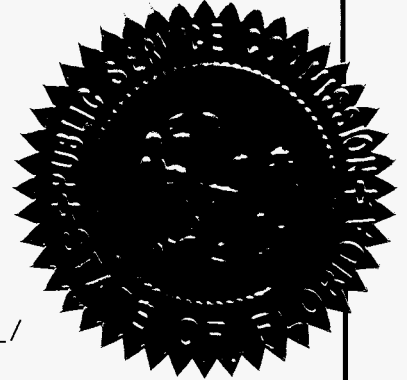


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080121-WS

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.



PROCEEDINGS: SPECIAL AGENDA CONFERENCE

DATE: Wednesday, March 25, 2009

TIME: Commenced at 9:48 a.m.
Concluded at 1:08 p.m.

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

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

DOCUMENT NUMBER - DATE

02861 APR 1 2009

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 REPRESENTATIVE SANDY ADAMS, representing her
3 constituency.

4 GIGI ROLLINI, ESQUIRE, representing Aqua
5 Utilities Florida.

6 RALPH JAEGER, ESQUIRE, KATHERINE FLEMING,
7 ESQUIRE, MARSHALL WILLIS, JENNIE LINGO and BART
8 FLETCHER, Commission staff.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2 CHAIRMAN CARTER: Good morning to one and all.
3 I want to call this Special Agenda Conference to order.
4 And before we begin, Commissioners, I want to just make
5 a few comments here for the record.

6 Commissioners, today we have a situation
7 that's a little unusual. We're in the posture where
8 we've taken all the testimony and evidence in the case
9 and have started our deliberations. It's outside the
10 normal procedure, but Representative Sandy Adams has
11 asked to be allowed to make some remarks here before we
12 start today. And although we are post-hearing and the
13 record is closed, I recommend that we accommodate
14 Representative Adams' request.

15 I would point out to everyone that the record
16 is closed and that our deliberations cannot be based on
17 any information other than what's contained within the
18 record established in this proceeding. However, before
19 Representative Adams speaks, I would like to put an idea
20 out there for your consideration, Commissioners, and for
21 staff's review and feedback. It's just an idea and I'm
22 not exactly sure how strongly I support it yet without
23 hearing our staff's thoughts.

24 During this case we've heard a lot of
25 testimony about what appear to be systemic and

1 persistent problems in the Chuluota system with water
2 quality, customer service, meter reading and billing
3 issues. By their account the company has taken steps to
4 address these problems, but I think these problems
5 continue to plague the customers. This is true in
6 nearly every case where such a problem arises from a
7 large water and wastewater system. Still what bothers
8 me here is I just don't have a level of comfort that the
9 company's efforts have been sufficient or effective in
10 addressing the problems. Now these are problems and
11 these problems are severe enough that we voted in our
12 last meeting on this case to embed a significant penalty
13 in the company's earnings. I understand that Aqua has
14 made a showing that it's underearning and it's entitled
15 to compensatory rates. I'm not suggesting that the
16 Commission withhold its consent to a new rate for the
17 Chuluota systems, but I am going to put out an idea
18 that's a little creative in how the rates would be
19 implemented. I wanted to put this out there early so
20 that our staff could have some time to think it over
21 while others speak.

22 Here's my idea and, staff, it's in the form of
23 a question. Staff, is it possible for the Commission to
24 approve a rate increase but to delay its implementation
25 until the company is able to make some objective factual

1 showing that a certain level of progress has been made
2 addressing the persistent issues with customer
3 relations, billing and meter readings? I'd like for you
4 to use the time while Representative Adams addresses us
5 to think about it and to give us your ideas and concern.

6 While staff considers what I've just dropped
7 on them, Commissioners, let's go ahead and hear from
8 others. I understand that a representative from Aqua is
9 here to lodge a respectfully worded objection to
10 post-hearing testimony. Let's take that objection
11 first.

12 You're recognized.

13 MS. ROLLINI: Thank you, Mr. Chairman.
14 Commissioners, with all due respect for the record, Aqua
15 would object. Aqua firmly believes it would be
16 inappropriate to permit commentary at this late stage
17 after the record in this proceeding has been closed and
18 the parties have rested.

19 Chapter 120, the Commission's rules and due
20 process principles dictate that your decision may not be
21 influenced by matters outside of the record in this
22 case. Moreover, the notice of today's agenda does
23 reflect that the record is no longer open for public
24 comment. That is all. Thank you.

25 CHAIRMAN CARTER: Thank you. Thank you for

1 your comments. Duly noted.

2 And with that, good morning, Representative
3 Adams. You are recognized.

4 REPRESENTATIVE ADAMS: Good morning,
5 Commissioners, and thank you for letting me address you
6 today. I just left a committee hearing, and I wanted to
7 address you on behalf of my constituency in the Chuluota
8 area.

9 While I understand the record is closed, I am
10 just going to repeat things that are continuing to
11 happen that were on the record just so that we
12 understand that it appears nothing in Chuluota has
13 changed. The water quality issues are still a big
14 problem. DEP and DOH have joined forces and are testing
15 the water, and they have found -- and I believe if you
16 are able to look at their records that you will find
17 that there has been some rejections of some of the
18 testing done by Aqua.

19 And, moreover, I just have some serious
20 concerns that I don't even know if they rise to
21 fraudulent levels or not, but I really think people need
22 to look at the way my constituency is being billed for
23 water that they may or may not be using. I have
24 numerous e-mails from my constituency which they have
25 copied the Commission on, and each one of them stating

1 that there has been billing issues one right after the
2 other, after the other with their meter readings. And
3 actually I believe you probably received these pictures
4 by one of my constituents who actually had gone through
5 and taken photographs of his meter and contacted Aqua on
6 March 2nd and said, you know, "The actual meter reading
7 on your bill to me dated 2/16 shows 193,900 gallons or
8 the reading of that. That's impossible because my meter
9 on 2/28, eight days later, shows a reading of 184,540.
10 Please see attached digital photo. On 2/10 my meter
11 reading was 182,000. See attached digital photo. The
12 actual meter reading on your bill to me on 1/14 shows
13 95,600. That's impossible because on 1/18 my meter
14 showed a reading of 174,050."

15 This is persistent throughout the constituents
16 out there. And, again, when he sent the e-mail, his
17 response back from Aqua was, thank you, we'll look into
18 it and we'll get back to you within 48 to 72 hours. I
19 think that he -- after I was brought into this, he then
20 received a phone call from Aqua and I believe that issue
21 has been resolved.

22 However, I have another young man who has been
23 dealing with Aqua since February that I know of in
24 reference his bill, which he says he has been paying the
25 bills that he's been given throughout his billing cycle;

1 however, the company continues to overbill him. His
2 last bill was 50,000 gallons overcharged according to
3 the meter versus the statement. Again, we have the same
4 issue.

5 After contacting me, I contacted Aqua, and we
6 went back and forth and each time it got more
7 interesting, more interesting. So then to this date the
8 issue is not resolved. I got an e-mail just last night
9 on March 24th or should I say yesterday morning, 10:28
10 a.m. He says yet after another one-hour cell phone call
11 the issue is still not resolved. The bottom line was
12 that even though once he was told to pay \$500 and they
13 would get back to billing correctly, yesterday he
14 informed me that the best they can offer him from Aqua
15 is \$1,000 even though he was told that they have been
16 billing incorrectly, that there has been some issues,
17 and either pay the thousand or have his water turned
18 off, water that he believes he can't even drink or bathe
19 in. And whether or not that is a factual fact, that is
20 debatable among a lot of people. They believe because
21 of the noncompliance water levels that they don't feel
22 safe drinking or bathing in that water.

23 He also decided to go down his neighborhood to
24 find out how their neighbors, the neighbors had been
25 doing with Aqua. He says, "Also, they're continuing to

1 wreak havoc in my community. Examples, one neighbor is
2 not getting charged sewer charges. They have called
3 Aqua and requested proper billing. Aqua says their bill
4 is right. One neighbor is not getting any bills and has
5 lived there three months. They say they are calling and
6 asking why they aren't getting bills. Aqua's response
7 is that they show they're not using any water.

8 Another neighbor is still getting overcharged
9 with wrong billings and wrong readings. One neighbor, a
10 massive bill, Aqua said the billing had screwed up and
11 now wants to backcharge him previous months. They got
12 just this one huge bill added in. One neighbor had
13 their water shut off this week by Aqua for no apparent
14 reason, and this, of course, was March 11. They paid
15 their bills on time every month in full, but Aqua came
16 out and turned off their water to the whole house and
17 put a lock on their water. These are but just a few
18 examples.

19 The problem is, Commissioners, that these
20 examples are predominant throughout my community and my
21 constituents are asking for some help. And I realize
22 your record is closed and you're going to make your
23 decisions based on the closed record at hand, but I
24 would ask you that if and when the record ever, if it
25 does become reopened or if you go back and look at what

1 you have placed into your record, I'm sure you will find
2 these e-mails along with many, many, many more. And I
3 would ask you to really contemplate and think about what
4 decisions you are making here today because if you have
5 a system that -- I have strange concerns, huge concerns
6 that they haven't addressed the issues that were brought
7 to you two years ago. Two years ago. This is ongoing
8 and the citizens of Chuluota deserve better than that.
9 They're paying already a lot of money for their water,
10 yet their water quality has not improved, yet their
11 billing issues have not improved, and we are still
12 continuing to see what could be fraudulent charges. How
13 can you put actual on a meter reading when you've got
14 pictures of a meter that shows definite differences?

15 I ask you to really think about what you are
16 doing here today. The citizens of the state and
17 especially the citizens of Chuluota deserve better.
18 Thank you.

19 CHAIRMAN CARTER: Thank you.

20 Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: Yes. Mr. Chair, a
22 couple, a couple of things I want to say. And --

23 CHAIRMAN CARTER: Pull your mike a little
24 closer.

25 COMMISSIONER ARGENZIANO: It ain't coming any

1 closer, and I'm trying to get over there. I'd like to
2 bring the seat up a little bit, but it ain't, it ain't
3 going to move either. Can you hear me okay? Can you
4 hear me all right? Okay.

5 It's very frustrating. And one thing I want
6 to say to Representative Adams is during the hearing,
7 the decision process, Chuluota was a real sticking point
8 with me, and The Woods was also. And I remember trying
9 to go below what we wound up on because I felt that
10 these were continuing problems. The evidence that I saw
11 through the meetings and what I was hearing from
12 constituents and from customers was, it was appalling.
13 As a matter of fact, I think staff had used the word
14 marginal when it came to Chuluota and I had a real
15 problem with that. I felt it was kind of an insult.
16 Not that staff meant it that way, but to me it was, it
17 was not marginal. I thought it was unsatisfactory and
18 poor.

19 But the problem I have and I had that day and
20 the reason I'm bringing it out now is because you and
21 the Legislature may be able to help. I was told that
22 day that we shall give them, they have to -- to me it
23 looks like the statute, Sandy, says that, that if a
24 company comes in and asks for an increase, and I'm
25 struggling to find a basis sometimes for those

1 increases, what for, it looks like the way the statute
2 is written they get what they ask for, and I think
3 something needs to be done.

4 I remember when I was in the House when, when
5 some of that language was put in, and I had problems
6 with it back then. And there are still members who are
7 there now today who, who remember that and some have
8 moved on into the Senate. And what I'm telling you
9 today may not apply specifically today or maybe we can
10 apply it specifically today is that something needs to
11 change in the statute. Because if staff is here telling
12 me half the time that I shall and I can only go down to
13 this certain number, which I still have problems with
14 today because there was some case law that was, that was
15 presented, and when I researched the case law myself and
16 had some attorney friends of mine help me with that
17 after the fact, it really wasn't exactly on the point
18 with, with this case.

19 So, but what I still come down to and what I
20 want to express to you and I'm talking to some senators
21 and hopefully you can get this around in the House is
22 that something needs to be done in the statute because
23 just "shall give them" -- there has to be -- at least it
24 should have some kind of follow-up language that there
25 really needs to be a basis and it has to be proven.

1 And, Mr. Chairman, I heard what you said, and
2 I don't, I don't understand how, how we can do that
3 because I tried to do that during the hearing and I want
4 to know how we can. Because I'm still not happy -- I
5 mean, I know we penalized Chuluota and The Woods. And I
6 was told that day it was to the extent that I could, and
7 made it on record that I wasn't even happy with that.
8 But I'm not sure how you do that today. Can we legally
9 today say that we're going to hold back and see what's
10 going on?

11 There is other language in the statute that
12 says basically if quality and quality of service, and I
13 said this the day of the hearing, matters, well, then we
14 can affect the ROE. But I was told there was this
15 parameter and that if I wanted to stay within getting
16 appealed, getting it appealed, and I kind of felt like
17 my hands were tied. And I'm just telling you that
18 because that's on the record and that's the truth. And
19 I think we all have that problem when the statute tells
20 you you shall without some teeth behind it.

21 But what you're saying before, and correct me
22 if I'm wrong, is that there's a way of -- I don't know
23 how you do that at this point, to hold back.

24 CHAIRMAN CARTER: Well, that's what I was
25 asking -- excuse me for interrupting. That's what I was

1 asking is that we do have to grant the consent based
2 upon the record. But how do we grant it? Do we grant
3 it in stages? Do we grant it -- and the other thing is
4 that I was talking about the persistent issues of
5 customer relations, billing and meter reading. Is there
6 some way for us to see how we can decide on that process
7 being cleared up before we actually implement the rate
8 increase? So that's kind of what I was thinking, and
9 I'm hopeful that staff will be able to give us some
10 leadership on that in terms of some ideas on that based
11 upon maybe how we may have done something like that in
12 the past or how we could do it based upon this case. So
13 that's why I'd asked them to put their thinking caps on.
14 So as we deliberate, they can probably come back to us
15 and give us some ideas.

16 But I think that there are some things that we
17 can do to defer or delay the rate increase based upon --
18 I think. I'm just -- that's why I wanted to get that
19 out there so they can kind of dream with us and come up
20 with some ideas based upon this record here. Because,
21 as I said, there are persistent issues out there. And,
22 and with what Representative Adams was saying, she was
23 careful not to say things that are outside of the record
24 because she was talking about things that are like
25 customer relations, the billing and the meter reading,

1 which we do have a plethora of information and evidence
2 in the record related to that. And I think that staff
3 can kind of go through and come up with some ideas and
4 with our deliberation, with the five of us we can
5 probably come up with something, I'm hopeful, to deal
6 with that persistent issue as it relates to Chuluota.
7 One second.

8 Commissioner Skop.

9 COMMISSIONER SKOP: Thank you, Mr. Chairman.

10 Just picking up where Commissioner Argenziano
11 left off, in the last Special Agenda we had we addressed
12 the ROE issues and we did take significant steps as a
13 Commission to reduce the ROE significantly for Chuluota
14 and The Woods to what I think, per a lot of discussion,
15 was the lowest possible level comporting with case law.
16 But I also am interested, and, again, hopefully staff
17 will come up with some supporting case law for this
18 because I've been struggling with this and asking the
19 question as to if there is a legal basis that would
20 support the Commission withholding any rate increase
21 until such time as water quality issues or customer
22 service issues were resolved. Again, I think there's a
23 legal threshold that would have to be met to the extent
24 that Commission action could not be viewed as
25 confiscatory and would be compensatory. But if we have

1 a legal basis to stand on, certainly that's something
2 that the Commission should discuss and take into
3 consideration.

4 Just in passing, I guess I respect Aqua's
5 objection to letting Representative Adams speak. I
6 mean, they cited a statute. However, at least
7 personally, given the issues that have affected her
8 constituency directly, I think it was extremely
9 disrespectful, arrogant and short-sighted to try and
10 prohibit a state representative from speaking on an
11 issue that was not related to the record. I mean, those
12 are concerns that exist today, they concern her
13 constituency. And if we want to get into quoting
14 statutes, I would refer Aqua to Florida Statute Section
15 367.161(2) and we can talk about revocation. So, again,
16 I think I would be very careful in the future before
17 citing statutes. It's sufficient enough to raise an
18 objection and leave it at that. Thank you.

19 CHAIRMAN CARTER: Commissioner Argenziano.

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

22 How do I do this and do it tactfully, which
23 I'm never really graced with tact. I would have loved
24 to have known that at the time of the hearing because I
25 was searching and definitely was searching very hard

1 that day to find out what to do. I can understand Aqua
2 coming up. I'm not saying I appreciate it, but I can
3 understand. They're going to do what they have to do
4 legally. That's the way it works and I understand that.
5 But my problem has been is that at the time -- and I'm
6 trying to learn from, coming from the Legislature coming
7 here is quite a difference because you want to say
8 things and you can't or you have to rely on other people
9 who are telling you you can't say that or you can't do
10 that and sometimes later on you find out, yes, you could
11 if it was done a different way, and that's the
12 frustrating part.

13 So what we're saying today and what I just
14 heard you say was if we have a way to do that, why the
15 heck wasn't that done during the hearing? If there was
16 a way to do it back then, that's when I would have
17 wanted to do it.

18 CHAIRMAN CARTER: I think during the hearing
19 we were dealing with the return on equity.

20 COMMISSIONER ARGENZIANO: Yes. But if you
21 remember, the argument was bringing them down even
22 lower, to get Chuluota down without violating some kind
23 of rule or appeal process or something else to bring
24 them down to that point. Because it looked like what
25 the statute said, quality of service was something I had

1 to use as a tool. But then I was told that that's as
2 far as you can go because -- and it was a big issue on
3 appeals and everything else and case law, so I took it
4 down to where I knew what I could get. And, and at that
5 point I would have liked to have taken it down even more
6 because I think what's happened at Chuluota and The
7 Woods is appalling. And I had more than enough proof,
8 but I didn't want to have it blown.

9 But now what I'm hearing is if there was a way
10 to do something about it, then that's what I'm trying to
11 say, I'd like to know at hearing time. And if there's
12 not, well, then we need to know and that's what I'm
13 going to express to the Legislature also. If you, if
14 you on one hand say here's what we want you to do but
15 the statute ties our hands, then you need to know that.
16 And there were many reasons some of those things were
17 done that way. Some were for good, some were not good
18 intentioned, and some things probably need to be changed
19 statutorily, and I'm in ongoing conversations with the
20 Legislature. That to me is the biggest message you send
21 to the utility is that, you know what, maybe the statute
22 favors a little bit too much in these circumstances and
23 maybe there should be when there are these
24 circumstances, especially since it's indicated in the
25 statute somewhere that quality of service seems to be a

1 real issue with what you have, a tool. But if the tool
2 is cut off, that you really can't say, you know what,
3 for that place where there's a constant problem, you
4 know what, don't even talk to me today about that. And
5 that's what we don't seem to have as a tool.

6 CHAIRMAN CARTER: Right.

7 COMMISSIONER ARGENZIANO: And I would ask
8 Representative Adams -- and I have made inquiry with
9 senate counsel as to what our tools really are. And
10 maybe, maybe we can get some kind of changes there in
11 regards to that type of facility and problem that we're
12 seeing.

13 CHAIRMAN CARTER: Commissioners, let me do
14 this. Let me ask if staff had an opportunity or do we
15 need to -- are you guys prepared to respond to the
16 question presented to you?

17 MR. WILLIS: Yes, Commissioner. Staff has had
18 time to think between the last agenda and this one on
19 the problems as far as customer complaints, billing
20 problems. We do believe the Commission has addressed
21 the quality of service especially in Chuluota by the
22 reductions. We're concerned also with moving forward
23 that the company will continue to make efforts to
24 improve how it interrelates with its customers.

25 The one question you asked as far as whether

1 or not we can withhold a rate increase, I'd like
2 Mr. Imhof to address that at this point, if you don't
3 mind.

4 CHAIRMAN CARTER: Okay. Let's hear from our
5 General Counsel.

6 MR. IMHOF: Thank you, Commissioners, Mr.
7 Chairman. Section 367.081, as we know, provides that
8 the Commission shall fix rates that are just,
9 reasonable, compensatory and not unfairly
10 discriminatory. The statute also requires the
11 Commission to consider the value of quality of service
12 and the cost of providing such service, which shall
13 include a series of, but not be limited to, debt
14 interest, requirements of the utility for working
15 capital, maintenance, depreciation, tax and operating
16 expenses incurred in the operation of all property used
17 and useful and in public service, and a fair return on
18 the investment for the utility and property used and
19 useful and in public service.

20 Some of the issues, of course, that you've
21 already raised is whether basing a rate of return, a
22 reduction in rate of return or -- not rate of return,
23 but the, the rate increase on quality of service,
24 whether that would be a problem with takings or that
25 type of thing.

1 The Commission is vested with great
2 discretion, and since the last agenda I found some
3 additional case law on this particular issue. And the
4 supreme court has held in North Florida Water versus
5 Bevis, which was construing a similar statute which was,
6 that had the similar wording that our statute has today,
7 that, that the statute provides that no utility shall be
8 denied a reasonable rate of return, but in this manner
9 does not compel the Commission to grant a rate increase
10 where the applicant's existing service is shown to be
11 inefficient.

12 The court went on to say that the fixing of
13 utility rates necessarily involves a balancing of the
14 public's interest in withholding rate relief because of
15 inadequate service and the utility's interest in
16 obtaining rate increases to finance its necessary
17 service improvement.

18 The court indicated the Commission in this
19 particular case, in the North, North Florida Water case,
20 found that the quality of service issue was to be, was
21 predominant and supported by, and supported a, a denial
22 of rate increase by competent, substantial evidence.

23 The court also in a case, Askew versus Bevis,
24 had talked about where the statute had just been
25 changed, and it said that it was evident that the

1 statute was enacted to provide the Commission with
2 greater flexibility in ratemaking. It is our view that
3 the, our view that the mandated, the statute mandates
4 the Commission to grant rate increases to ensure
5 reasonable rate of return, but additionally provides the
6 Commission with means of ensuring that all such
7 increases will achieve a desirable goal of more
8 efficient and adequate facilities. And so I think that
9 you do have some, some discretion and some, some power
10 in that area.

11 CHAIRMAN CARTER: Commissioner Argenziano.

12 COMMISSIONER ARGENZIANO: You know what that
13 does for me today? It doesn't do what it should have
14 done for me when we had the hearing. I kept asking, I
15 kept asking about that. If you take the transcript and
16 you look at the transcript, I thought we had more
17 discretion, and what I was told was two case -- if you
18 remember, the discussion went around two case laws.
19 What was it? Hartsfield -- Bluefield and -- I forgot
20 the other one.

21 COMMISSIONER McMURRIAN: Hope.

22 COMMISSIONER ARGENZIANO: Hope. That's right.
23 And I find it really difficult to now get information
24 that says you could have done what you wanted to do that
25 day. That's disturbing to me. And I understand you

1 just looked at it. But now, you know -- and part of it,
2 while I have you here, Representative, part of it is
3 that our staff here keeps getting more to do statutorily
4 with less resources. Okay? So I can't pound on staff
5 all the time when they're pulling their hair out trying
6 to get things done, especially in the water cases
7 because that seems to be the largest area that we have.
8 And, but it does me no good to find out after the fact
9 that what I asked for during the hearing was there; I
10 could have done more. And it was really difficult that
11 day not to go even lower on that ROE with the Chuluota
12 and The Woods that day. And now hearing it afterwards
13 doesn't do me much good.

14 CHAIRMAN CARTER: I think on the -- the ROE is
15 different from what we're talking about now in the
16 context of --

17 COMMISSIONER ARGENZIANO: No, it's not. You
18 just said the quality of service gave a great
19 discretion, didn't you say, on the equity?

20 MR. IMHOF: I did, but not in the ROE area. I
21 think, I think that case was, was good because on the
22 basis of the record there's a reasonable range and
23 that's what the Commission addressed.

24 COMMISSIONER ARGENZIANO: Okay.

25 MR. IMHOF: Here is kind of a separate issue

1 where you could deny a rate increase or make, have
2 discretion to put restrictions or, or other requirements
3 on the --

4 COMMISSIONER ARGENZIANO: Okay. Okay. So
5 then you're saying today that that could be used. Okay.
6 But let me go back just while I have you here. On the
7 ROE doesn't it say in the statute that if quality of
8 service is not adequate, even if they're under consent
9 and it has not met the DOE consent order, that you can
10 reduce the ROE? And doesn't that change the range that
11 we argued about that day of where is a reasonable amount
12 of ROE that could be made?

13 MR. IMHOF: Well, I'm not sure about that.
14 The Gulf Power case that was talked about at agenda
15 really addressed the issue of ROE and said that if it --
16 and based it on competent, substantial evidence within
17 the range, and that was the issue of how far down the
18 range we could go. And that was the concern with the
19 Gulf Power case is that it had to be in the range of the
20 ROE that witnesses had testified to and that was on the
21 record. And so that was the issue of how far down the
22 Commission could go. Here I think it's different, that
23 you have the discretion in a addition to that to just
24 address the issue of the rate increase in general, not
25 the ROE.

1 COMMISSIONER ARGENZIANO: Okay. Well, that's
2 very good to know.

3 CHAIRMAN CARTER: Okay. Thank you.

4 Commissioner Skop, then Commissioner
5 McMurrrian.

6 COMMISSIONER SKOP: Thank you, Mr. Chairman.

7 So if I understand legal staff, Booter
8 correctly, basically staff is distinguishing between the
9 concept of rate setting which deals with ROE, which is
10 bound by the controlling case law of Gulf at the Florida
11 Supreme Court level and the U.S. Supreme Court cases of
12 Hope and Bluefield and distinguishes rate setting from
13 rate implementation, where under 367.081 the Commission
14 may have the authority based on circumstances to
15 withhold a rate increase for, across the board or for a
16 certain service area should it deem appropriate to do
17 so.

18 MR. IMHOF: Yes, sir.

19 COMMISSIONER SKOP: All right. Thank you.

20 COMMISSIONER ARGENZIANO: Mr. Chair, I want to
21 make it clear that when I looked up the case law that
22 was cited that day, which, of course, I couldn't look it
23 up that day, it had different particulars. It didn't
24 apply to what was before us really that day. There was
25 no real parameter there saying -- it was totally -- it

1 was confiscatory -- it was totally a different, it was a
2 different subject matter that you could -- and perhaps
3 it's antiquated, if you look back at the date on it, and
4 perhaps it needs to be challenged or looked at again.

5 So I want to make sure that we understand
6 that -- I understand staff saying, using the case law.
7 But when I looked at it, the particulars were different
8 than the particulars of the case that was before us. So
9 I don't want to keep using that as that was case law
10 because I think it was -- it could have been very
11 different than what was before us.

12 CHAIRMAN CARTER: Okay. Commissioner
13 McMurrian.

14 COMMISSIONER McMURRIAN: I think my question
15 has been answered now because it was to go to the point
16 I think that we just clarified that what Mr. Imhof was
17 talking about was our discretion as far as granting the
18 rate increase or not versus the other case law that we
19 talked about more the last time was more about the ROE
20 area and what the range and all could be. So that, so
21 that distinction is right. So.

22 you're saying it's the North Florida Water
23 versus Bevis case, and in that case there are quality of
24 service issues is what you're saying similar to -- well,
25 maybe not similar to the exact case, but it was about

1 quality of service and the Commission denied a rate
2 increase based on quality of service and that was
3 upheld?

4 MR. IMHOF: Yes.

5 COMMISSIONER McMURRIAN: Okay. Thank you.

6 CHAIRMAN CARTER: And what I was asking,
7 Commissioners, I know I may have been inartful in
8 stating it up-front, but I was saying is that based upon
9 the fact that, you know, the, granting the rate
10 increase, is that it seems to me that based upon the
11 fact that there's continuing and persistent issues with
12 customer relations, the billing and the meter reading,
13 is that somehow or another rather than grant the
14 increase right away, let's have them deal with those
15 issues before the increase is granted and then maybe put
16 some parameters on that in terms of to, to make sure
17 that whatever parameters are relating to these issues
18 out there, there's some way to justify it. In essence,
19 some kind of transparency where staff can go back and
20 say, okay, you said you were going to do this and go
21 back and check the meters. You know what I'm saying?
22 Some verification of that before the rate increase takes
23 place. That's -- I know it may have been inartful.
24 That's the kind of process that I was talking about,
25 staff.

1 Commissioner McMurrin, then Commissioner
2 Skop. Commissioner McMurrin.

3 COMMISSIONER McMURRIAN: After you said that,
4 that made me think of a question, I guess, for Mr. Imhof
5 too. If that case says that we have authority to not
6 grant a rate increase, is what the Chairman is talking
7 about with delaying a rate increase, would that -- that
8 authority would also give us discretion in that way? I
9 mean, it wouldn't matter if it's delaying a rate
10 increase or denying a rate increase. If there's
11 authority there, wouldn't it be -- would it be the same?

12 MR. IMHOF: I would think so. Yes.

13 COMMISSIONER McMURRIAN: Okay. I think that's
14 all for now. It seems like I had another question but I
15 forgot it.

16 CHAIRMAN CARTER: And the reason I was asking
17 that is that we really want to -- and as I said when we
18 were in Chuluota, Representative, before your
19 constituency, is that I said fundamentally is that we
20 want to clean up the water. We want to clean up the
21 water. So even if we're going to, if we grant the rate
22 increase, it's fundamental that we clean up the water
23 by, one, making sure the water quality, dealing with the
24 customer relations. It just doesn't make sense to
25 continue to have these problems with customer relations.

1 Also with the billing issues and the meter reading is
2 that we, I think we went -- remember, Commissioners,
3 where they said that they had an extra zero on there, an
4 extra two zeros, and we went through all of this, it
5 seemed like, seemed like -- it's like Groundhog Day all
6 over again with these issues and all.

7 What I was saying is that since we have to do
8 this because they're entitled to compensatory rates, but
9 rather than grant them, let's make sure that these,
10 these things are taken care of before the rate increase
11 takes place. That's where I'm coming from.

12 Commissioner Argenziano, then Commissioner
13 Edgar, then Commissioner Skop.

14 Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: I think Commissioner
16 Skop was next.

17 CHAIRMAN CARTER: Commissioner Skop, you're
18 recognized.

19 COMMISSIONER SKOP: Thank you, Mr. Chairman.

20 Just two quick questions, one to legal staff.
21 If, in fact, North Florida Water was controlling or
22 would be controlling case law, why was that not
23 previously cited? And I guess I go back to Commissioner
24 Argenziano's concerns. You know, I've asked the
25 question internally a couple of times as to knowing what

1 all the Commission's options are in any given case, not
2 only this case but other water cases, but this case has
3 really never come up before. So it would have been nice
4 to know about it previously.

5 MR. IMHOF: Well, Commissioner, we found it in
6 additional research that we had conducted. That's --

7 COMMISSIONER SKOP: Okay. And then secondly
8 to the Chairman's point about the possibility of
9 withholding rate increase for certain systems, which I
10 generally would be in favor of based on the specifics, I
11 think on Page 12 before we get into that, Mr. Chair,
12 staff notes the possibility of removing Chuluota's
13 wastewater from the groupings, and I think that would
14 also be relevant to the discussion at the appropriate
15 time as to whether we should remove Chuluota to make it
16 completely stand-alone on water and wastewater. And I
17 do think that that has some other potential benefits,
18 although in the near-term, near-term, it might be a
19 near-term problem with long-term benefits, but I'd like
20 to discuss that at the appropriate time.

21 CHAIRMAN CARTER: Okay. Commissioner
22 Argenziano.

23 COMMISSIONER ARGENZIANO: It seems to me that
24 we had made that suggestion and the company chose not to
25 have Chuluota taken out. And I'm just going to say if

1 we have the authority to deny a rate increase for that,
2 for that facility, then I make a motion that we deny
3 Chuluota's rate increase and The Woods.

4 COMMISSIONER SKOP: Second.

5 CHAIRMAN CARTER: Before we go into the
6 motion, we have further discussion. Commissioner Edgar,
7 you're recognized.

8 COMMISSIONER EDGAR: I just wanted to follow
9 up on some of the questions and comments from some
10 moments ago, and so let me ask this to staff to make
11 sure I understand.

12 In the charts that are on Page 12 and the
13 first chart that talks about the water systems and the
14 four bands, am I correct that Chuluota stand-alone would
15 be basically a fifth band?

16 MS. LINGO: Yes, ma'am. That's correct.

17 COMMISSIONER EDGAR: Okay. So, Mr. Chairman,
18 I think, and this is for my own clarification, I think
19 what I was hearing you suggest may have been, and please
20 correct me if I'm wrong because I do want to understand,
21 is that for the water systems that perhaps an approach
22 that might be available to us would be to take those
23 five bands and perhaps approve the rate system as
24 recommended by our staff; however, then for what I would
25 call the fifth band that would be only Chuluota, suspend

1 that newly approved rate structure with the additional
2 condition that they would be suspended until certain
3 specified conditions are met that we could discuss
4 further. Is that, is that kind of what you were
5 suggesting?

6 CHAIRMAN CARTER: That's pretty much, that's
7 pretty much what I was suggesting.

8 Commissioner McMurrin, you're recognized.

9 COMMISSIONER McMURRIAN: I just have one
10 question about what was just --

11 CHAIRMAN CARTER: You're recognized.

12 COMMISSIONER McMURRIAN: To Commissioner
13 Edgar, if she was talking about stand-alone water and
14 wastewater, I just, I probably wasn't listening as
15 carefully, or just the water would be separate?

16 COMMISSIONER EDGAR: At this point I was just
17 thinking about the water because I was just trying to
18 think through process and procedure. And I haven't
19 thought through yet on wastewater but would hope that we
20 would have additional discussion on that.

21 COMMISSIONER McMURRIAN: Okay. Thank you.
22 And I did have a question for staff from before. Of
23 course now we've got --

24 CHAIRMAN CARTER: You're recognized. You're
25 recognized, and then Commissioner Skop.

1 COMMISSIONER McMURRIAN: Okay. And perhaps
2 it's somewhat moot now. If we were talking about
3 delaying a rate increase, would that in any way have a
4 negative impact on the customers of Chuluota? In other
5 words, would there be any kind of interest or anything
6 like that that would accrue or would it just be the rate
7 increase wouldn't go into effect until things were
8 resolved and there wouldn't be any negative consequences
9 on those customers?

10 MR. WILLIS: I don't believe, based on what
11 I've heard on the case law that's been cited, that the
12 Commission would withhold with interest being calculated
13 on a daily basis. I think it would be withheld until a
14 point in time in which the Commission decided it was
15 appropriate to implement rates.

16 COMMISSIONER McMURRIAN: Okay. That was my
17 understanding.

18 MR. WILLIS: And we're talking about
19 withholding.

20 COMMISSIONER McMURRIAN: And, again, perhaps
21 it's moot with the other motion that's on the table, but
22 I did want to go ahead and ask it to make sure I
23 understood. But thank you, Chairman.

24 CHAIRMAN CARTER: Okay. I'm going,
25 Commissioner, I'm going to come back to the motion, but

1 I wanted to let us go ahead on and fully discuss the
2 other issues before us and then we'll come back. But I
3 do -- I will come back to your motion. Okay.

4 Commissioner Skop, you're recognized.

5 COMMISSIONER SKOP: Thank you, Mr. Chairman.
6 And to Commissioner McMurrian's point, again, on Page 12
7 staff briefly talks in passing about the ability of
8 separating Chuluota's wastewater from the band that it
9 was placed in. I believe it was in band, and correct me
10 if I'm wrong, staff, it was in band 2.

11 MS. LINGO: Yes, sir. That's correct.

12 COMMISSIONER SKOP: Okay. I would be in favor
13 of removing it that way just as a purpose for discussion
14 that we'll get to later. But I'd be in favor of
15 Chuluota being a stand-alone system on its own, water
16 and wastewater combined. And I think that would -- from
17 a long-term perspective that may offer some advantages
18 which I really won't speak to at the moment. But I can
19 see some perceived advantages of having it stand-alone
20 versus implementing it into a band only to have to
21 unwind that later, so.

22 CHAIRMAN CARTER: I just wanted to say,
23 Commissioner Skop, I agree with you on that. I do think
24 that Chuluota, the whole system, Commissioner, and I'll
25 get back to your motion in a minute, but I think that

1 whole Chuluota system should be taken out of this
2 proceeding.

3 Commissioner Argenziano, you're recognized.

4 COMMISSIONER ARGENZIANO: I think that's what
5 I know I had indicated and I think Commissioner Skop
6 did. I don't know if anybody else did. I'm not going
7 to speak to anybody else. But what I recall is that
8 what we, that's what we were hoping the company would do
9 way back then. And since they haven't and showed -- and
10 I even said, I think, at the hearing that that was I
11 thought bad faith for them not to do that knowing the
12 problems that were occurring in The Woods and in
13 Chuluota, that since the statute and the case law
14 indicate that we have the authority, I don't know what
15 other egregious case you can use. If that's not what
16 that statute and that case law is for, I don't know what
17 else we would use it for.

18 So I stick with my motion and say that I'd
19 like to deny Chuluota. I wish I would have known this,
20 you know, during the hearing, and still have problems
21 with the, with some of the things, the leverage graph
22 that we used and things that I put on the record that
23 day. But I stick with the motion to deny the increase
24 for Chuluota and The Woods.

25 CHAIRMAN CARTER: Commissioner Skop.

1 COMMISSIONER SKOP: And that was properly
2 seconded by me, so.

3 CHAIRMAN CARTER: So, Commissioners, as I
4 said, I wanted to get whatever further discussion we
5 needed on, on, on this before going back to the motion.
6 If any, anything further, I'll go to the motion
7 unless -- Commissioner Edgar, you're recognized.

8 COMMISSIONER EDGAR: Just a question to staff.
9 I'm trying to understand within the framework of what we
10 have before us, so if you could maybe help me put the
11 motion into the context of the issues that are before us
12 which issues would be impacted and what, if any,
13 recalculations would need to be done.

14 MR. WILLIS: Certainly, Commissioner. Jennie
15 can correct me if I steer wrong on this, but it is going
16 to affect Issue 64 and 65 as far as the banding goes.
17 We already have a calculation, as Commissioner Skop
18 pointed out, on Page 12 which shows the calculation if
19 you were to remove the Chuluota wastewater system. The
20 Chuluota -- The Woods system is another question. We
21 have not made the calculations in the bands for that.
22 That will and could change things depending on what that
23 does by taking The Woods out. I'm not sure what
24 magnitude or impact that would be.

25 I would point out that the, The Woods' consent

1 order was closed too, also. So that -- DEP has closed
2 that consent order. I just wanted to point that out if
3 that helps any deliberation on the bench.

4 CHAIRMAN CARTER: Commissioner Argenziano.

5 COMMISSIONER ARGENZIANO: No, it really
6 doesn't. A lot of the things that are coming in after
7 the fact don't help me at all. They irritate me to
8 death, as a matter of fact. And, you know, I'm prepared
9 to just, to just deny the whole entire rate increase. I
10 think, I think everything from the beginning stunk to
11 high heaven. I don't like the way the leverage graph
12 was used, I don't like the consolidation, and I'm
13 putting everything on record that I've already said.

14 So at this point I know it's going to change
15 some of the systems, the work that you've done, but, you
16 know, and it's up to the Commissioners, they're going to
17 vote the way they want to vote. I just think if we have
18 that available to us -- and I think things could have
19 been done a little differently at the hearing if we had
20 more information available to us. And I was struggling
21 that day to try to figure out how not to reward a
22 company for having such poor service. And I'm not even
23 sure that it shouldn't, the whole rate increase
24 shouldn't be denied. So I'm going to stick with that
25 motion right now and see where it goes.

1 You know, it's not because Representative
2 Adams is here. I've been a representative and been a
3 senator. That's not it. I've been on the record all
4 along feeling this way, and now today just feeling just
5 slightly more irritated because knowing that, that the
6 company wouldn't separate Chuluota and now we're talking
7 about possibly separating them. Why didn't we do it the
8 day of the hearing? Why didn't we tell the company too
9 bad? And I just, I just don't know how else to explain
10 the frustration. I'm sure you all have your own
11 frustration, you've been at the meetings, and we may
12 handle things very differently. And I just have a real
13 problem with rewarding a company that I think has had
14 just consistent problems over and over and over again,
15 especially at those two facilities, and I think they
16 should be denied.

17 CHAIRMAN CARTER: Thank you.

18 Commissioner McMurrin.

19 COMMISSIONER McMURRIAN: A couple of questions
20 for staff. In fact, what you just said about The Woods'
21 consent order being closed, that happened after the
22 record was closed; right?

23 MR. WILLIS: That's correct, Commissioner.

24 COMMISSIONER McMURRIAN: So you really can't
25 consider that anyway, or at least I don't think we can

1 consider that.

2 MR. WILLIS: Well, Commissioner --

3 COMMISSIONER McMURRIAN: In the same way that
4 we're talking about that we can't necessarily, we can't
5 really consider the fact that the problems are ongoing,
6 but we had stuff in the record about the problems at
7 Chuluota and The Woods at the time we made the decision.
8 And then we got into the discussion about the, the case
9 law and that sort of thing where we thought we didn't
10 have the discretion to deny a rate increase.

11 MR. WILLIS: Commissioner, on, a point on The
12 Woods, the Commission voted at that agenda that when the
13 consent order was closed, that the rates could be
14 increased for those systems, being the Chuluota and The
15 Woods.

16 COMMISSIONER McMURRIAN: Oh, I see what you're
17 saying.

18 MR. WILLIS: When we received --

19 COMMISSIONER McMURRIAN: So in a sense we
20 built that into our decision about The Woods because --

21 MR. WILLIS: Yes. During -- between the
22 agenda and now, the last agenda and now, we did receive
23 official communication that that had now been closed for
24 The Woods and that issue is resolved with DEP. That
25 meets your parameters that you set aside at the last

1 agenda where you can now relieve The Woods of the 25 or
2 50 basis points reduction. That's part of our
3 recommendation here to do that, to take care of that
4 rather through a separate proceeding, and that's
5 contained within our Issue 64 and 65.

6 COMMISSIONER McMURRIAN: Okay. And I have a
7 question kind of on a different aspect while I try to
8 chew on that.

9 If you deny a rate increase to Chuluota or,
10 and The Woods, what happens to the revenue requirements
11 that we approved last time that included costs for
12 Chuluota and The Woods? Would, would a decision, would
13 a motion to deny the rate increase for Chuluota and
14 The Woods essentially take out those revenue
15 requirements that we approved last time, in a sense we'd
16 be reconsidering what we did, or would the revenue
17 requirements somehow stay in and get doled out to the
18 rest of the customers? I just want to --

19 MR. WILLIS: No, Commissioner. I would view
20 it as in the very last proceeding the Commission
21 established revenue requirements by system combined into
22 one complete company revenue requirement.

23 COMMISSIONER McMURRIAN: Okay.

24 MR. WILLIS: And in doing so, if you decide
25 that, for instance, Chuluota wastewater should be pulled

1 out and treated as a stand-alone system for this case,
2 you know, in this case we're treating two commercial
3 systems as stand-alone, you could treat Chuluota as
4 stand-alone for whatever reasons you determine, that
5 revenue requirement stays with the Chuluota systems.
6 That -- because of how we're doing the rate structure
7 issues, Chuluota has to stand on its own revenue
8 requirement when it's stand-alone. If you choose to go
9 with the CAPM rate structure for the rest, that would be
10 in the rate design on how that portion of the revenue
11 requirement is shared between all the systems.

12 COMMISSIONER McMURRIAN: Okay. So there
13 wouldn't be any impact on the rest of the customers
14 because of denying a rate increase for that system.

15 MR. WILLIS: No, there would not.

16 COMMISSIONER McMURRIAN: Okay. Thank you.

17 CHAIRMAN CARTER: Commissioner Argenziano,
18 then Commissioner Skop.

19 COMMISSIONER ARGENZIANO: How long was The
20 Woods out of compliance? How long did it take them to
21 fall into compliance?

22 MR. WILLIS: We'll get that for you in just a
23 second, Commissioner.

24 COMMISSIONER ARGENZIANO: Okay. And the
25 reason I ask is because if they've just suddenly come

1 into compliance, I'd like to see some consistency. And
2 just because we last week according to the case law that
3 was cited only went to the 8, was it, 75, 8.75 for the
4 revenue on Chuluota and The Woods because of the threat
5 of appeal and everything else or staying in those
6 parameters that I now find really, aren't really there,
7 they can still, because the DEP consent order has now
8 been removed, they can still get the higher ROE but we
9 can still, when it comes to the rate increase because of
10 past performance and quality, still not grant the rate
11 increase or diminish the increase that was recommended;
12 is that correct?

13 MR. IMHOF: Let me address that on kind of the
14 general overall. Remember that, that any decision by
15 the Commission still must be based on competent,
16 substantial evidence and it's a balancing test between
17 what you want to do as far as the quality of service
18 versus the utility having a reasonable rate of return as
19 required by the statute.

20 COMMISSIONER ARGENZIANO: No. No. But what
21 I'm, what I'm saying is Marshall had indicated that
22 since we, at the last, at the hearing on the ROE we had
23 decided that Chuluota and The Woods would get the lowest
24 within those parameters or within what everybody decided
25 would make it so it wouldn't be an appealable thing,

1 that 8.75 was the ROE until the conditions improved.
2 Well, Marshall is saying that the DEP consent order has
3 been removed for The Woods and they have improved that.
4 So staff is recommending that now their ROE go from the
5 8.75 to the higher number. I'm saying that can still be
6 done, but when it comes to the rate increase, because
7 we're still dealing with a facility that had a long
8 history of noncompliance and quality problems, we can
9 still adjust the rates according to your North Florida
10 versus Bevis.

11 MR. IMHOF: I think you would have the
12 discretion to do that if it was based on the evidence in
13 the record.

14 COMMISSIONER ARGENZIANO: Okay. And when you
15 say -- what was the term you used that was, that we have
16 to base our decision on, what was it?

17 MR. IMHOF: Competent substantial evidence?

18 COMMISSIONER ARGENZIANO: Yes. Is that what
19 we consider the leverage graph?

20 MR. IMHOF: Could we ask for a break to talk
21 about this?

22 COMMISSIONER ARGENZIANO: Sure. I guess, Mr.
23 Chairman.

24 MR. IMHOF: Mr. Chairman?

25 CHAIRMAN CARTER: Why don't we do that and

1 give staff an opportunity to kind of collect their
2 thoughts and get everything together and then we'll come
3 back and do ours.

4 Let's see. I'm looking at our clock,
5 Commissioners, the proverbial clock on the wall, and I
6 say we'll come back at 10 of. We're on recess.

7 (Recess taken.)

8 We're back on the record. And we took a break
9 to give staff an opportunity to kind of get things
10 together. And with that, staff, you're recognized.

11 MR. IMHOF: Thank you, Mr. Chairman. I just
12 wanted to kind of give -- thank you for giving us the
13 opportunity to talk this over. While, while the Bevis
14 case we mentioned does indeed deny a rate increase for
15 poor service, we really believe that the Commission
16 would be on firmer legal grounds if they set
17 requirements for improvement of the system as opposed to
18 completely denying the rate increase.

19 In one -- in several -- in one case, as the
20 supreme court said, there is a paucity of cases, case
21 law on this area, in this area. In the general United
22 Telephone Company of Florida versus Mayo case, the rate
23 increase was denied until United Telephone had improved
24 its service, and that was specifically held to be upheld
25 by the supreme court. Also, there was an issue, there

1 was one case where it allowed it to be under bond and
2 that sort of thing. So even though the Bevis case did
3 indeed deny the, the rate increase because of poor
4 service, that is, that is our recommendation to the
5 Commission.

6 Also, the issue of the decision must be based
7 on competent substantial evidence, which in these cases
8 that's what the supreme court found, that the rate, the
9 rate, the actions toward the rates were based on
10 competent substantial evidence, and so that is our, our
11 recommendation. And I'm going to turn it over to
12 Mr. Willis with your permission, Mr. Chairman.

13 CHAIRMAN CARTER: Mr. Willis, you're
14 recognized.

15 MR. WILLIS: Chairman, I'd like to offer up
16 some further comments about The Woods and the process,
17 the idea of not actually denying the rate increase but
18 actually deferring the rate increase.

19 As far as denying versus deferring, I would
20 point out that one thing staff is concerned about is the
21 risk we put upon the ratepayers themselves. It's
22 already happened in the past. We've had cases where
23 that's happened where we've been overturned on appeal.
24 And if we are overturned on appeal, what that means is
25 the customers of those systems that would be affected

1 would be facing surcharges to make up for the revenue
2 that was lost during that period of time plus interest
3 on those surcharges for that period of time. So that's
4 an impact you have to think about when we look at the
5 risk of appeal, and staff does believe we're on safer
6 ground by not denying totally, but rather deferring the
7 rate increase out until a point in time that the company
8 meets proper standards that you'll set. At a point in
9 time I have, I have a plan for monitoring that that I'll
10 read.

11 The other thing I'd like to point out too on
12 The Woods, in Issue, in Issue 1 at the February agenda
13 the Commission did vote that upon DEP advising the
14 consent orders are satisfied, staff should be given
15 administrative authority to approve the increase and the
16 return on equity and approve increased rates upon the
17 utility filing the appropriate tariffs and notice. And
18 I point that out because that's what staff is doing in
19 the recommendation here. DEP has resolved the consent
20 agreement, it is closed, and that's why we included The
21 Woods at the midpoint in the actual rate calculations
22 for this case.

23 If you're talking about deferring, I think
24 we're on safer grounds deferring the Chuluota portion,
25 which is not, rather than The Woods. And let me tell

1 you why that is. Right now The Woods is in a rate cap
2 and in that rate cap their, their actual water and
3 wastewater bill based on 7,000 gallons of water is going
4 to be about \$140. If the Commission denies The Woods a
5 rate increase at this point, which means the Commission
6 would be effectively putting them as a stand-alone
7 system just like Chuluota, that means the company in the
8 next case would file for The Woods as a separate
9 stand-alone company and they would be facing what we're
10 looking at today, a \$300 a month bill by not being in a
11 rate cap. That's, that's the consequences of not
12 allowing them to stay in a band at this point.
13 You're -- you could be facing these customers with an
14 extremely huge bill in the future when that case is
15 refiled.

16 So with that, I'd also, one thing I forgot to
17 point out about the appeal process is not only do the
18 customers face risk, but the Commission also can end up
19 paying court costs, and we have in the past had to pay
20 court costs for the utility company when we've lost on
21 appeal.

22 CHAIRMAN CARTER: Commissioner Argenziano.

23 COMMISSIONER ARGENZIANO: That's because the
24 statutes really need to be overhauled.

25 In the, in the opinion -- let me read it. It

1 says, "Florida Statutes provides that no public utility
2 shall be denied a reasonable rate of return, it in no
3 manner compels the Commission to grant a rate increase
4 where the applicant's existing service is shown to be
5 inefficient."

6 Now I don't know about anybody else, but I
7 think Chuluota has been far below inefficient. I think
8 it's been subpar, to say the least.

9 As far as The Woods, you know, I guess we're
10 like, you know, if you don't do this now, which is not a
11 good thing to do, you may get this later. It's kind of
12 a real crappy, excuse me, situation to be in. And it's
13 like if we, if we can't win the next time around, then
14 the people will be subject to more, and then you're
15 always at, kind of like at bay -- well, I have to give
16 them now because we could wind up losing the next time
17 around.

18 I don't know -- and, again, I need to ask, how
19 long was The Woods out of compliance?

20 MR. WILLIS: I think we have that answer.

21 MR. JAEGER: Commissioner Argenziano, the
22 consent order from DEP was issued on April 26th, 2007,
23 and then they, Aqua submitted its permit application on
24 December 8th, 2007. And then by letter dated
25 January 14th of this year, 2009, it said, "This letter

1 is to notify you that the provisions of the
2 above-referenced consent order have been met," and then
3 it says, "Consent order is closed."

4 COMMISSIONER ARGENZIANO: And from 2007 was
5 there a prior consent order that had then been
6 rectified?

7 MR. JAEGER: Not to my knowledge. I think --
8 we were looking at all the consent orders in the last
9 few years. But I'm not sure going before 2007. I'd
10 have to defer to the engineers. I'm not sure that's in
11 the record.

12 COMMISSIONER ARGENZIANO: My fear is that,
13 especially with Chuluota, is that if you don't deny a
14 rate increase and you just delay until something is
15 fixed, how do you know how consistent -- you know, what
16 happens when they fix something -- and Chuluota is a
17 nightmare -- they fix something for, for ten days and
18 then all of the sudden they get a rate increase and it
19 goes right back to where it was before? I just, I just
20 don't know a better -- I mean, the statute here
21 basically says it all for me. Service is shown to be
22 inefficient, that, that the Commission -- let's see.
23 Hold on one second. Let me find those specific words.
24 I'm looking at the wrong paragraph. That's why.

25 "It in no manner compels the Commission to

1 grant a rate increase where the applicant's existing
2 service is shown to be inefficient." So I don't know
3 why that's not enough. Why wouldn't that be? I can't
4 imagine that even if it went to court that you couldn't
5 show that Chuluota has been inefficient, still, still
6 has a, you know, a consent order.

7 As far as The Woods, I'm not really sure about
8 that. I just find that a couple of years of being out
9 of compliance is pretty bad, and I don't know that, that
10 the statute doesn't cover that. I mean, having the, the
11 consent order lifted is, is, is somewhat comforting, but
12 I don't know how long that's going to be. And I would
13 hate to give a, a rate increase just because it could
14 turn out to be something later on. I feel like, you
15 know, you're being held up by like a gun. If you do
16 this, even though it may be the right thing to do, it
17 could cost you more later. And I don't know. I could
18 maybe make an exception for The Woods even though I'm
19 not real comfortable with that, but I still think that
20 Chuluota, especially since it's under a consent order, I
21 don't know what the statute would be written for if it's
22 not for Chuluota.

23 CHAIRMAN CARTER: Thank you, Commissioner.

24 Commissioner McMurrin, you're recognized.

25 COMMISSIONER McMURRIAN: I have a question, a

1 follow-up on the point that Commissioner Argenziano just
2 made about how do we know if it's consistent? And I
3 guess I was thinking in my mind, how do we, if we go
4 forward in whatever way we go forward, whether we delay
5 it and say we want you to fix X, Y and Z and down the
6 road they fix X, Y and Z but we get into the problem
7 where maybe they have, they have the problems again, do
8 we have the authority based on those types of problems
9 to show cause a utility?

10 MR. WILLIS: Yes, you do.

11 COMMISSIONER McMURRIAN: Okay. So for
12 service-related things we could show cause them. So if
13 we were to get, if it were to get fixed --

14 MR. WILLIS: It's a violation of the statute.

15 COMMISSIONER McMURRIAN: -- and it happened
16 again. Okay. Thank you.

17 CHAIRMAN CARTER: Commissioner Argenziano,
18 then Commissioner Skop.

19 COMMISSIONER ARGENZIANO: And if you do that,
20 what happens? If they've already been granted an
21 increase, what happens? What are the mechanisms and
22 what's the cost, if any, to the consumer or what's the
23 process and how long could they be paying a higher
24 amount for a company that falls out of compliance?

25 MR. WILLIS: For -- I'm sorry. I don't think

1 I understand the question completely.

2 COMMISSIONER ARGENZIANO: I mean for the
3 utility.

4 Well, Commissioner McMurrin just asked you do
5 we have an option that if we were to turn around for,
6 let's say, The Woods and say since you're out of, the
7 consent order has been lifted, that, you know, we would
8 go ahead and give you this increase, but then if you
9 fall out of compliance because they haven't exactly been
10 consistent, especially with Chuluota, but in The Woods,
11 that there's a mechanism that the Commission has to call
12 them back and say, hey, you know, you're not, you're
13 falling out of compliance. So that your answer, again,
14 then to Commissioner McMurrin would be that then we can
15 reduce the rates?

16 MR. WILLIS: I understand what you're talking
17 about. And a show cause proceeding wouldn't exactly
18 mean you could reduce the rates. It means that you
19 could fine the company up to \$5,000 a day for the
20 violation.

21 I would point out that the statutes basically
22 allow the company to offset any fines that the
23 Commission enforces upon the company against fines that
24 DEP has enforced. In other words, if DEP goes to court
25 and fines them for \$100,000 for the violation and over

1 here we've enforced a \$25,000 fine, they would pay us 25
2 and pay DEP 75. So we really by statute can't enforce
3 more -- well, we can actually enforce more than what DEP
4 does, but ours would be taken into account up to the
5 point of what DEP --

6 COMMISSIONER ARGENZIANO: Okay. Let me ask,
7 let me ask you this. Since The Woods was not in
8 compliance, had we fined them before?

9 MR. WILLIS: We have not, we have not fined
10 them before through a show cause proceeding.

11 COMMISSIONER ARGENZIANO: Okay. Thank you.

12 CHAIRMAN CARTER: Commissioner Skop.

13 COMMISSIONER SKOP: Thank you, Mr. Chair. I
14 just want to follow up on two points first. I think the
15 point that Commissioner Argenziano raised with respect
16 to, you know, if, if we can't do this or else this might
17 happen, this parade of horrors, you know, we have a
18 very talented legal team with a stellar appellate
19 record. So, again, I know that should be a concern in
20 passing but, you know, it shouldn't be used, I think, as
21 a reason for why the Commission should not take a more
22 proactive role in pressing forward to achieve a desired
23 result. We've got, again, that legal team and our
24 appellate record speaks for itself.

25 Secondly, to the point raised by Commissioner

1 McMurrin and also Commissioner Argenziano, I know that
2 we went through explanation of a show clause (sic.), I
3 mean, excuse me, a show cause and what would happen in
4 that.

5 Could this Commission preserve the ability --
6 and this is the hypothetical I want staff to respond to.
7 Say, for instance, that either the Chuluota, or not
8 Chuluota, but The Woods falls back out of compliance
9 and, again, as Commissioner Argenziano has pointed out,
10 this has been a recurring theme, it happens quite often,
11 can the Commission reserve the ability to rescind
12 automatically the rate increase if it was passed through
13 to The Woods based on, based on Commission knowledge of
14 a violation that would occur in the future?

15 CHAIRMAN CARTER: I think that's a legal
16 pretzel.

17 Commissioner Edgar.

18 COMMISSIONER EDGAR: Commissioner Skop, I
19 didn't hear the last part of your hypothetical.

20 COMMISSIONER SKOP: Oh, I'm sorry.

21 COMMISSIONER EDGAR: No. It's me.

22 COMMISSIONER SKOP: No. I'm struggling too,
23 my throat. I guess what I'm wondering, I know the show
24 cause option came out and that didn't seem to be a good
25 option for all the reasons that staff articulated. I'm

1 wondering as a Commission if by virtue of some of the
2 things that staff have articulated to the extent that
3 The Woods is now in compliance, assuming for sake of
4 discussion and based on legal reasoning that we were to
5 allow that increase to go forward based upon the
6 rationale that staff gave, if something changes in the
7 near future, say, for instance, they go out of
8 compliance tomorrow, do we have, can we reserve any
9 authority or ability to rescind that increase that was
10 granted without having to go through a protracted legal
11 process?

12 MR. WILLIS: I'll attempt to answer that.
13 Mr. Imhof can jump in if I say anything wrong here.

14 The Commission in the past, to preserve a
15 right to do something like that, would have to put the
16 rates subject to refund for a period of time. It just
17 couldn't be subject to refund for eternity. It would
18 have to be for a set period of time. And if you found
19 them to be, I guess, out of compliance like you're
20 talking about, then you would have that ability, if
21 they're subject to refund, to require a refund.

22 COMMISSIONER SKOP: Okay. So just following
23 up on that for the sake of The Woods, which has recently
24 come into compliance and what have you, we could put
25 that caveat or reserve that ability within a fixed

1 period of time, and I think the period of time is
2 important to delineate that it doesn't extend forever.
3 But say, for instance, in a year, 18 months, that if
4 they were to fall out of compliance, then those, those
5 rates could be subject to refund, those rate increases.

6 MR. WILLIS: Yes. You would have to make them
7 subject to refund today for that period of time for that
8 reason.

9 COMMISSIONER SKOP: All right. Thank you.

10 CHAIRMAN CARTER: Thank you, Commissioner.

11 Commissioner Edgar, you're recognized.

12 COMMISSIONER EDGAR: Thank you. And this,
13 that, that question and discussion brings me to a point
14 that actually I was hoping that we would have the
15 opportunity to discuss a little further. In my briefing
16 with staff yesterday, one of, some questions that I
17 posed and some discussion that we had, one of the things
18 I was trying to think about was how to incent or drive
19 within our regulatory authority better customer service
20 in response to some of the concerns that we heard at
21 hearing and at customer meetings both with the first
22 round and also with the earlier round. And we've all
23 talked about them but, of course, you know, poor
24 communication with the customers, this is in addition to
25 the water quality question specifically at Chuluota, but

1 the concerns we had about issues with meter reading,
2 with errors with bills, with slow, if any, response and
3 poor communication and those sorts of things. Whatever
4 rates are set at when we are done with this proceeding,
5 I wanted to try to think through some way that we could,
6 as I said again, kind of incent improvement in those
7 areas that we heard repeated testimony about issues and
8 problems and concerns. And we discussed the show cause
9 ability that this agency has, and that to me did not
10 seem to be the perfect answer in this situation for
11 reasons that have been discussed today.

12 The decision that we made at the last Special
13 Agenda as to a reduced ROE 100 basis points and then
14 100 basis points less specifically for Chuluota that I
15 did in my view see as punitive in response to concerns,
16 quality concerns that we had, but that is a decision
17 that is made that is then put in place. And, again, I
18 want to kind of use the tools that we have to drive
19 better performance because that is something that will
20 actually, you know, provide benefit to the customers;
21 whereas, the ROE number is in a little bit of a
22 different category.

23 So with all of that said, some of the
24 discussion that we've had about -- and we've used the
25 terms defer, deny, rescind, suspend -- in response,

1 thinking about it to some of the discussion from our
2 general counsel when we first came back from break, I am
3 just wondering if, rather than a straight denial, if to
4 use whatever procedural mechanism, I used the term
5 suspend but maybe there's a better term, with then
6 conditions precedent so that we are little more, I would
7 hope, in the driver's seat to try to encourage better
8 performance, better quality assurance in relation to
9 customer satisfaction, those areas that we have more
10 regulatory authority over than the water quality, more
11 DEP consent order type, type things.

12 And so I think what I'm hearing is we're all
13 trying to get to, you know, basically the same place,
14 the same result. It's just procedurally how do we do
15 that in the best way? And there is, you know, kind of
16 the category of punitive responses, but then also what I
17 would think of as a second category, which I'm using the
18 term conditions precedent, but as some way to say, okay,
19 if you do better, you know, there is a reason to do, to
20 do better because we will be looking at these. And,
21 quite frankly, the utility for particularly Chuluota
22 will have to come back to us. So I put that out just
23 for discussion because procedurally I'm trying to think
24 through how do we use the tools we have to get the best
25 results?

1 CHAIRMAN CARTER: Thank you.

2 Commissioner Argenziano.

3 COMMISSIONER ARGENZIANO: I don't see we have
4 any tools. Our tools are extremely limited and that's
5 the problem I keep having here at the PSC, that we have
6 very extremely limited tools. And when you have certain
7 tools that are available to you like this one and the
8 statute that says, you know, even on ROE that if quality
9 of service is not there, you have the right to reduce
10 the ROE -- so since we're limited with those tools and
11 this case law here, I don't see any other tool that's
12 going to help us. I think Chuluota, Chuluota fits in
13 with this decision a million percent.

14 Now I'm willing to maybe, and if somebody can
15 convince me, and the only thing that's compelling to me
16 right now is that the DEP consent order for The Woods
17 has been lifted, and I'd like to -- if we don't include
18 The Woods in the motion, if I remove The Woods, I would
19 like some kind of caveat on there. I'd like to know
20 what my tools are that if they fall out of compliance
21 suddenly, what we have. And what it sounds like we have
22 is that we're going to have to go through a whole big
23 legal thing or they're going to be fined, but the people
24 are still going to have that increase on their back.
25 And I just haven't, I just haven't felt like that the

1 company for those two facilities especially have been
2 able to resolve the problem, and I somehow am worried
3 that it could be a temporary resolved matter for The
4 Woods.

5 So if we do remove The Woods, what tool do we
6 really have? And the people will still be strapped with
7 that increase, won't they, or will they?

8 MR. WILLIS: Yes. Yes, they would.

9 COMMISSIONER ARGENZIANO: Okay. And the only
10 thing then is that if all five of us were to agree to
11 fine the company if they fell out of compliance along
12 with maybe whatever DEP does.

13 MR. WILLIS: To that, to that end,
14 Commissioners, which hopefully will address several of
15 your concerns here, my staff and I have worked up a,
16 what we would call a monitoring plan for the company in
17 which we would basically be for probably a period of six
18 months monitoring the company for several things.

19 And I've -- if you want me to, I'll be happy
20 to read it out and kind of go over it. And the end
21 result would be that we would monitor the company for
22 several things, three basic things.

23 COMMISSIONER ARGENZIANO: Okay. But, excuse
24 me, Marshall. This company has been out of compliance
25 at least at The Woods for two or three years and with

1 Chuluota I don't know how long. What good did
2 monitoring do? And I'm not sure where monitoring gets
3 you. If the end result of monitoring is that they can
4 be fined --

5 MR. WILLIS: Yes.

6 COMMISSIONER ARGENZIANO: -- I understand
7 that.

8 MR. WILLIS: That's the end result.

9 COMMISSIONER ARGENZIANO: So what I'm saying
10 is that the tools that we're referring to are really
11 very minimal. And possibly with The Woods I would, I
12 would maybe consider removing that from the motion with
13 the monitoring, understanding I'm not comfortable with
14 it because people are still going to get an increase on
15 their bills, and I don't know whether the company is
16 going to be consistent. But since the DEP consent order
17 has been removed, I'd be willing to do that in order to
18 make sure that Chuluota is -- I'm not going to --
19 everybody votes the way they want to vote, but I'm not
20 going to bend on Chuluota. I think Chuluota has been
21 awful. And, and I know that some of that is just
22 inherent in an old system and where the, where the wells
23 are, but there have been so many things compounding
24 those factors that I think this case law specifically to
25 me goes to Chuluota. So I'm not willing to, to suspend

1 for Chuluota. I think I -- my heart and my mind tell me
2 that Chuluota should not get an increase at this time.
3 And I'd be willing to modify the motion to remove The
4 Woods with the caveat that they're monitored and it's,
5 you know, maybe suspending just to see, or however you
6 suggest we could do with The Woods. But with Chuluota I
7 just think it -- I just can't give an increase for
8 Chuluota at this time.

9 CHAIRMAN CARTER: Thank you, Commissioner.

10 Commissioner McMurrian, then Commissioner
11 Skop, and then if anything is left to be said, I'll make
12 a few comments.

13 Commissioner McMurrian, you're recognized.

14 COMMISSIONER McMURRIAN: Thank you. And I
15 think with respect to The Woods, I mean, that seems to
16 be the way to go. And perhaps what we were talking
17 earlier about the subject of refund, I heard what
18 Commissioner Argenziano was saying about the ability to
19 fine and all later, but if we also worked into whatever
20 we do the fact that we realize it's just been a short
21 period of time since they did come into compliance and
22 maybe we hold it subject to refund for some period of
23 time and we'll need to talk about that.

24 I guess with respect to Chuluota, I guess what
25 I'm worried about, Commissioner Argenziano, is, and

1 maybe it's something I shouldn't worry about, I don't
2 know, I just haven't thought it through enough, but
3 whether or not if we were to deny, putting aside the
4 appellate issues that staff has talked about that maybe
5 we might be on better legal ground to defer rather than
6 deny for the reasons they went through, but putting that
7 aside, would the customers' water get better or would
8 perhaps the utility say if I'm not going to get a rate
9 increase for what I've already been doing, and obviously
10 it hasn't had good results yet from what we've talked
11 about, but will they have an incentive to continue to
12 try to do anything about the water? And that's the
13 worry I get.

14 I mean, and we've talked about, I know, the
15 city and the county and things before about whether or
16 not they might be interested in taking over the system.
17 The impression I've gotten throughout the proceeding is
18 perhaps they're not that interested because we're still
19 where we are. But, anyway, I don't really mean to go
20 down that road too much. But I just worry that the
21 company may just throw up their hands and say, well, if
22 we're not going to get rate increases to do any
23 improvements, then why do any more improvements? And I
24 do want the water to get better. And I know we all want
25 that; I'm not trying to say that we're in different

1 places. I think we're all extremely frustrated.
2 Customers should not in any circumstance be scared of
3 drinking their water ever. So, you know, I'm frustrated
4 too, but that's, that's the concern I have.

5 So I agree with a lot of what Commissioner
6 Edgar was saying. I just don't know how to get there.
7 And I would -- I wish there was a perfect answer, but it
8 seems like that perhaps that that's the, the, what we
9 should be thinking about is trying to make sure that the
10 company continues to work toward it faster, much faster.

11 CHAIRMAN CARTER: Okay. Commissioner
12 Argenziano and then Commissioner Skop.

13 COMMISSIONER ARGENZIANO: Well, I'll tell you,
14 when it comes to that, first of all, I don't see a
15 legal, in the issue of the rate increase, I don't see
16 that. I think that Chuluota falls 100 percent within
17 this case law better than anything I've seen in front of
18 me here before. Thank you, Booter, for that because
19 that really cleared up things when it comes to between
20 ROE and increase. So this covers the increase better
21 than anything I've seen before us.

22 As far as it being appealed, I think what it
23 says here, and I'll read it again, that in no, "It in no
24 manner compels the Commission to grant a rate increase
25 where the applicant's existing service is shown to be

1 inefficient." Well, heck, if we don't have enough of
2 that for Chuluota, then you'll never have it.

3 But as far as the incentive for the company,
4 my God, how long has this been going on with Chuluota?
5 I've heard from customers of Chuluota who say that they
6 don't drink it, they don't bathe in it. They use it to
7 basically flush their toilet. It is ruining their
8 appliances. I think that -- I heard from them saying
9 that -- I think they'd want to string me up if I said,
10 okay, now I'm going to give them more money to give you
11 the same product.

12 And I think that the company has every
13 incentive in the world to go ahead and fix things
14 because they then probably down the line could get a
15 rate increase. And without it, they're stuck with
16 nothing but problems, more complaints and probably
17 further legal problems down the line. So as far as the
18 incentive, I think the incentive is there. I think from
19 the customers I've heard that they're -- I think they
20 would be appalled to have an increase for such a system
21 at this time.

22 CHAIRMAN CARTER: Thank you. I'm going to
23 go -- you want to follow up, and then I'll go to
24 Commissioner Skop.

25 Commissioner McMurrian.

1 COMMISSIONER McMURRIAN: Thank you. I
2 apologize, Commissioner Skop. I just, I just wanted to
3 make clear I guess what I was thinking with respect to
4 Chuluota is that you would still withhold the rate
5 increase now -- that you wouldn't, you wouldn't have a
6 rate increase now. And even after the consent order we
7 might at that time and maybe even now, I don't know, but
8 even after the consent order, similar to what we're
9 talking about with The Woods, that even after the rates
10 would increase if they complied, that you still would
11 hold that subject to refund for some period of time in
12 the same way we're talking about The Woods to make sure
13 that it's not, you know, they just get it fixed, the
14 rates go into effect, and then perhaps the problems
15 reoccur. So I guess I just wanted to be clear that what
16 I was thinking about with respect to the incentive
17 wouldn't be that the customers would get a rate increase
18 now, it would be withheld, and even at the time that
19 they have the compliance that it might be held subject
20 to refund still. So I don't know if that's helpful or
21 not. Thank you.

22 CHAIRMAN CARTER: Commissioner Skop, you're
23 recognized.

24 COMMISSIONER SKOP: Thank you, Mr. Chairman.
25 I tend to, having listened to the comments,

1 agree with Commissioner Argenziano. I guess my thoughts
2 on the process -- and I guess we have a motion and I
3 guess Commissioner Argenziano has indicated some
4 willingness to perhaps amend it for The Woods. I'm
5 comfortable on the, on The Woods. What I'm trying to do
6 is harmonize granting any increase if one were to be
7 granted with the ability to immediately rescind such an
8 increase if a violation occurred. And I think, I think
9 staff has said that's possible to reserve that
10 capability. And I also agree with Chuluota that in no
11 way, form or fashion should an increase be granted at
12 this time. And even if there was a showing that they
13 were in compliance, again, I'd tend to agree with
14 Commissioner McMurrian that that should not in itself be
15 sufficient to pass through an increase absent them being
16 in compliance for a sufficient period of time. So I
17 think if we could find a way to harmonize -- well, I'll
18 yield to Commissioner Argenziano.

19 CHAIRMAN CARTER: I think that she's saying
20 that we, we did not hear them say that they could
21 rescind it. They said there were some provisions that
22 they could monitor it over a period of time but not, not
23 rescind it.

24 COMMISSIONER SKOP: Mr. Chair, if I may, I
25 asked Mr. Willis, I believe I asked if there was the

1 ability of the Commission in granting an increase to
2 reserve the capability of immediately rescinding that
3 increase should it come to the Commission's attention
4 that they were no longer in compliance. And it's kind
5 of like tying the two saying that as long as you're in
6 compliance, you get the increase. But, you know, this
7 system has been problematic in the past. And, again,
8 I'm trying to find a way to reserve inherent capability
9 and authority of the Commission to do something that's
10 against my better judgment to do in the first place.

11 But to be fair to the company, grant the
12 increase for The Woods, but be able to yank it back
13 should they come out of compliance tomorrow because it's
14 not fair to the consumers to have an illusory effect if
15 you're in compliance one day and you're not the next.
16 So if staff could elaborate on that a little bit
17 further, I think the Commission might --

18 MR. WILLIS: Sure. I think, I think my answer
19 to you a while ago was more than just rescind, it was
20 you wanted to give the money back. To do that, to keep
21 it from being retroactive ratemaking, you'd have to put
22 that money from today forward subject to refund, that
23 increase subject to refund, and that would prohibit the
24 retroactive ratemaking effect.

25 At that point you could -- if you desired and

1 found it legal, you could refund the money and rescind
2 the rate increase at that point, if you so chose.

3 COMMISSIONER SKOP: Okay. So, so for the
4 purpose of styling a motion in respect to The Woods,
5 should Commissioner Argenziano modify her motion, and if
6 the increase were granted, then it could be subject to
7 refund and those are the key words of import that would
8 protect the Commission from retroactive ratemaking but
9 still protect the consumers. So is there any way staff
10 could come up with some language that might be suitable
11 along those lines, if it would be agreeable to
12 Commissioner Argenziano?

13 MR. WILLIS: Sure. I think it would be --
14 personally I think it would be cleaner if you separated
15 the two. If there's a desire that The Woods should stay
16 within the rate structure that we're contemplating here,
17 one of these rate structures, I think it would be
18 simpler if we separated the two out, dealt with Chuluota
19 alone, and then put a provision upon The Woods within
20 that rate structure.

21 COMMISSIONER SKOP: I agree.

22 MR. WILLIS: I think it would be a lot
23 cleaner.

24 CHAIRMAN CARTER: I was thinking the same
25 thing because Chuluota is obviously Exhibit A of, you

1 know, unreasonable conduct. So I think maybe we could
2 deal with Chuluota first, take that out. And,
3 Commissioner, I'm with you in terms of denying an
4 increase for Chuluota. And I think that was the flavor
5 of your motion was to deny; is that correct?

6 COMMISSIONER ARGENZIANO: Yes. The reason I
7 say deny rather than defer, because I'm not going to --
8 I don't feel comfortable saying you're going, we're
9 going to give you an increase even though we think the
10 system has been horrible. I somehow just can't, can't
11 think that's logical. You've been bad, bad, bad, but
12 we'll give you an increase and we'll defer it. No, you
13 don't deserve an increase. And so I say no increase for
14 Chuluota.

15 You want to separate it, let's separate it for
16 The Woods with those provisions that, you know, if you
17 stay on course and try your best, I'm glad that the,
18 that the consent order has been lifted, then, yes. I
19 just don't want the company to fall back into an
20 inconsistent pattern of poor quality. And I think
21 that's, that's an incentive by putting that language in
22 there for The Woods, separating it, as you had
23 indicated, and saying that, okay, we'll do this, we'll
24 defer it, you know. But, I mean, we'll, we'll change
25 The Woods and say that if, you know, there's a pattern

1 of inconsistency and you fall out of compliance, well,
2 then you are subject to refund that money that you have
3 just taken from that ratepayer.

4 And in Chuluota, I have to reiterate, people
5 cannot drink the water. Now if the water in the wells
6 are that bad, and it may not be entirely the company's
7 fault, that area has been known for a long time to have
8 bad water and I understand those things, but nonetheless
9 people are paying for water they can't drink. And to
10 put an increase on top of that to me -- it's just,
11 there's no way I'm going there. So if we need to
12 separate it, help me get into the proper posture and
13 then the Commission will do as they please. But if we
14 can separate The Woods and Chuluota and have two
15 separate motions, I guess.

16 CHAIRMAN CARTER: Yeah. Let's do that.

17 MR. WILLIS: Certainly. That's what I would
18 recommend.

19 CHAIRMAN CARTER: And also with Chuluota we're
20 talking about both water and wastewater.

21 COMMISSIONER ARGENZIANO: And wastewater,
22 exactly.

23 MR. WILLIS: I wanted to make sure that was
24 clear, that you --

25 COMMISSIONER ARGENZIANO: Oh, yes.

1 MR. WILLIS: -- in that motion you would be
2 removing the wastewater Chuluota portion as a separate
3 stand-alone system too; right?

4 CHAIRMAN CARTER: So Chuluota water and
5 wastewater would be denied the rate increase. I think
6 that's the flavor of the motion, right, Commissioner?

7 COMMISSIONER ARGENZIANO: Yes.

8 CHAIRMAN CARTER: Would be deny the rate
9 increase for Chuluota.

10 MR. WILLIS: And I would add to that that you
11 might want to point out they'd be treated as a
12 stand-alone system.

13 CHAIRMAN CARTER: As a stand-alone system.
14 That is correct.

15 Commissioner Skop.

16 COMMISSIONER SKOP: Thank you, Mr. Chairman.

17 Just procedurally, and I'll yield to the Chair
18 and it's Commissioner Argenziano's motion, but perhaps
19 to make it cleaner I know that staff on Page 12 had
20 mentioned taking Chuluota wastewater and moving that
21 out. So perhaps a single stand-alone motion to do that
22 might be appropriate to make it cleaner and then we can
23 deny the rate increase. But I'll leave it -- it seems
24 to me we ought to probably first affirmatively vote on
25 taking the wastewater and leaving that stand-alone for

1 Chuluota, and then we can start denying the increases
2 from there.

3 CHAIRMAN CARTER: Is what we're saying is
4 putting the entire Chuluota system, both water and
5 wastewater, taking them out of this, have a separate
6 stand-alone system and deny the rate increase for them.

7 COMMISSIONER SKOP: Yes.

8 CHAIRMAN CARTER: That's the flavor of the
9 motion, right, Commissioner?

10 COMMISSIONER ARGENZIANO: Right.

11 COMMISSIONER SKOP: Yeah. And I guess that's
12 fine. I guess you can do it --

13 CHAIRMAN CARTER: We'll deal with The Woods
14 after we deal with this.

15 COMMISSIONER SKOP: Right. And I was thinking
16 that you could do it, I guess, combining it right there,
17 but it might be cleaner just to, to vote to take them
18 out as a stand-alone and then individually on the
19 increase. That way you don't bundle them. But I think
20 both can be accomplished in a single motion.

21 CHAIRMAN CARTER: Do you maintain your second,
22 Commissioner?

23 COMMISSIONER SKOP: I think Commissioner
24 Argenziano is probably going to modify the original
25 motion.

1 COMMISSIONER ARGENZIANO: I think we -- yes.

2 CHAIRMAN CARTER: Yeah. And that is -- and
3 her motion is that we -- first of all, the Chuluota
4 water and wastewater system would be a stand-alone
5 system and the Commission would deny a rate increase.

6 COMMISSIONER ARGENZIANO: Absolutely. An
7 increase for that, exactly.

8 COMMISSIONER SKOP: For Chuluota.

9 CHAIRMAN CARTER: For Chuluota.

10 COMMISSIONER SKOP: I'll maintain my second to
11 that.

12 CHAIRMAN CARTER: Okay. And I think I
13 properly stated the motion. Right, Commissioner?

14 COMMISSIONER ARGENZIANO: Yes.

15 CHAIRMAN CARTER: Commissioners, any further
16 debate, any concern? Motion and properly seconded. All
17 in favor, let it be known by the sign of aye.

18 (Unanimous affirmative vote.)

19 All those opposed. Show it done.

20 Now let's deal with The Woods. And The Woods,
21 Marshall, kind of walk us through that because what we
22 wanted to do was put a, some kind of monitoring process
23 --

24 MR. WILLIS: What I would propose -- there's
25 two separate things here that I'm envisioning because of

1 what you all have been talking about. Let's talk about
2 The Woods first.

3 With The Woods I would propose that you put
4 the rates that you're going to implement for The Woods
5 only, the rate increase for The Woods only subject to
6 refund for a period of, say, 18 months, and that if the
7 company goes out of compliance with the Department of
8 Environmental Protection, that would come back to you
9 where you would have the ability to decide whether you
10 wanted to refund the increase at that point and rescind
11 the rate increase within that 18-month period.

12 CHAIRMAN CARTER: Okay.

13 MR. WILLIS: That would handle the service
14 quality problem.

15 Now as far as looking at other areas, this is
16 what I wanted to bring up earlier, the monitoring plan
17 or the idea that staff has come up with here. This goes
18 to three major aspects that we heard throughout the
19 hearings as far as customer problems. It goes to the
20 failure of the company to handle customer complaints
21 properly and within a timely manner: Problems with the
22 call center, not adequately handling calls from
23 customers, rudeness, all those wonderful things we heard
24 about the call center. And the last aspect would be
25 improper meter readings and the resulting incorrect

1 bills. Those are the three major areas that staff heard
2 as far as dealing with the customer service problems
3 other than quality of the water itself.

4 And what we would propose -- and you can do
5 this for any period of time. We'd probably propose a
6 six-month time period. We would want the company as
7 part of this plan to submit a monthly report to the
8 Public Service Commission for that first six-month
9 period starting in May right after the order is issued
10 in which they would list all the customer complaints for
11 the system for each month and it would be a monthly
12 report. The report would include the customer's name,
13 the address, phone number, account number and a
14 description of the complaint and how the complaint was
15 resolved. We would audit a sample of those complaints
16 and we would determine whether or not we believe those
17 complaints were handled appropriately.

18 And the purpose for getting them to submit
19 this information to us is to find out how well Aqua was
20 handling these complaints. We get our own complaints.
21 We'll have that ability to look at what we receive. But
22 our, our whole focus here is is Aqua improving its
23 ability to handle complaints and are they handling them
24 properly? That's what this first criteria would be as
25 far as the reporting purposes to us and that's how we

1 would look at it. We would probably define whether or
2 not they're handling it appropriately as whether any
3 errors were made by the company as far as, that were not
4 corrected, and all the issues the customers address,
5 brought forward were addressed properly, whether or not
6 the complaint was valid or not, the customer's complaint
7 still needs to be responded to, and whether or not it
8 was responded to adequately and correctly. That's how
9 we view that.

10 Part two will be the company would also be
11 required to submit on a monthly basis all of the sound
12 recordings we heard about. We heard that at the call
13 centers they monitor, they record all of these
14 interactions between customers in the call center for
15 quality monitoring of their own. We would like those
16 sound recordings submitted to the Public Service
17 Commission, and we can figure out how that's to be done.
18 We would like those submitted to us so we also can take
19 a sampling of those recordings and we can see on a
20 first-hand basis how these interactions are going on
21 between the call center and the customers who call in.

22 The third thing would be that Aqua would also
23 be required to provide the staff a routing of how the
24 meters are going to be read. It would be a meter
25 reading route schedule, the days and which system the

1 company would be automatically reading the meters. We
2 in turn would do a sampling on the same day. We would
3 pick a day during the month, maybe a couple of days. We
4 would go out and sample meter readings on our own. As
5 part of that they would be required to submit all of the
6 meter reading logs to us on the day they were read each
7 month. We would go down and find the meters by the
8 meter number and we would verify -- our readings should
9 be, if we do it on the same day, should be fairly close
10 to what Aqua read.

11 COMMISSIONER ARGENZIANO: Can I ask a question
12 to that? Are you going to let the company know when
13 you're going to do the meter readings?

14 MR. WILLIS: No, we would not.

15 COMMISSIONER ARGENZIANO: Okay.

16 MR. WILLIS: That's, that's the purpose of
17 getting the whole route of all meter readings for all
18 systems from the company. They won't know which ones
19 we're reading.

20 COMMISSIONER ARGENZIANO: Well, that means all
21 staff; right? No one is going to tell the company, hey,
22 we're coming down tomorrow to --

23 MR. WILLIS: No.

24 COMMISSIONER ARGENZIANO: Okay.

25 MR. WILLIS: The company doesn't even have to

1 know. We'll just take a staff, you know, a state car
2 down and we'll, we'll do a sampling of meter readings on
3 the day they say they're going to take them and they
4 won't know which system or anywhere else that we're
5 going to do this at. But we can verify our readings
6 with what we receive from them as far as the records as
7 far as the meter reading logs.

8 That would be the three areas that we believe
9 would cover those three criteria that we're looking at
10 for the three major problems, and we would propose that
11 we monitor that for a period of six months and we bring
12 back those findings to the Commission. And at that
13 point if you feel, if you believe that the company has
14 not improved, you could open up show cause proceedings
15 and say you haven't done it and you're going to be show
16 caused for that. If you feel that they have met it,
17 you'd close the docket and go forward. That's what we
18 propose as a monitoring plan.

19 CHAIRMAN CARTER: And that's for The Woods;
20 correct?

21 MR. WILLIS: That, you could do that for The
22 Woods, you could do that for all of the systems. I know
23 Commissioner Edgar said that she was concerned in our
24 briefing with all of the systems. We can, we can expand
25 it to the entire Florida systems that we regulate. We

1 can just do it for The Woods. It's up to the
2 Commission.

3 CHAIRMAN CARTER: Commissioner Edgar, you're
4 recognized.

5 COMMISSIONER EDGAR: Thank you. And I
6 appreciate the follow-up from, from staff.

7 Commissioners, my thinking on this during the
8 hearing and the Special Agenda and discussions with
9 staff yesterday and continuing today is that in my mind
10 there were, for just my way of thinking, two areas of
11 concern. One is that the water, the water quality,
12 which obviously for Chuluota to the more extreme, but
13 for The Woods there also were concerns, and those that I
14 see as more of that DEP, Department of Help -- Health,
15 excuse me, Department of Health authority and subject
16 area.

17 CHAIRMAN CARTER: We need the Department of
18 Help.

19 (Laughter.)

20 COMMISSIONER EDGAR: But the, but then the
21 other area which is more of the, what I think of, you
22 know, QA program, quality assurance, customer
23 interaction, billing, meter reading, which I see as more
24 of our area, and then our ability to take both of those
25 pieces and put it in, factor them into, into our

1 decision.

2 So the possible points for monitoring and
3 follow-up that Marshall has described for us, you know,
4 I don't know if that's the best right way, those things
5 are the best pieces of information, but I do think that
6 for the systems in their entirety, if we are going to
7 consider some banding, which to me does have some
8 positive points to it, to have some follow-up and
9 additional information systems-wide as to the QA type
10 things that I think that we have some authority over may
11 be very useful as we, as we go forward.

12 And so my thinking on that is the issue with
13 the consent order with The Woods is another kind of
14 unique category. So I guess with all of that to say is
15 I am interested for your consideration in looking
16 towards having some additional information on customer
17 complaints and customer interaction in the areas that
18 we've heard for all of the systems, not just for The
19 Woods. But whether what Marshall has described, I would
20 be open to discussion on that as to whether that's the
21 right, the right best approach, and I appreciate the
22 follow-up on that.

23 CHAIRMAN CARTER: Commissioners, we're in
24 discussion.

25 Commissioner McMurrian, you're recognized.

1 COMMISSIONER McMURRIAN: I absolutely agree
2 with doing, looking at something systemwide. I don't
3 know about the exact details. And I guess always we
4 could put something in place and if, as staff does the
5 monitoring, they think that there's some way that it
6 would need to be tweaked or something, we could always
7 talk about doing that. So it may be that, you know, we
8 go with what's proposed or of course with any changes
9 the Commission might be interested in.

10 But I did -- Marshall, if you could, because
11 that was kind of a long list, the part that was with
12 respect to --

13 MR. WILLIS: Would you like me to pass this
14 out?

15 COMMISSIONER McMURRIAN: That would be great
16 actually.

17 CHAIRMAN CARTER: And I, and I think the good
18 thing about what staff has done, Commissioners, is
19 they've zeroed in on the major areas that we've talked
20 about: Customer relations, billing, meter reading,
21 those kind of things that we heard ad nauseam from the
22 hearings last year, this year. Well, anyway, I don't
23 want to beat a dead horse to sleep or anything like
24 that.

25 COMMISSIONER McMURRIAN: So, Chairman, if I

1 can ask Marshall as we look at this --

2 MR. WILLIS: And where it says "three months,"
3 make that six months.

4 COMMISSIONER McMURRIAN: Where is -- which
5 paragraph?

6 MR. WILLIS: There's a paragraph entitled
7 "Number one," on the first line. "For the first three
8 months" should be six months. Down on paragraph three
9 on the second line where it says, "Aqua Florida's
10 regulated systems for the three months," make that six
11 months, and that would go along with what I just told
12 you.

13 CHAIRMAN CARTER: Okay.

14 COMMISSIONER McMURRIAN: Okay. This answers
15 my question. Thank you.

16 CHAIRMAN CARTER: Thank you. Commissioners,
17 as we look over this -- I want to thank staff for
18 putting this together because it does tie into the areas
19 of concern and it does, it gives us, gives us some, some
20 perspective on one, two and three. It also is
21 consistent -- we've got this -- we have ample -- what
22 was that our general counsel said we have to have?

23 COMMISSIONER McMURRIAN: Competent substantial
24 evidence.

25 MR. WILLIS: Competent substantial evidence.

1 CHAIRMAN CARTER: Competent substantial
2 evidence. Thank you. And we do have that in the record
3 to support this. And I think that -- I don't have a
4 problem with it being systemwide because we did have
5 commercial -- we had visits with customers systemwide.

6 Commissioner Argenziano, you're recognized.

7 COMMISSIONER ARGENZIANO: I have no problem
8 with that at all. I think it's a good idea. I just
9 want to make sure that when it comes to The Woods, that
10 there's that extra little caveat in there about --

11 MR. WILLIS: The 18 months.

12 COMMISSIONER ARGENZIANO: And being subject to
13 refund if they fall out of compliance.

14 MR. WILLIS: Yes.

15 COMMISSIONER ARGENZIANO: And with that, I
16 think it's a great idea to go systemwide and see what
17 happens, and maybe the company could get it together. I
18 think some of the meter problems, you know, were
19 compounded because of the little zero at the end and
20 maybe that's, maybe that's starting to disappear, I
21 hope. And, you know, some of those things may already
22 be resolved and you may find that when you get out there
23 that they've corrected that.

24 It didn't help, of course, at the time because
25 it generated more complaints, and rightfully so, but

1 hopefully that's resolved. But as far as doing it
2 systemwide, that's great just as long as when we're
3 talking about The Woods that that extra language is
4 added in there.

5 CHAIRMAN CARTER: Is that -- staff, would you
6 be comfortable in crafting that with the understanding
7 of what you've heard from the bench about The Woods?

8 MR. WILLIS: Yes. And in fact I could, I
9 could craft that for you rather quickly and it would
10 include, encompass this also. This would be the
11 monitoring plan for all systems. As far as The Woods
12 would go, their revenue increase would be held subject
13 to refund for a period of 18 months subject to the
14 Commission's finding that the utility had not been back
15 in violation with the Department of Environmental
16 Protection.

17 CHAIRMAN CARTER: Okay. Commissioners?
18 Commissioner McMurrin, you're recognized.

19 COMMISSIONER McMURRIAN: I just want to be
20 clear about that back in violation stuff. I just want
21 to be clear about what it is since DEP can issue several
22 different types of violations.

23 MR. WILLIS: That's correct.

24 COMMISSIONER McMURRIAN: Are we needing to be
25 specific or is it if they're, if they violate any kind

1 of service quality violation?

2 MR. WILLIS: I think it would be back in,
3 finding themselves back in a consent order with the
4 Department of Environmental Protection within 18 months
5 from the date of the order actually.

6 COMMISSIONER McMURRIAN: Okay.

7 MR. WILLIS: We probably ought to put that
8 provision in there. And I think that would be subject
9 to the Commission deciding that they have met a really
10 severe violation. I mean, a company could find
11 themselves in a consent order for a minor violation at
12 some point if they hadn't corrected it at that point.
13 So the Commission would have the latitude in 18 months
14 to say does that rise to what we believe is a major
15 violation?

16 CHAIRMAN CARTER: Commissioner Skop, you're
17 recognized.

18 COMMISSIONER SKOP: Thank you, Mr. Chairman.

19 I agree wholeheartedly with Commissioner
20 Edgar's desire to have the systemwide monitoring and I
21 think that's a good thing. And so long as the provision
22 for The Woods is put in there and we tighten that
23 language enough to make sure that it's fair to the
24 company but equally fair to the Commission to the extent
25 that if future noncompliances occur, that we have the

1 ability to, subject to refund, to take a look at that.
2 I'm happy with that and I think it was a good suggestion
3 by Commissioner Edgar.

4 CHAIRMAN CARTER: Okay. Thank you.
5 Commissioners, anything further on, on where we are a
6 with the context of the motion for -- do we even have a
7 motion? We were just discussing it, weren't we? We
8 were discussing it because we had broken The Woods out.
9 Okay. It's coming back to me. Commissioner Edgar,
10 you're recognized.

11 COMMISSIONER EDGAR: Mr. Chairman, just a
12 suggestion or request, I guess. We've had, and I'm glad
13 for it because I did want, was looking forward to having
14 some discussion today about kind of on a go-forward
15 trying to address some of these quality assurance type
16 issues, and so I'm glad we've had the opportunity to do
17 that. I'm wondering if it might be helpful, I think it
18 would be to me, to have staff tee up for us at this
19 point, realizing we still have The Woods to address, but
20 maybe tee up for us very briefly the issues that are
21 before us because it might make sense to then be able to
22 kind of wrap them all together with a motion.

23 MR. WILLIS: We can do that.

24 CHAIRMAN CARTER: Okay. Staff, you're
25 recognized to present the -- I got us all off with my

1 perspective, but I was hoping because of the nature of
2 the violations that we've seen consistently to put us in
3 a posture to deal with that. But, staff, you're
4 recognized.

5 MS. LINGO: Thank you, Chairman Carter. And
6 good afternoon, Commissioners. I'm Jennie Lingo with
7 Commission staff.

8 Commissioners, in Issues Numbers 64 and 65 --
9 just a moment, please.

10 (Pause.)

11 Oh, happy day, I'm back. Anyway, in Issue 64
12 and its companion Issue 65, Commissioners, we have
13 discussed and recommended the appropriate rate
14 consolidation methodology for the utility's water and
15 wastewater systems.

16 Commissioners, we analyzed the different rate
17 consolidation methodologies that were brought before you
18 during the hearing, and it's our recommendation to you
19 that based on our analysis we believe the appropriate
20 methodology for the water and wastewater system rate
21 consolidation is the capband approach and also
22 reallocating approximately \$580,000 from the wastewater
23 system to the water system.

24 Commissioners, the resulting rate bands are
25 indicated on Page 12 of the recommendation. I would

1 point out two things if we're talking about removing,
2 possibly removing The Woods. The Woods is in rate
3 band 4. It's a capped band for water and it would have
4 no change on that band. The Woods for wastewater is in
5 rate band 2, but it's a higher-cost system in rate
6 band 2. So removal of The Woods and bringing it
7 stand-alone would cause the rate in band 2 to be reduced
8 somewhat.

9 Questions regarding Issues 64 and 65?

10 CHAIRMAN CARTER: Commissioner Skop, you're
11 recognized.

12 COMMISSIONER SKOP: Yes, I have two. With
13 respect to The Woods in itself, I think that we're
14 leaving -- my understanding is irrespective of the
15 motions and the monitoring that The Woods would remain
16 in that, in that band; is that correct?

17 MS. LINGO: That was my, that's my
18 understanding, but just trying to cover the basis in
19 terms of teeing it up for you.

20 COMMISSIONER SKOP: Okay. And then I guess
21 with respect to Issue 64 I did have some questions.

22 CHAIRMAN CARTER: You're recognized.

23 COMMISSIONER SKOP: Thank you, Mr. Chairman.

24 I guess first and foremost I would commend our
25 staff for all the effort that they put into this. I

1 know it's a difficult situation. But just in general,
2 on Page -- I guess for me the staff commentary at the
3 bottom of Page 9 spilling over to Page 10 goes to the
4 crux of the problem and basically necessitates the need
5 to develop an alternate rate structure. And I guess on
6 that page staff speaks to the statutory provision and
7 why there's, a tension exists between, you know, rates
8 that are affordable but, you know, also compensatory.

9 So I guess in trying to better understand
10 this, and I do think that this is an appropriate fix and
11 I'm in full support of it, but the other half of me
12 wonders whether this is a one-time fix versus a more,
13 you know, whether a -- is this a one-time -- excuse me.
14 Is this a one-time fix or are we in need of a more
15 comprehensive long-term solution? And I had a couple of
16 questions that I wanted to ask staff to kind of flesh
17 this out. You know, I know in this rate, alternate rate
18 structure that's come up with there's been the tradeoff
19 between the subsidies and the affordability caps that
20 the Commission has adopted.

21 And the first hypothetical, because I think
22 it's reasonably foreseeable that Aqua will come back in
23 for another rate case sometime in the near future, but
24 in my first hypothetical, if there are no additional
25 acquisitions and capital improvements made, what would

1 that likely do in terms of impact on affordability and
2 the subsidy amounts? If staff could generally speak to
3 that.

4 MS. LINGO: Well, regarding affordability,
5 that would, that would be an issue or an item that you
6 would decide at the next rate proceeding and the subsidy
7 values as well.

8 COMMISSIONER SKOP: I guess, let me just make
9 it clearer. If capital improvements had the effect of
10 increasing the rate base driving the revenue
11 requirement, would it be more likely than not that the
12 affordability caps would have to rise and the subsidy
13 amounts would equally have to rise to cover that
14 incremental addition to rate base?

15 MS. LINGO: I don't believe the subsidy
16 amounts would necessarily need to rise because the
17 positive aspect of the capband rate structure is to
18 group these systems based on similar costs. So what
19 we're doing, instead of, instead of looking at a subsidy
20 from System A to System Z, we're only looking at the
21 level of subsidies within each band. So by grouping
22 them in this manner, we in fact minimize the subsidies
23 within those bands. So it -- I'm sorry.

24 COMMISSIONER SKOP: But isn't, isn't that
25 somewhat ignoring the obvious to the extent that, you

1 know, with the subsidies -- obviously somebody's bill
2 that is, you know, maybe \$10 a month may be going up a
3 few dollars on the water side, what have you. But, you
4 know, if we're just putting blinders on and looking only
5 at band to band, I mean aren't we in effect ignoring the
6 total effect of the total growth of the subsidy over
7 time?

8 MS. LINGO: No, sir. And the reason I, I
9 don't believe that's the case is because once we -- once
10 you vote on whatever your pleasure is regarding Issues
11 64 and 65, you would think about the respective systems
12 and the costs for that system as one entire, one rate
13 within that band.

14 Commissioner Skop, I believe a premise behind
15 what you're suggesting would be even though we group
16 systems in bands, that we would, we would never lose
17 sight of what its original stand-alone value would be
18 and any potential level of subsidies between one system
19 and another.

20 And the whole purpose behind rate
21 consolidation is to not necessarily think about a
22 particular system in and of itself. You're grouping
23 them together so that all customers within that band pay
24 the same cost. So that whenever we, whenever we go to
25 the next rate proceeding, we're not looking at 85

1 separate costs. We're looking at a total of nine
2 separate costs, five for -- four for -- five for water
3 and four for wastewater, something along those lines.
4 So I would respectfully disagree. But, you know,
5 that's -- well, that would be my response to you.

6 COMMISSIONER SKOP: Okay. And I agree in
7 principle with that and I accept that and that's part of
8 the tradeoff that's, that's occurring here in the sense
9 we're getting away from the individual notion of a
10 stand-alone system and the impacts and looking in the
11 aggregate on groupings, logical groupings. But, again,
12 that may have the end result of some systems' bills
13 actually going up over and above what they were today or
14 tomorrow. But I think that's part of the opportunity
15 cost that exists.

16 Second hypothetical, assuming -- let's change
17 the variables a little bit. Assuming that Aqua, there
18 was the acquisition of additional high-cost systems with
19 the capital improvements that I just mentioned on the
20 existing systems, what impact would that likely have on
21 affordability and subsidy amounts?

22 MS. LINGO: Commissioner, in all honesty it
23 would, it would, it would depend on the size of the
24 system that was being purchased and what, the disparity
25 and cost between that system versus the cost in the,

1 whatever the capped band amount is. And to be honest,
2 sir, I can't tell you a priori what, whether it would be
3 a substantial impact or a minimal impact. It would, it
4 would really depend on not only the number of high-cost
5 systems that are acquired but also the size and the
6 nature of those high-cost systems and where we may set
7 the bands, where we may set the bands in a future case.
8 So there's, there's at least three moving parts, so I
9 wouldn't be able to tell you right now how, how or the
10 magnitude of the direct effect would be.

11 COMMISSIONER SKOP: Okay. Fair enough. But
12 generally speaking, the acquisition or additional
13 acquisition of high-cost systems could have a profound
14 impact. And, if not, the existing high-cost system is
15 what is predicated by virtue of the situation we're in
16 in adopting this alternate rate structure. Would that
17 be correct?

18 MS. LINGO: The high-cost systems would have
19 an impact. Whether the impact be lesser or more
20 profound again is going to depend on the, on the nature
21 of the systems being acquired.

22 COMMISSIONER SKOP: Okay. And one final
23 question. Again, I'm just trying to understand. I do
24 commend staff for their efforts on this. I'm just
25 trying to look at the bigger picture and understand the

1 ramifications of our actions to the extent that we're
2 bound or not bound by decisions we make here today.

3 But just one final question, and this is
4 probably going to the crux of what I perceive the
5 problem or trying to find an ultimate solution, but in
6 staff's opinion should FGUA as a quasi-governmental
7 entity with a lower cost of operations be required to
8 take a more prominent role in the acquisition of
9 problematic high-cost systems on a forward-going basis
10 to help address this problem?

11 CHAIRMAN CARTER: I don't know if --

12 MR. WILLIS: That's a tough question. I think
13 that FGUA is its own boss, you might say. They get
14 involved in what they want to get involved in, and I'm
15 not sure that anything that the Commission could tell
16 them to do would force them to be more involved than
17 they want to be.

18 COMMISSIONER SKOP: I understand. But, I
19 mean, I guess what I'm getting at is I see a perceived
20 problem here in Florida, and to the extent that, you
21 know, we, the Commission has incentivized private
22 business to come in and acquire small, run-down systems,
23 which is good, but then we're up against the
24 affordability barrier. And I'm looking at if you have a
25 quasi-governmental entity that's there for a specific

1 purpose, then in lieu of cherry picking what systems
2 they choose to acquire, perhaps they may on a, on a
3 state interest basis have to take a more prominent role
4 in helping to be a partner in addressing the solution.
5 I don't know if that's a good thing or not. But I just
6 know that generally if you put a private company with a
7 return on equity and all the other things that go into
8 that, certainly a quasi-governmental entity should have
9 theoretically lower overall operating costs. So I can
10 see, you know, that helping the affordability equation.
11 But, again, I just wanted to get staff's perspective on
12 that.

13 MR. WILLIS: I understand the FGUA doesn't
14 have to pay taxes; therefore, they would have lower
15 operating costs. But for the FGUA to be involved they
16 would have to enter into interlocal agreements with
17 whatever county they decide to purchase a system in, and
18 that would mean that the county would have to be
19 responsible for getting the FGUA involved in purchases
20 such as Pasco County did with Aloha. And it wouldn't be
21 an action upon the Commission to do that, it would be an
22 action required by a county to do that.

23 COMMISSIONER SKOP: Okay. Just one final
24 question then, and I hate to do this, but with the issue
25 of high-cost systems, I guess we're in a conundrum there

1 because, again, we want to acquire those systems or have
2 somebody acquire them and bring them in to get economies
3 of scale. But if those are done in a, in a fashion
4 where all you're doing is acquiring the run-down
5 systems, it can have a profound impact on customers that
6 have currently low rates and drive those rates higher as
7 we've seen.

8 So how do you, how does staff -- you know,
9 what, what solutions are offered for addressing that? I
10 mean, I know the Commission has certificate transfer
11 authority to look at that. But, you know, I'm trying to
12 incentivize acquisition but equally keep rates
13 affordable, and I see a tremendous tension there and I
14 was wondering if staff could briefly speak to that.

15 MR. WILLIS: I understand where you're coming
16 from, I think. I have a concern, have had a concern
17 with Aqua's, I guess it would be their internal policy
18 on purchasing systems. Because if it were me and I had
19 the ability to go out and do this, I would be trying to
20 do a balancing of purchasing the low-cost systems and
21 the high-cost systems to make something like this
22 capband rate structure work really well, and that way
23 you would have a minimal impact on some of your low-cost
24 systems to take over some of these little problematic
25 systems. But I don't know how you go about fixing that

1 other than, other than tell Aqua that you think they're,
2 they need to review their practice of purchasing small
3 companies if they're not going to look at purchasing
4 more economically run systems at the same time. I don't
5 know how you would go about fixing that.

6 COMMISSIONER SKOP: All right. Thank you.

7 CHAIRMAN CARTER: Thank you.

8 Commissioner Argenziano.

9 COMMISSIONER ARGENZIANO: Thank you.

10 Different, different questions but with respect to that,
11 since -- I mean, is there any -- I guess there isn't
12 anything even statutorily that says that if you want to
13 buy a system that is really old, antiquated and would
14 cost ten times the amount to fix to bring it up-to-date,
15 that's your problem, is there? I mean, in some cases
16 some of these systems really shouldn't be bought. They
17 should be demolished and new systems should be built
18 because I think in the long run it's a lot cheaper for
19 the consumer. There's initial costs, but some of them,
20 to get them up to par is ridiculously expensive and is
21 adding and contributing to the problem that we're seeing
22 with increased rates to consumers because the systems
23 are old. And, you know, sometimes you've got to get rid
24 of the old and bring in the new. While there's an
25 initial cost, I think you get a better quality, you

1 resolve a lot of the problems and, and, you know, you're
2 not trying to constantly retrofit a system that should
3 have been just trashed.

4 But with saying that, from what I
5 understand -- I think I had asked staff the other day to
6 give me an amount of people who are going to be paying
7 more and people who would be paying less, and what I
8 basically got was a percentage. And what I've come up
9 with is that 69 percent of the people through these
10 systems are going to be subsidizing the 31 percent. Is
11 that correct?

12 MS. LINGO: Yes, ma'am. That's the
13 information I gave your assistant.

14 COMMISSIONER ARGENZIANO: So 69 percent of the
15 people are subsidizing 31 percent. And in the statute
16 where it mentions that we are not to unfairly be
17 discriminatory, if you have a single mom who's paying
18 \$40 now and is going to now be subsidizing, or an
19 elderly senior who's on a limited income who can't pay
20 more, or a single dad for that matter who can't pay
21 more, how is that not unfairly discriminatory? I'm just
22 having a hard time understanding how that's not
23 discriminating against someone who just can't pay,
24 because we're talking about compensatory also, but
25 forcing them to pay for other systems. How did you get

1 over that hurdle?

2 MS. LINGO: Commissioner, any time you're
3 talking about combining systems, whether it's two
4 systems together or multiple systems together, there's
5 always a tradeoff between affordability of the systems
6 on the one hand and the subsidy levels on the other.

7 The, what we can say is that the greater --
8 the lower the amount you set for subsidy limits, that's
9 going to result in a greater number of rate bands. And
10 while the subsidy, lowering a subsidy limit may seem
11 attractive at first blush, we also have the hurdle to
12 jump in that the more rate bands you have, the higher
13 the cost is going to be in that, in the final band or
14 two. So, again, ma'am, it's, there's always a tradeoff.
15 And what we did --

16 COMMISSIONER ARGENZIANO: No. No. No. I
17 understand that. I understand what it's all about and
18 how it works. I can't get over the hurdle that in the
19 statute says that we're not to be unfairly
20 discriminatory. How did you? I know --

21 MS. LINGO: I apologize.

22 COMMISSIONER ARGENZIANO: I know what you're
23 saying and how that works, but I can't get over that.
24 How do you, how, how did you reconcile that? How is it
25 not discriminatory against those persons who are

1 subsidizing, especially those who can't afford it?

2 MR. WILLIS: Well, Commissioner, I think, I
3 think you have to look to the fact that we set
4 affordability levels for a system, any system. And the
5 Commission setting an affordability level said that that
6 would be a reasonable rate at that affordability level.

7 COMMISSIONER ARGENZIANO: But that's for that
8 particular system.

9 MR. WILLIS: That is correct.

10 COMMISSIONER ARGENZIANO: Okay. This is for a
11 different system that we're subsidizing or different
12 systems. So it's not even the persons or that single
13 mom or that elderly citizen, it's not even their system.
14 They are now being told they're going to subsidize
15 another system, and I can't get over the part in the
16 statute that says we're not to be unfairly
17 discriminatory and the compensatory language in there
18 also. So I didn't know how you looked at that, and I
19 guess you don't.

20 MS. LINGO: Well, the, whether the rates are
21 unduly discriminatory is always a policy decision for
22 the Commission to make. And any time we're looking at
23 this sort of problem, you will have to wrestle with
24 whether you are looking at affordability perhaps as your
25 primary driver but never losing sight of whether the

1 rates are unfairly discriminatory with regard to the
2 amount of subsidies.

3 What we've recommended in this case is what
4 the Commission voted on in terms of the affordability
5 levels that you approved at the last Agenda Conference
6 with the exception that we requested that you increase
7 the subsidy amount from what you voted on at the last
8 Agenda Conference.

9 COMMISSIONER ARGENZIANO: With all due
10 respect, we were voting at the last Agenda Conference
11 for individual systems. This is a consolidated cost to
12 consumers of who 69 percent are going to be paying a
13 subsidy. So I think I understand where you're at. I
14 just have a real problem with the consolidation, I
15 guess, the language in the statute that we're kind of
16 picking and choosing which parts we adhere to and
17 twisting it. I just see it as being unfairly
18 discriminatory to that 69 percent who will be paying a
19 subsidy to the 31, and especially those who testified
20 and said they just couldn't afford any more. So that's
21 where I'm coming from.

22 MR. WILLIS: Commissioner, I understand where
23 you're coming from. It's kind of a catch-22 because for
24 these individual systems you're talking about, they may
25 have to pay a subsidy which in turn helps out another

1 system where they wouldn't be able to pay whatsoever
2 because of a \$300, \$350 a month rate that they would --

3 COMMISSIONER ARGENZIANO: It's not a catch-22.
4 It's whether you agree -- and I understand you have to
5 make a consolidation work or a plan and say this is how
6 it works. But in the statute what it comes out to me,
7 and just a creature of the statute, is that in order to
8 do that, to lessen somebody else's, somebody else has to
9 subsidize them. And within that somebody else who's
10 doing the subsidizing there are people who can't afford
11 higher bills. And I understand you're trying to make a
12 plan work. I guess I'm just against the whole
13 consolidation because of that, because the statute
14 directs me not to be unfairly discriminatory.

15 Everybody has their own decision on how
16 they're going to look at that. I'm just trying, was
17 trying to find how you reconciled that part of the
18 statute, and I look at that and say I can't reconcile
19 it. I just don't think that the 69 percent
20 subsidizing -- there's going to be a lot of people there
21 who just can't afford it and I just have a real problem
22 with the consolidation, I guess, in general. And I
23 thought maybe you had some kind of trick answer, or not
24 a trick answer but an answer that would alleviate that
25 problem for me, and I can see that's not there, so.

1 MR. WILLIS: Well, I would, I would point out
2 that a capband rate structure is not brand new.

3 COMMISSIONER ARGENZIANO: Oh, I know.

4 MR. WILLIS: This is not something new.

5 COMMISSIONER ARGENZIANO: I know.

6 MR. WILLIS: And it has been, it has been
7 tested in court.

8 COMMISSIONER ARGENZIANO: That doesn't mean
9 it's right.

10 MR. WILLIS: And the court has found that it
11 is an appropriate rate band structure that does meet our
12 statutory requirement, so.

13 COMMISSIONER ARGENZIANO: Well, I, I beg to
14 differ when I look at that statute that tells me -- you
15 know, when I've heard people say they can't afford any
16 more and they're going to be part of the subsidizing
17 batch, I have a hard time, as I say, figuring out how
18 they're going to do that. And I guess that's my
19 personal opinion, but that's where I'm at.

20 MS. LINGO: And, Commissioner Argenziano, in
21 our process of going through and trying to figure out
22 what would, what would be something appropriate to bring
23 before you, the tables that are shown on Page 9 where we
24 walk through the analysis of going from comparing what
25 stand-alone rates would be versus fully consolidated

1 versus the capband method versus the portfolio method,
2 while it's true under the stand-alone method there would
3 be no subsidies paid because everyone pays whatever the
4 respective system costs would be, but then we look at a
5 maximum bill on the water side \$229 and, you know, we,
6 we have very grave concerns about that level of bill on
7 the water side. So then if you go to the -- if you go
8 to the --

9 COMMISSIONER ARGENZIANO: I understand that.
10 So do I. That's what tells me the whole system is out
11 of whack and that too many of the systems are too old
12 and are costing people more money than they really
13 should be. I understand what you're saying and I
14 understand that there's going to be higher bills and
15 you're trying to flatten that out for everyone. You
16 understand my problem is for the individuals who are
17 doing the subsidizing who can't afford that. They're at
18 a lower rate now and would be at a lower rate if it
19 wasn't for subsidization, subsidization, yeah,
20 subsidization of those other facilities that have gone
21 up so high. And it's like a mechanism of saying, well,
22 this system is broke and it's going to cost more and
23 more because there's a lot of old systems here or
24 whatever, but we've got a way to fix it and we're going
25 to just charge the people who are paying less to do

1 that, and at some point I just think it's absurd.

2 But given those, those specifics within that,
3 meaning those people who are doing the subsidizing, I
4 understand where you're going and what you're trying to
5 do and how you're trying to level it out. It still
6 doesn't alleviate my angst of individuals who are doing
7 the subsidizing, especially so many of them, 69 percent
8 doing the subsidizing and when things are so high for
9 everybody right now. And I know I heard a lot of people
10 say they just can't afford any more, and to me in
11 looking at the statute I think it's discriminatory to
12 those individuals. No matter what the reasoning is and
13 even though the reasoning on your part is, look, we have
14 to have this plan to flatten it out for everybody else,
15 I understand that, but I still cannot resolve the
16 problem that those who have to subsidize that should be
17 stuck with that at this point and don't think it's fair
18 or -- and I do think it's discriminatory,
19 discriminating, so.

20 CHAIRMAN CARTER: Thank you, Commissioner.
21 Thank you.

22 Commissioner McMurrian, you're recognized.

23 COMMISSIONER McMURRIAN: Thank you. And I
24 guess I'll try to answer the question how I think about
25 it. And, Commissioner Argenziano, I'm not trying to

1 talk you into or out of anything because this is
2 difficult -- I really hate the subsidization stuff too.
3 I'm just trying to figure out, you know, what do we do
4 about the situation we find ourselves in with the, you
5 know, the things that Jennie mentioned about the maximum
6 bills here, and I know you've got the same concern.

7 I guess when I look at that language, and I
8 probably should be more careful, but where it says "not
9 unfairly discriminatory," I guess I look at it and I
10 have to think there was a reason to add the word
11 "unfairly." That in trying to design rates, even within
12 a certain system there are going to be certain customers
13 within that certain system that are going to cost more
14 to serve, and still we decide that, you know, there
15 would be one rate applied to all those customers within
16 that system. And so you have some subsidization and
17 some discrimination even with designing rates on a
18 stand-alone system basis.

19 So then it gets into where do you reach the
20 unfair? And I agree with you, the rate increases even
21 with the capband approach, especially for all those
22 customers who said they couldn't pay more, it is, it is
23 a substantial rate increase particularly in some bands.

24 I guess I just don't know what else to do. It
25 seems like the approach that has been laid out here, you

1 know, given all the testimony and all we had from
2 Witness Stallcup and I guess the other witnesses too,
3 seemed to point in the direction that the capband
4 approach was some kind of reallocation of wastewater to
5 water will help address the affordability part, and it's
6 that balancing all those different things that are
7 mentioned in there in the statute at the same time.

8 So I don't feel really good about saying the
9 rates we approve might be discriminatory. At the same
10 time I think there's import to that word "unfairly."
11 And will this be fair in looking at the whole picture
12 and trying to recognize that there will be some
13 subsidies, trying to limit that to some kind of fair
14 number. That's how I look at it, if that's, if that's
15 --

16 COMMISSIONER ARGENZIANO: And I understand
17 that, except that the statute doesn't go to
18 consolidation, it goes to just rates. It doesn't
19 separate the two.

20 And I guess the way -- and I understand the
21 way you look at it. The way I look at it is if I'm the
22 single mom in whatever facility, that I'm going to now
23 be the, the one who's going to be subsidizing some other
24 system that in most cases is just an old system, should
25 have been squashed to begin with or whatever, maybe not,

1 but I'm going to be subsidizing. If you ask me is it
2 unfair that I have to pay more for another system, hell,
3 yes. That's how I look at it.

4 CHAIRMAN CARTER: Thank you.

5 Commissioner Skop.

6 COMMISSIONER SKOP: Thank you, Mr. Chairman.
7 And I think that goes to -- the discussion we're having
8 is I think a good one because I think it goes to the
9 central point that I was raising is, you know, what do
10 we, what do we do? Is this a one-time fix versus the
11 comprehensive solution?

12 And I guess my concern, and staff has pointed
13 out on Page 10 of the staff recommendation, staff
14 rejected fully consolidated rates because it would
15 result in what they deemed to be an unfair subsidy in
16 excess of \$25 per, you know, contribution. But the
17 current subsidy is up to \$12.50, a doubling of what we
18 discussed because of, for the reasons staff articulated.

19 So I guess to me I feel in some regards I have
20 a gun to my head because the do-nothing alternative is
21 not a good one because you're going to have some
22 ratepayers paying in excess of \$350 a month, I think,
23 for wastewater services, which is insane.

24 I mean, I can't, as a lifetime Florida
25 resident 42 years old I can't contemplate having a water

1 and wastewater bill higher than my electric bill, but
2 that's what some of these consumers are facing. That's
3 just a completely foreign concept to me. And I think
4 that's where the comprehensive solution that I keep
5 beating the drum on needs to come into play at some
6 point because we might be able to do this once, but are
7 we going to be as fortunate enough to be able to do it
8 on a forward-going basis? And that's why I want to be
9 very careful of what I commit to today because I want to
10 understand the ramifications on a forward-going basis
11 and that's the reason for that extensive questioning.

12 But, again, getting down to it, you do have
13 those subsidies and you are having people having to pay
14 more to cover other high-cost service systems, and I
15 guess that's problematic because we find ourself in that
16 situation. And so I'm very sympathetic to Commissioner
17 Argenziano's point about, you know, at what point do you
18 get, you know, unduly, unfairly discriminatory or at
19 what point is a subsidy excessive?

20 And then on top of that, the affordability
21 caps. I would argue in some things if I were a consumer
22 that those affordability caps, which would basically be
23 in the aggregate \$150 a month for water and wastewater,
24 would be not affordable to me because it's higher than
25 my power bill. So, again, it's a problem.

1 And I think the only good solution that gets
2 back to Commissioner McMurrian's point -- it might not
3 be the perfect solution. I know staff has struggled
4 with this. I've read Jennie's, you know, analysis on
5 the various options that the Commission has available
6 to it, and I think there's a, there's a nice chart on
7 Page 6 of the staff recommendation describing the rate
8 consolidation methodologies that could be utilized, and
9 there are no good answers. I mean, the best answer that
10 falls out of the sky is probably what staff has chosen.
11 Is it perfect? Absolutely not. Is it going to be
12 offensive to some people? Absolutely. I mean, I think
13 that, you know, if I were a consumer faced with some of
14 these rates, I'd probably have a tea party and
15 clandestinely stick in a well and septic tank in the
16 middle of the night. But it is what it is.

17 So, again, I'm having to, just for my
18 reasoning I'm having to deal with if we do nothing and
19 don't subsidize, you're going to have people that have
20 bills approaching \$500 a month for water and wastewater,
21 which is not fair to those consumers in terms of
22 affordability. But it's requiring a contribution
23 interest from the other consumers, which is -- to some
24 degree it might be fair, but once you approach a certain
25 number, it's going to become inherently unfair.

1 And I guess where I'm at is I probably with
2 grave reservations could support the staff
3 recommendation because I feel it's the only solution,
4 reasonable solution that the, alternative that the
5 Commission has available to balance all the competing
6 interests and try and assure some affordability. But to
7 do nothing is going to have those 31 percent of
8 consumers or whatever the appropriate systems are have
9 those bills that just shock the conscience. I mean,
10 \$500 a month for water and wastewater, that's just
11 insane. I mean, that's crazy. And that needs to be
12 part of the comprehensive solution of what are we going
13 to do to start addressing these high-cost water systems?
14 You can't continue to acquire high-cost systems without
15 driving up these subsidy amounts, without driving up the
16 affordability limits, and you're going to put consumers
17 out of business. I mean, they're already struggling
18 enough as it is.

19 So, again, I commend staff for trying to make
20 the best out of an otherwise Hobson's choice, for lack
21 of a better word. But, again, I think that if this is a
22 near-term fix, so be it. But on a, from a policy
23 perspective I think that we need to utilize the
24 Commission's resources to address this issue more
25 comprehensively. Because, again, I don't think that we

1 can take another iteration of this, you know, should it
2 come before us because, again, those subsidy limits may
3 approach what staff has already by its own admission
4 deemed to be unaffordable or discriminatory.

5 So I think that we need to move forward
6 cautiously, but I think that, again, it gets back to
7 that comprehensive solution. And I'm sorry if I'm being
8 redundant, but, again, I see this as a big problem
9 facing Florida. And, you know, we want to encourage
10 investment from utilities and private business, but if
11 they can't be the low cost, high quality producer, then
12 we need to look at other alternatives. And if that
13 requires quasi-governmental entities, then maybe that's
14 the direction we need to move in. But we need to
15 sustain affordability so that consumers can have
16 essential, essential service that's necessary. I mean,
17 water is necessary for life and we've got to have it, so
18 we've got to keep it affordable. Thank you.

19 CHAIRMAN CARTER: Thank you.

20 Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: Yes, Mr. Chair. You
22 know, the very fact that you have to have that many or
23 any subsidization, subsidization -- I can't even speak
24 today -- subsidizing, I'll say it that way, of other
25 facilities tells you that something is very wrong. And

1 perpetuating that, and that's what we're doing,
2 perpetuating that never changes anything.

3 What's the bad part about this is that when
4 you, when you look at it that way -- and, of course, I
5 sympathize. I think it's extremely wrong that people
6 have to pay that much for life, life-sustaining water.
7 Okay? I just think at some point something is very
8 broke. But you don't add more people to the broke list
9 by having them subsidize.

10 So while the statute indicates to me that I
11 can't unfairly be discriminatory, my heart goes out to
12 those people who are going to pay a lot of money. But I
13 can't be, I can't look at it and say, well, in order to
14 save these people from saving a lot of money -- and,
15 yes, I commend staff because that's what they had to do.
16 They had to look at a plan to try to flatten that out.
17 But I'm going to, I'm going to charge more people here.

18 So according to the statute, I think it's kind
19 of being hypo -- I'm a hypocrite if I say, well, yes,
20 I'm not going to be discriminatory. I have to save
21 those people with the \$200 and \$500 bills at the expense
22 of other people and 69 percent of them and some of those
23 which can't afford it at all.

24 Either you look at the statute and take it for
25 what it says or you don't. I look at it as the statute

1 says I can't do that. And even though there are people
2 who are having higher amounts, that's going to force a
3 policy decision above this, above this Commission. It's
4 going to have to be a legislative decision whether these
5 systems are panning out.

6 If you keep, if you keep subsidizing a system,
7 what happens down the line? You're going to keep
8 subsidizing, keep subsidizing. Pretty soon people are
9 going to be paying a thousand dollars for their water.
10 And people, and the people who are subsidizing, I mean,
11 you're saying, well, we've got to help those people with
12 the \$500 bill by charging the people who can't afford it
13 the most probably down here and putting them on the, on
14 the, on the chopping block also.

15 So while I try to understand and I know where
16 you're going, trying to -- I just see it as you can't do
17 it. You can't have it both ways. You've got to say
18 either -- it's got to be fairly -- it's going to be
19 nondiscriminatory and somebody else higher than this
20 Commission is going to have to make a decision on what
21 the policy is going to be. Otherwise, you keep
22 perpetuating the same thing.

23 So my, my concern is the, is very much all of
24 the consumers that are out there. Those high bills are
25 astronomical and I have my own personal opinion about

1 those. I, while I was in the Legislature, tried many
2 times to make changes there. And, of course, it's a
3 political, political thing and it is going to be their
4 decision to make at some point, but it's not going to
5 get any better. But the fact that, as I said, the very
6 fact that you have to have subsidizing of other
7 facilities tells you something is very broke. And to
8 continue that just to alleviate some at the higher level
9 is to me putting more people in that, in that burden
10 spot and I just can't do that.

11 COMMISSIONER SKOP: Mr. Chair.

12 CHAIRMAN CARTER: Thank you.

13 Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

15 And I wholeheartedly agree. Again, there
16 needs to be that comprehensive solution. But at the
17 current -- you know, I've got the gun to my head, and
18 I'm trying to rationalize it again because, you know,
19 people should not have to get high water bills for
20 essential service just because they chose to live in a
21 certain place. I guess some could be put on the
22 consumer, but I'm having trouble adopting that line of
23 reasoning.

24 But just to staff, if they could briefly -- on
25 Page 5 they have the Southern States rate case that was

1 affirmed on appeal by the 1st DCA. If staff could
2 briefly speak to that case. I didn't have the
3 opportunity to pull it, but I just relied on the, on the
4 footnote, so I'll --

5 MS. FLEMING: With respect to the Southern
6 States rate case, it consisted of a similar situation
7 here where we were trying to consolidate various
8 systems. And within that case it kind of speaks to what
9 Commissioner Argenziano is referring to with the statute
10 that states, "The Commission shall set fixed rates which
11 are just, reasonable, compensatory and not unfairly
12 discriminatory."

13 I think there is -- you need to define what
14 unfairly means within the term of discriminatory. But
15 within the Southern States rate case the court upheld
16 that the statute does not prohibit the Public Service
17 Commission in an appropriate case to use capbands to fix
18 rates which are just, reasonable, compensatory and
19 unfairly discriminatory.

20 So the Southern States case just further
21 reiterated that the statute -- the Commission is given
22 broad legislative authority when fixing rates, and the
23 capband rate structure is an appropriate method by which
24 the Commission may set rates.

25 COMMISSIONER SKOP: Okay. But in that

1 particular case it did not consider the issue of first
2 impression where the Commission is using water subsidies
3 to offset the wastewater cost; is that correct?

4 MS. FLEMING: That's correct. As far as the
5 Southern States rate case and the research that we have
6 conducted, we have not been able to find any case law
7 regarding the reallocation from wastewater to water
8 either for or against the reallocation.

9 COMMISSIONER SKOP: Okay.

10 MS. FLEMING: So this is a case of first
11 impression.

12 COMMISSIONER SKOP: And in relation to, to
13 being, I'll choose my words carefully, in relation to
14 being fair, I guess staff would consider based on its
15 analysis on Page 10 that in a fully consolidated request
16 that a subsidy in excess of \$25 would be unfair, which
17 is why staff did not adopt that methodology of the
18 consolidated, fully consolidated rate structure.

19 MS. LINGO: Yes, sir, that's correct.

20 COMMISSIONER SKOP: Okay. So fairness in
21 terms of staff's eyes probably is obviously below 25 but
22 not really bounded. I guess, we're currently at \$12.50;
23 is that correct?

24 MS. LINGO: Currently, yes, sir. That's what
25 we're recommending. But, Commissioners, we also

1 wrestled with, with the term in the statute that says
2 that the Commission shall set reasonable rates. And
3 what we were up against in looking at stand-alone bills
4 for some of these systems, we were, it was our belief
5 that it may be construed as some of those bills being
6 unreasonable because of their affordability. So it, it
7 could have potentially violated the statute in that
8 regard.

9 And then the flip side of that from the
10 utility's perspective, if those bills were unaffordable,
11 then the utility may run the risk of not recovering its
12 full revenue requirement, which would mean that the
13 revenue requirements would be, that the rates would be
14 non-compensatory, which would conflict with the statute
15 from the other end. So we were trying to balance the,
16 the fairness of the subsidy with reasonableness of
17 rates, and this was -- as you said, Commissioner Skop,
18 we were trying to make the best of a, of a difficult
19 situation. And while there are no perfect answers and
20 there are subsidies inherent in any rate structure, it
21 is our belief and our recommendation that what we have
22 before you today is the most appropriate solution given
23 the circumstances we have.

24 COMMISSIONER SKOP: And just one final
25 follow-up, Mr. Chairman.

1 So in the staff's recommended option, actually
2 in that case they had competing interests. They had the
3 affordability cap and then a subsidy cap. And
4 ultimately to maintain affordability the subsidy had to
5 yield to affordability; is that correct?

6 MS. LINGO: Yes, sir. That's correct.

7 COMMISSIONER SKOP: All right. Thank you.

8 CHAIRMAN CARTER: Thank you.

9 Commissioner Argenziano, you're recognized.

10 COMMISSIONER ARGENZIANO: Only government does
11 things this way. Let's see. We can't afford this
12 because we're doing it so wrong to begin with, but let's
13 make these people make it less on those people and throw
14 them all in a place where they all pay far too much.

15 Who determines what's unreasonable? What is,
16 what is unreasonable? If there is a constituent or a
17 consumer out there who cannot afford the increase in
18 regard to being one of the ones who subsidize, who would
19 determine that? You have a 90-year-old lady out there
20 with a very limited income that cannot pay for water
21 anymore and goes to court and the court decides, well,
22 she just can't pay for the water anymore. Is that
23 unreasonable? I mean, I'm trying to determine who
24 determines unreasonable?

25 And I'm not blasting staff. I understand what

1 you had to do. I understand the reason for it and
2 everything else. I just can't -- two wrongs don't make
3 a right, and that's what I see here. We're trying to
4 make a wrong a right by putting more people in a
5 position where they have to pay more money, and I just
6 think that's just so backwards and only government does
7 things this way. And I just, I'm trying to find out
8 when we use the term unreasonable or unaffordable, who
9 makes that decision?

10 MS. LINGO: Based on what we have in the
11 recommendation today regarding affordability, it's what
12 you as a Commission voted on at the February 24th Agenda
13 Conference. We specifically used those affordability
14 limits that you explicitly --

15 COMMISSIONER ARGENZIANO: That was not for
16 subsidizing other facilities. See, the difference
17 here -- what I'm trying to say is we are talking about
18 in this recommendation now, and I understand the
19 stand-alones and everything else, but with this
20 recommendation, let's forget about what we voted on,
21 okay, because if we want to take the transcripts out, I
22 had a lot of problem with the way we got to those
23 numbers anyway. We are talking about now subsidizing
24 other facilities. In order to make it hurt less for the
25 others who are going to pay far too much, unaffordable

1 so that the company can't recover, I'm worried about
2 also the consumer who can't pay and get their water, and
3 the company should worry about them not being able to
4 recover them either.

5 So when I asked, I guess -- and I don't think
6 you can answer that. I think it's up to me as an
7 individual Commissioner to make sure what I think is
8 unreasonable and unaffordable. So while I'm not saying
9 you didn't do your job, you did your job that was before
10 you and trying to flatten the rates, I just see an
11 inherent problem in trying to fix it this way. It needs
12 to be fixed a different way. And by doing it this way,
13 I think it is unreasonable to those people who testified
14 before me and said I can't afford any more. I can't
15 even afford what I'm doing now.

16 So I find it -- I guess what I have found and
17 looked at and read and saw and heard in testimony that
18 it can be unaffordable doing it this way to those, some
19 of those who are subsidizing those who are paying
20 unbelievable amounts. And I know to lessen the sting to
21 them it's done this way, but at the same time it's
22 saying, okay, to make this better, I'm still not going
23 to do it right, I'm going to do it this way. And I in
24 my mind, this is me as one Commissioner, have, I guess
25 have determined that it is unreasonable and it will be

1 unaffordable for some people to have to subsidize others
2 and just indicates to me the larger problem, as I said
3 at the beginning, that the very fact that you have to
4 subsidize other systems says that something is wrong.
5 And that's all I have to say.

6 CHAIRMAN CARTER: Thank you.

7 I'll go to Commissioner McMurrin, then
8 Commissioner Skop.

9 Commissioner McMurrin, you're recognized.

10 COMMISSIONER McMURRIAN: Thank you. And I
11 certainly appreciate that, Commissioner, because I'm
12 struggling with it too. I don't, I don't, I don't like
13 subsidization either. It's hard to be, it's hard to say
14 subsidization is something that you like. I mean, it
15 just kind of goes against a lot of principles for me.
16 But I just don't see another way, so I guess for me I
17 agree with what staff is doing.

18 And I, and I guess I should -- there's a
19 statement on Page 7 of the rec near the bottom, and I
20 wanted to flesh it out a little bit more and actually
21 was, I thought of it when Commissioner Skop was talking
22 about sort of the precedent and all earlier, but I
23 wanted to go to it. And it's the sentence that's kind
24 of in the middle about, "However, systems making plant
25 improvements is an example of how the subsidization

1 levels change and often reverse over time."

2 And I think what staff is trying to tell us
3 there, and I just wanted to make sure, is that right
4 now, for instance, you might have customers in maybe
5 Jasmine Lakes subsidizing customers in Rosalie Oaks, for
6 instance, because that would be customers in band 1
7 would be probably picking up some subsidy. I guess it
8 depends on how it goes down, but at least customers in
9 probably band 2 or 3 would definitely be picking up some
10 of that excess revenue requirement from band 4. But
11 over time it may be that Jasmine Lakes, for instance,
12 needs substantial improvements or upgrades to their
13 system and that then it would be a huge impact on the
14 customers of Jasmine Lakes.

15 And by setting up the capband structure --
16 well, one, we'd be looking at it down the road too. If
17 they were to come in for a rate increase and something
18 had substantially changed, then it may be that you
19 change the bands around, you put different systems in
20 different bands and we might be there. So I don't
21 think -- I think to the extent of the precedent thing, I
22 think we've always got an ability. They can't change
23 rates until they come to us, so we've always got the
24 ability to weigh all that when we make them.

25 But am I, am I understanding it correctly to

1 say that because of the need for maybe upgrades to some
2 of those systems that are lesser cost systems right now
3 the situation could reverse itself down the road as they
4 need upgrades?

5 MS. LINGO: Yes. I'm sorry. Yes, ma'am,
6 you're correct in that there's no system that remains
7 absolutely static over time. The, the philosophy, the
8 thinking behind moving toward a consolidation process is
9 where you may have a system or group of systems being
10 subsidized by another system or group of systems.

11 Over a period of time, just as you mentioned,
12 Commissioner McMurrian, those who are subsidizing --
13 those who are being subsidized may in fact become
14 subsidizers and vice versa because, again, as I said,
15 there's nothing that remains static over time. There's
16 an ebb and flow between systems.

17 So while it may appear in this -- while in
18 this case what you have before you is whatever the bands
19 we have listed, it is entirely possible -- well,
20 actually I'm sure it will happen that there will be some
21 systems in need of plant expansion or plant upgrades or
22 things of that nature which would change -- you know, if
23 you were looking at them on a purely individual basis,
24 it would change, it would change how they would, how
25 they would look.

1 So within a band, for example, you can expect
2 the ebb and flow over time for systems to sort of
3 fluctuate back and forth within the band in terms of
4 whether they're being -- if you, again, if you have, if
5 you look at the purely stand-alone cost, which is not
6 what we're recommending doing, but if you want to put
7 the blinders on and say, okay, now that system just,
8 that system needs an expensive plant upgrade, and if you
9 think conceptually, well, the plant upgrade means that
10 perhaps it's going to need to be, need to be subsidized
11 instead of the other way around. So it's the ebb and
12 flow of how systems are just by the nature of the water
13 and wastewater industry, especially because you've got
14 capital improvements that are made necessary either
15 because of the age of the system or because of DEP
16 mandates, and it does change over time.

17 COMMISSIONER McMURRIAN: Okay. Thank you.
18 And I thought that that's what you were trying to tell
19 me, but I wanted to be sure.

20 And I guess the only other thing I wanted to
21 say was with respect to some of the other stuff we
22 talked about earlier when Commissioner, when
23 Commissioner Skop talked about, you know, the, and I
24 think Marshall responded too about how perhaps the
25 acquisition practices where they're picking up the

1 higher-cost systems on a, maybe a more frequent basis
2 than they're picking up some of the lower-cost systems
3 and that sort of thing. I guess I get a little bit
4 uncomfortable that we're suggesting how they pick up
5 what systems and that sort of thing. I just wanted to
6 kind of say that. I mean, I don't disagree with it. I
7 just don't really know how we can skin that cat, and
8 it's something else that I'm sure that it's illegal
9 along with beating a dead horse.

10 But, anyway, I don't know how we can really
11 resolve that here. I do think it's good to note those
12 kinds of concerns. I have similar concerns too. At the
13 same time, I'm also thinking about citizens who may now
14 be served by a high-cost system or a system that's in
15 desperate need of repair and maybe they're not paying
16 high rates but they also need the water system repaired.
17 And what if we send some kind of message to companies
18 like Aqua that we don't really want you picking up those
19 systems and improving them? Because whether or not
20 they're under our jurisdiction now, I mean, I still care
21 about those citizens who might need that. And I
22 don't -- so I just want to be careful about the message
23 we send there.

24 And I also am not sure that I agree maybe with
25 respect to taxes -- the municipal type or public/private

1 type partnership like FGUA might have lower operating
2 costs. I just don't know that that's always true. I
3 don't know that it's necessarily cheaper for a certain
4 kind to provide service. It seems like no matter who
5 provides service to some of these systems in disrepair
6 it's going to be expensive to fix it. So I just wanted
7 to say that. Thank you, Chairman.

8 CHAIRMAN CARTER: Thank you.

9 Commissioner Skop, you're recognized, sir.

10 COMMISSIONER SKOP: Thank you, Mr. Chairman.
11 And I think Commissioner McMurrian's points were well
12 taken. I noticed that provision in the staff
13 recommendation suggesting as such that, you know, for
14 the time being the one facility may be paying. But as
15 soon as they need a capital improvement it's a reversal
16 of fortune, if you will.

17 And with respect to, you know, other entities
18 or the Commission's discretion, again, I don't want to
19 send the wrong signal because I want to track economic
20 investment in our state. But, you know, we need to be
21 also equally accountable to the consumers. And these
22 rates without our intervention today are not affordable
23 for some of the consumers. That's just clearly not the
24 case. And, but it requires subsidies.

25 And I know that my colleagues are all Star

1 Trek fans, Commissioner Edgar and Commissioner, Chairman
2 Carter. And, you know, in Star Trek II, I mean, The
3 Wrath of Khan, I guess, you know, Spock said, you know,
4 "Logic would clearly indicate that the needs of the many
5 outweigh the needs of the few." Well, in this choice of
6 evils that we're faced to make today, it's almost as if
7 the needs of the few necessitate a contribution from the
8 many, as Commissioner Argenziano has pointed out. I
9 think she's laughing.

10 (Laughter.)

11 COMMISSIONER ARGENZIANO: I'd like to remind
12 you of something. This is a republic and in a republic
13 the minority is protected. So Star Trek may be fun on
14 the big screen, but in a republic the minority is
15 protected from the majority.

16 COMMISSIONER SKOP: Okay. But like I say,
17 there, there do not at least to me seem to be any great
18 solutions to this one. I've struggled with it. I think
19 Commissioner Argenziano's points are extremely well
20 taken, Commissioner McMurrian's points equally taken
21 that there is no viable alternative other than to do
22 nothing results in people with \$500 water and wastewater
23 bills a month instantaneously, and that's not going to
24 fly.

25 So, again, I'm probably with reservation in

1 support of the staff recommendation. That's kind of
2 where I'm at with it because I don't, I don't see a
3 better alternative. I truly feel like I have a gun to
4 my head. And, again, I hope that we take a
5 comprehensive approach, whether that be as a Commission
6 to try and use the authority we have to send the right
7 signals to attract investment but to equally say that
8 you can't just acquire dogs. You know, you need to have
9 a balanced portfolio approach to keep rates affordable
10 or to, as Commissioner Argenziano alluded to, seek
11 legislative assistance to try and, you know, balance
12 this out to ensure affordability. Because that's what's
13 driving my tension here is the affordability component.

14 Because I got to tell you, if I were facing
15 some of these rates, I don't care who I was accountable
16 to, I'd be in the middle of the night tapping a well and
17 putting in a septic tank. I mean, that's how bad I feel
18 that it's gotten for the consumers in terms of being --
19 even to expect to pay \$150 a month. I mean, I've been
20 fortunate enough to be on municipal water all my life
21 and I drink it out of the tap, it's always high quality,
22 low cost, and I've never seen a water bill I think in my
23 life over 20 bucks. So it's hard for me as a lifelong
24 Floridian to put this into perspective to say people are
25 actually paying more for water and wastewater than they

1 are for an electric bill. I mean, it just, it's weird
2 to me.

3 COMMISSIONER ARGENZIANO: Commissioner Skop,
4 if you're one of these subsidizing, you'll see it
5 raised.

6 COMMISSIONER SKOP: Yes. I understand. Yeah.
7 I don't disagree with anything that you've said, I
8 really don't. But I don't know what alter -- I mean, is
9 there a better alternative? If we were to do nothing
10 today, how would we address with the consumers who would
11 have the \$500 bills? Would we just have to --

12 COMMISSIONER ARGENZIANO: If you're asking me
13 a question, I'll be happy to answer that. Of course we
14 have different opinions on that and I understand. I'm
15 just, what I'm saying is doing nothing to me doesn't
16 violate the statute. Doing something alleviates some
17 people from astronomically high bills, but I can't go
18 there, not at the expense of others. That's just my
19 opinion.

20 COMMISSIONER SKOP: Well taken. Well said.
21 Thank you.

22 CHAIRMAN CARTER: I just, if I can stick my
23 nose in right here, first I wanted to say to staff,
24 outstanding job in putting that together. It's a very
25 difficult process, but it's outstanding the way you did

1 that. And, Commissioners, we've, we've got to grab the
2 bull by the horns and make a decision. I think we've
3 pretty much said as much as we can say about Issue 64
4 and 65 -- what is it, 64, 65, yeah -- several times.
5 And are there any further questions or concerns or
6 discussions on Issue 64 and 65, Commissioners?

7 Okay. Let's see. Do you want to proceed all
8 the way through before we do anything, Commissioners?
9 Because if that's good, then we're finished on 64 and
10 65. We'll just make this a break so staff can have
11 lunch. I know Linda has been with us all morning and I
12 have not given her a break.

13 COMMISSIONER EDGAR: Mr. Chairman, I think
14 that 66 is pretty much a fallout issue and the others
15 kind of are. Staff probably wouldn't describe them that
16 way, but I might.

17 CHAIRMAN CARTER: Well, let's do this then.

18 COMMISSIONER EDGAR: We might be able to move
19 through them pretty quickly if our introductions can be
20 brief.

21 MR. WILLIS: We can do that.

22 CHAIRMAN CARTER: Let's roll.

23 MR. WILLIS: We can be very brief.

24 CHAIRMAN CARTER: Staff, you're recognized.

25 MS. LINGO: Commissioners, in Issue 66, it's a

1 fallout issue based on your votes regarding the rate
2 consolidation issue and the negative .3 repression
3 factor that you approved in the February 24th Agenda
4 Conference. And the effects are shown in Table 66-1 on
5 Page 15.

6 In Issue 67, Commissioners, we're discussing
7 the appropriate monthly rates for the water and
8 wastewater systems. To the effect any system has been
9 removed, then, you know, the rates -- we would make the
10 appropriate fallout change in this issue as well.

11 MR. FLETCHER: Commissioners, Bart Fletcher
12 with Commission staff. Issue 70 is a fallout issue, the
13 four-year rate reduction. And, again, that would be a
14 fallout of the approved rate, stand-alone systems and
15 the rate bands.

16 Issue 74, staff is recommending that for
17 future price index filings that it be on a consolidated
18 basis, and then for pass-throughs it would be based on
19 the approved stand-alone systems approved by the
20 Commission and rate bands approved.

21 Issue 75, staff -- is a fallout issue of the
22 Commission-approved stand-alone systems and rate band
23 systems in an effort to consolidate the books. It would
24 be based on whatever the Commission approves, the
25 consolidation of their books and records based again on

1 the stand-alone systems approved and the rate bands
2 approved.

3 CHAIRMAN CARTER: Okay. Thank you, staff.
4 The close the docket.

5 MR. JAEGER: Commissioner, there is Issue 76.

6 CHAIRMAN CARTER: Yeah. About close the
7 docket.

8 MR. JAEGER: Because of the change to
9 The Woods and making their rates subject to refund with
10 interest for an 18-month period, staff recommends that
11 the docket remain open.

12 CHAIRMAN CARTER: Okay. Commissioners, we've
13 had a discussion on the case before us, presented the
14 issues. We're on our discussion phase.

15 Commissioner Edgar, you're recognized.

16 COMMISSIONER EDGAR: Mr. Chairman, if we're at
17 this point, I would be glad to try to wrap it all into
18 one motion, doing the best of my ability to incorporate
19 the conversation that we've had.

20 CHAIRMAN CARTER: You're recognized.

21 COMMISSIONER EDGAR: Then in order to address
22 the issues before us, 64, 65, 66, 67, 70, 74, 75 and 76,
23 I move that we incorporate the earlier motion dealing
24 with Chuluota as a stand-alone system and the other
25 pieces of that motion that were, that was adopted by

1 this Commission. That as to The Woods system,
2 specifically water and wastewater, that as a -- we adopt
3 the other pieces of the recommendation; however, with
4 the addition that the rate increase is subject to refund
5 if a DEP consent order were to be issued within 18
6 months from our order being issued. And that the rest
7 of the staff recommendation on all additional items with
8 the addition of the monitoring plan from the staff
9 handout with the change of three months to six months be
10 incorporated. That we leave the docket open, and that
11 we direct our staff to work with the company to refine
12 that monitoring plan in any way that may be needed,
13 recognizing that what we're trying to achieve is the
14 goal of improved quality assurance and quality control.

15 COMMISSIONER SKOP: Second.

16 CHAIRMAN CARTER: It's been moved and properly
17 seconded.

18 Commissioner Argenziano, you're recognized.

19 COMMISSIONER ARGENZIANO: I'm -- we voted
20 already on the motion for Chuluota.

21 CHAIRMAN CARTER: Yes, ma'am.

22 COMMISSIONER ARGENZIANO: And I was
23 affirmative on that. And since it was my motion, I
24 guess, to include The Woods, The Woods is now, the
25 language on The Woods is now going to be incorporated

1 into the final vote rather than a motion, a separate
2 motion, as I thought we discussed before.

3 COMMISSIONER EDGAR: I'll be glad to separate
4 them, if that's easier.

5 COMMISSIONER ARGENZIANO: Yes. Because I'm
6 going to vote nay on the, on the consolidation but want
7 a yea on The Woods. So if we could do that. I could go
8 back to making that motion or whoever wants to make it.

9 COMMISSIONER SKOP: I would probably second
10 it.

11 CHAIRMAN CARTER: Okay. Commissioner Edgar,
12 you're recognized.

13 COMMISSIONER EDGAR: I'll be glad to give it a
14 try. Again, recognizing that we've had a previous
15 motion to do with Chuluota on a stand-alone basis, a
16 motion at this time to just address The Woods and to
17 adopt the rate increase for the water and wastewater for
18 The Woods as recommended in the staff recommendation,
19 with the addition that it would be subject to refund
20 should a DEP consent order be issued within 18 months of
21 our final order issuing.

22 COMMISSIONER SKOP: Second.

23 COMMISSIONER ARGENZIANO: That would include
24 the monitoring? Did we get that part in?

25 COMMISSIONER EDGAR: And then what I would put

1 out is that when we address all the other issues, that I
2 would like to include the monitoring.

3 COMMISSIONER ARGENZIANO: Great.

4 COMMISSIONER SKOP: Second.

5 CHAIRMAN CARTER: It's been moved and properly
6 seconded. Any discussion? Hearing none, all in favor,
7 let it be known by the sign of aye.

8 (Unanimous affirmative vote.)

9 All those opposed, like sign. Show it done.

10 Commissioner Edgar, you're recognized.

11 COMMISSIONER EDGAR: Thank you, Mr. Chairman.
12 Then for all additional issues before us and all of the
13 remaining systems that are within the Aqua territory
14 that are before us within this docket, that we adopt the
15 staff recommendation with the addition of the monitoring
16 plan described in the staff handout with the change of
17 three months to six months, give our staff the ability
18 to work with the company to refine that should there be
19 any reason, again recognizing that the overall purpose
20 is to improve quality assurance and quality control
21 relating specifically to customer service, and that we
22 keep the docket open in specific recognition of the
23 previous motion on The Woods, and that any fallout
24 issues from our decisions today be addressed by staff
25 administratively.

1 COMMISSIONER SKOP: Second.

2 CHAIRMAN CARTER: Moved and properly seconded.

3 Commissioners, we're in debate, in debate. No debate?

4 Hearing none, all those in favor, let it be known by the
5 sign of aye.

6 Aye.

7 COMMISSIONER EDGAR: Aye.

8 COMMISSIONER McMURRIAN: Aye.

9 COMMISSIONER SKOP: Aye.

10 CHAIRMAN CARTER: All those opposed.

11 COMMISSIONER ARGENZIANO: Aye.

12 CHAIRMAN CARTER: Show it done.

13 Commissioners, with that, I just want to join
14 you in complimenting our staff for -- this was a very
15 difficult task and they did an outstanding job in
16 bringing to us some creative recommendations. And I
17 also want to thank you, and a special thanks to Linda,
18 our court reporter, who did not get a break. And,
19 Linda, I apologize to you. Thank you for hanging in
20 there. With that we are adjourned.

21 (Proceeding adjourned at 1:08 p.m.)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 15th day of April, 2009.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734



Parties/Staff Handout
 Internal Affairs/Agenda
 on 3185109
 Item No. Special Agenda
 080121-WS

LEXSEE 302 SO.2D 129

NORTH FLORIDA WATER COMPANY, a Florida corporation, Petitioner, v. William H. BEVIS et al., Respondents

No. 45187

Supreme Court of Florida

302 So. 2d 129; 1974 Fla. LEXIS 4621; 7 P.U.R.4th 414

October 16, 1974

CASE SUMMARY:

outweighed petitioner's interest in obtaining rate increases.

PROCEDURAL POSTURE: By petition for writ of certiorari, the court was asked to review an order issued by respondent that denied a rate increase to petitioner water company. Respondent had denied the increase on the ground that petitioner's water system was inefficient.

LexisNexis(R) Headnotes

Energy & Utilities Law > Administrative Proceedings > Public Utility Commissions > General Overview
Energy & Utilities Law > Utility Companies > Rates > General Overview

OVERVIEW: This matter was before the court by petition for writ of certiorari seeking review of an order of respondent that denied a rate increase to petitioner. Petitioner had filed an application for a water rate increase in one Florida county because it had been operating at a financial loss for several years. Respondent, through its examiner, held a public hearing. Contrary to the examiner's recommendation that petitioner be granted the requested utility rate increase, respondent denied the increase on the ground that petitioner's water system was inefficient. The court denied the writ of certiorari, agreeing with respondent that the public should not be compelled to pay increased rates because of an inefficient system. The court explained that *Fla. Stat. Ann. §§ 367.081(2), 367.111(2)* specifically authorized respondent to consider the efficiency of the system in determining the propriety of a rate increase. The court further reasoned that the fixing of utility rates involved a balancing of the public and the utility's interests and in the matter at hand, respondent found the former interest to be predominant.

[HN1] *Fla. Stat. Ann. §§ 367.081(2), 367.111(2)* authorize the Florida Public Service Commission to consider the efficiency of the system in determining the propriety of a rate increase.

Energy & Utilities Law > Administrative Proceedings > Public Utility Commissions > General Overview
Energy & Utilities Law > Utility Companies > Rates > Ratemaking Factors > Rate of Return

[HN2] While *Fla. Stat. Ann. § 366.041* provides that no public utility shall be denied a reasonable rate of return, it in no manner compels the Florida Public Service Commission to grant a rate increase where the applicant's existing service is shown to be inefficient.

COUNSEL: [**1] B. Kenneth Gatlin, Madigan, Parker, Gatlin, Truett & Swedmark, Tallahassee, for Petitioner.

OUTCOME: The court denied the petition for writ of certiorari, holding that respondent had statutory authority to consider the efficiency of petitioner's system in determining the propriety of a rate increase. The court further found that the public's interest in withholding rate relief

Raymond E. Vesterby, Tallahassee, for Respondents.

JUDGES: Overton, Justice. Adkins, C.J., and Ervin, Boyd and McCain, JJ., concur.

OPINION BY: OVERTON

OPINION

[*129] By petition for writ of certiorari, we are asked to review Order No. 5853 of the Florida Public Service Commission denying a rate increase to North Florida Water Company.¹

I We have jurisdiction pursuant to *Fla.Const., Art. V, § 3(b)(3)*.

Petitioner, North Florida Water Company, a wholly-owned subsidiary of Florida Cities Water Company, filed an application for a water rate increase in Jackson County, Florida. The company has been operating at a financial loss for several years. The respondent-Commission, through its examiner, held a public hearing in Marianna, Florida, on October 16, 1972. Contrary to the examiner's recommendation that petitioner be granted the requested utility rate increase, the Commission denied the increase on the ground that [**2] petitioner's water system was inefficient. More specifically, the Commission found that the system contained leaks, that 34.4% of the water pumped was unaccounted for, and that a significant number of meters were stalled and not recording. The Commission also found that Florida Cities Water Company had acquired North Florida Water Company with full knowledge of these and other system defects and that North Florida Water Company's customers should not be required to bear the cost of correcting these defects.

We agree with the respondent-Commission that the public should not be [*130] compelled to pay increased rates because of an inefficient system. [HN1] *Sections 367.081(2) and 367.111(2), Florida Statutes*, authorize the Commission to consider the efficiency of the system in determining the propriety of a rate increase. [HN2] While *Section 366.041, Florida Statutes*, provides that no public utility shall be denied a reasonable rate of return, it in no manner compels the Commission to grant a rate increase where the applicant's existing service is shown to be inefficient. See *United Telephone Company of Florida v. Mayo*, 215 So.2d 609 (Fla.1968).

Our holding in *Askew v. Bevis*, 283 So.2d [**3] 337 (Fla.1973), decided subsequent to the United Telephone Company case, is not controlling. In *Askew v. Bevis*, *supra*, we upheld a Commission order granting the utility a rate increase under bond pending improvement of the applicant utility's service defects. Those circumstances are not present in the case at bar.² To hold that *Askew v. Bevis*, *supra*, inflexibly mandates a "fair return" increase no matter how extensive the applicant utility's service defects, would be improper and contrary to statutory guidelines.

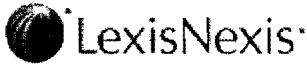
2 For a full discussion of Commission Order No. 5618, the order reviewed in *Askew v. Bevis*, see *Re Florida Telephone Company*, 98 PUR.3d 70 (1972).

The fixing of public utility rates necessarily involves a balancing of the public's interest in withholding rate relief because of inadequate service and the utility's interest in obtaining rate increases to finance its necessary service improvement program. The Commission in the instant case found the former interest to be predominant. From our examination [**4] of the record, we find the Commission order to be supported by competent substantial evidence.

The petition for writ of certiorari is denied.

ADKINS, C.J., and ERVIN, BOYD and McCAIN, JJ., concur.

Parties/Staff Handout
Internal Affairs/Agenda Page 1
on 3 125 109
Item No. Special Agenda
080121-WS 11TR7



LEXSEE 215 SO.2D 609

UNITED TELEPHONE COMPANY OF FLORIDA, Petitioner, v. William T. MAYO, as Chairman and Jerry W. Carter and Edwin L. Mason as Members of and constituting the Florida Public Service Commission, Respondents

No. 37671

Supreme Court of Florida

215 So. 2d 609; 1968 Fla. LEXIS 2075

October 24, 1968

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner sought review of the order from respondent Public Service Commission (Florida), which withheld approval of a rate increase sought by petitioner until petitioner completed its plans for improvements.

OVERVIEW: Petitioner sought respondent commission's approval of a rate increase. Respondent commission, however, withheld approval of the increase until improvements planned by petitioner were accomplished. Petitioner opposed that ruling, and sought the court's review. The court held that squarely in the way of petitioner's opposition to respondent commission's ruling was Fla. Stat. Ann. § 366.041 (1967), which plainly authorized respondent commission to withhold approval. Petitioners also assaulted § 366.041 on constitutional grounds, asserting that it deprived them of property, namely the rate increase, without due process of law. The court rejected that argument, however, and held that respondent commission's order was authorized under § 366.041, and that § 366.041 was not shown beyond a reasonable doubt to be invalid. Accordingly, the order of respondent commission was affirmed.

OUTCOME: Respondent commission's order withholding approval of petitioner's rate increase was affirmed because respondent was plainly authorized under statute to withhold such approval, and that statute was not shown to be constitutionally invalid.

LexisNexis(R) Headnotes

Administrative Law > Agency Adjudication > General Overview

[HN1] See Fla. Stat. Ann. § 366.041 (1967).

COUNSEL: [**1] M. W. Wells, of Maguire, Voorhis & Wells, Orlando, for Petitioner.

B. Kenneth Gatlin, Tallahassee, for Florida Public Service Commission.

Thomas T. Trettis, Jr., Naples, for City of Naples, Respondents.

JUDGES: Caldwell, C.J., and Thomas, Roberts, Ervin and Hopping, JJ., concur.

OPINION BY: PER CURIAM

OPINION

[*609] This case comes to us upon petition to review an order of the Public Service Commission withholding approval of a rate increase sought by the United Telephone Company of Florida until improvements planned by the Company were accomplished. Squarely in the path of those who would oppose the ruling by the Commission is [HN1] Fla.Stat. § 366.041 (1967), F.S.A., Ch. 67-326, Laws of Florida, which plainly authorizes what was done in this case for it expressly provides:

"In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state of Florida by any and all public utilities under its jurisdic-

tion, the Florida public service commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered, the [**2] value of such service to the public, and the ability of the utility to improve such service and facilities; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration thereof, the commission shall have authority, and it shall be the commission's duty, to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals * *

[*610] But, says the petitioners, the law on the subject was settled by our decision in *Florida Telephone Corporation v. Carter*, 70 So.2d 508 (Fla.1954), when it was held that the Commission could not authorize an increase in rates and at the same time assess a penalty for inadequate service. It is obvious, however, that the Act which we think now governs was enacted subsequent to that pronouncement by the Court and, for ought we know, was intended to overcome the decision.

Petitioners next assault the statute as being unconstitutional because it deprives it of its property, supposedly the amount of the rate increase, without due process [**3] of law.

We cannot accept this argument, which we consider unusual, and we hold that the Commission's order is authorized by the statute and that the statute is not shown beyond a reasonable doubt to be invalid.

The Order of the Commission is affirmed.

CALDWELL, C.J., and THOMAS, ROBERTS, ERVIN and HOPPING, JJ., concur.