.
6 But if we're going to end up each time trying to figure out
7 what kind of effect that has on Chuluota specifically, then it
8 seems like we're better off deciding that upfront.

9 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

11 I guess hearing the comments of, you know, different
12 ways to approach it, I guess with respect to Commissioner
13 Argenziano's concern, I think she raised a valid point to the
14 extent that there may be, adjustments may result in increases.
15 Which, again, I was speaking generally when I spoke the first
16 time.

17 But perhaps, as Commissioner Edgar suggested, we
18 could just go through the various issues and then, you know,
19 just ask questions. And that would provide an opportunity, if
20 there were adjustments or increases to adjustments that
21 Commissioner Argenziano has problems with, those could be
22 brought up in questions and then we can kind of vote at the
23 end, as Commissioner Edgar suggested, as opposed to individual.
24 But just in, in a hopeful thought, you know, you never know,
25 maybe the company could come forward and just withdraw Chuluota

1 and we wouldn't have to deal with them. That might be wishful
2 thinking, but anyway. Either way is fine with me. I just want
3 to work through the issues and address each of them and any
4 questions that may arise. Thank you.

5 **CHAIRMAN CARTER:** Well, let's see. Commissioners,
6 Commissioners, Issue 1 does deal with the quality of service.
7 And based on staff's recommendation, they say the overall
8 quality of service is marginal, and they say the quality of the
9 product is satisfactory except at Chuluota and The Woods water
10 systems where the product is marginal. And we had a discussion
11 between staff and Commissioner Argenziano this morning on
12 what's marginal, and she said not necessarily marginal,
13 unsatisfactory. And in staff's recommendation -- I'm on Page
14 12, Commissioners. And in staff's recommendation they said as
15 a result of the water quality at Chuluota and The Woods, a
16 25-basis point reduction on return of equity should be applied
17 to the water system.

18 I guess the, probably the best thing to do,
19 Commissioners, is we could just go ahead on and deal with
20 Issue 1 and look at -- that gives us a good launching pad to
21 deal with whether or not we do want to exclude Chuluota from
22 the perspective on that. And if we did that, as we proceeded
23 further, we'd know that it's not part of the discussion and we
24 move forward on that. Does that give anybody heartburn?

25 Yeah. Let's, let's tee up Issue 1, staff. You're

1 recognized.

2 **MR. WILLIS:** Okay. Let me try and take a shot at
3 teeing up Issue 1 then.

4 **CHAIRMAN CARTER:** Okay.

5 **MR. WILLIS:** Issue 1 deals with the quality of
6 service of all these 82 systems. Staff has found that the
7 quality of service is marginal for these systems. And there's
8 two basic findings in here, and I'll talk about the larger one
9 first that affects all 82.

10 The Commission -- the staff has looked at these
11 systems and determined that there are still existing problems
12 with the call center, there are still existing problems with
13 customer complaints as far as billing problems go and, because
14 of that, staff is recommending that the Commission reduce the
15 rate of return by 50 basis points which we're recommending
16 would last for a two-year period. And at that point the
17 company would have to come back to the Commission and
18 demonstrate that they have resolved those two areas of problems
19 before the 50-basis point reduction would be, would be lifted,
20 and rates would be increased once that is removed.

21 The other part of this deals with The Woods and
22 Chuluota systems where staff has found that those systems are
23 marginal, and I would explain that staff looks at three
24 different levels when they look at how the satisfaction is as
25 far as the product that comes out.

1 If it's satisfactory, they're meeting all the
2 standards and everything is rocking along quite well at the
3 plant. If it's unsatisfactory, it's normally indicative that
4 the company is not trying to resolve problems, they're not
5 working with DEP to resolve problems. But when we look at the
6 marginal aspect like we have here, it's because the company in
7 all appearances is trying to work with DEP and trying to
8 resolve those problems, and we try and recognize that by
9 calling it marginal. Because even though there are problems
10 there, the water is not something that we would consider
11 satisfactory to drink right now, the company is trying to work
12 with DEP to resolve that problem. That's why we come up with a
13 marginal level when we say marginal. And, of course, that's up
14 to you to decide whether you believe that is the correct
15 category to put the company in as far as Chuluota or The Woods.

16 But as far as the recommendation goes, we're
17 recommending that the Commission reduce the return on equity
18 for The Woods and Chuluota by 25 basis points, which would be a
19 full 75-basis point reduction when you look at both together,
20 and that would be lifted only when DEP closes its consent order
21 for those two systems. And at that point the company could
22 come forward and ask for that 25 basis points to be restored
23 once the consent order is lifted on those two systems.

24 **CHAIRMAN CARTER:** Thank you. Commissioner McMurrian,
25 and then Commissioner Argenziano, then Commissioner Skop and

1 then Commissioner Edgar. And if there's anything left, I may
2 have a comment or a question too.

3 Commissioner McMurrin, you're recognized.

4 **COMMISSIONER McMURRIAN:** Thank you. I guess this is
5 to Mr. Willis. You explained the three levels that we've used
6 in the past, the satisfactory, unsatisfactory and marginal.
7 What do the statutes say with regard to what we have to decide
8 with respect to quality of service? Does it say that we need
9 to find whether or not the quality of service is satisfactory
10 and that's it or is it just saying make a determination?

11 **MR. WILLIS:** No, Commissioner. The statute --

12 **COMMISSIONER McMURRIAN:** I guess I should have asked
13 Ralph, too.

14 **MR. WILLIS:** I'd like to read it here.

15 **COMMISSIONER McMURRIAN:** And I guess what I'm getting
16 at is whether or not -- sort of we've over time established
17 that as a way to sort of give more, to more fully describe what
18 we see happening with the utility as opposed to really being
19 required to say whether or not it's some middle ground between
20 satisfactory or unsatisfactory.

21 **MR. JAEGER:** Commissioner McMurrin, we have a rule,
22 25-30.433, rate case proceedings. And it says, "In a rate case
23 proceeding the following provision shall apply." And, let's
24 see, "Unless the applicant or any intervenor demonstrates that
25 these rules result in an unreasonable burden, in these

1 instances" -- I'm sorry. I've looked at -- I've got the rule
2 but -- "The Commission in every rate case shall make a
3 determination of the quality of service provided by the
4 utility. This shall be derived from an evaluation of three
5 separate components of water and wastewater utility operations
6 and its quality of utilities product and operational conditions
7 of the utility's plant and facilities and the utility's attempt
8 to address customer satisfaction."

9 It doesn't say whether you have to find it
10 satisfactory, unsatisfactory. That's sort of -- we've cited
11 some cases where like in Aloha it was unsatisfactory and we
12 reduced the return on equity by 100 basis points. Ocean Reef
13 and the Southern States, we found it marginal, and we did
14 Southern States by 25 basis points and the Ocean Reef Club by
15 50 basis points for marginal.

16 So when they're unsatisfactory, we usually, sometimes
17 we'll take them all the way to the bottom of the range of the
18 return on reasonableness.

19 **COMMISSIONER McMURRIAN:** Right. And I think you're
20 getting ahead of me a little bit. But you are, but you did
21 bring up something I wanted to talk about. But anyway it
22 sounds like the answer to what I asked was we're required to
23 make a finding with respect to quality of service, we're
24 required to look at those three subparts, but we're not
25 required to say satisfactory or unsatisfactory or marginal.

1 That's something we've done in order to give, I guess, all the
2 parties some kind of, to try to share with them what we see
3 happening with the utility. And we've, it seems like we've
4 used marginal to say, as Marshall described, it hasn't been
5 satisfactory but we see efforts by the utility to correct the
6 problem. As opposed to unsatisfactory, we might use that when
7 we see less than satisfactory efforts to correct the problem, I
8 suppose.

9 **MR. JAEGER:** And Marshall may have been trying to get
10 to 367.081(2)(a)(1) where it just says, "The Commission shall
11 consider the value and quality of the service in every rate
12 proceeding."

13 **COMMISSIONER McMURRIAN:** Okay.

14 **MR. WILLIS:** Well, actually what I was trying to do
15 is get to 367.111 which deals with service. And I'd just add
16 to that -- that's the other part, .081.

17 But if you look at (2) of 367.111 which deals with
18 service for water and wastewater companies, the last part of
19 Paragraph 2 talks about the reduction of rate of return. It
20 says, "If the Commission finds that the utility has failed to
21 provide its customers with water and wastewater service that
22 meets the standards promulgated by the Department of
23 Environmental Protection or the Water Management Districts, the
24 Commission may reduce the utility's return on equity until the
25 standards are met." And that's the statute we're going on here

1 that basically says for Chuluota and The Woods, once that
2 consent order is lifted, is closed, that's when they've met
3 those, the Department of Environmental Protection's
4 requirements.

5 **COMMISSIONER McMURRIAN:** Right. And I think again
6 y'all are getting ahead of me a bit because I'm not really
7 getting into the ROE part yet. I'm just really asking what is
8 it we're required to do as far as a finding? I'm certainly
9 getting to the, to the question that Commissioner Argenziano
10 raised about whether or not -- I'm trying to get in my mind
11 whether we say satisfactory, unsatisfactory or marginal. And I
12 guess I'll go ahead and share with you that I don't have a
13 problem with saying unsatisfactory. I do think it's
14 unsatisfactory. If it's a binary decision, it's either
15 satisfactory or not, then I think it's unsatisfactory.

16 And I realize we've used this marginal to say that we
17 see the utility making some strides to address the problem.
18 And I think that's true; I think there's plenty of evidence
19 that says that. But if I'm making a decision with is it okay
20 or not, then I'm with it is not at this point satisfactory.
21 And so I feel like unsatisfactory would, would be okay.

22 And so I'm just trying to see are we bound to say
23 unsatisfactory, satisfactory or marginal, or can we, despite
24 the fact that we've been using this marginal category, can we
25 just say whether or not it's satisfactory and be done?

1 **MR. WILLIS:** I believe you, I believe you can look at
2 the testimony in this case and decide whether you believe it
3 goes further to the unsatisfactory category. You have that
4 ability.

5 **COMMISSIONER McMURRIAN:** Okay. And then another
6 point that Mr. Jaeger brought up was something I was going to
7 ask about in one of the prior cases that he mentioned with
8 respect to Aloha. And I seem to remember that with respect to
9 Aloha we decided that the quality of service was
10 unsatisfactory. And I also seem to remember that there were
11 some problems with hydrogen sulfide but also with other
12 customer service problems perhaps, and I don't really mean to
13 get too far into this. But I guess what I'm trying to do is
14 draw some parallels of prior cases where we've said
15 unsatisfactory. Are we in sort of a similar situation here,
16 not exactly the same, I'm definitely not trying to say we're in
17 exactly the same boat, but if we had quality of service
18 problems, perhaps even some that weren't with respect to not
19 meeting a DEP standard, that some of it is hydrogen sulfide and
20 more aesthetic issues as well as issues with respect to
21 customer service, which we also have here that you've laid out
22 in that Part 3, wouldn't we be in sort of similar territory to
23 say that the overall quality of service was unsatisfactory in a
24 similar way that we did in that case?

25 **MR. JAEGER:** I think there are many similarities

1 obviously between Aloha and this case. There was a whole
2 series of Aloha dockets with water, and it started out, we
3 actually said the quality of the water was satisfactory. Then
4 we sort of said, well, no, it's not so good. And then we
5 finally got to the point where it was unsatisfactory in the
6 nine -- I think it's 960545. I'll check that.

7 But anyhow when we -- and it was more -- we didn't
8 see progress, we didn't see movement, and it wasn't until we
9 got into that last Aloha docket that Aloha finally did hire
10 Dr. Taylor. And Aqua has done this -- they've already hired
11 Dr. Taylor before we ever got to that final order. So Aqua is
12 a few steps ahead of Aloha. They did put the chloramines back
13 on and they thought that would handle it. They've hired
14 Dr. Taylor to watch, you know, to oversee this black
15 water/hydrogen sulfide problem. And so we think that they are
16 a little bit ahead of where Aloha was.

17 That's the reason we went with the 75 basis points
18 versus the 100 versus Aloha. They've been more proactive,
19 more -- and I think there was testimony -- I remember on
20 cross-examination where they were talking about three separate
21 ways to handle this hydrogen sulfide problem, and they were
22 looking at a 2010/2011 timetable of going through it. And I
23 think they admitted that chloramines may not be the ultimate
24 solution because it takes too much tinkering, too much
25 oversight, too much review. And so they are saying, yes, it

1 looks like we are going to have to do more. We've got the
2 chloramines in place and now we're seeing if we're going to go
3 with MIEX or anion exchange or some other procedure to take
4 care of this hydrogen sulfide. So, yes, it's very similar,
5 same problems. We think that Aqua has just shown a little bit
6 more proactive trying to fix the problem. They have come in
7 with money, investment and it's still a problem, and that's the
8 reason we went with 75 versus 100.

9 **COMMISSIONER McMURRIAN:** Well, I agree with that.
10 And I wasn't getting into the ROE again, but I -- and I'm
11 definitely not trying to say that because in the Aloha case
12 that we made an unsatisfactory ruling that, therefore, the ROE
13 outcome should be the same. We're dealing with two completely
14 different systems.

15 I'm really only trying to draw a parallel in the fact
16 that we had cases where we said that there were some quality of
17 service problems with the quality of the water, even if it was
18 somewhat aesthetic, as well as customer service problems, and
19 we said the overall quality of service was unsatisfactory. I
20 realize there were a lot of things that led up to that, a much
21 more prolonged history of problems there.

22 But at the same time, it seems like -- frankly, it
23 seems like the more important thing to talk about is how we
24 address finding, the finding that it's unsatisfactory or even
25 marginal. The more important thing is to get to what you all

1 keep getting into, which is what we do with the ROE and what
2 kind of actions we take because of the company's service rather
3 than getting as caught up necessarily in marginal versus
4 unsatisfactory. And maybe I'm the one who's catching us up in
5 marginal versus unsatisfactory. But I guess that's my point.
6 How important really is it that we say marginal versus
7 unsatisfactory? Because, again, I feel like if I'm choosing
8 between satisfactory or unsatisfactory, I have to call this
9 unsatisfactory.

10 **MR. JAEGER:** I think you could do that -- I think
11 I'll take you back to the Wilson case. As long as you do, keep
12 them within the range of reasonableness on their rate of return
13 --

14 **COMMISSIONER McMURRIAN:** Right.

15 **MR. JAEGER:** -- then you can set the equity, you
16 know, either at the bottom or up to, you know, anywhere on that
17 line for the rate of return.

18 And so I'm not sure that unsatisfactory or marginal,
19 you know, is really that important. And if you want to say
20 unsat (phonetic) you can do whatever the penalty is, 100, you
21 know, off the midpoint, all the way up.

22 **COMMISSIONER McMURRIAN:** We would still be in
23 compliance with the statutes to make a finding one way or the
24 other, and then we would still need to be cognizant of the
25 statute that, like you said, in the Gulf, that was in the Gulf

1 Power versus Wilson case to make sure we, we provide that
2 reasonable range of return.

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

4 **COMMISSIONER McMURRIAN:** Okay. And I guess I have
5 one other, one other question along those lines.

6 Is getting into the issue of pulling Chuluota out --
7 well, let me ask it this way. Is Chuluota earning, is the
8 Chuluota system currently earning that fair rate of return? If
9 we did not do anything with the Chuluota system now, would we
10 be in compliance with the statute?

11 **MR. JAEGER:** I will leave that up to the accountants.

12 **MR. FLETCHER:** Commissioners, Bart Fletcher with
13 Commission staff. If you would refer your attention to 256,
14 Chuluota, the wastewater operation schedule, and 257. Their
15 achieved rate of return now is 4 percent based on staff's
16 recommended adjustments to their operating expenses, revenues,
17 et cetera.

18 So at this point, I mean, they're in a situation
19 based on our adjustments where they would be entitled to an
20 increase whether you were to recommend any kind of reduction
21 point or not on the, regarding quality of service. So, I mean,
22 they're in a position now where based on the evidence and based
23 on the calculations they would be entitled to an increase even
24 with the 100-basis or 75-basis points reduction.

25 **MR. WILLIS:** And, Commissioner, that's dependent upon

1 the adjustments that staff has presented here. If the
2 Commission were to disagree on those adjustments and reduce it
3 even lower, then that would, that would cause the return to
4 fluctuate, so.

5 **CHAIRMAN CARTER:** Do you mind if we yield for a
6 moment? Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** I just want to respond
8 to --

9 **CHAIRMAN CARTER:** You're recognized. I'll come back
10 to you.

11 **COMMISSIONER ARGENZIANO:** You said they're entitled
12 to their, to their return within that range of the, of the, of
13 the leverage graph. But you also read the statute that
14 indicated that if they don't meet DEP standards, we can reduce
15 their ROE. So while they may be entitled to it at Chuluota, we
16 also can, if we found that they weren't meeting the standards,
17 can reduce their ROE.

18 **MR. WILLIS:** That's correct.

19 **COMMISSIONER ARGENZIANO:** So we don't have to
20 increase their ROE.

21 **MR. WILLIS:** Commissioner, what --

22 **COMMISSIONER ARGENZIANO:** The statute gives us that
23 ability.

24 **MR. WILLIS:** Commissioner Argenziano, what staff is
25 trying to explain here is that we understand we can reduce it

1 down to the low end of the range of reasonableness that you all
2 set today.

3 **COMMISSIONER ARGENZIANO:** No. No. I got that. I
4 got that.

5 **MR. WILLIS:** What we're trying to say here is that on
6 these schedules what it shows is that the company is earning
7 based on our calculations below that range of reasonableness
8 right now. That's all we're trying to indicate.

9 **COMMISSIONER ARGENZIANO:** Right. But, Mr. Chair,
10 that begs the question again, and that's why I interjected,
11 because the way I read the statute, even if they're at
12 4 percent now below, the statute says if they are not meeting
13 the standards, I can reduce their current rate of return.

14 **MR. WILLIS:** That's true. The statute says that.

15 **COMMISSIONER ARGENZIANO:** So even though that's the
16 low end of their, is 8.75 in there, I could, if the Commission
17 decided to, and that's not what I'm saying, but I'm just trying
18 to clarify this, is that the way I read the statute, we could
19 reduce the utility's return on equity until the standards are
20 met. So if they're not at 8.75 now and we don't give them that
21 8.75, does that mean that you can reduce what they're making
22 now?

23 **MR. WILLIS:** No. I believe --

24 **COMMISSIONER ARGENZIANO:** Tell me why.

25 **MR. WILLIS:** Case law, that's the problem, we have

1 case law that's interpreted the statute. The case law that
2 Mr. Jaeger was talking about indicates that the Commission has
3 to set a rate of return within a range of reasonableness, and
4 that range of reasonableness is something that you'll vote on
5 today.

6 And, for instance, if the Commission --

7 **COMMISSIONER ARGENZIANO:** I know that, Marshall.
8 What I'm trying to get at -- and forgive me, but I know that.
9 I understand that.

10 Was the case law based on a standard that was not
11 met?

12 **MR. JAEGER:** I believe it goes all the way back to
13 Bluefield where if you don't give the utility an opportunity to
14 earn a fair rate of return, that is an unconstitutional taking,
15 confiscatory.

16 **COMMISSIONER ARGENZIANO:** I understand that. Was the
17 case law you're citing, was it particular, was it the same in
18 not meeting a standard, a DEP standard, or was it just that you
19 weren't, somebody, whatever Commission it was, decided they
20 were not going to give them their ROE based on something else?

21 **MR. JAEGER:** It was based on corrupt business
22 practices of Gulf Power Company.

23 **COMMISSIONER ARGENZIANO:** Okay. Well, then wouldn't
24 it be different if the statute says you can, you can reduce
25 their ROE if they are not meeting standards? Isn't that --

1 that's not the same as the case law you're citing.

2 **MR. JAEGER:** I think our interpretation over the
3 years has been that this case applies to -- and it, it goes all
4 the way back to the Bluefield case.

5 **COMMISSIONER ARGENZIANO:** So you think, let me ask
6 you this, you think that using that case law, and I agree with
7 you there, if they were corrupt or whatever it is, there's no,
8 there's nothing in here that I see that applies -- I guess
9 there is. I'm sorry. Let's take it back.

10 You're using that, that case law for a case that has
11 different particulars. This one would have a different
12 statutory remedy that says that we can reduce, we can keep
13 you -- it doesn't say below, it just says we can reduce the
14 revenue if you are not meeting the standards. And I'm not sure
15 that that case that you cite applies to, to a deficiency in
16 standards. It's corruption or whatever the case was. I'm not
17 sure it's the right case law to, to rely on, and that's what I
18 was asking for. Not that I'm saying we're going there. I'm
19 just trying to figure out if the statute says that you can
20 reduce -- you know, here, "If the Commission finds that the
21 utility has failed to provide its customers with water or
22 wastewater service that meets the standards promulgated by the
23 Department of Environmental Protection or the Water Management
24 Districts, the Commission may reduce the utility's return on
25 equity until the standards are met." It doesn't say you have

1 to bring it up to the leverage and then reduce it. I'm
2 wondering if that then would mean that it can be reduced from
3 where it is now.

4 **MR. IMHOF:** Commissioner Argenziano, Booter Imhof on
5 behalf of staff.

6 I think it can be reduced within the range to be fair
7 and reasonable by the Commission, and that's what that Gulf
8 Power case said.

9 Essentially you have, the Commission has to give,
10 allow the, a fair and reasonable return. As long as they do
11 that within the range found reasonable, it's, it's okay. But
12 below a reasonable rate of return, then it would be a
13 confiscation under the Constitution, I believe.

14 **COMMISSIONER ARGENZIANO:** So then what you're saying
15 is that we'd have to increase their revenue in order to punish
16 them because they are not meeting the standards basically.

17 **MR. IMHOF:** What I'm saying is that if you find a
18 reasonable rate of return between that range, you can reduce it
19 as far down with a reasonable rate of return.

20 **COMMISSIONER ARGENZIANO:** And you could just
21 otherwise, otherwise not give them -- I won't even go there.
22 I'll, I guess I'll take that answer and somewhat disagree. But
23 thank you.

24 **CHAIRMAN CARTER:** Let me see. Commissioner
25 McMurrin, had you completed?

1 Okay. In this order, we'll go Commissioner
2 Argenziano, then Commissioner Skop, then Commissioner Edgar.

3 Commissioner Argenziano, you're recognized.

4 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.

5 Getting back to the word marginal. The reason I
6 brought up marginal was -- and what I'm seeing here is that
7 there's either wordsmithing or an interchanging of the word
8 marginal and what it's applied to.

9 As far as I'm concerned -- and, Marshall, you had
10 explained it as the effort of the company. Marginal to me and
11 quality of the service or the quality of the product has
12 nothing to do with the effort the company is making.

13 I think the company is making an effort to try to get
14 that done and they have no choice, and they're trying, I think,
15 hard to get that done. And I've even sympathized with the fact
16 that that water just may be stinky water because that's where
17 it is, and it's going to cost a lot, I think in my mind, for
18 the company to have to repair the hydrogen sulfide.

19 It is the other issue that I'm talking about. I'm
20 not saying that that's not problematic: Black sinks and black
21 clothing and stinky water is not a good thing. But to
22 interchange the meaning of marginal to apply to their efforts,
23 you have to word that differently. You have to say then the
24 efforts by the company to change the quality of service is
25 marginal or they're getting there. But the product is not

1 marginal, and it's insulting to every person who has to take
2 Chuluota's water to consider that having DEP standards that are
3 not met marginal. And the definition that I see, and there's
4 several, but they all come down to the same thing of marginal
5 is bare, just barely adequate or within a lower limit. It's
6 not within the lower limit of DEP. It's below the lower limit
7 of DEP, so it cannot be marginal. It's below. So putting the
8 word marginal to the water quality, the product, is inaccurate
9 and it needs to be changed.

10 And if you want to add something in there that the
11 company's efforts absolutely is marginal. They are moving
12 forward and they are. But I don't want it misinterpreted --
13 marginal is the wrong definition to use to describe the product
14 quality. And, and I just disagree and oppose using the word
15 marginal because it does not meet the lower, even the lowest
16 standard on the trihalomethane, right, for Chuluota. And
17 that's the reason, Commissioner McMurrian, I say that it does
18 make a difference in using the word marginal, because it is
19 not.

20 And, let's see, did I have anything else? I think
21 that's it for now, Mr. Chairman.

22 **CHAIRMAN CARTER:** We'll still come back to you.

23 Commissioner Skop, you're recognized, sir.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

25 Just following the discussion. Again, I think I have

1 similar concerns that, that have been expressed by Commissioner
2 Argenziano, Commissioner McMurrian and the rest of my
3 colleagues.

4 I think in some aspects you have the consumer
5 perception versus the DEP standards. And even if in some
6 instances it met DEP standards, I think some consumers would
7 find the water to be objectionable via odor, particulate
8 matter, what have you. So, again, that's a little bit of a
9 tension to the extent that, I guess that we use DEP standards
10 and compliance with those standards as one of the critical
11 benchmarks in judging whether the water quality is satisfactory
12 or unsatisfactory, or I guess the third option is marginal.
13 But, again, to me that's kind of nebulous. And I think that
14 it's very important to have clear criteria when we're trying to
15 articulate our reasoning for a decision that this Commission
16 makes so that there's no uncertainty or confusion in future
17 cases or in terms of the precedent that we set so that it's a,
18 the parties have a clear understanding as to how the Commission
19 may be expected to rule in a given situation.

20 So I do think that the, the water quality has not
21 been in compliance with the DEP standards. And even if it met
22 the DEP standards, I don't think that that would fully address
23 some of the other concerns that have been expressed by the
24 consumers. Now whether those -- again, that's where the
25 subjectivity comes into it. But currently the water quality in

1 Chuluota and The Woods is obviously not up to par, whether we
2 call it unsatisfactory, marginal, what have you, and I think
3 that we as a Commission need to address that.

4 Going back to the discussion with respect to
5 adjusting the rates of return for a particular system, I have a
6 quick question to Mr. Willis. With respect to each of the
7 water and wastewater entities, you mentioned that they're
8 stand-alone, that they're viewed as a stand-alone basis. Does
9 that include ROE in a stand-alone basis or is ROE uniform
10 across each of them or more globally across the portfolio?

11 **MR. WILLIS:** Well, the calculation for ROE is based
12 on Aqua Utilities Florida, the subsidiary, which is made up of
13 the 82 systems plus some that aren't regulated by the
14 Commission.

15 **COMMISSIONER SKOP:** Okay.

16 **MR. WILLIS:** So it's spread out among all of those.
17 But if you wanted to look at them separately the way we've
18 calculated it here, we've given each system an equal proportion
19 of that capital structure.

20 **COMMISSIONER SKOP:** Okay. So any adjustments that
21 would need to be made for Chuluota would have a global effect
22 on AUF; is that correct?

23 **MR. WILLIS:** Not as far as reducing the rate of
24 return. As far as -- if you want to reduce it for quality of
25 service, those calculations only have a bearing on the Chuluota

1 system as far as the product.

2 **COMMISSIONER SKOP:** Okay.

3 **MR. WILLIS:** The global when we're doing it, the 50
4 basis points we're recommending, has an affect on all, all
5 systems.

6 **COMMISSIONER SKOP:** Okay. So if I, if I understand
7 you correctly, and I think this was explained in the analysis
8 at the end of Issue 1, that for the adjustments that may be
9 appropriate for Chuluota and The Woods, those are specific to
10 those particular systems only.

11 **MR. WILLIS:** That's correct.

12 **COMMISSIONER SKOP:** And don't affect -- okay. And I
13 think just touching upon the Gulf case, at least my
14 interpretation of that and I think how courts have interpreted
15 the 367.111(2) statute, is that, again, we do have the ability
16 to reduce return on equity or earnings within that zone of
17 reasonableness. I don't think we can go below it due to the
18 Supreme Court precedent of, I believe it's Bluefield and,
19 Bluefield and Hope, that you have to earn that reasonable rate
20 of return; otherwise, it would be an unconstitutional taking.
21 So I do think that we have broad discretion.

22 But equally I do think that there, I think there was
23 some discussion Commissioner McMurrin raised between, you
24 know, the Aloha case and this case and the histories, the
25 various histories versus, you know, a near-term acquisition

1 where someone has come in and tried to make some improvements,
2 perhaps coming in for a rate case a little bit sooner than they
3 should have. But, again, that's their legal right to do so.
4 But equally those customer concerns, customer service, water
5 quality issues, those are something that I guess we have to
6 discuss as a Commission. I mean, I think that those could be
7 addressed appropriately in some of the ways that staff has
8 recommended, but perhaps some additional tweaks as the
9 Commission deems appropriate. Thank you.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Edgar.

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

13 Briefly.

14 Just to kind of put out there after the good and
15 thoughtful discussion that we've had kind of where I think I'm
16 at from hearing all of this, I am comfortable I think at this
17 point, unless I hear something different, with in my mind, when
18 we under Issue 1 are to consider the quality of service, I
19 think I'm comfortable with marginal for the 80 systems. And I
20 say that -- and that's kind of what this, this says but not
21 exactly. Excuse me.

22 And the reason I say marginal for the 80 systems is
23 my memory is that we did hear from some customers from some of
24 the other systems that they were satisfied with the service
25 that they had had in some of those other systems. We did hear,

1 of course, as we all remember, significant concerns in Chuluota
2 and also in The Woods.

3 So the way I'm thinking about it in my own mind is my
4 thinking, a decision point of quality of service for the
5 80 systems as marginal, for Chuluota and The Woods as
6 unsatisfactory. I don't know that we need to make that
7 finding, but that's just kind of my thought process.

8 And along with that then I agree with the staff
9 recommendation as to the 50-basis point adjustment for that
10 finding or determination or description of marginal, realizing
11 that there were concerns and complaints that we have all heard
12 about primarily some of the customer services issues, billing,
13 poor follow-up and some of those other changes, and poor
14 notification on some of the meter system changes and along
15 those lines. And so the 50-basis point adjustment for the
16 80 systems in my mind is consistent with what we heard in the
17 analysis.

18 I think the additional 25-point adjustment for
19 Chuluota and The Woods, in light of the discussion we've had
20 and my own thought process added into that, I would offer an
21 additional 25 adjustment for just those two systems such that
22 what I'm putting forth in my thinking is a 50-basis point
23 adjustment for the 80 systems, an additional on top of that
24 50-basis point adjustment for Chuluota and The Woods, with the
25 same conditioning that it would be, the burden would reside on

1 the company to come forth at a later date and show improvements
2 in both per the consent order from DEP and other quality of
3 service factors that we have discussed.

4 **CHAIRMAN CARTER:** Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** I have a question on the --
6 just out of curiosity, if you can help me out here. Reducing
7 the staff's recommendation and reducing the 50 basis points for
8 the quality issues, does that get down to where the company, is
9 that about the same number of the company's original request
10 for ROE? Does that take it down to their original request?
11 Could somebody check on that?

12 **MR. WILLIS:** It takes it close. Commissioner, it
13 takes it close. What staff is coming up with is 10.77, and a
14 50-basis point reduction would be 10.27.

15 **COMMISSIONER ARGENZIANO:** Okay. So the company came
16 in and asked for --

17 **MR. WILLIS:** Ten -- well --

18 **COMMISSIONER ARGENZIANO:** Wasn't it nine something?

19 **MR. WILLIS:** The company's original request, I
20 believe, was 10.25 when they came in with the MFRs. The
21 leverage graph that we're recommending now would show 10.77.
22 The 50-basis point reduction would bring it to 10.27.

23 **COMMISSIONER ARGENZIANO:** Okay. So let me just get
24 this straight. So the company comes in and asks for less than
25 what we're recommending now, and then for the quality issues we

1 give them a 50-basis point reduction of staff's recommendation
2 and it gets them back to what they originally asked for.
3 That's not a real punishment to get what you originally asked
4 for.

5 **MR. WILLIS:** I understand where you're coming from.
6 What the company did in its filing, since they didn't know what
7 the new leverage graph would produce, was to do what every
8 company does and file their filing with the current leverage
9 graph in effect. But they also per their request was to use
10 the leverage graph that would be in effect at the time of the
11 Commission's decision. That can go either for or against the
12 company, it has in the past, depending on where the leverage
13 graph goes.

14 **COMMISSIONER ARGENZIANO:** That's the 2008 that you're
15 talking about.

16 **MR. WILLIS:** In this case it went in their favor
17 because it went up.

18 **COMMISSIONER ARGENZIANO:** Was there anything else,
19 Marshall, changed from the 2007 test year or fuel adjusted from
20 2007 to -- I mean, things -- I'm just trying to figure out if
21 we could pick and choose from the test year and then go to 2008
22 and use the leverage graph, was there anything else changed?

23 **MR. WILLIS:** There are -- if you look through the
24 adjustments staff has made, staff has made adjustments to what
25 we call normalized expenses in 2007. That means we don't agree

1 that some of the 2007 expenses are appropriate to carry forward
2 to 2008 and beyond because we are trying to design rates for
3 the future and not for 2007. So we have to take any test year
4 and try and make it appropriate for setting rates in the
5 future. That's, that's sort of what we're doing when we
6 normalize expenses.

7 **COMMISSIONER ARGENZIANO:** And I get that, I really
8 do. I just don't understand how you can use a test year and
9 then go to the next year, and that makes me feel less confident
10 about other numbers that may be moving back and forth.

11 **CHAIRMAN CARTER:** Commissioner, would you yield?

12 **COMMISSIONER ARGENZIANO:** Sure.

13 **CHAIRMAN CARTER:** I just thought of something. You
14 just said something that made me think.

15 Marshall, this morning, it seems like forever ago, I
16 think it may have been Mr. Maurey that said that we can choose
17 a range from 8.75 to 10.77. Did I not hear that this morning?

18 **MR. WILLIS:** I believe Mr. Maurey did say that.

19 **MR. MAUREY:** The range I gave was eight point --
20 there's testimony in the record that it could be as low as
21 8.75 or as high as 11.3.

22 **COMMISSIONER ARGENZIANO:** Mr. Chair, can I just say
23 something?

24 **CHAIRMAN CARTER:** Yes, ma'am.

25 **COMMISSIONER ARGENZIANO:** If you remember earlier, I

1 said I had a motion, and part of that was to deal with that for
2 Chuluota and The Woods. And I'd like to make the motion that
3 Chuluota and The Woods be at the bottom range of, of that, of
4 that, what we're statutorily obliged to give them until they
5 come back and prove that that quality of service has been taken
6 care of. So that would be the 8.75. That will --

7 **CHAIRMAN CARTER:** You made me think of that when you
8 asked that question.

9 **COMMISSIONER ARGENZIANO:** Right.

10 **CHAIRMAN CARTER:** Because I thought we heard that.

11 Mr. Maurey.

12 **MR. MAUREY:** If I could clarify, that's the range of
13 estimates of return on equity that if this decision were
14 appealed to the Supreme Court, you would, the decision wouldn't
15 be overturned. That's not staff's recommendation that 8.75 is
16 a reasonable equity return for this company.

17 **CHAIRMAN CARTER:** We know that. We know that.

18 **MR. MAUREY:** Okay.

19 **CHAIRMAN CARTER:** We know that. That's not whether
20 or not it was staff's recommendation. It was the range. Is
21 that the way you read it, Commissioner?

22 **COMMISSIONER ARGENZIANO:** Exactly. Since I'm obliged
23 by statutes, by the statute to allow them a reasonable rate of
24 return and that's the range that I read and it was presented to
25 me, well, that's the motion I made. I'm not indicating that's

1 staff's recommendation. That's mine. Whether anybody agrees
2 with it or not I don't care. It's what I want.

3 **CHAIRMAN CARTER:** And if I could think aloud with
4 you, is that lower end of the range would be applicable until
5 the water is brought, and customer service, the quality of
6 service is brought to a satisfactory level.

7 **COMMISSIONER ARGENZIANO:** Absolutely.

8 **CHAIRMAN CARTER:** Because we were talking, you know,
9 it's either satisfactory or unsatisfactory, and we know it's
10 unsatisfactory at this point in time. So that's -- and I
11 hope -- thank you for letting me interrupt you there because I
12 was on that train of thought with you to see where we were on
13 that. And that's kind of, that's what I understood where you
14 were going on that.

15 **COMMISSIONER ARGENZIANO:** Yes. That was part of the
16 motion. It was to include other things, but I'll go to that
17 later. Since we were getting there, that's the motion that's
18 on the table.

19 **CHAIRMAN CARTER:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

21 Just a point of clarification with respect to not
22 only the motion but something that staff had said previously.
23 Trying to do the math on the fly, and I think Commissioner
24 Edgar had, had suggested that perhaps in lieu of the staff
25 recommendation with respect to Chuluota and The Woods that

1 there be a 50-basis point reduction on top of the 50-basis
2 point deduction for the systemwide, which would be a total of a
3 100-basis point reduction for Chuluota and The Woods until such
4 time as the water quality was improved.

5 Trying to do the math from, and if staff could help
6 me out, trying to do the math from the recommended staff ROE of
7 10.77, which is in dispute because, again, you had the '07 ROE
8 which was lower on the leverage formula than the '08 and the
9 '09 will probably drop back down too. So that's an issue in
10 itself. But on the 10.77 recommended by staff for the ROE, if
11 you did that 100-basis point adjustment, you would end up with
12 a midpoint ROE of 9.77; is that correct?

13 **MR. WILLIS:** Well, let me -- not actually.

14 **COMMISSIONER SKOP:** That's not what I was looking
15 for.

16 **MR. WILLIS:** I probably confused you. It doesn't
17 really matter.

18 When you say that you're dropping the midpoint down,
19 you really don't do that. What the Commission would do and
20 what they normally do is they set a return on equity as a
21 certain percentage. Let's just say that the Commission adopts
22 the 10.77. That is the rate of return that you're going to
23 set. And then if you want to drop it further to the low end of
24 the range of reasonableness, which at that point would be
25 100 basis points lower or 9.77, you could do that. It doesn't

1 change the midpoint. The midpoint doesn't drop down to 9.77.
2 It stays at 10.77. It's just you're setting rates at the 9.77
3 level, the low end of that range.

4 **COMMISSIONER SKOP:** Okay. That's where I need a
5 little bit more clarification. Because, again, if I understand
6 it correctly, you're setting it at 10.77 but reducing it to
7 9.77. So they can earn 100 basis points more than that, but
8 they can't earn 100 basis points less than that; is that
9 correct?

10 **MR. WILLIS:** Well, you're actually setting rates at
11 9.77.

12 **COMMISSIONER SKOP:** Okay.

13 **MR. WILLIS:** But you're saying that if, basically if
14 the company were able to earn higher than that given the rates
15 you produced, they can earn within that 200-basis point range
16 above and below the 10.77.

17 **COMMISSIONER SKOP:** That's what I'm trying to
18 articulate here, and help me out because I'm not the best
19 explainer in the world. I guess it's the engineering brain of
20 mine. But if we're at 10.77 on the ROE and we do the proposed
21 reduction, as Commissioner Edgar has mentioned, and you get
22 down to setting the rates at 9.77, then there's a 100-basis
23 point downside and a 100-basis point upside that's the zone of
24 reasonableness, the 200 basis points that you just spoke to.
25 Is that correct?

1 **MR. WILLIS:** That's correct. But the 100 basis
2 points starts at the 9.77. So it would be 200 basis points
3 above the 9.77 at that point.

4 In other words, when you set the return on equity,
5 and this is based on, based on case law, when you set that
6 return on equity, it doesn't shift the zone of reasonableness
7 that they can earn within. What you're doing is saying here is
8 a set return on equity. This is what we believe a company
9 operating with satisfactory service should get. And if it's
10 10.77, that would be what you're saying would be the perfect
11 return on equity for this company.

12 But then if you say it's unsatisfactory and you wish
13 to reduce it based on the quality of service, for example, by
14 100 basis points, it doesn't change that range of
15 reasonableness around the 10.77. All it means is that the
16 range -- you're now setting rates not at 10.77, you're setting
17 rates at 9.77 down at the low end of the range of
18 reasonableness, which doesn't mean you move your 200-basis
19 point range with it.

20 **COMMISSIONER SKOP:** Okay. I think I understand now.
21 So basically the midpoint is still based on the 10.77,
22 100 basis points above, 100 basis points below, and we're just
23 taking it down below. But I was wondering if you shifted it to
24 the 9.77, whether that low end band followed so that you would
25 essentially maybe have a low end that was at the low end of the

1 zone of reasonableness, which I think Commissioner Argenziano's
2 motion suggests, but at 9.77 you could, you could move that way
3 but you could also move up a little bit more. So thank you for
4 that clarification. I don't know if it explains my concerns.

5 I think that there's different ways to approach that.
6 And just to refresh my memory, the zone of reasonableness in
7 terms of what staff would be suggesting would be, and the
8 witness testimony is from, the range is eight something to
9 above. And what staff is suggesting is 10.77 and 100 basis
10 points above that and 100 basis points below, so that the
11 lowest you could get would be 9.77; is that correct?

12 **MR. MAUREY:** That's correct. That's staff's
13 recommendation.

14 **COMMISSIONER SKOP:** Okay. Because I thought I was
15 wrong. Thank you.

16 **CHAIRMAN CARTER:** Commissioners, we're discussing
17 the, Commissioner Argenziano's motion. And --

18 **COMMISSIONER ARGENZIANO:** Mr. Chair.

19 **CHAIRMAN CARTER:** Yes, ma'am.

20 **COMMISSIONER ARGENZIANO:** Yes, there is a motion.

21 And I don't know if anybody wants to go with the motion, but I
22 made it. And I just --

23 **CHAIRMAN CARTER:** You restate it.

24 **COMMISSIONER ARGENZIANO:** I'd restate the motion.

25 And the reason for the motion is because these two plants don't

1 meet DEP standards, and the statutes say that until those, the
2 standards are met I can as a Commissioner reduce the ROE. And
3 because those, especially Chuluota, which the company, I think,
4 was asked to keep Chuluota out of this and chose not to, and I
5 thought that was not in good faith, to be honest with you.
6 And -- not that I would lie to you. But to be honest with you,
7 I just didn't think that was a good message.

8 And personally I wish I could do more for those two.
9 And I appreciate the company's efforts, and saw, as
10 Commissioner Edgar said or Commissioner McMurrin, that there
11 are other places that we had good, fairly good reports. There
12 are quality of service problems that definitely are out there.

13 But at this time I felt that if I have to stick
14 within that range where you're talking about case law and it
15 being fair, that, that if I couldn't go lower for Chuluota
16 especially, then at least I could do it for those consumers out
17 there who are paying and looking at rate increases now for
18 water they can't even use would be to take it down to its
19 minimum to -- when we talk about a stick to move the company
20 forward and make sure it keeps moving forward. I don't want to
21 add insult upon injury to those consumers out there. I can't
22 believe that we're even raising their rates for Chuluota and
23 The Woods. As a matter of fact, if I get started on that, my
24 voice will probably go up ten octaves.

25 So the motion is that I would, I would reduce the

1 staff's recommendation of 10.77 to the minimum 8.75, and until,
2 I want to make it clear, that the standards are met, until that
3 time.

4 **CHAIRMAN CARTER:** First Commissioner Edgar, then
5 Commissioner Skop.

6 Commissioner Edgar, you're recognized.

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

8 Commissioner Argenziano, a question just so that I'm
9 clear on what you're proposing.

10 When you say from 10.77 to 8.75, are you suggesting
11 that 8.75 for the two systems or for the 82 systems? I just
12 wasn't clear.

13 **COMMISSIONER ARGENZIANO:** Not for the 82 systems.
14 Just for the Chuluota and The Woods systems. Only the ones
15 that are not really meeting the standards.

16 **CHAIRMAN CARTER:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And I
18 appreciate Commissioner Edgar on that clarification because
19 that was one of my questions.

20 And I was looking at Page 95 of the, Issue 28 on Page
21 95, and that discusses the return on equity. And at the top of
22 the page it discusses the ranges as suggested by the OPC
23 witness Rothschild, and that was 8.75 percent. And, again,
24 this was what OPC was advocating for the entire system, not
25 necessarily the two problem areas, which I probably would not

1 agree with in terms of the total system.

2 But that range of reasonableness looks like the
3 8.75 depending, or 9.47 depending upon the capital structure,
4 which, again, I think staff has made a recommendation on that,
5 but the range on the DCF was 9.28 and 9.71 and the CAPM was
6 8.68 and I think that they kind of settled on 8.75.

7 So I, I could support the motion and I'm willing to
8 second it. I'm looking at the range of reasonableness though
9 within the numbers that OPC has suggested, and the
10 8.75 certainly is at the bottom end of that range. I'm not
11 suggesting that it should go higher. But, again, when there's
12 a range of numbers, would there be any willingness to, to
13 perhaps it being 9 or is the 8.75 pretty firm? I'm just
14 looking at the range. I'm not trying to change the motion.

15 **COMMISSIONER ARGENZIANO:** Unfortunately no.

16 **COMMISSIONER SKOP:** Okay.

17 **COMMISSIONER ARGENZIANO:** You know, I'm not saying
18 you have to vote for it. I just, that's where I, that's where
19 I'm at.

20 **COMMISSIONER SKOP:** And if it's limited to the two
21 problem systems, which, again, I think have shown some problem,
22 and the staff recommendation on the 10.77 for the remaining
23 systems is still open for discussion, I'd second the motion.

24 **CHAIRMAN CARTER:** And the motion before us is a
25 recommendation of a rate of return of 8.75 for the Chuluota and

1 The Woods system.

2 Hang on one second. Do we need to get clarification
3 here?

4 **MR. WILLIS:** Commissioners, could --

5 **CHAIRMAN CARTER:** Let's do this, Commissioners. Hang
6 on a second. Let me, let me kind of check with staff and get
7 us in round before we go further. But we do have a motion on
8 the floor and we've got a second on that. Let's give me five
9 minutes here so I can check with staff. We're on recess.

10 (Recess taken.)

11 We are back on the record. Commissioner Skop, you're
12 recognized.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

14 And I want to address the, the prior second that I
15 made. I'd like to temporarily for one second withdraw that so
16 I could propose a friendly amendment that would accomplish in
17 my mind the same thing but in a more clear way. Because I
18 think when voting on this, we need to be concerned about the
19 legal --

20 **COMMISSIONER ARGENZIANO:** Well, excuse me.

21 **CHAIRMAN CARTER:** You're recognized.

22 **COMMISSIONER ARGENZIANO:** If I can. Since it was my
23 motion -- and I think I understand, because we went out of
24 order is what messed everything up. And I thought we were
25 proceeding to, to get to the suggestion that Commissioner Edgar

1 had mentioned, I thought it was appropriate then to bring it
2 up. So if we're out of order and we should have waited until
3 Issue 28 from what I understand, if that is the problem that we
4 hadn't established what the actual ROE would be for the total
5 systems, then I would like to readjust my own motion.

6 **COMMISSIONER SKOP:** That's fine. I'll withdraw my
7 second.

8 **COMMISSIONER ARGENZIANO:** And what we'll do then is,
9 is either take it up now and deal with Issue 28 or wait until
10 we get there and then I'll make the motion. Whichever way you,
11 you prefer.

12 **CHAIRMAN CARTER:** Well, Commissioner, you were just,
13 you and I were on a wavelength and we just kind of went down --
14 and, I mean, it was nothing, no harm, no foul, so to speak.
15 But I do think that in the context of where we are, since we
16 are in the scope of discussion, here's what I was thinking. I
17 was thinking that there was a probability that we could, even
18 before we set, S-E-T, a rate of return for the company that we
19 could deal with this situation with the unsatisfactory systems,
20 Chuluota and The Woods.

21 And as you were saying in terms of 8.75, that would
22 be just for those two systems separate and apart from the other
23 80 systems. And whatever rate we set for the other systems
24 would not be pertaining to this because after they brought the
25 standards up and made the water quality and quality of service

1 satisfactory, then they would be able to move to the level of
2 the other company, other portion of the company.

3 **COMMISSIONER ARGENZIANO:** Right. But, Mr. Chairman,
4 I thought -- and maybe staff needs to tell me what the problem
5 was with my motion then. I thought, I thought what the problem
6 was that maybe the motion I had couldn't be established first
7 because it would put them below the allowed, what is it, 100
8 basis points.

9 **MR. WILLIS:** I think there was some confusion on your
10 motion among staff on whether you were talking about a range of
11 reasonableness or the return on equity. And as long as you're
12 talking about the return on equity, I think we're okay. And it
13 may be that it's a good idea maybe to go with Issue 28 too
14 since we're discussing it already.

15 **COMMISSIONER ARGENZIANO:** Okay. So it's not a
16 problem then that we didn't establish the total overall ROE and
17 then move to change Chuluota after that. Is that, is that a
18 problem?

19 **MR. WILLIS:** I think if you're going to do return on
20 equity, you should do both at the same time and establish both.

21 **COMMISSIONER ARGENZIANO:** Okay.

22 **CHAIRMAN CARTER:** Okay. Commissioner McMurrian, then
23 Commissioner Skop.

24 **COMMISSIONER McMURRIAN:** And perhaps I'm going to
25 confuse it worse. But I guess one thing I would bring up with

1 regard to the order, since Commissioner Argenziano brought this
2 up, is whether or not -- it sort of depends on your rationale
3 for Issue 28, what you recommend in Issue 28. It might depend
4 on what you had done in the capital structure issue before it.
5 And so it just seems like perhaps if we're talking about voting
6 on 28, we might have needed to take up capital structure first,
7 which sort of makes me think that maybe we're better off going
8 in order, but.

9 Well, for instance, on the top of Page 95 where it
10 talks about OPC's witness Rothschild recommends an ROE of
11 either 8.75 percent or 9.47 percent depending on the capital
12 structure the Commission approves, which is addressed in an
13 earlier issue. And I'm not saying that that's the basis for
14 Commissioner Argenziano's 8.75. I'm just saying that there are
15 things that lead up to Issue 28 that perhaps we should decide
16 before we get to 28. But, again, I'm not sure.

17 **CHAIRMAN CARTER:** I was thinking, and I could be way
18 out in La-La land, but I was thinking that if you were to deal
19 with the way that Commissioner Argenziano had said that that
20 would be separate and apart for just those two systems that
21 were unsatisfactory and then that still would give us an
22 opportunity to set the rate of return for the other 80 systems.
23 And I don't see that there would be a conflict in doing --
24 unless I'm missing something.

25 **MR. WILLIS:** Chairman, I believe you're right. I

1 think we can handle, we can handle that one right now and get
2 it out of the way for those two systems.

3 **CHAIRMAN CARTER:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

5 And, again, I want to emphasize I have no problem
6 with the motion as it was framed. My friendly was only to
7 attempt to clarify it in terms of what would happen on
8 Issue 28. And just food for thought, we can take up the motion
9 now or we can wait, as, however Commissioner Argenziano will
10 want to present it, which I will likely second.

11 But what I was merely going to try and add in terms
12 of a friendly amendment was to suggest we adopt the appropriate
13 ROE as staff had recommended for, of 10.77 percent pursuant to
14 the leverage formula, do a systemwide reduction as staff has
15 recommended to address the customer service issues of 50 basis
16 points, which would be effective a 10.27 ROE, and then take a
17 further reduction for, of 152 basis points, which would get
18 down to the 8.75 for Chuluota and The Woods, reflecting the
19 unsatisfactory nature of the water quality. And that would
20 stay in effect until such time as those two systems were
21 brought up to DEP standards.

22 **CHAIRMAN CARTER:** Commissioner Argenziano.

23 **COMMISSIONER ARGENZIANO:** Well, let me tell you the
24 problem with that is if you wanted to adopt staff's
25 recommendation of the 10.77, I'm not there yet. I would

1 adopt -- if you want to move to going to Issue 28 and voting on
2 whether it should be 10.77, I have no problem doing that and
3 that would solve the problem ultimately anyway where we're
4 going to wind up with Chuluota and The Woods.

5 **CHAIRMAN CARTER:** That was one of the reasons why I
6 thought we could do that because I do think that once we get to
7 that point in terms of what the overall rate of return is, is
8 that I'm not at 11.73 myself or whatever that is. What is it,
9 11 point --

10 **COMMISSIONER SKOP:** 11.77.

11 **CHAIRMAN CARTER:** 11.77.

12 **COMMISSIONER SKOP:** Mr. Chair, I just wanted to add
13 to that again what I was saying --

14 **COMMISSIONER EDGAR:** I think it's 10. Isn't it 10?

15 **COMMISSIONER SKOP:** 10.77. I'm sorry. I'm trying to
16 increase it.

17 **CHAIRMAN CARTER:** 10.77. I'm not there either. I'm
18 not there.

19 **COMMISSIONER SKOP:** I'm a little dyslexic. But what
20 I was trying to emphasize though is I don't care how we get
21 there, but I'm comfortable with the 8.75 for Chuluota and The
22 Woods. I mean, again, I was trying to work from the top down
23 to get there. And that was my only concern with the motion,
24 that we work from the top down, so.

25 **CHAIRMAN CARTER:** Commissioner, before you respond,

1 let me just say this. My concern with that was, I wanted
2 this -- I was thinking we'd make this separate and apart.
3 Because if you do that, then you start getting into talking
4 about the range for this and the range for that and I don't
5 think that's appropriate.

6 Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** And, Mr. Chair, that's the
8 reason I came back and asked staff if there was, if it was
9 inappropriate for me to make that motion before we voted on the
10 total ROE. Since they said no, then it's, then it's fine with
11 me. I don't know what anybody wants to, how they want to vote
12 on it. But if there's no problem with doing it before we vote
13 on the total ROE, then I see no problem in moving forward in
14 whatever way.

15 **MR. WILLIS:** Staff doesn't believe there's a problem.

16 **COMMISSIONER ARGENZIANO:** Okay.

17 **CHAIRMAN CARTER:** Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

19 I think you just may have touched on a very good
20 point in terms of an appellate process. If we were to spin
21 Chuluota and The Woods out from the 81, you know, it's all,
22 right now it's all condensed, but staff has mentioned that we
23 could take systems on an individual basis. If we were to do an
24 adjustment for those two systems as suggested, perhaps it is
25 better to spin those out and make that adjustment separately

1 from the remaining systems to the extent that if it is
2 appealed, it only pertains to those two issues and doesn't put
3 the whole remainder of the case in jeopardy.

4 **CHAIRMAN CARTER:** Okay. Okay. Are we all clear?
5 Commissioner Edgar, you're recognized.

6 **COMMISSIONER EDGAR:** I am not clear, and I am very
7 hungry. And I would like the opportunity to meet with staff, I
8 think others may have -- I have some legal questions and some
9 accounting questions, and I'm wondering if we could maybe take
10 a lunch break.

11 **CHAIRMAN CARTER:** Oh, wow, I hadn't thought about
12 lunch.

13 **COMMISSIONER ARGENZIANO:** How about a half hour?

14 **COMMISSIONER EDGAR:** That's fine.

15 **CHAIRMAN CARTER:** Okay. Let's come back -- we'll
16 take lunch and come back at, on the hour. Okay.

17 (Recess taken.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

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

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

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

DATED THIS 25th day of February, 2009.

Jane Faurot
JANE FAUROT, RPR
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