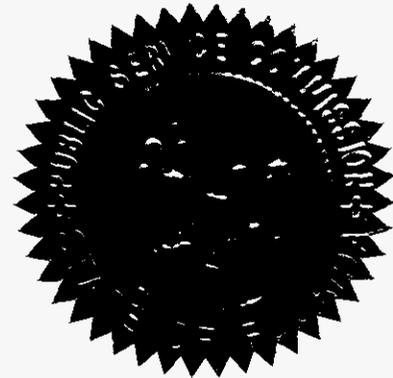


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080366-GU

In the Matter of:

PETITION FOR RATE INCREASE BY FLORIDA
PUBLIC UTILITIES COMPANY.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 10

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

DATE: Tuesday, May 5, 2009

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

REPORTED BY: JANE FAUROT, RPR
LINDA BOLES, RPR, CRR
Official FPSC Reporter
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **COMMISSIONER EDGAR:** We are back from break and
3 back on the record. And we are on Item 10. I will ask
4 our staff to introduce it for us.

5 **MR. PRESTWOOD:** Good morning, Commissioners. My
6 name is Clarence Prestwood, I'm with the staff.

7 This case involves Florida Public Utilities
8 Company's rate increase request. It was filed on
9 December 11th. The company is requesting an increase of
10 approximately \$9,918,000. That's based on a return on
11 equity of 11.75 percent with a range of plus or minus 100
12 basis points. The staff is recommending an increase of
13 approximately \$8,567,000 based on a return on equity of
14 11 percent plus or minus 100 basis points.

15 As part of the proceeding, the company was also
16 granted an interim increase by order on March 3rd of
17 \$984,000 that went into effect approximately 30 days after
18 the date of that order subject to a corporate undertaking.

19 The OPC has intervened in this case and is here
20 today, as well as the company is here today to speak to
21 any issues that may come up. We can either address these
22 issues one-by-one or we can entertain questions from the
23 Commission.

24 **COMMISSIONER EDGAR:** Thank you.

25 I think what I would like to do at this point is

1 in just a moment take appearances from the parties. And,
2 Commissioner, of course, as we are all aware, this is a
3 PAA item, and we do have 55 issues that are a part of it,
4 some of which I think can probably fall into pretty clear
5 general groupings. So we may approach it that way
6 depending on your pleasure.

7 I would ask that each of the parties, if you
8 can, go ahead as you introduce yourself for the record,
9 identify if there are specific issues that you would like
10 to address in more detail. And, Commissioners, also that
11 may be a way -- if there are specific issues that you know
12 you would like to discuss, that way we can go ahead and
13 identify them for all of us and see how it makes the most
14 sense to work through all of these issues.

15 So, Mr. Horton.

16 **MR. HORTON:** Thank you, Madam Chairman,
17 commissioners. I'm Norman H. Horton, Junior, appearing on
18 behalf of Florida Public Utilities Company.

19 We don't have any specific issues that we would
20 want to address. We do have personnel that will be
21 available to answer questions. We are here primarily to
22 answer questions.

23 Your Staff gave you an overview. I would add to
24 that that during the process we have also provided a
25 substantial amount of information that has been available

1 to Public Counsel and the staff for review in developing
2 the recommendation. Again, we are here primarily to
3 answer questions and potentially respond to the OPC. And
4 with that, we would encourage that you issue the proposed
5 agency action as your Staff has presented.

6 Thank you, ma'am.

7 **COMMISSIONER EDGAR:** Thank you.

8 Mr. Rehwinkel.

9 **MR. REHWINKEL:** Good morning, Madam Chairman.

10 Charles Rehwinkel, Charlie Beck, and J.R. Kelly here on
11 behalf of Public Counsel.

12 Our issue is a broad one. It's not directed to
13 any specific issue here. We believe that there is a major
14 fault in the PAA being issued at all, and we would like to
15 address that at the appropriate time.

16 **COMMISSIONER EDGAR:** Thank you.

17 Commissioners, any specific issues that you
18 would like to draw our attention to so that staff can be
19 ready, and the parties, as well?

20 Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Madam Chair.

22 Just, I think, my concern would be Issue 15.
23 There may be other issues, but I've spoken to staff on
24 that.

25 **COMMISSIONER EDGAR:** Okay. And we will make a

1 point, of course, to speak to that in more detail.

2 Commissioners, any other issues that you would
3 like to go ahead and identify?

4 Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** Just maybe briefly on
6 some salary issues, please.

7 **COMMISSIONER EDGAR:** Okay. And we will come to
8 that in just a moment.

9 Commissioner McMurrian.

10 **CHAIRMAN CARTER:** I didn't hear that, Madam
11 Chair.

12 **COMMISSIONER EDGAR:** Excuse me. Chairman
13 Carter, did you have a comment?

14 **CHAIRMAN CARTER:** I didn't hear the issues that
15 Commissioner Argenziano mentioned. I didn't hear that.

16 **COMMISSIONER EDGAR:** She said, if I may, that
17 she may have some questions on some salary issues.

18 **CHAIRMAN CARTER:** Okay. If you are taking
19 issues, the only issue I have is Issue 28, but it is not
20 that I want staff to discuss it, I support it and I
21 wouldn't want to go beyond staff's recommendation on Issue
22 28, storm damage.

23 **COMMISSIONER EDGAR:** Okay. Thank you, Mr.
24 Chairman, and we will make a point to have some specific
25 discussion about that, as well.

1 **CHAIRMAN CARTER:** Thank you.

2 **COMMISSIONER EDGAR:** Commissioner McMurrian.

3 **COMMISSIONER McMURRIAN:** I don't know when the
4 appropriate time is, but I want to hear more about the
5 major fault in issuing the PAA from OPC.

6 **COMMISSIONER EDGAR:** Absolutely.

7 Mr. Rehwinkel, why don't we start with you.

8 **MR. REHWINKEL:** Thank you, Madam Chairman.
9 Charlie Beck is passing out a document that I would like
10 to speak to.

11 Commissioners, Public Counsel is here today
12 because we believe that you are being asked to make a
13 decision to vote out a Proposed Agency Action on a filing
14 by Florida Public Utilities that has no meaning in reality
15 anymore.

16 The company is here before you asking that you
17 utilize a 2009 test year to set rates that will go into
18 effect, in all likelihood, later in this year if not at
19 the beginning of 2010. Two days before the staff
20 recommendation was filed in this docket, the company
21 announced to the world that they had merged with
22 Chesapeake Gas. The document that I've handed out to you
23 are slides that I got off the Securities and Exchange
24 Commission website last night that are from a conference
25 call they held with investors on April 20th, two days

1 before your recommendation was issued.

2 Now, as the staff notes, FPUC filed its case on
3 December 23rd, 2008. And, as I just noted, two days
4 earlier, FPUC entered into a merger agreement with
5 Chesapeake Gas. We are here to object to the staff's
6 recommendation and to your issuing a PAA at all in this
7 docket based on the fact that we believe the merger
8 renders the company's filing a nullity in that it casts
9 significant doubt on the reliability of the projections
10 contained in the MFRs and the representativeness of the
11 test year. We believe that because of the above, the
12 staff's recommendation overstates the required rate of
13 return, overstates rate base, overstates expenses that
14 will be incurred, and in general overstates revenue
15 requirements.

16 As a result, we are here respectfully to ask
17 that you deem the company's filing as insufficient in
18 light of materially changed circumstances and facts. We
19 have a brief presentation to make that highlights our
20 concerns at a very high level. Our concern is such that
21 we are asking you to take this action now rather than to
22 issue a PAA that would force the customers to make a
23 decision to seek a hearing and automatically trigger a \$10
24 million, or \$9.9 million rate increase.

25 We believe that the burden should be on the

1 company to prove to you and to its customers that their
2 filing is representative of a going-forward condition that
3 will be in effect when rates go into effect. FPUC filed a
4 test year letter with you that submitted that 2009 was a
5 representative test year. That letter was filed on
6 June 23rd, 2008. Almost a year ago.

7 Now, on Issue 1 on Page 6 of the recommendation,
8 your staff states -- and let me say right up front, staff,
9 I believe, legally could not have known about any of the
10 details of this merger. Not only was it being considered,
11 was it close to being to fruition, they could not have
12 known about it under the securities laws of this country.
13 So we believe that the staff's recommendation is pure in
14 the sense that it does not take any effect any aspect of
15 this merger. The problem with that is that none of the
16 expenses are evaluated based on whether they will be at
17 that level and representative of going-forward conditions
18 once the merger takes place.

19 On Page 6, the last paragraph on that page
20 states that the purpose of the test year is to represent
21 the financial operations of a company during the period in
22 which new rates will be in effect. Staff believes that
23 the projected test period of the twelve months ending
24 December 31, 2009, as adjusted for staff's
25 recommendations, is representative of the period in which

1 new rates will be in effect and is appropriate.

2 Now, prior to the merger being announced,
3 Citizens probably would have had no disagreement with that
4 statement other than with the concern that we would have
5 had about adjustments that might needed to have been made.
6 But the very fact that the merger has been announced, and
7 it has been announced that it will close in the fourth
8 quarter of this year causes us grave concern that the test
9 year is not representative and that you do not have a
10 basis upon which you can set rates.

11 We may not know when the company knew that it
12 was going to pursue or entertain a merger. We don't know
13 whether they sought it or whether they were the recipient
14 of a tender offer, but we do know that the testimony filed
15 and the MFRs do not say one single word about a merger
16 occurring, nor should they. They can't. Under the
17 securities laws of this country they couldn't have done
18 that.

19 They do not address the cost savings or
20 synergies that their shareholders will achieve. This is a
21 gap in information that makes it impossible, in our
22 opinion, for you to vote here today to authorize this rate
23 increase. Let's look at the company's own words filed
24 with the SEC on the same day the staff's rec was filed.
25 This was filed with the FCC on the 23rd. And I have

1 included excerpts from a 24-page slide show that was
2 presented to -- or that was presented to investors on a
3 merger conference call on April 20th. This was filed on
4 the 23rd.

5 On Page 13, and I've passed this out to the
6 Commissioners. I think the company and staff have a copy.
7 On Page 13 of that slide show, the two companies state
8 that earnings accretion in 2010 -- that they will achieve
9 earnings accretion in 2010 for FPU shareholders. Earnings
10 accretion means cost savings, and they are saying that
11 will occur in 2010. In their press release that was filed
12 and Commissioner Skop's office placed in the record, they
13 state that management expects a transaction to be earnings
14 neutral or slightly accretive in 2010, and meaningfully
15 accretive in 2011. They are talking about the combined
16 company, but here they are telling investors that in
17 Florida the accretion will start in 2010. They also state
18 that they will achieve increased financial strength and
19 access to capital to profitably fund growth.

20 On Page 15, the next page of the handout, which
21 is, I think, the key document in this slide show, they
22 state in the second bullet point that corporate overhead
23 cost reductions will occur. Audit, legal, insurance, et
24 cetera. There are no adjustments for those items in the
25 staff's recommendation. And I don't fault the staff for

1 that, they are just not in there. In the MFRs in the G
2 Schedules you see that outside auditing fees, \$214,000;
3 outside service employees legal fees, 425,000. I may be
4 off a line there. I think it's 425. I'm looking on Page
5 4 of 7 of Schedule G-2. Hundreds of thousands of dollars
6 of fees they are saying they are going to save. They are
7 telling investors that.

8 Now, the days are gone when you could tell Wall
9 Street one thing and regulators another thing.
10 Sarbanes-Oxley has changed that forever. They have to
11 abide by these statements and you can rely on them as
12 their own words. They say they will make savings there.
13 IT integration. On G-6, Page 7, I found \$44,000 of those,
14 you know, of IT costs. I don't know if they relate to
15 that, but certainly they are saying they will make savings
16 there.

17 Administrative and other public company costs.
18 These are costs of maintaining your presence on the stock
19 exchange. Those costs, there are costs related to those
20 in this filing, and they are saying they will achieve
21 savings. It is interesting to see that in their test year
22 letter filed June of 2008, they listed a bunch of items
23 that they said would cause them to come in for a rate
24 increase that they are asking you for. Item 4 on the
25 second page of their test year letter says accounting and

1 audit service expenses are expected to increase by an
2 estimated \$400,000 annually in 2009 over the 2005 level.
3 This is due to additional work requirements of regulations
4 on the external auditors including Sarbanes-Oxley Act as
5 well as the effects of becoming an accelerated filer for
6 FCC purposes.

7 There is another issue unrelated to merger about
8 that, that they are not at the threshold there, but they
9 are asking you to give them increased expenses for that.
10 The estimated annual impact of the --

11 **COMMISSIONER EDGAR:** Mr. Rehwinkel, I'm sorry.
12 I think we've got the gist, and I expect that there will
13 be questions and an opportunity for you perhaps to go into
14 more detail, but I would like to, at this point, give an
15 opportunity to the company to respond to the overall issue
16 that you raised. Not necessarily to the details, but
17 overall. And then, of course, we will ask our staff to
18 address that, as well.

19 And then, Commissioners, I expect there may be
20 some questions. Do you have kind of a rounded out thought
21 so that we can continue with our discussion?

22 **MR. REHWINKEL:** Well, let me just state that
23 there are hundred of thousands, if not millions of dollars
24 in expenses that are subject to the savings they list on
25 this page and other pages in here. But one other thing I

1 want to bring to your attention is they entered discovery,
2 as Mr. Horton pointed out, Interrogatory 23. I do need to
3 read this to you because it relates to the merger, I
4 believe.

5 They stated on Page 9 of 31 under Interrogatory
6 23, as of February 2009, we asked them about cost savings,
7 measure that they had put in place. As of
8 February 2009 -- and let me say to you one other thing,
9 Commissioner. I don't know when this merger took place.
10 I know that there was a confidentiality order issued by
11 the Securities and Exchange Commission that runs through
12 February of 2010. I suspect it was for a year term, and
13 it makes me think that the merger was hot and heavy in
14 February.

15 As of February 2009 until further notice, all
16 nonessential expenses, travel and seminars, and
17 nonessential new hires/replacements have been frozen.
18 That is new information. That is not consistent with
19 their MFRs.

20 Also, as of February 2009, all merit raises have
21 been frozen. Merit raises and increases in here. All
22 nonrevenue producing capital expenditures not essentially
23 necessary have been reduced to approximately 50 percent of
24 the original budget amounts for 2009. Reductions that are
25 not consistent with the MFR.

1 You get the picture. I appreciate that. I just
2 wanted to finish that out. There are other statements
3 that I would like to make, but that is our overall
4 concern.

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

6 And, again, there will be the opportunity for
7 some further discussion.

8 Mr. Horton.

9 **MR. HORTON:** Yes, ma'am. I have a couple of
10 comments, and I believe Ms. Martin, I would like to ask
11 her to respond, as well. But, first of all, this is
12 something that's proposed. There has been no merger.
13 There has been an announcement of a proposal to merge. If
14 it happens, it is still subject to review and approval by
15 a number of agencies. And if it happens, it is still
16 subject to approval by the shareholders. So nothing has
17 been done. There has been no merger. There has been an
18 announcement of a potential merger.

19 Mr. Rehwinkel has identified going forward that
20 there may be some benefits and savings, and that's
21 certainly something that I hope he would present in
22 encouraging the approval by the regulatory bodies. But
23 the fact of the matter is there is nothing inappropriate
24 about the filing that we made. It was made -- it's based
25 upon Florida Public Utilities operations. That's as it

1 should be going forward. That's as it should be. So
2 there is absolutely nothing relevant about the merger as
3 to the proposed agency action recommendation and our
4 petition that's before you.

5 Mr. Rehwinkel is kind of suggesting that there
6 has been something sinister or inappropriate here, and
7 there has not been whatsoever by the parties. When this
8 was -- when the agreement was reached it was announced to
9 everybody. It was not known at any point in time when we
10 prepared the petition and it doesn't matter, because it is
11 Florida Public Utilities operations that are before you.
12 And with that I would ask Ms. Martin to --

13 **MR. REHWINKEL:** Madam Chairman, I just would
14 like to say one thing. I'm not asserting in any way that
15 anybody has done anything improper. I mean, I think the
16 company has been very above board, and it was just
17 circumstances. I wasn't suggesting that.

18 **COMMISSIONER EDGAR:** Thank you.

19 **MS. MARTIN:** Hi. I'm Cheryl Martin with Florida
20 Public Utilities Company. I would just like to reiterate,
21 at this point it would not be appropriate for us to
22 consider the merger either for our customers or on behalf
23 of our shareholders. It does still require shareholder
24 approval by both companies, and at this point it would not
25 even occur until the end of 2009. So from our

1 perspective, we need to continue to operate as an ongoing
2 concern, and we still feel our test year is appropriate
3 with respect to what we have filed before the Florida
4 Public Service Commission.

5 **COMMISSIONER EDGAR:** Thank you.

6 And I would look to ask staff to comment, and
7 specifically for my benefit to -- overall, but also
8 specifically to the issue that Mr. Rehwinkel has raised
9 about, in my words, the test year perhaps not being
10 appropriate or moot at this time.

11 Mr. Devlin.

12 **MR. DEVLIN:** Thank you, Madam Chair. Tim
13 Devlin, Florida Public Service Commission.

14 First, I would like to point out that this is
15 the first we have heard of this issue is this morning, so
16 we haven't had really a lot of time to prepare for our
17 response, but I will attempt to address your issue as well
18 as other issues.

19 And I think it has already been pointed out, at
20 this point it is just an announced merger. There are
21 several steps. It's going to take several months, and at
22 best probably will be into 2010, if this merger is
23 consummated. The shareholders of boat companies would
24 have to agree, you have got two state commissions,
25 Delaware and Maryland, we have the Federal Trade

1 Commission and the SEC, and I believe FERC, but I'm not
2 sure about FERC.

3 To address the test year, in my opinion, I think
4 the test year is still legitimate because normally we try
5 to set rates to give an opportunity for a utility to earn
6 a reasonable rate of return the first year after rates go
7 into effect, and I think that would be probably somewhere
8 around June or July. So it would be -- and the test year
9 is a good proxy in doing that. The 2009 test year we
10 think is very close to that first year where rates go into
11 effect. It's pretty consistent with the previous cases we
12 have had with TECO.

13 So I believe, and my advice is that the merger,
14 one, is speculative at best. Whether it will be
15 consummated it's going to have to go through several hoops
16 and take a considerable amount of time. The impact, there
17 could be positive impact, but that would be well into
18 2010, well after rates have gone into effect, if you will.
19 And we do have safeguards for consumers. We have our
20 earnings surveillance program. So if there is a
21 precipitous increase in earnings because of synergies
22 related to the merger, and it's my understanding FPUC will
23 still operate as a separate business entity, although that
24 could get clarified or I could be corrected on that. We
25 would still be looking at FPUC as a separate entity and

1 looking at their earnings. And if their earnings spike we
2 will take immediate action and bring that to your
3 attention.

4 So, again, the bottom line is I think the
5 Commission should go forward. I think the statutory
6 framework is there. I think the test period is still
7 valid, and that's our staff opinion, that we should move
8 forward with this case.

9 **COMMISSIONER EDGAR:** Thank you, Mr. Devlin.

10 Commissioner Skop, did you have a question?

11 **COMMISSIONER SKOP:** Yes, Madam Chair, thank you.

12 I guess I had -- in discussing this with staff,
13 and the merger announcement came out, you know, kind of
14 right after, or right before the staff recommendation came
15 out, if I remember correctly. I had some of the same
16 concerns that I expressed to staff, and I think that
17 centered somewhat around -- and that was the issue that I
18 would get into about there was substantial discussion as
19 to why the company didn't do their equity, scheduled
20 equity issuance during the summer of 2008 and how that
21 might have changed some ROE calculations.

22 But another question that arose is how would the
23 proposed merger potentially affect the equity ratio and
24 whether the announced merger represented a material change
25 in circumstance that would preclude the Commission from

1 going forward. At that time I did not have the
2 information that Mr. Rehwinkel provided, which on Page 15,
3 again, adds some foreshadowment into the expected cost
4 savings and efficiencies that may arise. But, I think if
5 I heard staff correctly, and what I remember from our
6 discussion is I asked why, you know, such an announcement
7 would not constitute a material change in circumstance.
8 And I think the response I got, and I think the result
9 that Mr. Devlin is still stating is that the rates are
10 scheduled if the PAA is approved -- but I'm hearing it may
11 be protested -- were scheduled to go into effect May 1st,
12 on or about May 1st, and the merger would not happen until
13 subsequent to that. So if staff could briefly speak to
14 that.

15 Again, I still have some concerns. I think that
16 although you can't announce a merger due to securities
17 law, I mean, certainly there was substantial discussion as
18 to why the equity issuance was not made in the summer of
19 2008.

20 **MR. JAEGER:** Commissioner Skop, Ralph Jaeger of
21 legal staff. I think 366.064 governs this proposed agency
22 action procedure, and it says the Commission shall enter
23 its vote on the proposed agency action within fifteen
24 months of the commencement date. And, also, in Issue 51
25 we are saying that the rates would go into effect 30 days

1 after your vote here in this recommendation, so the rates
2 would be effective 30 days from now.

3 And, like Mr. Devlin says, then we have that
4 whole year, and then we don't know what's going to happen.
5 And in that joint pronouncement from both utilities, they
6 said initially that Florida Public would continue to be
7 run as a separate company as a separate business entity.
8 So right now it's too speculative. We don't know what's
9 going to happen. We have all of those approvals, and they
10 would have to come to us also for approval to merge their
11 operations or their being continuing to operate as FPUC
12 would be continuing to operate separately.

13 **COMMISSIONER SKOP:** Thank you.

14 And I think that's, in my discussion with staff,
15 the same rationale I had heard as to why the announcement
16 would not preclude the Commission from considering the
17 PAA. I think that, you know, certainly Mr. Rehwinkel's
18 additional exhibit, you know, adds a little bit more
19 visibility into what might occur in the future. But,
20 again, I will leave it at that.

21 **COMMISSIONER EDGAR:** Commissioner McMurrian.

22 **COMMISSIONER McMURRIAN:** Thank you, Chairman.

23 Mr. Rehwinkel, are you -- and I'm not sure I
24 heard this accurately at first whenever you were talking
25 about trying to avoid protesting this PAA decision. Are

1 you prepared to say today whether or not you would protest
2 this decision if it were -- I know we have got other
3 issues to talk about if we go forward, but are you
4 prepared to say whether we're going to be in a protest
5 situation and going to hearing regardless of what we do
6 today?

7 **MR. REHWINKEL:** Well, first of all, I'm not
8 nearly done with my presentation, and I vehemently
9 disagree with a lot of things that have been stated here.
10 You know, I didn't bring all the FCC documents that are
11 out there that talk about who's retiring, who has taken a
12 \$789,000 severance package, the officers and directors.
13 There are a lot of specifics here. And that document says
14 it is expected to close. And that interrogatory talks --
15 it impeaches this notion about this being speculative.

16 They have taken action in anticipation of this
17 merger. And I would suggest to you, if you looked at the
18 electric company, that similar behavior has occurred.
19 That they have not filled positions; they have not done
20 training that you authorized them to do. This is classic
21 pre-merger and merger behavior as the companies contract
22 what they have spent.

23 Now, to answer your direct question,
24 Commissioner, I'm not prepared to say that right now
25 because I don't really have a feel for where the direction

1 is going here. Before this merger was announced, we had a
2 whole different look at whether we thought the trending
3 factors were appropriate. An 11-1/2 percent increase to
4 their top three executives at a time when everyone else is
5 hurting out there and laying off people, taking pay cuts,
6 and they are going to give these guys an increase and
7 there is no adjustment for that. We have problems there.

8 We have problems with the way they have cut
9 their capital budget, but all of a sudden in the test year
10 they're going to spend a lot. Now, we have a lot of
11 problems out there. We don't really get a feel for where
12 things are going. We are not of the mindset right now
13 that we would advise customers who asked us should we ask
14 for a hearing that 8-1/2 million out of 9.9 is the
15 appropriate place for us to be.

16 I could take a break at the appropriate time and
17 consult, but definitely we're not -- we weren't happy with
18 it before the merger was announced, and the merger, once I
19 get to finish, I think there are some other issues that we
20 would want to discuss.

21 **COMMISSIONER EDGAR:** Commissioner McMurrin, did
22 you have a follow-up?

23 **COMMISSIONER McMURRIAN:** Yes, I do.

24 **COMMISSIONER EDGAR:** And then Commissioner
25 Argenziano.

1 **COMMISSIONER McMURRIAN:** And I realize it was
2 putting you on the spot, and I knew you could say that
3 couldn't answer that. I guess what I was thinking was,
4 and in years past we have had -- not this kind of issue
5 come up, this is probably pretty new to me, anyway, but we
6 have had issues where it looks like we were going to end
7 up in a protest situation anyway, so we talk about whether
8 or not we go straight to hearing. But I'm not suggesting
9 that now, that's where my question lies.

10 **MR. REHWINKEL:** There is a different twist, if I
11 may, Madam Chairman.

12 In the past when you look at other PAAs, there
13 is not this -- the concept of a PAA was normally if it was
14 protested it evaporated and everybody started anew and
15 there was no presumption one way or the other. In this
16 case, there is a statutory right for the company to put in
17 the full rates and that's a problem. That puts us in a
18 squeeze of figuring out what's the right place where you
19 can live with the rates and not go to hearing and have the
20 higher rates go into effect while you contest it. So this
21 is a little different. And I was at the gym this morning
22 trying to think back through my history here of when you
23 have had something like this occur on the eve of a vote by
24 the Commission on rates, and I can't think of one.

25 I know in the early '80s, the United Telephone

1 System was consolidating. Florida Telephone in Orange
2 City and Winter Park, and Tri-Count or whatever down in
3 Fort Myers, and they left out Quincy because they were
4 selling it. But I don't think that's an analog here to
5 what we're doing. I think this would be a case of first
6 impression where the Commission was voting to authorize
7 rates when the landscape was going to change soon after
8 rates went into effect.

9 **COMMISSIONER McMURRIAN:** Well, let me ask you
10 this, and this is off of the cuff, too, because I hadn't
11 given this a lot of thought. I had talked to staff in the
12 meeting about this announcement, but, of course, we didn't
13 have this information at the time, and we talked about
14 whether it was speculative or not. But just off the top
15 of my head, what about a company's ability to avail
16 themselves of rate relief under the statutes. If a
17 company such as FPUC comes to us with a request for rate
18 relief, as they have done here, do we have any -- in your
19 opinion, and I'll be glad to hear from others, do we have
20 an obligation to carry that forward? I think what I hear
21 you saying is that we don't have enough information to
22 make this kind of decision given this new information that
23 has come up.

24 **MR. REHWINKEL:** Well, Commissioner, A, I do
25 think that; and, B, I think that the burden is on the

1 company to prove up their case. It has never been any
2 different. It doesn't matter whether it is a PAA, or a
3 file and suspend, or a limited proceeding, they have the
4 burden. They pulled their own rug out from under
5 themselves, in our opinion. And it's not -- I'm not
6 faulting the company. We're not here to say there is
7 something wrong with the merger. We suspect the merger is
8 a good thing; we are not trying to stop that. But we
9 don't believe that rate relief on the eve of implementing
10 the merger is appropriate. We think they have impeached
11 their own case. These are their own words here.

12 **COMMISSIONER EDGAR:** Thank you.

13 What I would like to do is ask Commissioner
14 Argenziano to go ahead and pose your questions or
15 discussion, and then we can continue from there.

16 **COMMISSIONER ARGENZIANO:** Thank you.

17 I guess you just said what I was going to ask.
18 Part of your angst is that -- well, let me go back to Page
19 6, what you read, that the purpose of the test year is to
20 represent the financial operations of the company during
21 the period in which the new rates will be in effect.

22 And from what I gather, and I do see that there
23 have been -- I think it has been a good company, and I
24 have said that all along. And I don't think that the
25 merger is a bad thing, but it looks like to me they have

1 taken action to merge. And on staff's comment about
2 stand-alone is that the company -- it's not buying,
3 Chesapeake is not buying FPUC outright or to be a
4 subsidiary, it's a merger, so it makes a difference to me.

5 But I guess your angst is also that the test
6 year doesn't reflect maybe the expenditures, the
7 reductions, or the savings or benefits, and that the
8 merger could take place in the final quarter of this year,
9 which is not reflective, then, of the test year.

10 **MR. REHWINKEL:** Yes, that's correct. That is a
11 big part of our concern.

12 **COMMISSIONER ARGENZIANO:** Well, I can see where
13 that would be, because it's not then reflective of the
14 test year that was provided. And I'm not sure when the
15 company will actually merge, but it --

16 **MR. REHWINKEL:** Again, I would point to
17 Interrogatory 23 that says that they have taken steps.
18 They have taken -- I call them austerity measures, and it
19 is not necessarily -- it could be a combination of the
20 economy, but, you know, in February of 2009 they're taking
21 these steps to do significant cost containment that seem
22 to be inconsistent with what they have filed. And I think
23 they should be answerable to that in addition to the
24 merger document.

25 The merger is not just something that they sit

1 there and say, well, we think we would like to do this.
2 They have filed a definitive agreement with the Securities
3 and Exchange Commission, and it's -- I don't know, I
4 looked at it last night, it's 75 pages or longer. It's
5 very detailed. And I think they have every expectation
6 that this will close. And if it does -- they have stated
7 in here they are going to make consolidations, they are
8 going to move their headquarters to Delaware. They are
9 going to do a lot of things that will save them money.

10 **COMMISSIONER ARGENZIANO:** Those are some the
11 concerns that I have. Not that they are bad things to do,
12 but using the test year that we are using that gives me
13 great angst. What I do want to hear and have always
14 wanted to hear from the beginning, and you touched base on
15 it a minute ago, I do want to hear about the severance
16 packages and the salaries and the executive packages.
17 Because we talk about Bluefield a lot here, and then we
18 don't put into place what Bluefield to me really
19 represents.

20 The gist of it is the whole economic picture
21 that we are facing in our nation today. And we are in
22 something like we haven't been ever, probably. And to me
23 it makes a big difference what salaries are and what
24 severance packages are. And I think that if we are going
25 to use Bluefield, we have to use it to its fullest extent.

1 So I would like to know more about the severance packages
2 and the executive salaries and so on. And it's not just
3 with this company, it is with every ROE issue that comes
4 before us. So if staff can't fill me in, I certainly
5 would like OPC to do so.

6 **MR. PRESTWOOD:** Commissioner, even though it's
7 a PAA, as a part of the filing the company did file
8 testimony. That testimony did explain the process they
9 used to do a competitive salary comparison to other
10 companies to make sure that their salaries are in line
11 with other companies, and through data requests we
12 obtained that information as well as other information.
13 We did discover that in 2009, the company had put in an
14 11-1/2 percent increase for their executives, although the
15 board at that point had only authorized a 3 percent
16 increase, and so we did make an adjustment to reduce the
17 executive pay increase down to 3 percent for the test
18 year. We did discover through --

19 **COMMISSIONER ARGENZIANO:** Could you tell me -- I
20 don't mean to cut you off, but could you give me an idea
21 of what the salaries are? I know they weren't as high as
22 some other companies before, but I'd like to know what
23 they were before the 3 percent increase.

24 **MR. PRESTWOOD:** Commissioner, I'm not sure I
25 have that information with me. I do know that the study

1 did find that their executive pay was lower than other
2 utility executives, and that was part of the reason they
3 were giving -- trying to give the raises, but they had not
4 given them in 2009, and that's why we adjusted it back. I
5 did not bring that with me to the hearing, but we do have
6 that information.

7 **COMMISSIONER ARGENZIANO:** Okay. And the
8 severance packages?

9 **MR. PRESTWOOD:** There were no severance packages
10 that I am aware of. I believe that OPC was referring to
11 severance packages that might come about as a result of
12 the merger, and, of course, that data was not part of the
13 test year.

14 **COMMISSIONER ARGENZIANO:** Right. Okay. Well,
15 then OPC can elaborate on that part.

16 **MR. PRESTWOOD:** Yes. Now, in addition,
17 salary-wise or salary-related, we did adjust medical
18 expenses down. Those are benefits, of course, but they
19 are part of the salary package. We did adjust those down
20 considerably from what they had put in the test period, as
21 well as we did adjust the number of positions that they
22 had -- the company had included in the test year. There
23 was ten positions that they hadn't filled. It didn't look
24 like they were going to fill them for two to six months
25 based on the current economic conditions, so we adjusted

1 those out, as well.

2 **COMMISSIONER ARGENZIANO:** I read that.

3 Could you -- let's see. I had another question.
4 I'm reaching for it. As the Chairman usually says, he is
5 having his over-50 moment.

6 I'm there with you, Mr. Chair.

7 So staff had recommended reduce the recommended
8 amount of 11 percent -- I know what the question was. Did
9 the rank and file, did the line workers, did anybody else
10 get increases, the workers that actually keep the company
11 rolling?

12 **MR. PRESTWOOD:** Yes. And we did adjust those.
13 We did review them; we reviewed every single one of them
14 and looked at the data they had to support those
15 increases.

16 **COMMISSIONER ARGENZIANO:** What was their
17 increase?

18 **MR. PRESTWOOD:** It varied by individual. They
19 are fairly small, so they have the ability to go in and go
20 person-by-person. And so the data was put in by their --
21 I won't use the right title, but let's call it personnel
22 manager, actually put in the adjustment pay for those.
23 And then they also used a trending factor into '09 of -- I
24 believe it was 5-1/2 percent.

25 **COMMISSIONER ARGENZIANO:** 5-1/2 percent. Okay.

1 Just for my personal understanding, when a board
2 recommends a pay increase, they are recommending that that
3 come from the ratepayer, right, not from profits?

4 **MR. PRESTWOOD:** Well, effectively, you know,
5 it's part of their cost of service, and ultimately the
6 only source of revenue is ratepayers, so --

7 **COMMISSIONER ARGENZIANO:** Well, could it come
8 from -- could it be a decision by the board? And just for
9 my knowledge here, could it be a decision by the board
10 that the increases for executive salaries come out of
11 profits from shareholders rather than from the ratepayer
12 as a rate increase?

13 **MR. PRESTWOOD:** Not as a practical matter. It
14 wouldn't work that way.

15 **COMMISSIONER ARGENZIANO:** Well, practical
16 because the shareholder wants more money, but I mean could
17 it be done? Because I remember having this discussion
18 once before when I said I would rather see the company, if
19 they are doing a great job, keep their return on equity.
20 But if they wanted their increases in executive salaries,
21 then maybe it should come out of the shareholders. And I
22 just didn't know if it was possible. Not practical, but
23 possible. Could it be done that way?

24 **CHAIRMAN CARTER:** Commissioner Argenziano, I
25 hate to stick my nose in, but I think you're right. I

1 think we voted on that.

2 **COMMISSIONER ARGENZIANO:** Right.

3 **CHAIRMAN CARTER:** On that matter.

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

5 **MR. PRESTWOOD:** I think anytime a company pays
6 out money to its executives, it's going to have to be
7 under accounting rules recorded as an operating expense
8 and, therefore, affect the company's profits. But, you
9 know, by doing that, in a ratemaking sense, effectively
10 you are really reducing the return on equity that the
11 investors ultimately earn. You may say you are giving
12 them 11 percent, but by effectively limiting the pay that
13 you allow for ratemaking, which is less than what they
14 really do paid, essentially they get --

15 **COMMISSIONER ARGENZIANO:** I understand that.
16 What I'm saying though is that maybe it should come -- if
17 it's a board decision, it should come out of the
18 shareholders rather than the ratepayers. It's just a
19 different mechanism saying here is your ROE, I'm not going
20 to reduce that, here it is, it's higher. This is what we
21 did before and said it's higher, we're keeping it higher
22 because you're doing a good job, but if you want to pay
23 more to your executives in a time when we are in a real --
24 I don't know what you would call what we are in, because I
25 can't even reckon it to the Depression. I think it's even

1 worse. So at a time when Bluefield even says this is not
2 what you do, then perhaps you take it out of your profits
3 rather than doing it the other way. So I guess what I'm
4 getting is it can be done that way if the board chooses
5 and, of course, that is really not going to be their first
6 decision if they can get it from the ratepayer.

7 **MR. PRESTWOOD:** Yes. I mean, anything can be
8 done. It would be a very difficult maneuver, but it could
9 be done. I mean, it's a public company. It would require
10 the shareholders to issue -- you know, but, yes, it could
11 be done.

12 **COMMISSIONER ARGENZIANO:** Okay. My concern is
13 that when we keep doing what we always do because that's
14 the way we do it, if companies keep raising their
15 executive salaries, I mean, when does it end? So, you
16 know, let's say all the companies get together. If you
17 just keep raising your salaries, then guess what, pretty
18 soon, well, we're not comparable with that company, so we
19 want to raise some more. Pretty soon the salaries are
20 above belief. And I'm not saying for this company, but
21 that's what goes through my mind. Just because A and B
22 and C and D have these high salaries, I've looked at some
23 salaries of some companies that we regulate that are in
24 the millions that I'm going to be questioning. So it's
25 just because we have done it that way or it's not

1 . comparable to A, B and C and D's salary, that doesn't make
2 me feel more comfortable saying, okay, well, then you
3 deserve A, B, C, and D's salary, also.

4 I sometimes want to change the trend especially
5 thinking -- especially if there's such an economical
6 crisis that we have in this country right now, and I'm not
7 sure that those salaries should be raised at this time.
8 Not to punish a particular company, or to say -- you know,
9 I just don't know when it ends, number one. And, number
10 two, if it can be done the other way. If those board
11 members feel that in this time of crisis, then maybe they
12 should reduce their shareholders' profits rather than keep
13 taking it from the ratepayer. And that's the trend.
14 That's the way I'm looking at it.

15 If you really want to increase executive
16 salaries at this time, maybe that's the way it should be
17 looked at rather than the traditional way of just saying
18 that A, B, and C, and everybody jumped off the bridge, so
19 we're going to do it, too.

20 So that's why I'm asking that question. But to
21 get back -- and I guess to get back with the severance on
22 if the merger occurs, could Mr. Rehwinkel just give me an
23 idea of what you were talking about there so I have an
24 understanding of that, please.

25 **MR. REHWINKEL:** Commissioner, your question to

1 me was --

2 **COMMISSIONER ARGENZIANO:** On the severance
3 packages that you had indicated, could you fill me in?

4 **MR. REHWINKEL:** Yes. I apologize for any
5 confusion about that. My point on it, and I think Mr.
6 Prestwood is correct, is that I was making the point that
7 they have in their documents that are on file with the
8 SEC, they have made specific determinations about who will
9 go where, severance that will be allowed, or given to
10 Mr. English and he will stay on for two years as a
11 consultant. I was making the point, and I don't think the
12 company is trying to put those dollars in their case, but
13 I was talking about the more certainty than
14 speculativeness of the merger.

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

16 **COMMISSIONER EDGAR:** Commissioners, any further
17 questions at this time?

18 **CHAIRMAN CARTER:** Madam Chairman?

19 **COMMISSIONER EDGAR:** Commissioner Carter.

20 **CHAIRMAN CARTER:** I just wanted to go back for a
21 second. And, I'm sorry, I had one of my over-fifty
22 moments when I listened when Commissioner McMurrian was
23 questioning, is that based upon where we are now, I'm
24 trying to find what relief is Mr. Rehwinkel seeking on
25 behalf of OPC under that basis. That's what I'm trying to

1 follow along. I'm sorry I didn't ask that earlier.

2 **COMMISSIONER EDGAR:** I'm sorry, Commissioner, we
3 are having a little bit of difficulty getting your
4 question. Could you restate the question specifically,
5 and I know we'll give it try.

6 **CHAIRMAN CARTER:** Okay. The question was
7 basically under -- what relief is OPC seeking, and under
8 what basis are they seeking that based upon the case that
9 is before us today?

10 **COMMISSIONER EDGAR:** Thank you, Commissioner
11 Carter.

12 Mr. Rehwinkel, did you get that? And I'll try
13 to paraphrase. What relief are you seeking realizing
14 where we are situated today is, I think, the question?

15 **MR. REHWINKEL:** We would ask, and I think the
16 statute does not require you to authorize a PAA rate
17 increase if you don't feel like the information you have
18 before you is sufficient. We think the company's case has
19 self-impeached and should not be allowed at all. We think
20 you should deny the increase in its entirety based on the
21 merger announcement, and the statement in Interrogatory 23
22 that they have materially changed their expenditures
23 relative to the budget that is included in the MFRs.

24 **COMMISSIONER EDGAR:** Mr. Horton.

25 **MR. HORTON:** Yes, ma'am. I totally disagree

1 with Mr. Rehwinkel. I think the pleadings, the petitions,
2 the support, I think there's sufficient submission by this
3 company to warrant a review and to warrant entry of an
4 order.

5 I think that the company is entitled to entry of
6 a Proposed Agency Action order statutorily, by your rule.
7 I think we have supported the request adequately. All of
8 the discussion about the merger is just as interesting to
9 the employees of FPUC as to anyone else, but the fact of
10 the matter is that it is all speculative. And as has been
11 pointed out, Florida Public Utilities is going to continue
12 to operate as a separate entity, in which case they would
13 be regulated just as they are now. Nothing would change.
14 We have not included anything in this rate case with
15 respect to the merger.

16 We didn't even know about the merger at the
17 time. There is nothing in this rate case that relates to
18 any merger or potential merger at all. It is the same as
19 we would have presented at any other time. The fact that
20 there may be a merger next year, your staff has pointed
21 out that there are appropriate actions that they can take
22 to review earnings and make sure that the consumers are
23 protected at that time. That's absolutely right. But we
24 have submitted to you a demonstration that we are entitled
25 to rate relief and I think it would be appropriate to go

1 forward with the PAA.

2 **COMMISSIONER EDGAR:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 I think Commissioner McMurrian's suggestion
5 might be a good one, you know, if -- I think Mr. Rehwinkel
6 suggested that if the Commission were to take a break he
7 would be able to confer and get some sort of affirmative
8 decision as to whether this order would be protested. And
9 if there were to be a firm protest, then, again, I think
10 the Commission would have to weigh that the merits of
11 going through the motions only to have to go through a
12 full hearing. So I don't know if that would be
13 beneficial, but that might be the lingering question to
14 get an answer to.

15 **COMMISSIONER EDGAR:** Thank you, Commissioner
16 Skop. I wanted to see what your pleasure is.

17 As I noted when we first opened this item, there
18 are over forty individual items that are -- or issues that
19 are part of this item. If it is the will of the body to
20 go forward potentially with action today, then clearly we
21 will need to address all of those issues more
22 specifically. To state the obvious, if there is concern
23 about moving forward today by the majority, then that may
24 not be a good use of everyone's time.

25 So stating that with no position, but just to

1 kind of see where we are. As has been raised, we have a
2 couple of points that maybe are, at least to some of our
3 memory, the first time that we have addressed them with
4 this particular type of timing factual situation, and some
5 perhaps competing time lines, as well.

6 Our staff has noted that there are protections
7 to the consumers if we go forward. We have discussion
8 about the potential of a protest and going into a full
9 hearing, and perhaps some other options, as well.

10 So, Commissioners, I guess I would ask your
11 pleasure. It is about noon. I had thought we would go
12 until about 12:30, but obviously if there is a good
13 breaking point we can take a short break, we can have some
14 general comments, or we can go to lunch break since we
15 will be back this afternoon regardless.

16 Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** Can I ask one more
18 question?

19 **COMMISSIONER EDGAR:** Of course.

20 **COMMISSIONER ARGENZIANO:** To Mr. Rehwinkel.

21 Since obviously it seems that there is actions
22 moving forward with a merger, but it is speculative
23 whether it's going to come to fruition or not. So if we
24 move forward today as a Commission, I'd like to know what
25 your concerns are and how you would deal truthfully with

1 it being possibly speculative. We don't know if it is
2 really going to happen or not.

3 And I understand it looks like it. It's moving
4 that way, and what the costs would be to the company and
5 to the ratepayer, the pros and cons and ramifications if
6 we move forward today. What we have to do if they do
7 merge, then. If you could make it clear to me.

8 **MR. REHWINKEL:** Well, we feel that their MFRs
9 are as speculative as the merger, because that is all it
10 is now. So speculativism is a relative term. Are you
11 asking if we vote, if you vote the PAA out, what do we do?

12 **COMMISSIONER ARGENZIANO:** I'm basically asking
13 what you think happens if we vote this out today, as I'm
14 saying, the costs to go -- if we go to full hearing, the
15 cost to the ratepayers as well as the cost to the company
16 and ultimately the ratepayer, and what you think the
17 ramifications are moving forward today versus not. With
18 that word of speculative being in there. What if the
19 merger doesn't take place?

20 **MR. REHWINKEL:** Well, if the merger doesn't take
21 place we still think that there is a lot of fat in this
22 filing. And I don't mean that in a pejorative sense, it's
23 just that we think that there are excess costs in here
24 regardless of the merger.

25 But if you vote this out and the merger occurs,

1 we think the burden has shifted entirely to the customers
2 to disprove their case, disprove the impact of the merger.
3 The company, on the other hand, is fully protected. They
4 get the full \$9.9 million rate increase, they will get
5 rate case expense that is more than double what was
6 authorized in the last case, and what was authorized in
7 the last case they didn't even spend all of that. But
8 they don't have to return that, so they are well
9 positioned to weather a protest.

10 The customers, on the other hand, will
11 immediately have to fork out the money out of their pocket
12 and fund this while the company undertakes their austerity
13 measures and cuts costs and cuts costs and keeps the
14 savings. The burden then would be on us, you know, in an
15 after-the-fact way to look at their surveillance reports
16 and bring a reverse make whole case, which is very
17 difficult to do, and not overly successful, I might add.
18 So I think what the answer is is that the burden flips
19 completely to the customer if you issue this PAA.

20 **COMMISSIONER ARGENZIANO:** Just one final
21 question to that, and thank you for that? But what would
22 be the appropriate time to wait? How would you know how
23 long to wait?

24 **MR. REHWINKEL:** You know, I appreciate the
25 question, but the company has hoisted themselves on their

1 own petard, I think is the term, and I don't know. And
2 they have done nothing wrong. They have done the right
3 thing. They filed the right way, they've put their case
4 forward, they probably have taken appropriate steps as far
5 as a merger goes, but they have created this problem.

6 **COMMISSIONER ARGENZIANO:** Thank you.

7 **COMMISSIONER EDGAR:** Thank you.

8 Mr. Devlin, I recognize you for your comments,
9 and I would also like someone on staff to address the
10 point raised by Mr. Rehwinkel about the shifting of the
11 burden if, indeed, the situation were to change. Because,
12 candidly, I'm not sure that I understand that exactly.

13 So, Mr. Devlin, if you would.

14 **MR. DEVLIN:** Thank you, Madam Chair.

15 I'm not sure exactly what he means in that
16 context other than there could be a major effect if the
17 merger does go through. I still believe it's speculative.
18 We've had two FPL announcements in the last couple of
19 years for mergers, and they didn't go through. But we can
20 debate on whether it's a 50 percent chance or 80 percent
21 chance, but I would just like to put one notion on the
22 table for consideration before we break that may
23 ameliorate the concerns.

24 In the event the merger is consummated and goes
25 through sometime late this year, probably more like early

1 next year, perhaps the Commission could consider a
2 provision that would at that point in time place the
3 effect of this rate increase subject to refund until we
4 have an evaluation of what the impact of that merger is on
5 FPUC. It's just a thought, something for consideration,
6 and that would be a little more proactive than our normal
7 surveillance program that does have some regulatory lag
8 built into it.

9 **COMMISSIONER ARGENZIANO:** Madam chair.

10 **COMMISSIONER EDGAR:** Thank you, Mr. Devlin.

11 Commissioner Argenziano.

12 **COMMISSIONER ARGENZIANO:** But that didn't answer
13 the question, and I think what I want to know is the
14 shifting of the burden. I think what I heard
15 Mr. Rehwinkel say at one point one thing was that the
16 company would get the rate expense doubled than what they
17 would now. So when we are talking about -- well, maybe
18 Mr. Rehwinkel -- go ahead.

19 **MR. REHWINKEL:** My point was they had
20 400-and-something thousand dollars authorized in the last
21 rate, and there is 800-and-something in this one.

22 **COMMISSIONER ARGENZIANO:** Okay. But what would
23 be -- what I want to go back and forth with here is what
24 would be the shifting burden to the customers. To prove
25 after the fact is harder, I guess. That's what I want to

1 hear.

2 **MR. DEVLIN:** Commissioner Argenziano, I will
3 take a shot. I probably wasn't on point on that question.
4 I believe shifting the burden would be in the context that
5 if there was an increase in earnings for FPUC as a result
6 of that merger, and there was a prima facie case that
7 perhaps the rates are too high, then, of course, the OPC
8 or the Commission would have to take some action to bring
9 those rates down through a proceeding. I think that might
10 be the context of shifting of the burden. As opposed to
11 the company asking for something, we would have to, or OPC
12 would have to take the initiative to take some action.
13 And that's why I put that notion on the table. Perhaps
14 the remedy to that concern is that we could have a
15 provision in there that would protect the customers by
16 holding money subject to refund in the event the merger is
17 consummated as of an effective date.

18 **MR. REHWINKEL:** Mr. Devlin is correct. That is
19 the long-term effect of it that we would have, we would
20 ultimately have to come in and show that, you know, that
21 the MFRs were wrong based on the efficiencies, you know,
22 that was in the rest of my presentation that, that exist
23 out there and that they're saying are great. So we would
24 have to, we would have to come back and prove that out.
25 So, yes, I agree with what Mr. Devlin said.

1 **MR. HORTON:** Madam Chairman.

2 **COMMISSIONER EDGAR:** Mr. Horton, I was about to
3 call on you. Go right ahead.

4 **MR. HORTON:** Thank you. I have to disagree with
5 Mr. Rehwinkel again. And there's several parts of this.
6 First of all, this is a proposed agency, proposed agency
7 action. It's unlike -- Commissioner McMurrian mentioned
8 that when we know we're going to a hearing, a lot of times
9 we go ahead and schedule a hearing. But this is, there
10 are, there is a statutory provision in 366.06 that allows
11 us to utilize the five-month PAA process and requires the
12 Commission to issue an order within the five months. If
13 that order is protested and you have to allow a party an
14 opportunity, an entry point, and that 21 days after the
15 entry of the order is the entry point. At that point if
16 any party wants to enter a protest, they enter a protest
17 to the issues in that order. The company is, under the
18 statute the company is allowed to put into place the
19 non-protested part of the rate relief, not the
20 \$9.9 million. Mr. Rehwinkel is, is misleading on that,
21 he's wrong, unless we're entitled to put in under bond the
22 amount that's not protested and it's subject to refund.
23 That's one thing. You have orders out there identifying
24 that if a PAA is protested, the burden doesn't shift to
25 the customers, the burden doesn't shift to the other

1 party. The burden is on the company to go forward in that
2 PAA process with its presentation. We, we have
3 demonstrated a need to you for rate relief. We've
4 demonstrated that need right now which would entitle the
5 entry of the PAA. But if it's protested, the burden
6 doesn't shift to the customers, it shifts, it stays with
7 the company and goes forward.

8 Now the other thing that has been mentioned, and
9 it's really irrelevant because it's available to OPC or
10 the staff at any time, they can, they can place money
11 subject to refund for any company at any time to review
12 their earnings. So that's not shifting the burden. And
13 if that happens -- and Mr. Rehwinkel has been involved in
14 some of those cases. If that happens, the burden is not
15 on OPC to prove it, it's on the company to prove their
16 case.

17 **COMMISSIONER ARGENZIANO:** Mr. Rehwinkel.

18 **MR. REHWINKEL:** I did not intend to mislead the
19 Commission. I have to review the statute again, but
20 that's not the way I read it. But I, in my 25 years I've
21 never seen the Public Counsel successfully get money
22 subject to refund to do a reverse may call. I, I could be
23 wrong. It's hard to do.

24 **COMMISSIONER EDGAR:** Commissioners, other
25 questions before we take a break?

1 Commissioner McMurrin.

2 **COMMISSIONER McMURRIAN:** Yeah. I think this is
3 for the legal staff. I guess where I'm -- and this is
4 kind of what I alluded to earlier, and I'm still somewhat
5 stuck here, is if a utility that's regulated by the
6 Commission comes to the Commission and says we need rate
7 relief and they show -- they have to demonstrate, of
8 course, that they are entitled to it. And I know we can
9 argue about whether the 9.9 is right and staff's
10 recommendation is less than that and we haven't gotten
11 into those kinds of issues. So perhaps as we discussed it
12 we might decide that they weren't entitled to rate relief,
13 but let's assume that they were. Do we have an obligation
14 to resolve that case once they brought a PAA before us,
15 whether we send it straight to hearing or whether we rule
16 on it now and force some affected party to protest, do we
17 have an obligation to sort of see that through or can we
18 because of this new information just say it's denied?
19 And, and then the second part of that is what would happen
20 in that case? If we were able to deny it, would the
21 utility then be able to just file again whether for PAA or
22 hearing including new facts?

23 **MR. JAEGER:** Commissioner, I believe we have the
24 obligation to give the utility the opportunity to earn a
25 fair rate of return on its investment. Now I did see a

1 Southern States case where things kept changing and they
2 kept changing their filings and changed circumstances, and
3 they got to hearing and they tried to change it at hearing
4 and then the Commission just said enough is enough and
5 they threw the whole case out at that time. But that
6 was -- and I think that's as close as I can get to what
7 Mr. Rehwinkel is arguing that things have changed.

8 But I believe what we're saying here is that in
9 their initial filing and what we have before us is they
10 have shown that they're entitled -- and staff's
11 recommendation, you know, you can make those adjustments
12 that they are underearning. And we've given them, we gave
13 them a \$900,000 interim increase, but we're showing that
14 they're actually underearning by \$8.5 million by our
15 adjustments and stuff, and that's subject to y'all's
16 approval.

17 But basically if we don't go forward here, their
18 utility could be irreparably harmed. They could -- if we
19 don't do something now, they could lose those revenues
20 forever and never be able to get them back. So I believe
21 that's where we're -- the crux of the problem is. I think
22 Mr. Devlin had the really good solution is we protect the
23 utility, we protect the customers by making these rates
24 subject to refund and then figuring out what has happened
25 when they do merge and are there any synergies, any

1 savings, any, have the -- but right now we just don't know
2 what they are and the utility could be irreparably harmed.

3 **MR. REHWINKEL:** Madam Chairman, may I please
4 address two things? I'm reading the statute and it
5 says --

6 **COMMISSIONER ARGENZIANO:** What statute?

7 **MR. REHWINKEL:** This is 366.06(4). It says, "At
8 the expiration of five months following the commencement
9 date for final agency action, if the Commission has not
10 taken an action or if the Commission's action is protested
11 by a party other than the utility, the utility may place
12 its requested rates into effect under bond, escrow or
13 corporate undertaking subject to refund." I read that as
14 they can put the full 9.9 in. And if I'm wrong, I'm
15 wrong, but that's how I've always read that.

16 The second thing is with respect to what
17 Mr. Jaeger said, and I have a lot of respect for him, but
18 my problem is that their, the staff's \$8.5 million
19 recommendation is based on not looking at, as I understand
20 it, at Interrogatory 23 and knowing the impact of what
21 they have cut back on. The staff looked at the budget in
22 the MFRs. They did not look at what may have changed with
23 respect to what the company is cutting back on based on
24 that statement. So you can't sit here and say that you
25 know that they're \$8.5 million dollars in the hole if you

1 don't authorize this. We don't know what that number is.
2 Their, their filing has changed. It's changed based on
3 their actions as of February and it has changed going
4 forward. Remember, this is a projected test year. It's
5 based on what they expect to do.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Rehwinkel.
7 But as I had said, where we were at is seeing if there
8 were questions from the bench before we take a break.

9 Commissioner McMurrin, you had a question?

10 **COMMISSIONER McMURRIAN:** I guess to follow up on
11 that, and I know Mr. Horton wants to get in on this too,
12 are we better off just going to a hearing so that you can
13 flesh out what the effect of the merger might be on the
14 request? Mr. Rehwinkel, I'm looking at you first, and
15 then I want to hear from him, from Mr. Horton.

16 **MR. REHWINKEL:** Well, if that happens, that --
17 that's what I'm saying ought to happen if there's going to
18 be any action by the Commission is that essentially would
19 restart everything. Because the merger impact is not one
20 iota in this, these yellow binders here, the MFRs or the
21 testimony. So for them to show that, they basically would
22 have to come forward and recast their case and show us
23 what they expect to achieve, their due diligence that's
24 taken place in this merger where people, somebody
25 somewhere has an idea of what they can save so they can

1 decide whether this is in the best interest of the rate,
2 of the shareholders under their fiduciary obligations.
3 Somebody has done that. I don't know to what level of
4 detail, but that information could be put in there but it
5 would be a material change.

6 **COMMISSIONER McMURRIAN:** Mr. Horton, do you
7 understand what I'm asking or remember?

8 **MR. HORTON:** I've lost my train of thought.

9 **COMMISSIONER McMURRIAN:** Well, I'm asking are --
10 it just doesn't seem to me, you know, off the cuff, it
11 doesn't seem entirely productive to me to go down the road
12 of going through each and every one of these items and
13 talking about them given the fact that we'll probably end
14 up, again, my words, probably end up in a protest, end up
15 in a hearing where we're going to have, I believe, a lot
16 of cross on the effect of the merger on the rate case.
17 And it seems like that makes sense to me. I think I would
18 want to know that too if we're in the, if we're in the
19 posture to do that.

20 **MR. HORTON:** A couple of, a couple of responses.
21 Number one, if we resubmitted the MFRs tomorrow, I don't
22 know that we would have any more information, any changes.
23 Maybe some minor changes, as Mr. Rehwinkel has pointed
24 out, but there wouldn't be anything in there with respect
25 to the merger. We don't know anything about the merger.

1 It is all speculative. It's all an interesting
2 discussion, we're all interested in it, but we don't know
3 at this point and we won't know until after it occurs.
4 That's number one.

5 Number two, I'm not aware -- let me back up.
6 Let me, let me say that Mr., Mr. Rehwinkel correctly read
7 366.06(4) to you. I would not disagree with what he read
8 to you. But in your rule, and I was kind of combining the
9 two when I made my comments, in the rule, issues in the
10 proposed action that are not identified in the petition or
11 a cross-petition shall be deemed stipulated as a provision
12 of your rule. So I guess I was kind of backing into, you
13 know, if it's, if it's protested, then we can't put it in
14 place. But that's another issue. So I won't disagree
15 with Mr. Rehwinkel there. I'll correct that.

16 But there is a problem I think in going straight
17 to a hearing under this process because you've got a
18 statute that says that we're entitled to an order five
19 months after the commencement date under the proposed
20 agency action. If there is a protest, there's another
21 eight months beyond that. So you're looking at a lot of
22 additional expense, you're looking at a lot of additional
23 time. I would repeat what I said to you before; we have
24 filed and demonstrated the need for a rate relief and
25 we're entitled to the opportunity to earn a fair and

1 reasonable rate of return, and we have, we have
2 demonstrated that to you. So you've got another issue
3 under 04 if you go straight to a hearing. I think that's
4 my comment.

5 **COMMISSIONER EDGAR:** Thank you. Mr. Horton, I
6 have one -- and I'm still trying to think this through
7 too, but, and this is just a comment, not a question at
8 this point, if, and I do mean if for discussion purposes
9 we were to go to hearing, it almost seems like we would be
10 having evidence as to what a, what rates might be should a
11 perceived proposed merger go through and what they might
12 be if indeed it did not, and that seems like not
13 necessarily a great option to me.

14 But, Commissioner Argenziano, I would like to go
15 to break soon, but I'd like to get your questions out
16 before we do that.

17 **COMMISSIONER ARGENZIANO:** Great, because I have
18 a couple.

19 Mr. Rehwinkel, if you could, you're indicating
20 to me that, or to the Commission that despite the merger,
21 let's put the merger on the side, that there were, there
22 is information that is not taken into account in the MFRs
23 or staff has not taken into account in regards to the test
24 year. Could you go over that to me -- with me one more
25 time?

1 **MR. REHWINKEL:** Yes. And I, Madam Commissioner,
2 my point was that there is what I believe to be merger
3 related information that is not in the staff's
4 recommendation, and they could not have done that. That
5 is nothing they did wrong. I do not find fault with that.
6 But it's really the things I was going through that, that
7 are subject to being adjusted if they achieve the
8 synergies that they talk about to the investment
9 community, you know. That's, that's all I was saying. I
10 was not implying that they, that they left something out
11 that they should have --

12 **COMMISSIONER ARGENZIANO:** Okay. You weren't
13 indicating that there were expenditures not spent or
14 things that were held back or -- that's what I thought I
15 heard you say.

16 **MR. REHWINKEL:** Okay. My, my point there is
17 that I think that there, there are, I think, 280 something
18 thousand dollars of training that they're asking for in
19 here. I believe those dollars are allowed in the staff's
20 filing. But based on Interrogatory 23, and I believe it's
21 in relationship to the merger, and their fact that they
22 may not have spent that kind of money in the recently
23 concluded electric division case, that they might not
24 spend it going forward. It would be a savings or a
25 synergy that they would achieve in the merger. So that's,

1 that's what I'm suggesting is that that's a possibility
2 that that money could be requested, authorized, but not
3 spent.

4 **COMMISSIONER ARGENZIANO:** But could be
5 recovered; right?

6 **MR. REHWINKEL:** It would be recovered, yes,
7 absolutely, if it was, if it was not disallowed. And,
8 again, I'm not faulting the staff for not making any kind
9 of adjustment because they did not know about the merger.

10 **COMMISSIONER ARGENZIANO:** Okay. But then it
11 begs the question of me to find out then, then since we
12 don't know if the merger is actually going to take place,
13 what -- show me, make it clear where the harm is in moving
14 forward. How much does it cost to do a protest? What
15 would it cost the ratepayers? Give me the angst that you
16 have of not moving forward or, you know, what's the real
17 problem with moving forward at this time knowing, I mean,
18 knowing there may be a merger coming forward but we're not
19 sure that there is?

20 **MR. REHWINKEL:** Well, I've spent quite a bit of
21 time just dealing with the merger piece alone. If I was
22 going to go through the recommendation and say what
23 problems I had with the capital budget, with the ROE, with
24 --

25 **COMMISSIONER ARGENZIANO:** Well, this is what I'm

1 trying to figure out. And I realize -- and I'll take as
2 long as we need, if we come back from break or whatever it
3 is, I want that information. Because what I'm reading in
4 the statute, they're entitled to come in and ask for what
5 they've asked for. I see that there's a pending merger
6 possible.

7 **MR. REHWINKEL:** Yeah.

8 **COMMISSIONER ARGENZIANO:** And what the
9 ramifications could be, and then I want to know what the
10 remedy is, how much it costs to get there. And what I
11 need to know is is it beneficial to not go forward now for
12 some reason? And that's what I'm asking you to fill in
13 the blanks, as well as I'll ask the company what the
14 benefits are of moving forward now and what their rights
15 seem to be. But I'm not hearing clearly from you, I
16 guess. And it may be me, okay, and I need you to
17 emphasize what those points are in moving forward.

18 **MR. REHWINKEL:** I have only focused on the
19 uncertainties that are associated with the merger.

20 **COMMISSIONER ARGENZIANO:** Okay.

21 **MR. REHWINKEL:** The, the way I would approach
22 this if there was no merger is I would come to you and I
23 would go through the list of concerns that we have about
24 items that are unadjusted by the staff based on just a
25 difference of opinion that we have and they have about

1 the, the filing, and I could do that at the appropriate
2 time.

3 Our view is that the only reason you wouldn't
4 take action today is because of the merger. Otherwise, we
5 just would come here and we would say, you know, this
6 number, this number, this number is too high. You know,
7 we think you should adjust these, and hoping that you take
8 action and adjust those down issue -- what we would
9 consider to be a more reasonable PAA. Then we would sit
10 back and decide, okay, do we ask for a hearing on that
11 based on the modifications that you have made?

12 I can't sit here and say to you today that, that
13 if you vote this out, that we'll ask for a hearing. But
14 it's, it's pretty close to everything the company has
15 asked for, and we wouldn't have intervened had we not felt
16 like there was a problem with 9.9. And 8.5 is pretty
17 close to that, but I still can't say to you definitively
18 we would ask for a hearing. We do think it's still too
19 high.

20 **COMMISSIONER ARGENZIANO:** Okay. So then if we
21 come back after lunch, let's put the merger on the side --

22 **MR. REHWINKEL:** Okay.

23 **COMMISSIONER ARGENZIANO:** -- even though I see
24 that's a possibility and what could happen down the road,
25 and then I will ask staff to give me what happens if the

1 merger does take place, to spell it out for me. And then,
2 then I want to know with the merger aside what the
3 problems OPC has with moving forward with what's
4 currently in front of us.

5 **MR. REHWINKEL:** Fair enough. I was going to be
6 prepared or we were going to be prepared to deal with
7 that, deal with that until the merger came about and that
8 changed our focus entirely. But I can, I can go through
9 that to the best of my ability.

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

11 **COMMISSIONER EDGAR:** Thank you. Anything
12 further at this point, Commissioners? Okay. I am hungry.
13 I'm suspecting that perhaps there are others who might be.
14 So I would ask that we go on lunch break. Commissioners,
15 does 1:30 work?

16 **CHAIRMAN CARTER:** That works for me.

17 **COMMISSIONER EDGAR:** Okay. I think I'm seeing
18 nods, so we will be on break until 1:30. Thank you.

19 (Recess taken.)

20 We will go back on the record, coming back after
21 lunch break. I think where we left off is we had posed a
22 variety of questions and had asked our staff to give some
23 additional thought to them. Questions that were pending
24 in my mind include asking our staff to respond to the
25 requirement, if indeed there is one, under the statute to

1 act within a time frame when a petition for rate relief is
2 pending, protections to the consumers and ratepayers on a
3 go-forward basis, if indeed the Commission were to move
4 forward today with the matter pending before us. And then
5 also I believe there were some questions about the status
6 of the test year information that is a basis for a number
7 of the issues that are before us. So I'd like to ask our
8 staff to respond to those, and then, Commissioners, we'll
9 see if I've missed anything or if there is something that
10 you would like to add.

11 **MR. HORTON:** Madam Chairman, could I make one
12 clarification before we start?

13 **COMMISSIONER EDGAR:** Mr. Horton.

14 **MR. HORTON:** You know, we've been discussing the
15 merger and the issues with the merger and we still believe
16 that that's not part of this case, but I don't want the
17 Commissioners or OPC or anybody to think that as that
18 merger goes along we will continue to keep folks advised
19 of the status of the merger in the process. We've always
20 done that. So I don't want anything that we've said this
21 morning to suggest that we would not. We, we certainly
22 will. We don't think it's part of the rate case, but we
23 will certainly work in that respect.

24 And at the appropriate time we wanted to respond
25 to some, some items with respect to the Interrogatory 23,

1 so at the appropriate time I'd like to have that
2 opportunity.

3 **COMMISSIONER EDGAR:** Okay. Thank you,
4 Mr. Horton. And we will come back to you for that here
5 shortly.

6 I've posed some questions to our staff that,
7 like I said, I think is a little bit of a recap of where
8 we left off. And I guess I'll ask who would like to jump
9 in at this point.

10 Mr. Imhof, thank you.

11 **MR. IMHOF:** Thank you. Booter Imhof with the
12 legal staff.

13 Madam Chair, Commissioners, I want to make some
14 comments on the procedure before us. I believe that the
15 Commission at this time can move forward with addressing
16 the recommendations of staff and make your decisions
17 regarding those staff recommendations.

18 The parties would be able to protest the
19 provisions under Section 366.06(4). And if they do not
20 agree with the decisions, then they can request a hearing
21 on those matters. That, that section that I just
22 referenced envisions a decision within five months of
23 filing, and that deadline is upcoming on May 18th. These
24 provisions I understand were put in the statutes to
25 protect against regulatory lag for the Commission.

1 I want to note that the utility should be
2 allowed to earn a fair return on their investment and we
3 need good reasons for not granting the rate request. I
4 would recommend at this time that you move forward and act
5 on the staff's recommendations.

6 You also had a question on the burden. We
7 discussed that. And the burden, the initial burden is on
8 the company in a rate case for any rate increase. The
9 burden would be initially on the Commission to show that
10 they believe the company is, is overearning in any
11 overearnings case, but we've always believed that the
12 ultimate burden falls on the utility to justify its rates.

13 And at this time I'd like to turn it over with
14 your permission, Madam Chair, to Mr. Devlin for some
15 comments on the procedure including protections for the
16 utility and the consumers.

17 **COMMISSIONER EDGAR:** Okay. Thank you.

18 Mr. Devlin, I think that leaves us from my
19 questions, and then we'll see if there's others as to
20 again the protections to the consumers if indeed we were
21 to go forward today. And then I'd also like to ask you
22 also to address the other in my mind related question as
23 to the status of the information based upon the test year
24 that is pending before us.

25 **MR. DEVLIN:** Thank you, Madam Chair. And I

1 believe there's also, there was a question on the table
2 about the anticipated effects of the merger, so I'll try
3 to be brief in all three of those areas.

4 **COMMISSIONER EDGAR:** Thank you.

5 **MR. DEVLIN:** The last area I may defer to
6 Mr. Prestwood a little bit.

7 With respect to the anticipated effects of the
8 merger, there's two general areas that we usually see
9 impact, and one is in the corporate area. Corporate
10 savings usually result from a merger in the executive, the
11 accounting, the legal, the billing and collecting, so you
12 would expect to see cost savings with respect to a merger.
13 And another area is the capital structure. Right now
14 we're looking at an FPUC, and this does get to the test
15 period issue a little bit, we're looking at an FPUC
16 capital structure. And, again, I'm just anticipating if
17 the merger goes through, we would not be looking at an
18 FPUC capital structure. We'd be looking at a Chesapeake
19 type or parent type capital structure. Those are two
20 major effects.

21 Rates, no, rates would not change. The
22 Commission has complete authority. I know we've seen in
23 the press clippings that there's a desire of the company
24 to integrate rates, but they could only do that with
25 Commission approval.

1 I think it's also worthy to note that in the
2 event the merger is consummated, we won't know or be able
3 to ascertain the effects immediately. It takes time. You
4 know, it takes time to close down offices for instance or
5 reassign or redeploy staff. So that I think is relevant
6 and what I'm going to propose as a consumer safeguard
7 because we won't know for some period of time what the
8 full effect, if there is a merger, what it would be.

9 With respect to consumer safeguards, we have
10 two. One I mentioned before lunch and I'm just going to
11 expand on that a little bit, and it would really be a
12 hope, if you will, for the company and parties to agree to
13 hold money subject to refund -- and I'm, I would suggest
14 2010 just to take the uncertainty over the period of
15 time -- for one year and use the midpoint rate of return
16 as a benchmark to ascertain whether there should be any
17 refunds or other adjustments deemed appropriate by the
18 Commission. For instance, the Commission may deem that
19 it'd be a better use of the money to replenish the storm
20 reserve. So leave that open.

21 We'd also commit, and we've done this fairly
22 successfully with FPUC in the past, but I have to agree
23 usually it's at the top of the range, not the midpoint.
24 So we might have to have some discussion about that
25 difference. That may be a major difference.

1 The other area we would commit to do is a
2 thorough financial investigation. Like I said earlier, we
3 won't know right away what the impact of the merger would
4 be. So after that 2010, in the event there is a merger,
5 we would commit to a thorough financial investigation
6 including an audit and almost like a mini rate case, if
7 you will, and then come back to the Commission quite
8 frankly in 2011.

9 **COMMISSIONER ARGENZIANO:** I have a question.

10 **COMMISSIONER EDGAR:** Mr. Devlin, just a moment.

11 Commissioner Argenziano.

12 **COMMISSIONER ARGENZIANO:** Thank you. If that
13 were the case and, you know, we move forward and you were
14 diligently looking at the merger and if there were, let's
15 see, if there were more savings realized or more
16 reductions and just differences of what we contemplated
17 today -- how do I ask this? Let me -- let's say you
18 didn't recognize those though but OPC came back and saw
19 something. And as I think they mentioned earlier, very
20 seldom after the fact does OPC ever win on final rates or
21 I should say ever, ever win or get final reductions or get
22 reductions on final rates. Can you point to times when
23 they have?

24 **MR. DEVLIN:** Yes, Commissioner. I guess I
25 respectfully disagree with OPC. And I don't have all the

1 information in front of me. I've got it committed
2 somewhat to memory. But there have been many cases in the
3 past with electric, I'm not so sure with gas companies,
4 but electric and telephone companies where at OPC's
5 initiative or the Commission's initiative we've embarked
6 upon proceedings to reduce rates and get refunds.

7 **COMMISSIONER ARGENZIANO:** You say there's many
8 cases on final rates?

9 **MR. DEVLIN:** Yes, ma'am.

10 **COMMISSIONER ARGENZIANO:** Okay. I'd like to see
11 some of those at some point.

12 **MR. DEVLIN:** Okay.

13 **COMMISSIONER ARGENZIANO:** Just because, because
14 I'm the one sitting here hearing here and hearing here and
15 I'd actually like to see them. So that would be
16 beneficial rather than just hearing one side and the other
17 side, I think I'd like to see that proof so I know which
18 side may be exaggerating and which one may not be.

19 **MR. DEVLIN:** Yes, ma'am.

20 **COMMISSIONER ARGENZIANO:** Okay. Thank you. And
21 I'll have some other questions later.

22 **MR. DEVLIN:** And the third area that Chairman
23 Edgar spoke to was the appropriateness of the test period.
24 I spoke to it a little bit earlier. I probably don't have
25 anything additional to offer, but I'm going to turn this

1 over to Mr. Prestwood. He may have something additional
2 to offer.

3 **MR. PRESTWOOD:** Well, yes. Excuse me. In this
4 case the company requested and we have agreed to use the
5 2009 as the test year. And typically we do not go beyond
6 that test year in making adjustments without -- you don't
7 do that unless you're going to reforecast everything
8 that's in that test year. I mean, there have been items
9 that have been brought to our attention that have changed,
10 you know, on a go-forward basis. But, again, to reach out
11 and pick out some of the changes that may or may not
12 happen because there may or may not be a merger without
13 also looking at, you know, growth in the capital program,
14 growth in the number of employees, for other reasons, cost
15 increases, cost decreases other than merger related
16 activities, is it really requires a total reforecast. So
17 in this case we've stuck to the calendar year 2009, tried
18 to do a fairly thorough review of that year. I don't see
19 from what I've heard this morning about the potential
20 merger that much would be changing actually in the year
21 2009. Even if they're successful in being able to close
22 that merger by the end of 2009, it's like Mr. Devlin said,
23 there's not -- it takes time for changes to happen. They
24 don't happen overnight.

25 Also, as far as merging operations or major changes

1 like that, the Commission is going to be in full control of
2 that. They're going to have a say-so about what happens as far
3 as merging rates or any of those kinds of items. So I still
4 think our test year is very valid. It's representative of the
5 future. And then adding on top of that a commitment to do a
6 thorough review on the year following the test year, 2010, kind
7 of ties those two neatly together and protects both the company
8 and the consumer.

9 **COMMISSIONER EDGAR:** Commissioner Argenziano.

10 **COMMISSIONER ARGENZIANO:** These are probably
11 questions for OPC because I've heard about some safeguards
12 and I'd like to see if OPC agrees with those safeguards or
13 what you see may not be safeguards.

14 And then for staff after that I would like to
15 just ask another question or two after OPC answers.

16 **MR. REHWINKEL:** Commissioner Argenziano, with
17 respect to the safeguards that I've heard about today, I
18 do not think, first of all, that the statute -- I think
19 Mr. Devlin used the term "hope." I think the statute does
20 not authorize the Commission to require money to be put
21 subject to refund. So an agreement about that could be a
22 safeguard, but, again, what's the trigger point for it?

23 I do take issue with the characterization there
24 have been many occasions where money has been put subject
25 to refund in this type of context. Yes, we had times

1 where there were changes in the tax rate where the cost of
2 equity dropped precipitously and the Commission did
3 wholesale, industrywide, company by company holding
4 revenue subject to refund and there was various outcomes
5 there. A reverse make whole rate case with money being
6 put subject to refund in my 25 years is a very hard thing
7 to do, and I'm not sure we ever successfully did it
8 outside of some sort of a stipulation or a settlement.

9 I don't -- I'm not saying it can't be done, but
10 I say it is difficult to do where you can go and capture
11 the entire range of costs, cost of capital, earnings,
12 revenue requirement impacts. Usually what has happened is
13 money has been put subject to refund, a narrow type of
14 cost like a change in the federal income tax rate or a
15 change in the cost of equity. I'm not saying it hasn't
16 been done, but it's hard to do and it's not necessarily
17 easy or something that we feel like we can rely upon.

18 We continue -- and I just cannot get away from
19 this, because everyone wants to refer to the merger in a
20 speculative manner -- there is a definitive agreement on
21 file with the Securities and Exchange Commission. That's
22 the only thing that's, that's really reliable here. The
23 MFRs are what's speculative in our opinion. The MFRs are,
24 are projections and they are impeached not only by the
25 merger but by this interrogatory that is, that I've been

1 reading from today. So we do have serious doubts about
2 whether these things that are being suggested would truly
3 become a protection for the customers when they have to
4 reach in their pockets today and pay out -- if you vote
5 out a PAA in this case, that they would have to, and it
6 doesn't get protested, they would have to start paying now
7 and only hope that they could capture the savings that
8 would occur --

9 (Technical difficulties with sound system.)

10 **COMMISSIONER ARGENZIANO:** Excuse me. I don't
11 know if our Chairman knows --

12 **COMMISSIONER EDGAR:** Yeah. That's right.
13 Chairman Carter, are you with us? And I'll reference
14 again those technical difficulties that we were having
15 this morning. So our staff is going to continue to work
16 on that. And as I said this morning, just bear with us.

17 **COMMISSIONER ARGENZIANO:** Did he hear you?

18 **COMMISSIONER EDGAR:** Chairman Carter?

19 **COMMISSIONER ARGENZIANO:** I don't think he hears
20 us.

21 **COMMISSIONER EDGAR:** Yeah. As I said this
22 morning, my understanding was that he could hear us but we
23 could not hear him and I think that that may be where
24 we're at. But Chris is working on it. And my apologies
25 on behalf of everybody and let's move forward.

1 Mr. Rehwinkel.

2 **MR. REHWINKEL:** I think we just have serious
3 reservations about whether there can be put in place
4 protections now that would be effective for the customers
5 when they have to pay up-front. I think I'll just stop
6 there.

7 **COMMISSIONER EDGAR:** Okay. Commissioner.

8 **COMMISSIONER ARGENZIANO:** Yes. To staff, I want
9 to lay out a scenario both ways because I'm trying to get
10 to the nut of all of this. And if we were to move forward
11 today, let's say if we didn't move forward today because
12 there is a, somewhat of an agreement out there about a
13 possible merger coming, if we didn't move today and waited
14 to see if there was a merger in the next few months or so,
15 how, how much money would it cost the ratepayers? And I
16 don't mean exactly. What I'm trying to figure out is
17 different scenarios we take today, what will it cost the
18 ratepayer after, one, to come back for a protest; two,
19 maybe to go to a hearing; three, if we didn't do anything
20 today or said no today and waited to see if there was a
21 merger, I don't know how long you'd wait and if OPC had to
22 come back later on behalf of the ratepayer. I'm trying to
23 figure out the cost scenarios. Because while we're
24 talking about safeguards, I want to know if it costs a lot
25 more to not maybe be, use caution today knowing there is

1 an agreement. I mean, the company has kind of announced a
2 possible merger and it's probable with an agreement. We
3 don't know which way it's going to go, but you could lean
4 towards probable or possible. And if we were to move
5 forward knowing that that, they've waved the flag and
6 said, hey, things could change, what is the outcome
7 financially? What could it cost the ratepayer to take
8 different alternatives today: One alternative being we
9 say no and wait and see if there's a merger; two, if OPC
10 were to file a protest; and, three, if we went to hearing?
11 I'm trying to figure out the cost to the ratepayer to go
12 each, in each direction.

13 **MR. DEVLIN:** I'll try, Commissioner Argenziano.
14 The first question, the first scenario is to say no.
15 There's probably some legal, perhaps some legal
16 impediments to that. But let's say you did say no, then I
17 could see a scenario where they would file for a full rate
18 case and not use the PAA process. And, of course, that
19 would take some eight months, maybe there would be some
20 interim involved. And I'm speculating again. I'm not
21 sure what the outcomes would be, but I think the company
22 would probably take some action if the answer was no.

23 If there was a protest, of course, that just,
24 that costs money for everybody to process, you know, a
25 full case. So, again, it would be hard, it would be hard

1 to determine exactly what that impact would be, but there
2 would be rate case expense if there's a protest.

3 **COMMISSIONER ARGENZIANO:** And the likelihood,
4 and I'm not going to speak for OPC, but for a small rate
5 increase to, even if OPC felt they were right, and I'm not
6 saying they're right or wrong, the likelihood of filing
7 for a protest because of a small increase would be
8 probably not likely because for a small increase you might
9 say it may not be worth the entire cost to the ratepayer.
10 Thus, and, again, I'm not saying what I believe, but they
11 could be right but not want to move forward because it
12 would cost more than the rate increase. So what I'm
13 thinking is if they were right and there is a merger and
14 things change, then possibly they didn't protest simply
15 because the rate increase was such a small one, even
16 though they could have been right. So it's -- I'm not
17 sure that that entire scenario is the right thing to do.
18 If it's right to do, you should do it. And even if it may
19 cost, the costs may be higher later. But -- so, and I
20 think -- I know you can't give it to me in a nutshell, but
21 really if -- and you just said if we didn't move today,
22 the company could take legal action and go to a full rate
23 case. But in a full rate case, of course that costs a lot
24 more for the, for the ratepayer but it gets out a lot of
25 information, doesn't it?

1 **MR. DEVLIN:** That's true, Commissioner
2 Argenziano. But, of course, that's the purpose of the PAA
3 is to sort of streamline the process and cut down on rate
4 case costs. It works in many cases, especially in the
5 water and wastewater industry. It's not used as much in
6 the gas industry. It's just a tradeoff.

7 But I think one point that I cannot overstress
8 is that if there is a profound effect of the merger, we
9 won't see it, the company won't see it for some period of
10 time, a year or so. And that, that's why I think our
11 safeguard is still a legitimate one, that we will look at
12 2010 and commit to you and commit to the Commission to
13 come back after a thorough audit and review of the
14 effects, take whatever, you know, recommend whatever
15 action necessary at that time.

16 **COMMISSIONER ARGENZIANO:** Okay. And to that,
17 OPC, can you answer that for me?

18 **MR. REHWINKEL:** Madam Commissioner, I
19 strenuously disagree with my good friend Mr. Devlin. I --
20 the documents that I handed out that they filed with the
21 Securities and Exchange Commission describes their
22 definitive merger agreement say that they're going to
23 start putting these cost savings into effect in 2010. And
24 that coupled with Interrogatory 23 that talks about the
25 cost savings that they, measures that they put in in

1 February of 2009 tell me that they are making as many
2 strides as they can to cut costs and achieve what it says
3 on the last page of my handout, significant synergies
4 savings potential. This is what this merger is all about,
5 and it's a good thing. This is what business should be
6 doing. They're saving money for their shareholders and
7 for the ratepayers.

8 **COMMISSIONER ARGENZIANO:** Yeah. Sure. And I
9 agree. Now, staff, it's there. Tell me what you get from
10 that. Because you're telling me they probably won't see
11 anything for a number of years, but here it is,
12 significant savings, which is great, but it should be
13 taken into account.

14 **MR. DEVLIN:** Well, again, all I can say is,
15 again, that will take time if it does happen. I still
16 don't believe it's a for sure thing. I've seen those kind
17 of documents with other anticipated mergers. The parties
18 always try to pump it up as a great thing and still it
19 doesn't materialize.

20 **COMMISSIONER ARGENZIANO:** Right. Okay. And it
21 could -- it may not materialize and it may. But since
22 it's in front of me today, it's something that I have to
23 consider.

24 **MR. DEVLIN:** I understand.

25 **COMMISSIONER ARGENZIANO:** And it's hard to not

1 consider that right now when I'm looking at it and the
2 company is feeling that that's what's going to happen and
3 then what do we do in 2010.

4 **MR. PRESTWOOD:** Even if it was a positive thing
5 and it was going to materialize, the impact on 2009 though
6 is still minimal, if not zero, and that is the test year
7 in this case. And so again I go back to we've adjusted
8 the test year. It has no impact on the test year or
9 extremely minimal effect. If you want to look at 2010,
10 that requires a full reforecast of the whole year looking
11 at everything, not just the merger effects.

12 **COMMISSIONER ARGENZIANO:** And, Madam Chair, if I
13 could go to OPC again on that because that seems to be the
14 only way I can extrapolate.

15 **MR. REHWINKEL:** You know --

16 **COMMISSIONER EDGAR:** Just if I may,
17 Commissioner, I think that I saw that our staff would like
18 to expand on their response a little bit, and I'd like to
19 give you and Mr. Rehwinkel the opportunity to refer to the
20 full answer, I think. So let's go to our staff and then
21 Mr. Rehwinkel. And, Mr. Horton, I know you had asked to
22 jump in as well. So let's kind of go in that order and
23 see where that takes us.

24 **MR. HILL:** Thank you. What I was thinking, and
25 I think we're all thinking the same thing, maybe not, at

1 least staff, is that should the decision make, should the
2 Commission make a decision today, we're assuming there is
3 no merger. That's what's in front of you, a test year
4 that doesn't include one. But it would be contingent, if
5 you will, that if the merger takes place, the rate
6 increase that you granted is now subject to refund. And I
7 think what Mr. Devlin said and what we agreed was at that
8 point we will use 2010 since that's when all of this
9 happens as our new, if you will, test year to look at and
10 make adjustments that came from that merger and that
11 refunds would have to take place and rates would have to
12 be set based on that system merger did happen. If it
13 didn't happen, then you've made a decision here today and
14 it may or may not be protested. But if the merger does
15 happen, then you have vehicles in place, you've, you've
16 made your decision contingent that now all these monies
17 will be subject to refund and staff is going to do a full
18 investigation and come back to you, and I'm sure that
19 Mr. Rehwinkel and the rest of OPC will be involved in
20 that. So that's, that's what we had envisioned as
21 protection for the consumers.

22 **COMMISSIONER ARGENZIANO:** And I got that several
23 times.

24 **MR. HILL:** Okay. I'm sorry.

25 **COMMISSIONER ARGENZIANO:** I'm trying to go

1 beyond that. I'm trying -- that's why I'm going back and
2 forth because I realize here that I need to hear both
3 sides because then I can take from each side what I think
4 is reasonable and not.

5 And before we get to Mr. Rehwinkel, I know that
6 the test year was done assuming there was no merger. But
7 now let's say you knew -- you had these documents before
8 you a few weeks ago. Would you have considered something
9 different? Would you have said, hey, there's a red flag
10 here, there is an agreement, it could happen?

11 **MR. DEVLIN:** Well, Commissioner Argenziano, the
12 only thing I can say on that point is so even if it's
13 speculative whether the merger will take place or not,
14 we've been saying that, but even if we knew it was going
15 to take place, you know, the impact of that is very
16 speculative. It would be very hard to predict I think
17 because we're talking about over six months from now and
18 what office closings may take place, what employees may
19 get redeployed, what activities, billing, collecting may
20 get shifted to, you know, Chesapeake. You know, it's just
21 very difficult.

22 **COMMISSIONER ARGENZIANO:** But -- and I think
23 that's true. But the indicators are there. They're hard
24 not to look at when you're reading it from the company
25 saying these things are going to happen and you go, wow,

1 that will change things. And they could be substantial.
2 I don't know. I don't think any one of us know. So it's
3 hard for me to sit here and say, well, you know, it may
4 not be anything when it's there right from the company.

5 **MR. DEVLIN:** I understand.

6 **MR. REHWINKEL:** In that regard I take you back
7 to why would the Commission give this company or authorize
8 them rates based on \$400,000 of audit fees when they're
9 saying here that they're going to cut that? Why would you
10 do that? That does not make sense. I understand that we
11 want to say we're going to stay within the parameters of
12 the 2009 test year, but that is ignoring reality.

13 You know, on Page 31 of the recommendation we
14 have suggested or we would suggest that the CPI that's
15 negative for 2009 should be used. But the staff is
16 saying, no, it's going to be positive in 2010 and down the
17 road. So they're going outside the test year right there.
18 That's, that's inconsistent with this concept of staying
19 within 2009. And our point is why do it? And that's just
20 one example. Why do it if you know it's going to go away?

21 **COMMISSIONER ARGENZIANO:** Well, then what, what
22 about staff's point that they are subject to refund? If
23 you could go there again.

24 **MR. REHWINKEL:** Mr. Devlin remembers these days.
25 There was a telephone company that had an earnings

1 agreement in place, and when it came time to true it up to
2 see if the customers got their money back, we found
3 documents that said spend everything you can, trim the
4 bushes, replace every exit light in all the buildings, do
5 anything you can to avoid spending -- sending money back
6 to the customers. That's a company I'm very familiar
7 with. But it happened in the 1980s.

8 **COMMISSIONER ARGENZIANO:** Oh, yes. Okay. Now I
9 get it.

10 (Laughter.)

11 **MR. REHWINKEL:** But that's -- and I'm not saying
12 that Chesapeake would do that, but there are certain,
13 there are certain things that can happen. Once you, once
14 the barnyard fowl get out, I know we're not supposed to
15 talk about animals, but get out of the gate --

16 **COMMISSIONER ARGENZIANO:** I got it. I have one
17 other question.

18 **MR. REHWINKEL:** -- is that, is that you lose
19 control over things because there's, you would not be
20 putting in parameters of benchmarks. Don't spend above
21 these levels so we can test whether the merger has done
22 things. People would have the ability to save the money
23 on the shareholder's side.

24 **COMMISSIONER ARGENZIANO:** Do you think a hearing
25 is the way we should go?

1 **MR. REHWINKEL:** I personally think that this,
2 this case probably deserves a little bit more
3 off-the-record discussion. I don't think a hearing is, is
4 necessarily the way to go, but we would have to make some
5 determinations. We, we talked about it at lunch. This
6 merger is such an 800-pound gorilla that we really can't
7 look at it any other way, and we would like to have that
8 opportunity. But this came upon us at the very last
9 minute. It came upon your staff, it came upon you. It
10 even came upon the company personnel that are filed
11 (phonetic) in the case.

12 **COMMISSIONER ARGENZIANO:** Okay. Can I rephrase
13 the question?

14 **COMMISSIONER EDGAR:** Yes. But then I have some
15 questions, and I think Commissioner Skop does as well and
16 Commissioner McMurrian as well.

17 **COMMISSIONER ARGENZIANO:** Okay. I'll get there,
18 but I'm going to ask all the questions I need to ask.
19 Otherwise we're going to go issue by issue and I'm going
20 to have all those answers to the questions that I need.
21 And I'd ask for respect. I will let up and then keep
22 asking questions after some other Commissioners do.

23 But to rephrase the question that I, that I have
24 with me right now, I had asked you if you'd rather go to a
25 hearing. If this Commission majority decides to vote this

1 out today, would you rather have a hearing or vote it out
2 the way it is today? Which one do you think really vets
3 the process better? And I know the cost, I want to look
4 at the cost too to the ratepayer.

5 **MR. REHWINKEL:** Well, legally I don't think you
6 can set it for hearing. I don't think you can do that.
7 And I can, I cannot answer what the office will do based
8 on the situation here. I think a hearing is probably the
9 way to do it, but I think a hearing with refiled proof by
10 the company is the only way to do it. I don't know how
11 you get there. But this, this is not the way to do it
12 with the PAA with this thing looming.

13 **COMMISSIONER ARGENZIANO:** Thank you.

14 **COMMISSIONER EDGAR:** Mr. Rehwinkel, when did
15 your office intervene in this case?

16 **MR. REHWINKEL:** I think it was sometime in
17 January, Commissioner, but I, I don't recall. I don't
18 know if the staff rec --

19 **MR. JAEGER:** The order granting intervention was
20 issued in January, late January. I think it was about a
21 week before that that they petitioned to intervene.

22 **COMMISSIONER EDGAR:** All right. Thank you.
23 Commissioner Skop, I think you were wanting to ask some
24 questions. Is that still true?

25 **COMMISSIONER SKOP:** Yes. Thank you, Madam

1 Chair.

2 I want to go back to a comment made by Mr. Hill
3 that I somewhat disagreed with. He mentioned as part of
4 the consumer protection measure that, that the rate
5 increase, if any, were granted could be held subject to
6 refund and we would look at, you know, what cost savings
7 and such resulted from the merger in 2010. And the
8 problem I see with that just based on being involved in
9 mergers in the corporate world, that operational
10 efficiencies and the cost savings resultant from a merger
11 may not be readily apparent in a defined period of time.
12 As a matter of fact, if I knew I was looking only at 2010
13 as my benchmark to show those efficiencies, I might not
14 want to show them. So, again, that's something that can
15 be, for lack of a better word, timed accordingly if it
16 needed to to maybe not have full transparency.

17 So the problem I see with that is that if the
18 Commission were to move forward today on the PAA action
19 and leave it to the parties as to whether they wish to
20 protest the decision, then certainly if a merger were to
21 occur and that our staff or OPC considered that there were
22 substantial operational efficiencies and cost savings that
23 needed to be recaptured for the benefit of the consumers,
24 then that might be the appropriate time to have that full
25 hearing, to have full testimony, to discuss openly what

1 efficiency should be apparent from the merged companies,
2 what appropriate capital structure would result from the
3 merger, what cost savings. I think some of the
4 operational efficiencies highlighted in the document is
5 utility billing system facilities and related costs, other
6 operating efficiencies. Again, I don't know what those
7 are, but if I knew that I was only solely looking at 2010
8 and my merger was going to close in the end of 2009, I
9 might not be so quick to avail myself of all those
10 efficiencies if I knew the Commission was watching.

11 So, again, I see some, some, I guess I see some,
12 some issues with the manner in which it was explained. I
13 mean, certainly it could work like that. But, again, I
14 think that subject to refund is a great thing, but again
15 that relies on the fact that you're going to discover
16 those operational efficiencies and that they don't
17 manifest themselves in a timely manner in accordance to
18 your surveillance period. You're not going to be able to
19 pick up on those.

20 So, again, I just wanted to kind of point that
21 out that although that's generally speaking a good thing,
22 I don't think it's bulletproof in terms of what I've seen
23 in the corporate world.

24 **COMMISSIONER EDGAR:** Commissioner McMurrian.

25 **COMMISSIONER McMURRIAN:** Thank you. And this

1 goes to the process and all that we're talking about too.
2 In a PAA we're not bound by a record, not that I'm telling
3 anyone here anything they don't already know, but I guess
4 I feel like we can't go straight to a hearing legally as
5 Mr. Rehwinkel said, we don't necessarily want to force a
6 protest by just voting out what we have in a staff rec
7 because there will be substantial costs even if that's the
8 best way to go in the end. In the end we might ultimately
9 need the hearing to flesh all that out the best way.

10 But given it's PAA, it's perhaps, and I guess
11 I'll ask this of staff and Mr. Rehwinkel and Mr. Horton,
12 is it better just to trudge through the PAA issues and
13 whenever you get to an issue that perhaps OPC thinks might
14 be affected by merger issues, we talk about it? We don't
15 have to have a full record.

16 In other words, an example I was thinking about,
17 if there are new positions proposed in the rate case and
18 there are, and perhaps Commissioners may be on the fence
19 about whether the position should be in or not, and if the
20 OPC could make a case that these are the types of things
21 that these positions may never materialize partly because
22 of the merger, I think that that's something in a PAA that
23 a Commissioner could take into account in deciding whether
24 or not they wanted those positions to be included in that
25 rate case and that you -- it's just a judgment call and

1 that we do the best we can with the information we have
2 and then leave it to the parties to protest specific
3 issues or not.

4 I'm just not sure where else -- I under -- I
5 hear what OPC is saying about just wiping it clean, but I
6 think we're going to be faced -- one, I'm not sure if
7 legally we should do that and, two, I think we'll be faced
8 with the company having the opportunity to refile
9 everything over anyway. It just seems like there's no way
10 to get around going through the issues we have before us,
11 or at least that's where I feel like I am.

12 **COMMISSIONER EDGAR:** I tend to agree.

13 Commissioner Argenziano, did you say you had
14 additional questions?

15 **COMMISSIONER ARGENZIANO:** Yes, I do. And of
16 course they'll be ongoing if we're going to flush through
17 everything because I need to do that. But I would like to
18 know if OPC has a position on Commissioner McMurrian's
19 recommendation or suggestion on moving through the PAA.

20 **MR. REHWINKEL:** The only way I can say this is
21 that we got -- we learned with the rest of the world about
22 the merger probably the day after it was announced. We
23 haven't done any discovery on it. I went on the SEC
24 website last night and got everything I could find, read
25 that definitive merger agreement, which is very, very

1 difficult to do, but that's all the information we have.
2 I don't have any basis. I feel like I'm standing on
3 Jell-o because I don't know whether -- what's, what's kind
4 of been discussed in the recommendation are vacant
5 positions, but we know how ruthless it can be in the
6 business world when you have combinations, you can have
7 filled positions that get consolidated and eliminated. I
8 don't know what, what's going to be there. I don't know
9 what office buildings they're going to sell or abandon and
10 what's going to get moved to Delaware and what's going to
11 get consolidated into, you know, wherever Chesapeake's
12 buildings are, whoever's got the nicest building. I just
13 don't know and I don't know that the company knows that
14 right now. But I think that those are the reasons you
15 merge because you want to achieve synergies. We just
16 don't know.

17 You know, I could go -- the only thing I could
18 do is go through the MFR G schedule and show you the types
19 of categories and the balances in them that are, that are
20 discussed in the SEC document that I passed out, but I
21 don't know the degree to which they would, they would
22 adjust those accounts. It's probably not even fair to the
23 company because we would all be speculating. And that's
24 my point from the beginning of the day is I think all you
25 would be doing would be speculating. But you're

1 speculating on the MFRs because they have been impeached.
2 That's, that's our position.

3 **COMMISSIONER EDGAR:** Mr. Horton, you had wanted
4 to jump in and I did not come back to you. I apologize
5 for that. I don't know if this is the right time but this
6 is a time.

7 **MR. HORTON:** Yeah. Several times. I think I'm
8 going to ask Ms. Martin if she'll respond to some of this.

9 **MS. MARTIN:** First I'd kind of like to just
10 clarify again that we still feel 2009 is an appropriate
11 test year. Whether this merger goes through or doesn't go
12 through, 2009 is, is fairly representative of what we
13 expect in our test year.

14 Kind of a point to make, Mr. Rehwinkel was
15 talking about this document and he kept saying that it
16 talks about savings in 2010. It doesn't. If you read
17 that document on Page 15, it says that the merger is
18 expected to be earnings neutral or slightly accretive in
19 2010. So even that own document that he's referencing
20 doesn't even say what he says it's saying.

21 But regardless of that fact, what still is
22 appropriate is our company does expect that our 2009 test
23 year and the expenses that we expect to incur are
24 reflective of what we've put in this MFR and we need the
25 rate recovery for those expenditures. The audit fees that

1 are increasing, we are going to incur those expenses in
2 2009 whether this merger takes place or doesn't take
3 place. And he keeps trying to kind of twist and say our
4 response to Number 23 of his interrogatory talks about
5 merger savings. I can tell you because I'm the one that
6 responded to it, it does not talk about the merger savings
7 at all. It has nothing to do with the, with the merger
8 because I can tell you from our company's standpoint we
9 have not even identified if there are going to be those
10 savings. That's another point is that the shareholders on
11 both sides, our company as well as Chesapeake, have to
12 approve this merger.

13 It is completely speculative and we can't go
14 forward with what will happen, what might happen. We have
15 to continue and operate our company to the best that we
16 can as an ongoing concern. That's what's best for the
17 customers as well. And so I would say that with all of
18 that information that the MFRs do reflect what we expect
19 in 2009 and it is appropriate to move forward as far as a
20 rate proceeding.

21 **COMMISSIONER EDGAR:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

23 Just going back to Mr. Rehwinkel's points,
24 again, I think that he's being pressed to give an answer
25 and, you know, I'm trying to get the same answers too. So

1 I'm going to try and ask the question very succinctly
2 because, again, part of me having reflected upon it over
3 lunch would think that just move forward with the PAA and
4 leave it to the parties as to whether they want to protest
5 and then deal with the merger should it become an issue on
6 a forward-going basis.

7 But to Mr. Rehwinkel's point, assuming for the
8 sake of discussion that the merger does not close in the
9 fourth quarter as is stated in this, this document that
10 you provided, would that change your viewpoint as to
11 whether the Commission should move forward with the PAA
12 before us today, noting that the 2009 test year would not
13 be affected by the merger?

14 **MR. REHWINKEL:** If I knew it wasn't, if I
15 definitively knew that it wasn't, you know, I would have a
16 different set of concerns about this. But that would not
17 -- I would not be here asking you not to vote a PAA out
18 that gives them rate relief. Does that -- that's the best
19 I can do because I think it will.

20 **COMMISSIONER SKOP:** Well, again, I'm cognizant
21 as soon as the merger announcement came out that took the,
22 you know, the liberty to -- I don't know how I received it
23 but it's in the docket. But I discussed it with staff
24 because, you know, I have some concerns to the extent that
25 some of the decisions we're being called upon to make

1 today may materially change in the future, whether it be
2 equity ratio or a host of things. So, again, it's not a
3 concern that I'm casting aside blindly. I'm very
4 cognizant of the concern. But, again, I'm trying to deal
5 with the PAA, the case that is before us. Certainly some
6 could view the announcement as a material change in
7 circumstance. I think that what we're struggling with as
8 a Commission is to determine whether it's safe to move
9 forward cautiously to scrub each line item of the PAA and
10 give it a thorough discussion and move forward. And then
11 should the merger be consummated and those efficiencies in
12 corporate overhead reductions and operational efficiencies
13 manifest themselves, and certainly we would want to avail
14 ourselves of that to bring those cost savings and capture
15 those efficiencies back to the consumer to further reduce
16 their rates.

17 But I guess, you know, I can't predict the
18 future. I know that your concerns are founded. But if,
19 again, the merger doesn't close, then 2009 would seem to
20 me to be an appropriate test year. There may be some
21 externalities that work their way in there.

22 But, secondly, if the merger happens, does not
23 OPC and does not our staff through earnings surveillance,
24 through some other protective measures that have been
25 discussed today have the ability to bring either FPUC or

1 Chesapeake or the merge companies back in here because we
2 certainly regulate them and call for a full-blown rate
3 review hearing, if necessary? Hopefully it would, you
4 know, not arise to that. Maybe, you know, they would
5 just, you know, recognize that these efficiencies need to
6 be passed through. I'm an optimist. You know, when I go
7 fishing, I take a camera and a frying pan. But, you know,
8 I can't predict the future either.

9 I mean, at the appropriate time I'm sure that
10 OPC has the ability to hail somebody in here for a rate
11 case as does our staff. And I'm wondering whether that in
12 itself, being ever cognizant of the fact that we need to
13 diligently scrub these numbers before us today, does not
14 provide adequate protection to the ratepayer such that
15 when this merger occurs and we sense or smell
16 efficiencies, that we can go pursue those.

17 **MR. REHWINKEL:** It's a fair point, Commissioner.
18 We do not believe that the after the fact opportunity to
19 come in for a reverse make whole type rate case is an
20 effective protection mechanism. I mean, what you said
21 about the ability to time the achievement of efficiencies
22 or the manifestation of efficiencies is a concern. The
23 concerns that I expressed about having an overearnings
24 type true-up and the way spending behavior changes is a
25 concern. We do believe -- and Ms. Martin is, Ms. Martin

1 is correct. I did not mean to, if I ever said that the
2 Interrogatory 23 impact was merger related, but I think it
3 is, it is behavior that businesses undertake when they are
4 being looked at. When someone is looking, kicking the
5 tires on the company, they're going to look and see what
6 your income statement and your balance sheet looks like,
7 and I think that's the behavior that is being manifested
8 there. I'm not saying those are efficiencies that would
9 be achieved in the merger, but that is different from
10 what's in the MFRs.

11 **COMMISSIONER SKOP:** I understand. And, I mean,
12 I'm not trying to belabor this to any degree. I mean, I
13 think our staff would share at least some of the concerns
14 because, again, it's been extensively discussed with staff
15 and myself with respect to the equity issuance that we
16 were told was going to occur didn't occur. I mean, that,
17 that, you know, itself lends to some discussion as to why
18 that did not occur and what's the impact on the current
19 case before us today and the future impact. And we'll get
20 to that if we move forward and discuss this PAA. But
21 thank you for that clarification. I appreciate it.

22 **COMMISSIONER EDGAR:** Commissioners, other
23 comments or questions at this time?

24 **CHAIRMAN CARTER:** Madam Chairman.

25 **COMMISSIONER EDGAR:** Commissioner Carter.

1 **CHAIRMAN CARTER:** (Inaudible.) Chris and I were
2 working for a couple of minutes or so, about 20 minutes,
3 to try to get me piped in, and by the time I got piped in,
4 my doctor's office called me. So I apologize to you and
5 my colleagues on that. I'm just having trouble with my
6 phone system today, and so I apologize to you for that.

7 **COMMISSIONER EDGAR:** No apology necessary,
8 Commissioner. We're glad that you're with us, and we're
9 all sorry that we've had some technical difficulties. But
10 as we all know, those are just things we need to work
11 through. So we're glad that you can hear us and that we
12 can hear you.

13 **CHAIRMAN CARTER:** Thank you.

14 **COMMISSIONER EDGAR:** Okay. Commissioners, we
15 have again had long and full discussion and questions, and
16 I'm sure that probably not every question has been
17 answered definitively. Some of them, they probably are
18 not definitive answers, which is part of the reason that,
19 that we sit here as a group of five.

20 Let me just put this out there. I think we have
21 a couple of options. One would be to just -- and nobody
22 groan, okay, let me just talk it through for a moment --
23 would be to defer this item temporarily and go ahead maybe
24 and take up the remaining two while some of this goes
25 through our brain. We do have two other items on our

1 agenda today and we have staff and others probably
2 waiting. So that's just one possibility to maybe clear
3 the cobwebs a little bit and dispose of some other
4 business, recognizing that the day is stretching on and
5 the item before us, as I said earlier, does have over 50
6 individual and specific components. So that would be one
7 option.

8 Another would be to put up some discussion and
9 thoughts as to how we would like to proceed on this item
10 now and then move forward. And there's probably a third,
11 so -- or four or five. So, Commissioners, I welcome your
12 input. Do you have anything you'd like to put out for
13 discussion of the body at this point? Commissioner Skop.

14 **COMMISSIONER SKOP:** Again, I think all those are
15 equally valid options, whether we, you know, temporarily
16 defer this one and go to other items or we can deal with
17 this one directly when it's before us or what have you.

18 I guess my sense, and certainly the views of my
19 colleagues are very important to me because, again, I
20 think this is an issue of first impression before us.
21 Based on reflecting over lunch, listening to the arguments
22 that were made by the parties and then after lunch some of
23 the arguments that were raised by our staff, you know, I
24 feel that we could move forward with the, with addressing
25 this issue before us today, leave it to the parties as to

1 whether they wish to protest the PAA by the Commission. I
2 think that as long as we move forward and scrub the
3 numbers, you know, certainly that would afford or address
4 some of the concerns I've heard from OPC. What I thought
5 I heard Mr. Rehwinkel say earlier was that he would
6 probably protest irrespectively whether it was merger
7 related or not. But I think he receded from that to some
8 degree and stated that in lieu of a full-blown hearing
9 perhaps a thorough vetting or discussion of the PAA items
10 before us might suffice to bring out some of the points he
11 wanted to make.

12 I think that if we do go forward with the PAA,
13 some of the additional protections that were raised by
14 staff may be worthy of further discussion and
15 consideration to the extent that the merger has been
16 announced but not yet consummated. But, again, should
17 that merger go through, I would suspect that we might be
18 in a hearing posture to address and capture some of those
19 operational efficiencies and corporate cost savings that
20 are, that are clearly articulated in documents that have
21 been filed with the Securities and Exchange Commission.

22 **COMMISSIONER EDGAR:** Thank you. Commissioners,
23 any other comments at this point? No? Commissioner
24 McMurrin.

25 **COMMISSIONER McMURRIAN:** I think I have to agree

1 with Commissioner Skop. I'm just not sure what other
2 alternative -- and if we defer temporarily and take up the
3 other two, I think we're going to come back and be at the
4 same place we are now. I'm not sure I'm going to have any
5 more clarity by then.

6 **COMMISSIONER EDGAR:** Okay. I did want to put it
7 out as a possibility, I feel some obligation to keep an
8 eye on the clock and realizing our other business,
9 although, of course, wanting to give full time and
10 consideration to every point in question.

11 With that, I guess, you know, I would, would add
12 that no process is perfect, and whether the MFRs are
13 exactly accurate to the penny at any moment in time or the
14 estimates of savings on a pre-estimate basis or even a
15 post audit, you know, what we try to do, what I try to do,
16 what I think we all try to do is get as close as we
17 possibly can with the most accurate information that we
18 have at any point in time. I do feel some push to
19 recognize that we have before us a PAA and that it does
20 afford all parties, if a decision is made, it does afford
21 all parties the opportunity to, you know, request a full
22 hearing, to petition for other relief and additional steps
23 in the process, and that's a very important part of the
24 process.

25 I also recognize that Mr. Rehwinkel on behalf of

1 the Office of Public Counsel I believe stated that he
2 thought this case might have, might benefit from the
3 opportunity for some off-the-record discussions amongst
4 the parties. I don't know if that was a step towards
5 settlement discussions or not. I have no idea. I would
6 not read too much into it. But certainly if we move
7 forward today, those opportunities for further discussions
8 between the parties certainly are available to them.

9 So with that, Commissioners, we do again have an
10 item before us with over 50 items. I think I'm hearing a
11 desire to move forward, but I want to make sure that I'm
12 hearing correctly. So are there other comments at this
13 time?

14 Yes, Commissioner.

15 **COMMISSIONER ARGENZIANO:** Well, since I know I'm
16 going to have a lot of questions on each issue, I think
17 you should probably move to postpone this temporarily and
18 move on to our other cases so people don't have to sit
19 here all day. Because I have a lot of questions as we go
20 through issues by issues, unless you want to take them up
21 now. I hate to make other people wait if we can get
22 through those cases ahead of time.

23 **COMMISSIONER EDGAR:** Sure. I understand.

24 Commissioner McMurrin.

25 **COMMISSIONER McMURRIAN:** Well, as you were

1 speaking too to that point that reminded me about
2 something else I was thinking about earlier and what you,
3 what you said about what Mr. Rehwinkel said.

4 The only other option I could see is if you, and
5 I know this doesn't really give us any real time, but in
6 talking about trying to go through it anyway and do the
7 best we can, given the fact that -- and we all can
8 consider whether or not we think the merger is likely to
9 materialize and what impact it may have on our decision,
10 would -- I know that the statutory date is the, is, would
11 be the 18th, which would be before our next agenda. But
12 would there be any benefit in giving the parties time to
13 talk and bring it back to the next agenda, giving our
14 staff, giving any of the parties time to think about what
15 other arguments they might want to make with respect to
16 the merger's impact on it? But I realize that that's not
17 consistent with the statutory date we have in front of us,
18 so it would be up to the company, of course, to, to waive
19 that. So it's just, that's the only other idea I can
20 think of if we wanted to actually put it off and give a
21 few more weeks. I know that doesn't solve everything.
22 But would that be beneficial or not if we're talking about
23 deferring it at all?

24 **COMMISSIONER EDGAR:** Okay. Then thank you,
25 Commissioner McMurrian, for that additional comment. I

1 think what I would like to propose, members, if this will
2 work with you, trying to again take into account
3 everything that I think I've heard, let's, let's take, and
4 I do mean this, five minutes, clear our minds, I could use
5 five minutes to do that, temporarily defer discussion on
6 this item. We will come back shortly to this before we
7 adjourn for the day, but let's take five minutes, ask our
8 staff to get ready, realizing that the next item is
9 posthearing and it's just a discussion between staff and
10 Commissioners. So what I'm proposing is that we
11 temporarily defer 10 to come back to it later this
12 afternoon, take a five-minute break, come back then and
13 attempt to dispose of Items 15 and 16 and then come back
14 to 10. Is that satisfactory? And I think I'm seeing some
15 nods.

16 Okay. Then we are going to take a five-minute
17 break, and when we come back we will be on Item 15.

18 (Recess taken.)

19 **COMMISSIONER EDGAR:** Okay. We will go back on
20 the record after a short break. And we are now back to
21 our discussions on Item 10, which we had deferred earlier
22 in the afternoon.

23 I believe when we chose to move on to other
24 items, we had had some lengthy discussion and questions
25 with the parties and our staff about our options to

1 dispose of this item today. My thinking is that -- my
2 thinking and my memory is that a number of Commissioners
3 had expressed an interest in asking questions about
4 specific items, so I think what I propose is that we
5 handle this similarly to the way we did the last item, and
6 for discussion purposes and questions kind of group them
7 as we go, pose our questions, and, again, of course, see
8 where that takes us.

9 Commissioner Argenziano.

10 **COMMISSIONER ARGENZIANO:** I have a suggestion
11 that may or may not fly on the case before us. Couldn't
12 this -- to ask staff, why couldn't we make the rate
13 increase conditional on being, you know, reopened on a
14 limited basis if the merger went through. In other words,
15 you know, I guess not an earnings review, if the -- and I
16 guess looking at the MFRs, that would change because of
17 the merger. That would change if they did change because
18 of the merger, excuse me. And, in other words, do it on a
19 conditional basis.

20 Let me ask the second question, because it comes
21 to mind. In a recent case we had we did a step increase
22 that was conditional. And I think what we're doing here
23 is the opposite. Isn't this an inverse? Couldn't we do
24 it the same way as a conditional increase that if the
25 merger took place -- because it seems to me like we're

1 between a rock and a hard place. The company has a right
2 to ask to recover, and yet the company has also waved
3 flags at us and saying, look, this is what may happen.
4 And we have -- at least I have, and I have heard other
5 people with concerns that if the merger does take place.

6 Instead of denying the company and instead of
7 not listening to OPC's concerns, which are some of the
8 same concerns I have, couldn't it be done that it would be
9 a conditional type thing and going into a limited, if we
10 had to, pertaining to the merger, the changes of the
11 merger, and then that those MFRs would be -- all new MFRs
12 would be, instead of a whole full blown rate case being
13 redone. Is that possible?

14 **MR. DEVLIN:** Commissioner Argenziano, I'd like
15 to take a shot at it. It sounds plausible. But, of
16 course, sometimes the devil is in the details. But if I
17 understand what you are saying, in the event the merger is
18 consummated maybe we would have a requirement of a
19 resubmission, a refiling of some sort, and a review of
20 some sort. You know, we would have to articulate exactly
21 what we are talking about, but we could work on that
22 concept.

23 **COMMISSIONER ARGENZIANO:** And if I could hear
24 the company's and OPC's opinion on that. Rather than
25 either vote it in, vote it out today, figure out the

1 concerns that are remaining.

2 **COMMISSIONER EDGAR:** Mr. Horton, let's begin
3 with you.

4 **MR. HORTON:** Commissioners, I think this needs
5 to be voted on today. As far as any review that you're
6 talking about, I think you have that authority at any
7 point to review earnings of any of the companies that are
8 subject to your jurisdiction. So I'm not quite sure about
9 the step, and I think at this point my position would be
10 that this case should be decided, and if you find it
11 necessary to initiate a proceeding later on that you
12 already have that authority.

13 **COMMISSIONER ARGENZIANO:** Madam Chair, I don't
14 agree with that. That's the problem I have. Because what
15 I see in front of me that may occur, I'm trying to
16 accommodate the company getting what they have, but I also
17 want to safeguard the consumer that if you have a merger
18 that we have a condition that exists that you would then
19 have to come in. It would be a limited -- it wouldn't be
20 a full-blown rate case, but it would be limited, and you
21 would show costs and expenses related to that merger.

22 Because right now I have an uncertainty that
23 what's in front of me is going to change, and it could
24 change sooner than anticipated. So rather than me voting
25 no, I'm trying to say give the company this opportunity.

1 And if that occurs, then we have the right to come back
2 and look at what we should have looked at.

3 **MR. HORTON:** And, Commissioner, with all due
4 respect, I think you have that right. I think you have
5 that authority now under the statute. I think you could
6 initiate a limited proceeding at that time. I think you
7 do have that authority.

8 **COMMISSIONER ARGENZIANO:** What I'm trying to say
9 today is that that needs to be conditioned in whatever we
10 say on record today. I want to know that I have the
11 opportunity. I don't want to deny the company what they
12 have the right to ask for. But since this is out there,
13 and things may change, and it may be a very long time
14 before we look at that again, I'd like it to be said today
15 and on record that that is exactly what we could do. If
16 the merger does take place in this timely kind of way
17 where it does affect what we should have done today or
18 could have done today, but, unfortunately, it is a
19 possibility that it's not a known, we don't know that the
20 merger is actually going to take place even though it
21 looks like it could, and that's what I'm trying to say.
22 And I would like OPC's position on that, too.

23 **COMMISSIONER EDGAR:** And, Commissioner, to kind
24 of follow along on that, it may be that -- and we will
25 absolutely, Mr. Rehwinkel, come to you in just a moment,

1 of course -- that if we work our way through our
2 discussions on the issues before we close out this
3 afternoon an opportunity to craft language to more
4 specifically address the concerns that you have raised and
5 that we all have raised, so that's just one thought.

6 Mr. Rehwinkel.

7 **MR. REHWINKEL:** I guess my position, and
8 hopefully the Office of Public Counsel's position is that
9 I don't think I can say anything differently than I have
10 said all along today. We really don't have any way of
11 knowing how to sit here and predict the right way to look
12 at the merger. If you vote something out today and
13 evaluate whether things have changed such that the
14 customers are due something back, I just can't envision a
15 way to craft that. I'm not saying it can't be done. I
16 would have to evaluate whether it can be done in the
17 context of a specific PAA statutory grant that the company
18 is here under.

19 This is a variation, a specific variation of the
20 PAA process. It doesn't make the PAA order go away. It
21 allows the revenues to go in subject to refund. So I
22 would have to understand that.

23 We are almost at the point where we would just
24 assume you vote something out as a PAA if you are inclined
25 to give them some revenue increase, and let's just let us

1 evaluate it. We have been here a long time today, and I
2 really appreciate the consideration that all the
3 Commissioners have given us for our position here.

4 Our position stays the same, but I just feel
5 like I don't know much -- I think we have said our peace.
6 And we would certainly take a long hard look at anything
7 you put out with any conditions that were on it and see
8 whether we thought that it met the legal requirements of
9 the statute and the ratemaking precedent. But I'm almost
10 at the point where I'm brain dead today, and I really
11 don't know what the right thing to do is when you start
12 kind of getting outside this 366.064. I just don't -- I
13 probably have not been helpful in my answer.

14 **COMMISSIONER ARGENZIANO:** Do you understand what
15 I'm trying to do? I'm trying to figure out a way that we
16 don't disregard your concerns, but we don't disregard the
17 company's right to be able to go in for that -- I mean, as
18 you look at it, and I know it has been a long day, but as
19 you look at it, you, yourself have to sit back and say,
20 well, okay, they have statutory authority to come in.
21 They have the authority to come in and ask for this, and
22 what we are looking for is a merger.

23 And I hear what you are saying, there is a
24 definitive agreement, but it is not done. If it was done,
25 it would give -- it's much different, we wouldn't be

1 sitting here with that. So knowing that, I'm trying to
2 find a way to take your concerns into consideration down
3 the road if that does happen, because they are my
4 concerns.

5 **MR. REHWINKEL:** I mean, our position is that the
6 MFRs aren't a done deal, either. That Interrogatory 23 is
7 a real problem for us, because we think they have changed.
8 We don't know at this point exactly the dollar amounts,
9 but they have changed their way of doing business. It's
10 different from what they -- it must have been the summer.
11 I mean, their actual cutoff for preparation of the MFRs I
12 think was April of 2008 actuals. So way back then they
13 had no idea, I don't think, that there was going to be a
14 merger. They have prepared their MFRs. There are certain
15 projections and assumptions that are essentially a budget
16 that they have given to you. That has changed. And, you
17 know, I just feel like I keep repeating myself, but we
18 just have a real problem with it.

19 **COMMISSIONER ARGENZIANO:** Thank you. But it is
20 very good to repeat yourself sometimes, because sometimes
21 it may not sink in the right way and repeating it maybe
22 only makes it clearer.

23 And just one other question to staff, if I can.
24 Did you take into consideration that concern that the
25 things have changed, business as usual has changed in the

1 MFRs? And what does that send to you, what signal does
2 that send to you if it's not business as usual, or have
3 you noticed the change?

4 **MR. PRESTWOOD:** Well, the MFRs really haven't
5 changed. Again, you know, we are using the 2009 test
6 year, and I hate to be repeating myself, but there is no
7 changes in 2009 as a result of the proposed merger. If
8 the proposed merger comes about, they expect it to
9 close --

10 **COMMISSIONER ARGENZIANO:** The way that we are
11 doing business, I think that is different. I think what
12 Mr. Rehwinkel is saying is that there had been a change.

13 **MR. PRESTWOOD:** Well, again, I don't believe
14 there will be a change in the way they do business during
15 2009. Those changes won't occur until sometime in 2010 or
16 later.

17 **COMMISSIONER ARGENZIANO:** Okay.

18 **MR. REHWINKEL:** Commissioner Argenziano, I
19 really -- I'm serious about it. I don't know any other
20 way to read Interrogatory 23 than to say they have
21 curtailed -- because as of February 2009, we're talking
22 about actual expenditures, until further notice, all
23 nonessential expenses, travel and seminars, and
24 nonessential new hires/replacements have been frozen.
25 Also, as of February 2009, all merit raises have been

1 frozen. All non-revenue producing capital expenditures
2 not essentially necessary have been reduced to
3 approximately 50 percent of original budget amounts for
4 2009.

5 I read that, and I could be totally wrong, but I
6 read that as saying they have made a reduction from what
7 they submitted as 2009 costs and expenses for your
8 consideration. So that is a change. And I'm assuming
9 that this is behavior that was -- that is related to the
10 merger, but is not -- it's not the synergies we are
11 talking about, it's just kind of keeping your powder dry,
12 you know, while you're sitting there deciding how you're
13 going to go.

14 **COMMISSIONER ARGENZIANO:** Madam Chair, that begs
15 the question to staff again. That's the changes -- what
16 is staff's take on that change?

17 **MR. PRESTWOOD:** Well, for example, Commissioner,
18 we did notice -- we reviewed all the vacant positions.
19 There are ten positions that we found were not filled as
20 of February with the notation that those positions would
21 not be filled for another two to six months, and so we
22 eliminated those positions.

23 Whether they had to do with this possible merger
24 that was coming along or not, we don't know, but we did
25 make that adjustment to take those positions out. It was

1 one of our larger adjustments. So we have corrected for
2 that. Any known information that we had at the time we
3 put this case together that showed up like that, we took
4 that into consideration.

5 **COMMISSIONER EDGAR:** Mr. Horton or Ms. Martin, I
6 know that you spoke specifically to Interrogatory 23 a
7 little earlier in the afternoon, but if you would like to
8 again, I will give you that opportunity now.

9 **MS. MARTIN:** Sure. We had the duty to respond
10 to that like, we do with everything. I can tell you that
11 that response and the actions that we took that are
12 mentioned in that had nothing to do with the merger. They
13 did have to do with some information that came to light
14 after our filing, that's correct. In actuality, if we
15 didn't take those actions, our expenses would have well
16 exceeded what we have in the MFRs with respect to the
17 projections. We had some unknown expenses and
18 contributions that were due that related to pension, and
19 those have far exceeded the projections that we have put
20 into place for 2009, and they are expected to materialize
21 for 2009. So we did have to take some immediate temporary
22 steps and measures just to get a handle on those and see
23 what we needed to do.

24 Those are constant things that businesses always
25 do. You know, there are some things that change, but

1 overall our expenditure levels are appropriate that are in
2 the MFRs. They were prudent cost savings measures that we
3 took into place. They had nothing to do with the merger.

4 In addition, as we noted in our 10K, which was
5 also disclosed in public information that we had some fuel
6 covenant issues that occurred, again, as a result of some
7 pension contributions that we expect to have to make in
8 2009, and it's true those things weren't taken into
9 account in our MFRs. I still think that the expenses are
10 going to exceed what we have in our MFR to some extent,
11 but we did have to take measures to try to control some of
12 those costs, and we did that on a temporary basis until we
13 can take a look at what we can do going forward. But it
14 had nothing to do with the merger, it was just for those
15 pension costs that we are going to incur in 2009.

16 **COMMISSIONER EDGAR:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Madam Chair.

18 I don't know if we have it available, but if we
19 had one of those matrix as to the issues, that might
20 facilitate should the Commission desire to move forward
21 with voting on this issue before us. And I guess
22 previously, earlier this morning Mr. Rehwinkel mentioned
23 that he had concerns. So that in terms of taking it by
24 issues grouping, that would also give him the opportunity
25 to address any concerns that he would have with the staff

1 recommendation.

2 I mean, certainly he would have come prepared
3 today to address those issues or concerns that he has over
4 and above the merger. At least from my perspective, I'm
5 reasonably comfortable, and I would expect that we would
6 be diligent in looking at any merger that would be
7 consummated to the extent that I previously mentioned of
8 protecting consumers and capturing those operational and
9 corporate savings and efficiencies and passing those
10 through to consumers should a merger be consummated.

11 But, again, that's somewhat in the future. Some
12 of the concerns, although they are not expressly stated, I
13 know you referred to Interrogatory 23, I think we heard a
14 response from the company. You know, you can interpret
15 those in various ways. I can certainly, as our staff has,
16 interpret the failure to issue equity according to a
17 schedule in which they told us is perhaps indicative of
18 something was brewing, and I will get to that should the
19 Commission decide to address the issues before us.

20 But if we did have one of those matrix, I know
21 this is PAA, but it would be really ideal to have one of
22 those if we happen to have it. If not, we can work off
23 the table of contents.

24 **COMMISSIONER EDGAR:** Commissioner Skop, I
25 appreciate that. I also would say that if we were to turn

1 to the table of contents for Item 10, which, of course, if
2 you go past the summary, then it's Pages 2 and 3. It's
3 not quite as pretty, but I think that might be a good
4 place for us to work from. So that would be my suggestion
5 realizing that the day is getting on.

6 **CHAIRMAN CARTER:** Madam Chairman.

7 **COMMISSIONER EDGAR:** Commissioner Carter.

8 **CHAIRMAN CARTER:** Let me see if I can help out
9 here. I believe that from what I have heard this morning
10 as well as this afternoon is that from what staff is
11 telling us we can make this conditional. I was listening
12 as Commissioner Argenziano was saying, I think we can go
13 back. We can make this conditional and go and look and
14 see if things have changed with this merger and then make
15 an adjustment based upon that.

16 I think there have been several suggestions in
17 terms of how we can do that, but I think that we can do
18 that. I mean, we just put it in our order. It's just
19 that simple. We just put it in our order, and then if the
20 merger does come through, then we will come back in. If
21 it doesn't come through, then no harm, no foul.

22 **COMMISSIONER EDGAR:** Commissioner Carter, I
23 thank you for your comments. And as always, I think you
24 are right on point. As we have discussed a few minutes
25 ago, and with Commissioner Argenziano and others comments,

1 I agree, I think there is a way for us to do that. I
2 agree that generally we have -- my own opinion, that
3 generally we have that ability and authority regardless.
4 However, I think we may be able to craft some pretty
5 simple language here towards the end of our discussion to
6 either require a report or a specific direction to our
7 staff to bring an item back to us after the fact or
8 something along those lines. I think we can get there. I
9 think we can get there.

10 So, Commissioners, with Commissioner Carter's
11 suggestion, following along Commissioner Argenziano's and
12 the other comments that we have had, and, again, we will,
13 of course, give all the time we need, but also recognize
14 that it is after 5:00 o'clock. And I know that -- I think
15 each of us had said that on specific issues we do have
16 some specific questions, and I do want to make sure that
17 we have the opportunity, to the best of my ability, to
18 make sure we have the opportunity to get you answers.

19 So with that, I would propose that we start
20 through the issues. I suggest that we, again, kind of do
21 them in grouping, but give the time to the questions that
22 are required. And we will come back then to how to craft
23 some specific language on a go-forward basis. But let's
24 get into the issues.

25 And so I would propose that we address at this

1 time, see if there are any questions on items or Issues 1
2 and 2. There were not any when we asked for specific
3 questions before, but are there any questions or
4 discussion on Issues 1 and 2? Okay. I'm hearing none.
5 Is there a motion to address Issues 1 and 2?

6 **COMMISSIONER SKOP:** I would move to approve
7 staff recommendation as to Issues 1 and 2.

8 **CHAIRMAN CARTER:** Second.

9 **COMMISSIONER EDGAR:** Okay. Hearing a motion and
10 a second. Commissioners, any further discussion? Hearing
11 none, all in favor of the motion say aye.

12 (Simultaneous aye.)

13 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

14 And, Commissioners, let's address Issue 3,
15 quality of service. Are there any questions on Issue 3 at
16 this time? I'm hearing none. May I have a motion on
17 Issue 3?

18 **COMMISSIONER SKOP:** I move to approve staff
19 recommendation on Issue 3.

20 **CHAIRMAN CARTER:** Second.

21 **COMMISSIONER EDGAR:** We have a motion and a
22 second. Hearing no further discussion, all in favor say
23 aye.

24 (Simultaneous aye.)

25 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

1 Commissioners, I think the next grouping
2 addresses rate base, Issues 4, 5, 6, 7, 8, 9, and 10.
3 Again, I don't think that when we asked earlier that there
4 were specific questions on these, but let me ask again.

5 Commissioners, are there any questions at this
6 time of the parties or our staff on Issues 4 through 10?
7 Okay. I am neither hearing nor seeing any questions on
8 this particular subset.

9 Commissioners, is there a motion on Issues 4
10 through 10?

11 **COMMISSIONER SKOP:** I move to approve staff
12 recommendation as to Issues 4, 5, 6, 7, 8, 9, and 10.

13 **CHAIRMAN CARTER:** Second.

14 **COMMISSIONER EDGAR:** We have a motion and a
15 second. Hearing no further discussion, all in favor of
16 the motion say aye.

17 (Simultaneous aye.)

18 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

19 Commissioners, I think our next grouping would
20 address the issues of cost of capital. I propose that we
21 consider them as a group, Issues 11 through 17. I believe
22 there was an indication earlier in the day of some
23 questions more specifically on Issues 15 and 16.

24 So let me ask, Commissioners, any questions for
25 our staff or the parties on Issues 11 through 17?

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 And I'll try to make this brief, given the late
4 hour. If we could please turn to staff recommendation for
5 Issue 15 that's on Page 24. And at the bottom of that
6 recommendation, staff in its conclusion references a prior
7 decision of the Commission in the FPUC electric division.
8 And I guess just a question to staff. Each case,
9 obviously, stands on its own stand-alone merits, so should
10 that be used as a justification supporting the staff
11 recommendation, or was that extraneous and will not be
12 included in the final order in terms of that statement as
13 well as Footnote 6?

14 **MR. MAUREY:** Okay. Now I see what you are
15 saying. Commissioner, that was for informational
16 purposes. It wasn't the basis of our recommendation in
17 this particular docket.

18 **COMMISSIONER SKOP:** Okay. So it's probably a
19 question better directed to Legal in terms of the legal
20 premise that each case stands on its own individual
21 merits.

22 **MR. JAEGER:** If you believe it would be better
23 to take it out, then staff would have no problem taking
24 that statement out.

25 **COMMISSIONER SKOP:** Very well. I just would

1 hope that that would not show up in the final order. I
2 guess with respect to the cost of capital issues, the
3 return on common equity, and I'll start with that briefly.
4 I spent quite a bit of time trying to fully appreciate the
5 difference between the staff recommended ROE in the FPUC
6 and the Peoples case that were before us today. And a lot
7 of emphasis has been placed on ROE, a lot of criticism on
8 ROE, but I think that taking the time to discuss this
9 briefly with staff is worthwhile to the extent that I
10 think that the FPUC case before us today stands for the
11 proposition that you can't look at just ROE in isolation.

12 And I know that staff had elaborated on that
13 previously, but this goes to my point, and if I can refer
14 the Commission and staff to the handout that staff created
15 showing the capital structure for Issues 15 and 16. It's
16 my understanding in this case, and was previously alleged
17 by the company that they were going to issue equity in the
18 summer of 2008, and that never occurred. Is that correct?

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

20 **COMMISSIONER SKOP:** Okay. And had they, in
21 fact, issued equity, their equity ratio would have been
22 higher comparable to that of Peoples, is that correct?

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

24 **COMMISSIONER SKOP:** Okay. And as a result of
25 not -- or had they done that, the resultant ROE would have

1 been also comparable to that that was recommended in
2 Peoples, is that correct?

3 **MR. MAUREY:** Yes.

4 **COMMISSIONER SKOP:** Okay. So, I guess, all
5 things being equal, and I'll ask staff to explain their
6 handout, but in the handout I think that if we look at the
7 bottom staff analysis which shows what would have happened
8 had they issued the equity, and they would have had an
9 equity ratio of approximately 53.16 percent at the staff
10 recommended, or at the lower ROE, I guess by adopting a
11 lower ROE with the higher equity ratio in this case would
12 have resulted in a higher pretax cost of capital yielding
13 a higher revenue requirement and corresponding in a higher
14 bill for consumers. Is that correct?

15 **MR. MAUREY:** Due to the income tax effect,
16 that's correct.

17 **COMMISSIONER SKOP:** Okay. So although it's
18 somewhat counter-intuitive, the higher ROE that is
19 recommended by staff in Issue 15 with the corresponding
20 lower equity ratio resulting from not doing the equity
21 issuance in this case actually benefits consumers because
22 it results in a lower overall pretax cost of capital
23 yielding the lower revenue requirement and a corresponding
24 lower bill for consumers. Is that generally correct?

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

1 **COMMISSIONER SKOP:** Okay. So I guess just in a
2 nutshell, the point I was trying to make is that a lot of
3 emphasis is placed solely on the number that the
4 Commission picks for ROE, and in this case, picking a
5 higher number, or just looking at the number in isolation
6 without looking at the other factors, one might be
7 critical; but, in fact, the way the numbers work out in
8 this particular case, the ROE recommended by staff, which
9 was higher than that ordered to Peoples, 11 percent ROE,
10 coupled with the lower equity ratio in this case is a more
11 cost-effective result for consumers to the extent that the
12 pretax cost of capital is lower, and the resultant revenue
13 requirement is also lower, and that results in a lower
14 bill.

15 Is that staff's understanding?

16 **MR. MAUREY:** Yes.

17 **COMMISSIONER SKOP:** Okay. So nothing I said
18 staff would disagree with, and staff would agree that ROE
19 cannot be looked at in isolation, is that correct?

20 **MR. MAUREY:** We're in agreement.

21 **COMMISSIONER SKOP:** Okay. And if staff would
22 add anything to their analysis that they might want to
23 add, and I will be done talking.

24 **MR. MAUREY:** Nothing more. We're available for
25 questions, recognizing that we might have a few.

1 **COMMISSIONER SKOP:** And I appreciate staff's
2 hard effort for you to take the time, because you guys
3 spent hours convincing me that your analysis was
4 appropriate in this case. I mean, we talked about many
5 things for many hours, but I think what was, I guess,
6 surprising to me and somewhat counterintuitive that the
7 higher ROE actually resulted in a lower overall revenue
8 requirement.

9 Thank you.

10 **COMMISSIONER EDGAR:** Commissioner Argenziano.

11 **COMMISSIONER ARGENZIANO:** Just to make it clear
12 and to make sure I'm correct, your recommendation for the
13 capital structure is 48.13, is that correct?

14 **MR. MAUREY:** That's correct. As a percentage of
15 investor capital, yes.

16 **COMMISSIONER ARGENZIANO:** Thank you.

17 **CHAIRMAN CARTER:** Madam Chairman.

18 **COMMISSIONER EDGAR:** Commissioner Carter.

19 **CHAIRMAN CARTER:** This has nothing to do with
20 the case. I was just going to try to give Chris a heads
21 up to call DSM to make sure that they don't turn the air
22 conditioning off on you guys.

23 **COMMISSIONER EDGAR:** And we appreciate your
24 thinking of us, and my understanding is that has been
25 done.

1 **CHAIRMAN CARTER:** Okay, good.

2 **COMMISSIONER EDGAR:** Thank you.

3 Okay. Commissioner Skop, I completely agree
4 with your comments about ROE specifically, and many, many,
5 many items more generally all working together and being
6 part of a larger whole, and that sometimes that
7 interrelationship can kind of get glossed over.

8 But with that, one of the points when I try to
9 think through these issues that I try to look at is the
10 need for capital in the out years. And in this instance,
11 partially the size of the company, but also partially the
12 information that we have about the out years, and what the
13 needs are for the company in order to meet the needs of
14 the ratepayers in their area now and in the future, I
15 don't see that as much as that need for a large infusion
16 of capital. And for that reason, the staff recommendation
17 of 11 feels a little high to me. So I just would like to
18 put that out there. We discussed that, I think, some. Or
19 when I say we, my office and staff and me discussed that
20 with staff a little bit in our briefing, as well.

21 So let me, if I may, look to Mr. Maurey to
22 address that point more specifically about the need, or
23 lack of, or relative for the ability to attract capital in
24 this factual scenario for this company, and then let's
25 open it for further discussion.

1 **MR. MAUREY:** Yes. All companies, all publicly
2 rated utilities will need to attract capital at some point
3 in time. Looking at this window of time, some companies a
4 more pressing need than others. And in the cases that you
5 have had before you, certainly in the case of Tampa
6 Electric and in PGS there was quite the need for capital
7 in the near term over the next five years.

8 That same case wasn't made as strongly for this
9 particular company, and they may choose to add to that.
10 But in our evaluation that wasn't as pressing a need in
11 the future for them. Your other question, I'm afraid I'm
12 going to have to get that again.

13 **COMMISSIONER EDGAR:** I think you pretty much
14 have covered it. Thank you.

15 Commissioners, further discussion?

16 Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Madam Chair.

18 I guess I had had the same discussion with
19 staff. You know, again, they justified their result.
20 Again, I had looked at the average ROE of the peer groups
21 between FPUC and Peoples trying to gain a better
22 appreciation for why the average peer group was the same,
23 but the result was 25 basis points different. And what
24 staff rationalized that to was the equity ratio and the
25 difference between the average equity ratio with the

1 respective peer groups.

2 So I think the point that you raise is a very
3 good one. I had that same discussion. Again, had the
4 company issued the equity in the manner in which they
5 previously told the Commission they would, we wouldn't be
6 having this discussion because the ROE would be -- the
7 resultant ROE would be lower.

8 Again, I think staff, in its defense, countered
9 with an argument that there is some sort of distinction
10 that can be made in terms of borrowing costs. I'm not so
11 sure that it is, you know, the 70 basis points I think in
12 a previous case, which, again, I don't want to mix apples
13 with oranges, but this is PAA. But a previous staff
14 recommendation, you know, had the same kind of equity
15 ratio and it was somewhat lower.

16 So, again, the number I had discussed with staff
17 was 10.85 in lieu of the 11. I'm certainly open to
18 discussion. I, myself, thought 11 under the circumstances
19 was a little high, particularly in light of the fact that
20 there is some uncertainty as to the resultant capital
21 structure from the forthcoming merger.

22 I don't know if that will change something, but
23 if you were -- I want to choose my words carefully, but if
24 you were trying to massage or optimize your capital
25 structure to drive your ROE, then certainly a lower equity

1 ratio results in a higher ROE, and then by virtue of the
2 staff analysis, generally speaking. And I wonder, you
3 know, if you lock in that ROE and the capital structure
4 changes on a forward-going basis, I think that would be
5 room to revisit it.

6 But also, too, I feel that the company had made
7 some representations to us. They didn't really kind of do
8 what they say they were going to do. Again, not to
9 penalize them, but, again, I feel also, too, that they are
10 being somewhat rewarded in the case by the 11.

11 I know the equity ratio is 48.13. I'm generally
12 okay with that. But, again, the ROE in totality looking
13 at everything that's going on, I do feel is a little bit
14 high. I can live with the 11, but my inclination would be
15 10.85.

16 **COMMISSIONER EDGAR:** Commissioner Skop, thank
17 you for those comments. My thinking, as I think I said
18 earlier, but if I may, I will restate is that 11 seems a
19 little high. I was, in my mind, kind of at, perhaps,
20 10.75; 10.85 seems like a reasonable approach to me,
21 realizing that these are all, of course, judgment calls.

22 Commissioners, are there other questions or
23 comments? Commissioner Skop.

24 **COMMISSIONER SKOP:** I would just add briefly.
25 Again, 10.75 I am equally fine with that, also. What I

1 was trying to do, based on my discussion with staff, was
2 further distinguish the incremental borrowing costs that
3 the company would have over a larger company, Peoples, and
4 I think staff and I discussed that extensively. But, Mr.
5 Maurey, if you want to add briefly whether there should be
6 some slight differential, if any.

7 **MR. MAUREY:** Well, the differential you are
8 speaking to did factor into our recommendation. According
9 to -- well, looking at just those two companies, there is
10 a 70-basis-point difference in their cost of debt. And we
11 are not trying to track that, but if the debt market is
12 going to recognize that type of differential between these
13 two companies based on essentially financial risk, that
14 the equity markets would also recognize some differential.

15 But it is a judgment, and in our judgment we
16 proposed a 25-basis-point differential. It could be
17 smaller or wider.

18 **COMMISSIONER SKOP:** Thank you.

19 **COMMISSIONER EDGAR:** Thank you.

20 Commissioner Argenziano.

21 **COMMISSIONER ARGENZIANO:** I'm confused. And I
22 am not sure if my colleagues can answer this or staff can,
23 because I'm just not sure. We went through some rate
24 cases where the rates were much higher or higher than
25 today's company is asking for, and I don't know why the

1 differences would be. I guess my colleagues, I can ask
2 what would be the differences. Is it a smaller company
3 and so it doesn't warrant the same ROE?

4 I'm trying to figure out what we are doing here.
5 Why is it -- why would we give them less, Commissioner
6 Skop, than you would in the cases that we have looked at?
7 And I'm not saying it is a good thing or a bad thing. I'm
8 personally trying to figure out how this differs from the
9 other cases that we have gone through recently.

10 Because I tend to see -- and don't take this the
11 wrong way, and if you do, what can I say? I tend to see
12 that the smaller companies just don't get the same kind of
13 response as the bigger companies, and I would like to know
14 why. And if there is a reason, well, then good, it helps
15 me figure out why. But what is the difference here? Why
16 would my colleagues, and maybe you can help me, want to
17 give this company less than you would any other company,
18 especially the bigger companies? Help me to figure out
19 what the differences are here, because it's very
20 confusing.

21 **COMMISSIONER EDGAR:** I'll take a stab at it, and
22 then ask others, of course, to jump in. A couple kind of
23 random thoughts as they come to me. Realizing that we
24 have had a number of cases that have come before us in the
25 past roughly year or so where we have had long discussions

1 about ROE, some with water cases, water and wastewater
2 cases, some with electric, and we have had two with gas.
3 It's not in my -- you said wanting to give this company
4 more or less, I'm not sure exactly how you phrased it, but
5 realizing that we do have two gas cases in front us today,
6 and that the staff recommended ROE and that we adopted
7 earlier today is at 10.75, the differences between this
8 company before us now and that one to me didn't rise to
9 the level of the higher ROE that the staff has
10 recommended. Realizing, again, that every situation is
11 different and there are certainly some factual
12 differences, it just didn't, in my mind, rise to that
13 level. So that's one factor.

14 The second is that I believe, and I will ask staff
15 to correct me if I'm wrong, that historically -- and that
16 doesn't make the decision, but it is a factor -- that
17 historically the ROEs approved by this Commission
18 generally are less for gas companies than for electric.
19 And, in my mind, one of many factors for that would be
20 the, again, more capital intensive nature of the electric
21 generation side of those companies.

22 And I think I may have already said this, but
23 let me repeat it because it is a significant point in my
24 mind when we look at the need for capital infusion in the
25 foreseeable next few years, to me that is an important

1 factor and has played a part in my own thinking. I'm
2 trying to respond, and I don't know, Commissioners --
3 Commissioner Skop.

4 **COMMISSIONER ARGENZIANO:** Before you do, can I
5 just ask a question of staff? The electric companies, the
6 bigger companies, to me have less risk. Maybe higher
7 capital expenditure, but they are allowed to recover
8 pretty much everything. Do the gas companies get the same
9 recoveries?

10 **MR. MAUREY:** They have access to certain
11 recovery clauses. I don't believe, and I can be
12 corrected, they are as extensive as the clauses available
13 to the electric companies.

14 **COMMISSIONER ARGENZIANO:** I see it just the
15 opposite as you do, Commissioner Edgar. I think that the
16 bigger companies have the recoveries and the smaller
17 companies don't. So I see the risk factor being higher
18 for the smaller companies than the bigger companies.
19 Because when you are allowed to recover everything,
20 obviously your risk is reduced greatly. So I disagree
21 there.

22 Commissioner Skop, if you could tell me your
23 logic, it could help.

24 **COMMISSIONER SKOP:** Okay. Well, again, I think
25 my logic is a couple-fold. Again, I was somewhat puzzled

1 when the staff recommendations came out because, again, as
2 an attorney and good regulatory practice I like to make
3 sure that we have consistent uniform outcomes that are
4 fair to the parties. I do sense and have seen myself
5 that, you know, making that fairness and consistent
6 outcomes apply equally, irrespective of company size. So
7 I think that there certainly, at least from my
8 perspective, is some merit in the statement that you had
9 previously made.

10 But for this specific instance, looking at the
11 extensive analysis that staff had done, again, I must have
12 had six hours. One of our legal staff accused me of
13 holding court and having lots of meetings, but that is so
14 I can try to make well-informed decisions. But, again,
15 the equity ratio here, if the company had done what they
16 told us they were going to do, the discussion that we are
17 having now would have been a moot point to the extent that
18 I think, Mr. Maurey, and correct me if I'm wrong, but if
19 they would have issued equity as they told us they were
20 going to do, their equity ratio would have been exactly
21 the same or roughly equal to that in Peoples, which is
22 another gas company, and the resultant ROE would have been
23 very close, if not equal to the 10.75 in terms of staff's
24 view. I don't want to put words in your mouth, but help
25 me out.

1 **MR. MAUREY:** Typically -- well, two points.

2 Madam Chair, you are correct that over time the
3 history has been that the authorized ROEs for the electric
4 industry are higher than the authorized ROEs for the
5 natural gas industry, and that has been the case for at
6 least the last two decades.

7 And in your response to your question, had the
8 equity ratios been comparable, more comparable, then we
9 would have recommended similar ROEs. If you look at
10 decisions that are made in reasonably the same time under
11 the similar capital conditions, they will have very
12 similar ROEs. I mean, just last year all four of our IOUs
13 had the same ROE, even though they were set slightly
14 different times, but they tend to gravitate around each
15 other.

16 **COMMISSIONER SKOP:** Okay. And so that
17 discussion I had with staff, we talked extensively about
18 why didn't they issue equity as they told us they were
19 going to do in light of the merger announcement, in light
20 of -- you know, could that be a reason, a light of a lot
21 of scenarios that we ran through. But in terms of what
22 actually happened is the basis for my understanding the
23 differential between the 10.75 that staff recommended in
24 the Peoples case and the 11 that they recommended here in
25 the FPUC case was driven by the majority of the equity

1 ratio in relation to the ROE, and also to some of the
2 expected borrowing premia (phonetic) that the company may
3 incur. Is that generally correct?

4 **MR. MAUREY:** Let me be clear, the recommendation
5 in the PGS case is based on the record in that hearing.

6 **COMMISSIONER SKOP:** I'm sorry.

7 **MR. MAUREY:** And with that in mind, FPUC coming
8 on its heels, the differential in financial risk, that is
9 what drove our recommendation, yes.

10 **COMMISSIONER SKOP:** Okay. And then, secondly,
11 again, the historic perspective, again, this being PAA, as
12 Mr. Maurey has noted, that historically the ROEs for
13 electricians have been greater than those of the gas
14 companies. But, again, what I was trying to better
15 understand here was the delta difference between the two
16 ROEs, and in light of the prevailing economic conditions,
17 again, the markets stabilize somewhat at the current date.
18 I think that we have seen, you know, capital make itself
19 available. Obviously larger companies with better credit
20 ratings obviously can attract capital at lower borrowing
21 costs. Smaller companies, not so much.

22 So I do appreciate that incremental spread
23 between what the company may borrow at versus another
24 company and that impact in terms of its weighted average
25 cost of capital and all the things that carry through in

1 making this discretionary judgment that we have to do.

2 But, based on that, again, as I said, I can live
3 with the 11, but it strikes me as being somewhat high.
4 And, again, as I discussed with staff, and I think Mr.
5 Maurey would agree, you know, I talked about a lower, a
6 slightly lower ROE, and the number I came out with was
7 10.85. But, again, I'm not, you know, open to -- I'm open
8 to discussion on it. I'm not wed to a particular result.
9 It's not to -- you know, it's not like I'm doing this
10 arbitrarily. I'm looking at it in great detail trying to
11 draw from not only staff's knowledge, but my own
12 independent judgment to determine what is the appropriate
13 ROE. And, again, ROE being discretionary and not being
14 able to be viewed in isolation. Again, there is a range
15 there that is appropriate, and so that's the basis for my
16 rationale.

17 **COMMISSIONER EDGAR:** Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** I need to ask staff,
19 what does it mean that historically the electric companies
20 get more than gas companies? Do you take into
21 consideration that historically there weren't recoveries
22 that there are today, or have been in the last few years?
23 I mean, is that telling me, well, just because we have
24 done it that way forever that's the reason we do it? I
25 mean, I'm really having a hard time here. I don't

1 understand that. Isn't ROE based a lot on risk?

2 **MR. MAUREY:** Yes, it is based on risk. Your
3 first question, historically, that's just a fact. They
4 have been --

5 **COMMISSIONER ARGENZIANO:** Right, but what does
6 it have -- forgive me, but what does that have to do with
7 me determining whether that's the case that it should be?
8 Because historically they have gotten more, that means
9 they should get more? That's what I'm trying to derive.
10 Is that what you are saying? Is there some legal basis
11 that because historically they have gotten more -- and if
12 there is a legal basis for that, well, have you taken into
13 consideration the recoveries? Because you make it
14 sound -- and I have been listening to this for a long time
15 now -- that the electric companies, or the bigger
16 companies have the greatest risk, when yet you have failed
17 to mention the recoveries that they are given. They are
18 guaranteed recoveries which reduces the risk incredibly
19 so.

20 And I have had to do a bunch of research. We
21 all talk about the hours we put in on Bluefield, and
22 looked at so much of the ROE issue that to me by telling
23 me that it's historically done that way, unless you have
24 added into the equation that the risk has been reduced to
25 almost nil, it means nothing to me. So I'm trying to

1 derive from you what does that mean historically and what
2 should it mean to me as a Commissioner.

3 **MR. MAUREY:** I don't believe it constitutes a
4 legal basis for you to make a determination, no. There
5 are certain expectations in the market for returns. You
6 should base -- not you -- the Commission should base its
7 decision on the record before it on expected risk and
8 expected returns. And we, staff, it would be far easier
9 for us just to give you a range and let you pick something
10 within that range.

11 I've been told I have to give you a spot
12 estimate, so I'm complying. It is easier to designate a
13 range of returns, and then the Commission can use its
14 judgment, because it is an informed judgment on what the
15 appropriate return should be.

16 **COMMISSIONER ARGENZIANO:** Madam Chair. And I
17 appreciate that, and I know that it is difficult for
18 staff. But I want you to be careful when you use the
19 terminology or use it in a sense that makes it sound like
20 there is some kind of legal basis for that because we have
21 done that historically. Because then I have to call you
22 on, well, what has been done, what has changed that, what
23 has changed in that factor. And to me the biggest change
24 is the reduction of risk. And, quite frankly, I don't see
25 the larger companies not getting the capital they need. I

1 just don't see that happening, so I've got to call it for
2 what I see it as.

3 But here I am faced with a smaller company,
4 again, who to me has more risk because they don't have the
5 same recoveries that the larger company has, and it is not
6 logical to me what I'm hearing about -- and everybody has
7 a right for their own opinion. But for me, personally,
8 it's not logical to say, well, you don't deserve
9 11 percent because historically the electric companies got
10 more than you do.

11 So that's my angst. And I'm not blaming you.
12 You have to come up with what you have to come up with,
13 but I have to derive from you after you make a statement
14 that -- and not that you made it for that purpose, but I
15 have to derive from you if there was a legal basis or not.
16 And I think I've got the answer to that question, so I
17 thank you.

18 **COMMISSIONER EDGAR:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you, Madam Chair.

20 And I know on Page 24 we talked about that each
21 case stands on its own individual merits. But with the
22 reference that staff had made to the prior case, again,
23 initially before I kind of figured out that it probably
24 wasn't a good thing to reference to, it caused me to pause
25 and look back about a year ago when the prior decision for

1 the same company was made, and what the Commission
2 adopted.

3 Again, that was not the basis for my decision,
4 but what I was trying to rationalize just based on what
5 staff had written was that, you know, if that were adopted
6 then and the economy has changed so much now, then putting
7 that in perspective on, you know, for it to remain equal,
8 again, caused me, you know, to dive a little deeper. It
9 was not the basis for my decision and that's why I have
10 asked staff not to include it in the final order. But,
11 again, you know, sometimes I can't change what the
12 Commission has done historically. I'm looking at this on
13 a stand-alone basis on the discussions I had with staff
14 and the record evidence that was presented. And so,
15 again, I'm just trying to get consistent, uniform
16 outcomes.

17 **COMMISSIONER EDGAR:** Commissioners, we are
18 talking about Issues 11 through 17 at this point. Any
19 other -- let me start here. Any other questions for staff
20 on any of these issues at this point? 11 to 17.

21 I'm hearing no further -- oh, Commissioner Skop.

22 **COMMISSIONER SKOP:** No, Madam Chair.

23 **COMMISSIONER EDGAR:** No? No questions. Okay.
24 Then is there further discussion at this point?

25 Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.

2 I would like to -- I guess we could take them as
3 a group, or if there were perhaps on the return on common
4 equity, I could make a separate motion for that and see
5 where the Commission goes with that based on the
6 discussion I've heard.

7 **COMMISSIONER EDGAR:** Okay. Then, I guess,
8 Commissioner Skop, in keeping kind of with how we handled
9 the last item, may I ask if you are at a position to give
10 us a motion for our consideration on Issues 11 through 14?

11 **COMMISSIONER SKOP:** Yes, Madam Chair.

12 I would move to adopt the staff recommendation
13 as to Issues 11, 12, 13, and 14.

14 **CHAIRMAN CARTER:** Second.

15 **COMMISSIONER EDGAR:** Thank you.

16 We have a motion and a second. This is to
17 address Issues 11 through 14. Any discussion? Hearing
18 none, all in favor of the motion say aye.

19 (Simultaneous aye.)

20 **COMMISSIONER EDGAR:** All opposed? Show it
21 adopted.

22 Commissioner Skop, I think you said that you
23 would then be in a position to make a motion on Item 15,
24 is that correct?

25 **COMMISSIONER SKOP:** Yes, Madam Chair.

1 **COMMISSIONER EDGAR:** You're recognized.

2 **COMMISSIONER SKOP:** On Item 15, I would
3 respectfully move to modify the staff recommendation and
4 to adopt an authorized ROE midpoint of 10.85.

5 **COMMISSIONER EDGAR:** Okay. Commissioners, we
6 have a motion on Issue 15 for a change to the staff
7 recommendation of I believe I heard you say 10.85, is that
8 correct?

9 **COMMISSIONER SKOP:** Yes, Madam Chair.

10 **COMMISSIONER EDGAR:** Commissioners, is there a
11 discussion; questions?

12 **CHAIRMAN CARTER:** I have a question.

13 **COMMISSIONER EDGAR:** Commissioner Carter.

14 **CHAIRMAN CARTER:** Yes, ma'am. What is the
15 impact of that? I mean, I don't have my calculator here.

16 **COMMISSIONER EDGAR:** I understand. Nor do I.
17 Nor at this point would I be able to calculate it even if
18 I did, probably. But let me pose your question on your
19 behalf to our staff.

20 **MR. MAUREY:** One hundred basis points on ROE is
21 approximately \$500,000 revenue requirement. So you're
22 only coming off -- I'm fried.

23 **CHAIRMAN CARTER:** That's okay. We all are, but
24 we are going to get there.

25 **MR. JAEGER:** This is Ralph Jaeger.

1 If 100 basis points is 500,000, then 10 percent
2 would be 50,000 plus you have got another 5,000 -- I mean
3 another 5 percent, so it is somewhere over 50.

4 **MR. MAUREY:** 75,000.

5 **COMMISSIONER EDGAR:** Okay. Commissioner Carter,
6 just to make sure that you were able to hear, I believe
7 our response from our staff is an impact of 75,000
8 negative to the company.

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

10 **COMMISSIONER EDGAR:** Commissioner Carter, does
11 that answer your question?

12 **CHAIRMAN CARTER:** Yes, ma'am, it does.

13 **COMMISSIONER EDGAR:** All right. Thank you for
14 the question.

15 Commissioners, any further questions at this
16 point?

17 **CHAIRMAN CARTER:** Let me ask you this, Madam
18 Chairman, or Commissioner Skop, or anyone on the bench, is
19 that based upon what I'm hearing in the discussion, is
20 there a move to reduce the return on equity or to increase
21 it? I mean, excuse me for missing out on that, but I lost
22 the train of thought on that whole discussion there.

23 **COMMISSIONER EDGAR:** That's okay. I'm glad to
24 try to help us clarify so that we are all as clear as we
25 can possibly be at this point. My understanding of

1 Commissioner Skop's motion, and I will look to him to
2 correct me if I get it wrong, is that he has made a motion
3 to reduce the ROE from what the staff has recommended.
4 That would also be less than the current ROE that the
5 company is authorized.

6 **COMMISSIONER SKOP:** Correct, Madam Chair.

7 Basically, staff had recommended an ROE midpoint, and this
8 plus or minus 100 basis points of 11 percent, and
9 basically I'm reducing it to 10.85, which is a
10 15-basis-point reduction.

11 **CHAIRMAN CARTER:** Okay. That makes sense.

12 **COMMISSIONER EDGAR:** Commissioner Carter, any
13 further questions at this point?

14 **CHAIRMAN CARTER:** No, ma'am.

15 **COMMISSIONER EDGAR:** Okay. Thank you,
16 Commissioner Carter.

17 Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** For Commissioner Skop,
19 let me see if I understand this. This company is a
20 smaller company that has more risk because it doesn't have
21 recoveries, and you want to reduce their ROE for what
22 reasons?

23 **COMMISSIONER SKOP:** I think for the reasons that
24 I had previously articulated. I'm not trying to reduce
25 their ROE, I'm trying to recognize, based on my

1 discussions with staff, based upon --

2 **COMMISSIONER ARGENZIANO:** But, see, I didn't
3 have those discussions, so I'm trying to get you to be
4 more specific because I have seen you usually voting a
5 much higher ROE. And for whatever your reasons are,
6 whether they are legitimate reasons, I am sure they are
7 for you, and I'm trying to understand why on a smaller
8 company -- I just -- I guess I didn't understand what you
9 had to say about that. I have seen you regarding millions
10 of dollars on basis points vote the other way, and I'm
11 trying to figure out what it is that I may be missing here
12 to why a smaller company with more risk -- and I know you
13 talked about equity infusion, but I'm wondering if you
14 have taken into consideration the risk of a smaller
15 company.

16 **COMMISSIONER SKOP:** I have. And arguably
17 ostensibly if the company would have issued equity in a
18 manner in which they would have told us that they were
19 going to, the staff recommendation in this case would
20 likely based on a comparable equity ratio to Peoples of
21 proximately 53.16, would have been a resultant staff
22 recommendation ROE of 10.75. So, again, looking at what
23 the company told us they were going to do versus their
24 execution of that, okay? By not issuing equity they avail
25 themselves of a higher ROE as a result of the staff

1 recommendation.

2 Now, if there is truly a need to raise capital,
3 then certainly raising it via equity would have been an
4 option for them, but they did not pursue that option.
5 Likewise, again, looking at -- again, I don't want to
6 reference to the prior same company, same equity ratio,
7 but on Page 24, again, staff in passing had noted our
8 prior decision. I'm not really going to go there, but,
9 again, that was in a completely different economic time.

10 So, again, you know, noting that we have had
11 turmoil in the capital markets that have driven the basis
12 point spread in terms of what it costs to borrow, back in
13 November I might have had a different viewpoint. That has
14 since stabilized. So I look at a lot of different
15 parameters when I am evaluating something. Each case to
16 me stands on their own individual merits.

17 And, yes, in response to your question there
18 have been cases were I felt the fact pattern deserved a
19 higher ROE. But, again, the ROE, again, is not something
20 that I view that should be looked at exclusively in
21 isolation. There are many different factors that go into
22 that.

23 But, again, looking at the situation before me
24 here, a 15-basis-point reduction to the staff recommended
25 ROE is not a whole lot. But on the flip side of that, had

1 the company done what they told the Commission they were
2 going to do in the first place, we wouldn't be having this
3 discussion because their ROE would have been 10.75
4 recommended by staff.

5 **COMMISSIONER ARGENZIANO:** Madam Chairman.

6 **COMMISSIONER EDGAR:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** So you're mad at the
8 company because they didn't do what they said. And I
9 would like to hear from the company on that, because I
10 would like to know more. And I also want to clarify, too,
11 that I understand there were many different factors that
12 go into that. I understand it very well, because I
13 remember arguing a lot of those factors on some of our
14 other cases which didn't go anywhere, so I do understand
15 that.

16 My concern is when you have a company -- and the
17 biggest concern to me in ROE is risk factor. That is
18 really -- and I know there are other components that you
19 look at, and I guess what I am hearing you say is because
20 the company didn't come up with the equity -- excuse me.
21 And if the company could address that for me, I would
22 appreciate that.

23 **COMMISSIONER EDGAR:** Mr. Horton.

24 **MR. HORTON:** Yes, ma'am. Mr. Camfield can
25 address that.

1 **MR. CAMFIELD:** Commissioner Argenziano, my name
2 is Robert Camfield. I'm with Christensen Associates
3 Energy Consulting. The reason -- let me start out with
4 the issuance of the equity question that has been raised
5 here. The reason the company declined to go ahead with
6 the issuance of the equity, the common equity, was
7 because, first of all, they had expanded the authority of
8 their short-term debt, so they have greater access to
9 short-term debt than they did before in the authorization
10 with Bank of America.

11 Secondly was an issue of timing. It was planned
12 toward the middle of 2008, and as you realize those
13 markets got -- capital markets got really difficult during
14 that time frame, and it wasn't at all clear that the
15 company could go ahead and issue the equity under
16 favorable terms.

17 Then, finally, as things turned out, there were
18 reduced expenditure levels in the near term associated
19 with the environmental quality compliance.

20 **COMMISSIONER EDGAR:** Commissioner Skop.

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

22 Just a question in response to that, because I
23 discussed that issue extensively with staff, also. And
24 I'll look to the company and then to our staff, but it's
25 my understanding that the access to capital really became

1 a problem in the October/November time frame, later fourth
2 quarter of 2008, and not necessarily in the summer when
3 the company could have otherwise issued the equity
4 issuance, is that correct?

5 **MR. MAUREY:** It became pronounced in
6 mid-September with the bankruptcy filing of Lehman, and it
7 was difficult in October and November.

8 **CHAIRMAN CARTER:** Madam Chairman.

9 **COMMISSIONER EDGAR:** Commissioner Carter.

10 **CHAIRMAN CARTER:** The reason I was asking my
11 questions, I think Commissioner Argenziano articulated it
12 far better than I did, is based upon listening to my
13 colleagues and also the answers that staff has given to
14 the questions was for this company it seemed like that
15 made a plausible explanation in terms of why they
16 recommended the 11 percent. A smaller company having
17 difficulties and all like that, and I thought that was
18 where you guys were going. When I say you guys -- because
19 that is what I was thinking, too. They had convinced me
20 that that is pretty much the perspective on that. A
21 smaller company, a good running company, they have -- they
22 decided to go with the debt market versus the equity
23 market on that, and because of that this would give them
24 an opportunity go there -- when they did go to the debt
25 market, they would be able to go there with an opportunity

1 to show that they have a strong creditworthiness. I mean,
2 that's kind of what my thinking was. That's why when you
3 said the 10.85, I asked why.

4 **COMMISSIONER EDGAR:** Thank you, Commissioner
5 Carter.

6 Commissioner McMurrin.

7 **COMMISSIONER McMURRIAN:** Thank you.

8 I guess just to weigh in on this a little bit.
9 I think that Commissioner Skop's motion is sound and makes
10 sense as he has articulated how he got to the 10.85. I
11 guess I'll just say in general to the question, because I
12 didn't feel like it was really posed to me, but to the
13 issue of larger companies and larger ROEs, again, I think
14 it's a case-by-case thing. We look at them, and I think a
15 lot of the reasons that I have heard are similar reasons
16 that I have used to try to come up with where I think the
17 ROE should be in other cases.

18 But, I would say generally that with larger
19 utilities they are, of course, dealing with much larger
20 assets worth much more money, and they have an obligation
21 to serve a much greater number of customers. I mean, to
22 me I think that the responsibility is somewhat greater.
23 It is not that they have different responsibilities under
24 the law, but they do have much larger investments and they
25 need much larger capital infusions to add to their system

1 or to keep their systems going. So I guess in my mind
2 that that could be an argument.

3 I do agree with what Commissioner Argenziano is
4 saying about with more recovery clauses that that could
5 have downward pressure on risk. I guess I'm saying that
6 there are things that make risk higher on the one end and
7 also might make risk lower on the other end, and in each
8 case you have got to look at that sort of basket of
9 factors that you have. And so for me it's not as simple
10 as just looking at whether or not they have recovery
11 clauses. And, of course, the gas companies have at least
12 a couple, as well.

13 So, in my mind, the rationale that Commissioner
14 Skop has laid out for reducing the ROE is sound, and I'm
15 willing to second his motion at the appropriate time.

16 **COMMISSIONER EDGAR:** Thank you, Commissioner
17 McMurrian. I think we are about there, but, Commissioner
18 Skop, did you have an additional comment?

19 **COMMISSIONER SKOP:** Yes, Madam Chairman. Just
20 one comment in passing. And, again, it's the late hour,
21 so I'm not thinking as coherently as I was earlier in the
22 morning. But, again, I would note on Page 24 the staff
23 has noted in terms of the record evidence for this case
24 that the company presented average ROE for this group was
25 articulated at 10.24; and, again, a premium 75 basis

1 points the staff recommendation.

2 Again, Florida historically has been above
3 average for ROE. That can be a good thing to the extent
4 that it does help attract investment to Florida companies.
5 But, again, you know, I thought that the spread there also
6 was factored in my thinking in terms of the 75-basis-point
7 spread over and above the average peer group.

8 **COMMISSIONER EDGAR:** Thank you, Commissioner
9 Skop.

10 Commissioner Argenziano.

11 **COMMISSIONER ARGENZIANO:** My last comments on
12 this are that while I respectfully disagree with what
13 Commissioner McMurrian said, I agree to the fact that the
14 electric companies have higher capital output and a
15 larger -- I wouldn't say a larger responsibility, I would
16 say the responsibility is a burden or equal in any company
17 that has to provide. But I will say what I think is what
18 is the, I guess, the force for my decision is knowing that
19 it's even larger and it has got the larger capital outlay,
20 a larger capital to begin with, is the fact -- and I'm
21 going repeat it again, that you have a captive customer.
22 Either one has a captive customer. But the larger
23 companies have a government guarantee for that monopoly
24 that they have, and the government guarantee includes
25 almost all recoveries. So you can't say in one breath

1 that it's because of the capital expenditures of a bigger
2 capital component when they are allowed to recover
3 everything.

4 They can recover everything they build, they can
5 recover their costs, they almost totally can recover
6 everything. So when you say that it's a higher -- it's a
7 more capital outlook, you have to include the fact that
8 they can recover everything. You have to. Otherwise you
9 are looking out of one eye and not both.

10 That is my opinion, but it is fact, because the
11 legislature has said you can recover all of this. Even
12 though you are higher capital outlay, you are guaranteed,
13 so that risk is gone. And if you look at the stock
14 market, and you look at the securities, you will find that
15 the best ones to invest in are the bigger companies
16 because of those government guarantees, because there is
17 no risk to those companies. The customer is captive.
18 They are a monopoly and they pay everything. Pretty much
19 everything.

20 Now, here you have a smaller company, and this
21 is where I don't understand the logic, why it doesn't work
22 in the reverse for the smaller company. I guess, simply
23 because you're smaller. Why it doesn't work if the
24 company sitting before you here does not have -- you have
25 a responsibility, you have to provide this service,

1 whether it is water, or electric, or gas, you have to
2 provide that. This company does not have the same
3 recoveries, which tells me whether their capital is larger
4 or not they have more risk.

5 As a matter of fact, the capital, the larger
6 ones have far less risk because they are allowed to
7 recover pretty much everything. So that may sound good to
8 say it's larger capital, but it doesn't work when they are
9 allowed to recover all of that. They can recover
10 everything, so there is no danger that they are not going
11 to be looked at as we are going to give you money. Those
12 securities are the best ones to buy. They are flocking to
13 the utilities, the large utilities, because they have that
14 government backed guarantee and because they are a
15 monopoly.

16 I mean, God, if I was an investor, if I had the
17 money to invest, where would I invest my money? Would I
18 invest it in you guys who really don't have the recovery
19 back there? Maybe, because it's still a healthy company.
20 Or would I invest it in a place that says, you know what,
21 you're guaranteed by the government? This monopoly is
22 guaranteed to recover almost all of its costs.

23 So to say that they are a large capital, you
24 can't do that without saying they also have an incredibly
25 reduced risk. So it doesn't apply to a company that comes

1 in and has greater risk even though they are smaller
2 capital. You have to say okay who has the greater risk.
3 You have the greater risk. Black and white. Open the
4 statute, I can find it. And I think that you maybe, in my
5 opinion, because of that have the -- should get the higher
6 ROE because of the greater risk and because you need to be
7 able to get that capital.

8 So on one breath we are saying the bigger guys
9 who are safe and have the risk reduced greatly need to
10 invest -- need to get to the capital to do what they want.
11 Well, they can. They are doing it. It's proof. Go look
12 and you'll see. But yet we're telling the smaller company
13 with far greater risk in comparison that they -- well,
14 your capital, you will get it somehow and we are going to
15 reduce your ROE on top of that. It doesn't go. And I
16 just -- you can't make it go by telling me it's just a
17 larger capital without looking at the risk. And what you
18 may be doing to a smaller company in their ability to
19 acquire capital is just -- it doesn't go. It's just not
20 logical.

21 **MR. CAMFIELD:** There is certainly a substantial
22 body of empirical evidence that confirms your intuition
23 that small size is associated with progressively higher
24 risk, financial risk. That's true.

25 **COMMISSIONER EDGAR:** Commissioners, we have a

1 motion before us by Commissioner Skop to amend the staff
2 recommendation to an ROE of 10.85. Just to kind of round
3 out our discussion, I am at the substantial risk of
4 disagreeing with Mr. Maurey once again, I am prepared to
5 support that motion.

6 Commissioner McMurrrian, I think you were in a
7 position to second for the record. Are you able to do
8 that at this point?

9 **COMMISSIONER McMURRIAN:** Yes. I'll second the
10 motion.

11 **COMMISSIONER EDGAR:** Okay. We have a motion and
12 a second. We have had good and thoughtful discussion.
13 All in favor of the motion say aye. Aye.

14 **COMMISSIONER McMURRIAN:** Aye.

15 **COMMISSIONER SKOP:** Aye.

16 **COMMISSIONER EDGAR:** Those opposed?

17 **CHAIRMAN CARTER:** Aye.

18 **COMMISSIONER ARGENZIANO:** Aye.

19 **COMMISSIONER EDGAR:** The motion carries.

20 Commissioners, thank you. And to our staff, as well.

21 Commissioners, that brings us to round out the
22 subset of issues that we were looking at to Issues 16 and
23 17. My understanding is that there were not questions,
24 but I will ask again.

25 Are there questions on 16 and 17? Hearing none.

1 Commissioners, may I have a motion to address those two
2 issues?

3 **COMMISSIONER SKOP:** I would move to approve
4 staff recommendation as to Issues 16 and 17.

5 **COMMISSIONER EDGAR:** Is there a second?

6 **CHAIRMAN CARTER:** Second.

7 **COMMISSIONER EDGAR:** Okay. We have motion and a
8 second for the staff recommendation on Issues 16 and 17.
9 All in favor say aye.

10 (Simultaneous aye.)

11 **COMMISSIONER EDGAR:** Those opposed? Show it
12 adopted.

13 Commissioners, the next set of issues that are
14 before us fall under the category of net operating income.
15 It is a larger number, so let me suggest that we kind of
16 split it for discussion purposes to Issues 18 through 27.

17 Commissioner Argenziano, I believe you indicated
18 earlier that you had questions on Issue 26, so I'll look
19 to you first. And then, of course, we will see if there
20 are other questions or discussion.

21 Yes, ma'am.

22 **COMMISSIONER ARGENZIANO:** No, I have resolved
23 those.

24 **COMMISSIONER EDGAR:** Okay. All right. Thank
25 you.

1 Commissioners, questions on Issue 26 or any of
2 the other issues between 18 and 27 at this time? Hearing
3 none. Commissioners, may I have a motion to address
4 Issues 18 through 27?

5 **COMMISSIONER SKOP:** Yes. I would move to
6 approve staff recommendation for Issues 18, 19, 20, 21,
7 22, 23, 24, 25, 26, and 27.

8 **CHAIRMAN CARTER:** Second.

9 **COMMISSIONER EDGAR:** Commissioners, we have a
10 motion and a second. All in favor of the motion say aye.

11 (Simultaneous aye.)

12 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

13 Commissioners, then I would ask that we consider
14 Issues 28 through 36. And I ask if there are questions of
15 our staff or the parties on any of these issues at this
16 time? Hearing none. Is there a motion to address Issues
17 28 through 36?

18 **COMMISSIONER SKOP:** I move to approve staff
19 recommendation on Issues 28, 29, 30, 31, 32, 33, 34, 35,
20 and 36.

21 **CHAIRMAN CARTER:** Second.

22 **COMMISSIONER EDGAR:** Thank you.

23 Commissioners, we have a motion and a second.
24 All in favor of the motion say aye.

25 (Simultaneous aye.)

1 **COMMISSIONER EDGAR:** Opposed? Show it adopted.
2 Commissioners, our next set of issues to work
3 our way through this is under the heading of revenue
4 requirements. That is 37 and also 38. Are there any
5 questions?

6 **COMMISSIONER SKOP:** Madam Chair.

7 **COMMISSIONER EDGAR:** Commissioner Skop.

8 **COMMISSIONER SKOP:** To staff, I think Mr. Jaeger
9 had previously tried to chime in, but there may, as a
10 result of the ROE change, be some impact to some of the
11 fallout issues, on fall through on the revenue
12 requirements and such.

13
14 **MR. JAEGER:** Yes, Commissioner Skop. On Number
15 17, the weighted average cost of capital of course will be
16 a fallout and change because of the 10.85, and then the
17 revenue requirements will also change by approximately
18 that 75,000 I think we were talking about.

19 **COMMISSIONER SKOP:** Madam Chair, again,
20 procedurally I think you would be better able to help me.
21 Would we need to go revisit 17 to reconsider that motion
22 to address any changes that staff would need to make, or
23 is that --

24 **COMMISSIONER EDGAR:** Commissioner, let me
25 suggest this, and I will look to our General Counsel, but

1 I think what we may be able to do is work our way through
2 the issues, and then give direction to staff to make
3 whatever technical adjustments may be required based on
4 the decisions that we make today. And I think just for
5 simplicity if we could do that at the end, I think that
6 that might work.

7 **COMMISSIONER SKOP:** Very well.

8 **COMMISSIONER EDGAR:** Okay. I am getting a nod
9 from staff.

10 Commissioner Skop, we are on Issues 37 and 38.

11 **COMMISSIONER SKOP:** I would move to approve
12 staff recommendation on Issues 37 and 38, noting that as a
13 result of the change in the ROE and weighted average cost
14 of capital that there may be some revisions to those final
15 numbers.

16 **CHAIRMAN CARTER:** Second.

17 **COMMISSIONER EDGAR:** Thank you. We have a
18 motion and a second on Issues 37 and 38. Hearing no
19 further discussion, all in favor say aye.

20 (Simultaneous aye.)

21 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

22 Commissioners, that brings us to Issues 39
23 through 51, cost of service and rate design. My
24 recollection is that there was not an indication of
25 questions on these issues earlier. However, this is

1 certainly an opportunity if, indeed, any have arisen since
2 then. So, Commissioners, are there questions of our staff
3 or the parties on Issues 39 through 51? Hearing none. Is
4 there a motion?

5 **COMMISSIONER SKOP:** I move to approve staff
6 recommendation as to Issues 39, 40, 41, 42, 43, 44, 45,
7 46, 47, 48, 49, 50, and 51.

8 **CHAIRMAN CARTER:** Second.

9 **COMMISSIONER EDGAR:** Thank you. We have a
10 motion and a second. All in favor of the motion say aye.

11 (Simultaneous aye.)

12 **COMMISSIONER EDGAR:** Opposed? Show it adopted.
13 Commissioners, that brings us to the remaining
14 other issues, miscellaneous issues, which include or are
15 encompassed by 52, 53, 54, and 55. We will take up 55 in
16 a second, or a minute or two. Are there any questions or
17 discussion on Issues 52, 53, and 54? Hearing none. May I
18 have a motion?

19 **COMMISSIONER SKOP:** I move to approve staff
20 recommendation as to Issues 52, 53, and 54.

21 **CHAIRMAN CARTER:** Second.

22 **COMMISSIONER EDGAR:** Thank you. We have a
23 motion and a second. All in favor of the motion say aye.

24 (Simultaneous aye.)

25 **COMMISSIONER EDGAR:** Opposed? Show it adopted.

1 Commissioners, before we take up Item 55, we had
2 discussion earlier about -- well, two points. One, I'll
3 just restate it, that we give direction to our staff to
4 make whatever fallout technical adjustments are required
5 from our decisions and discussion today. But more
6 substantively, we had some discussion about considering
7 some language to have the ability -- or to restate our
8 ability to examine changed circumstances, my words, in the
9 future, realizing the proposed merger that is also a part
10 of our discussion today. And we also have talked about
11 some language perhaps addressing additional or reiterating
12 existing consumer protection. So I would like to come
13 back to that point, and look to our staff to see if they
14 have any comments on that, realizing our discussion. And
15 then, Commissioners, we will come to the bench, of course.

16 Mr. Devlin.

17 **MR. DEVLIN:** Madam Chairman, thank you. I'll be
18 addressing the notion of a contingency provision in the
19 event the merger is consummated, and I have four
20 provisions here to discuss.

21 Number one, effective the date of consummation,
22 the company would file MFRs within 60 days. There may be
23 some MFRs we would exclude such as in rate schedules, but
24 other than rate schedules, probably a full set of MFRs for
25 test year 2011. So we would get the full effect of the

1 merger. Of course, we would open up a docket. I should
2 have said that first.

3 Third, we would require the company to file
4 testimony within 60 days that would, at a minimum,
5 identify the synergies, if you will, of corporate
6 allocations and changes in capital structure.

7 And last, to protect consumers, I have two
8 choices here for consideration. One, to subject the
9 amount of the revenue increase today until that case, if
10 it does come to fruition, is concluded. Or, in the
11 alternative, subject the companies to an earnings cap for
12 two years, 2010 and 2011. And there's pros and cons to
13 both of those ideas, but they both protect consumers.

14 **COMMISSIONER EDGAR:** Sorry, I apologize for
15 this, but I'm very tired, and so I would like you to go
16 over that list of your suggestions for our discussion one
17 more time, and then, Commissioner Skop, I know you have a
18 question or a comment. So, Mr. Devlin, could you just go
19 through those just as you did one more time for my
20 benefit.

21 **MR. DEVLIN:** Sure, I would be glad to. And I
22 think we are all a little bit punchy. I am, too. But,
23 again, this would be contingent upon the merger being
24 consummated, and that would trigger a filing of MFRs. It
25 may not be a complete set. That's something we would have

1 to determine. Such as rate schedules may not be
2 necessary.

3 Of course, open a docket.

4 Third, the company would -- and the filing of
5 the MFRs would be within 60 days, sorry, for test period
6 2011.

7 Third, the company within 60 days would file
8 testimony addressing the effects of the merger, addressing
9 at a minimum the corporate allocation synergies and
10 changes in capital structure.

11 And last, to protect the monies, if you will,
12 two choices. One would be just to subject the revenue
13 award at the end of the day today to refund until the
14 conclusion of that case, whatever that amount would be.
15 Or, in the alternative, to subject the company to an
16 earnings cap where they would have to refund or otherwise
17 dispose at the Commission's discretion any earnings above
18 their top of the range for two years, 2010 and 2011.

19 **COMMISSIONER EDGAR:** Thank you, Mr. Devlin.

20 Commissioner Skop, you had a comment or a
21 question, I believe.

22 **COMMISSIONER SKOP:** I'm guilty of the same
23 offense here. I just had some questions for staff in
24 terms of some of the things that they have suggested. I
25 think that all the points that the staff has made are well

1 taken and worthy of discussion.

2 One of the questions I had with respect to the
3 requirement if the merger is consummated to file MMRs
4 within 60 days. Is there any reason why staff converged
5 on the 60 day, again noting that consummation of a merger
6 then you still have the integration on top of that. Would
7 it be more appropriate, you know, 180 days after that
8 where they have maybe some visibility on how the savings
9 and such resulting from the integration may translate into
10 savings that could be passed on to the consumers, or is
11 that 60 days, you know, is there a reason for that?

12 **MR. DEVLIN:** The reason for the 60 days is
13 tradition, and this is not a traditional situation.
14 Normally, my recollection when we initiate a case for
15 overearnings, for instance, we give the company 60 days to
16 file MFRs. There is nothing magic about that. It might
17 make good reason to extend that some period of time. I
18 don't know, maybe six months, to have a better feel for
19 the full impact of the merger.

20 **COMMISSIONER SKOP:** Okay. And then the proposed
21 test year would be 2011. So, again, the test year would
22 be based upon the integration efficiencies that would
23 result from the merger, and I think that would address my
24 previous concern that I expressed earlier today. If you
25 look solely at 2010 you might be missing the benefit of

1 the integration benefits that result from that merger.

2 **MR. DEVLIN:** That's correct.

3 **COMMISSIONER SKOP:** All right. And then I guess
4 the docket that would open would require, at a minimum,
5 filing testimony associated with the effect of the merger,
6 the synergies, and the change in capital structure. Is it
7 limited to those three or would there be others that staff
8 would propose?

9 **MR. DEVLIN:** No, sir. At this juncture that's
10 why I said at a minimum.

11 **COMMISSIONER SKOP:** Okay. And then with
12 respect -- and I think I would like to hear from OPC on
13 this. With respect to the preference of holding subject
14 to refund or an earnings cap at the upper end of the
15 approved ROE range, which would be 11.85, anything above
16 that I think if -- staff, correct me if I'm wrong, but
17 anything above 11.85 they would have to refund versus
18 subject to refund on some other criteria, but I'm trying
19 to flesh those two options out.

20 **MR. DEVLIN:** That's correct. The only thing I
21 would add to that is that it would be at the Commission's
22 discretion whether it be a refund or some other use such
23 as a storm damage accrual.

24 **COMMISSIONER SKOP:** Okay. I'm sure my
25 colleagues will have a bunch of questions on that, but I

1 would also like to hear briefly from OPC if there is a
2 preference on one over the other.

3 **MR. REHIWINKEL:** Commissioner, I think at this
4 time we would have no preference.

5 **COMMISSIONER SKOP:** Thank you.

6 **COMMISSIONER EDGAR:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** I just want to make
8 sure, and I think you said it, but I want to make sure
9 that it goes on record that if the merger takes place, all
10 costs, expenses, and revenues are to be included in the
11 MFRs.

12 **MR. DEVLIN:** Correct. The only thing I could
13 think of excluding would be we have a section in the MFRs
14 about rate structure and tariffs and things of that
15 nature. I think we could exclude that.

16 **COMMISSIONER ARGENZIANO:** Okay.

17 **COMMISSIONER EDGAR:** Commissioner McMurrian.

18 **COMMISSIONER McMURRIAN:** At the risk of jumping
19 out first, it seems to me subject to refund -- I guess
20 it's what I have had in mind the whole time anyway. When
21 we were talking about conditional or holding it subject to
22 refund earlier, it seems like that's easier and we avoid
23 what do we do with the monies over the cap, et cetera.
24 And I'm just not sure, I just prefer the subject to
25 refund.

1 **CHAIRMAN CARTER:** Madam Chairman.

2 **COMMISSIONER EDGAR:** Commissioner Carter.

3 **CHAIRMAN CARTER:** I would agree with
4 Commissioner McMurrin on that, because I do not want them
5 to put that in the storm recovery. I think that's
6 sufficient. I think it should be subject to refund to the
7 ratepayers.

8 **COMMISSIONER EDGAR:** Thank you, Commissioner.
9 Commissioner McMurrin.

10 Well, if I may, I'll ask a question and then I
11 will come back to you. A question to staff. On this
12 point of subject to refund, what would that mean, if
13 anything, if the proposed merger were not to be
14 consummated?

15 **MR. DEVLIN:** Well, in my mind all of these
16 provisions would only be relevant if the merger was
17 consummated.

18 **COMMISSIONER EDGAR:** Okay. And so --

19 **MR. DEVLIN:** I would like to clarify -- I'm
20 sorry.

21 **COMMISSIONER EDGAR:** That's okay. I'm just
22 trying to think through the different steps, process
23 procedurally. And, please, go right ahead.

24 **MR. DEVLIN:** I meant to clarify the timing of
25 whether it would be an earnings cap or subject to refund.

1 That would commence at the effective date of the merger,
2 in my opinion, as opposed to now.

3 **COMMISSIONER EDGAR:** Thank you. That is helpful
4 in my mind for clarification.

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam Chair.

7 I would concur with Chairman Carter and
8 Commissioner McMurrin with respect to the preference of
9 adopting a subject to refund criteria. I think that is a
10 better approach. And the only thing I would add is that
11 looking at the MMRs of 180 days after the consummation as
12 opposed to 60 to get a little bit better data if that's
13 the will of the Commission.

14 **COMMISSIONER EDGAR:** Thank you.

15 Commissioner McMurrin.

16 **COMMISSIONER McMURRIAN:** I got my question back.

17 **COMMISSIONER EDGAR:** Okay.

18 **COMMISSIONER McMURRIAN:** Surveillance reports.

19 We still would be doing surveillance reports like we
20 always do. So to the extent the company was earning above
21 that range anyway, it may still -- the Commission would
22 still be free to take some kind of action on overearnings.

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

24 **COMMISSIONER McMURRIAN:** Okay. I still like
25 subject to refund better. Thanks.

1 **COMMISSIONER EDGAR:** Commissioners, I think we
2 have all had a chance to ask some questions on the
3 suggestions by our staff to follow up on our points and
4 discussion earlier. I think we're close to consensus.
5 Can I ask if we can --

6 **MR. HORTON:** Madam Chairman, I'm sorry, can I
7 get just --

8 **COMMISSIONER EDGAR:** Mr. Horton.

9 **MR. HORTON:** I just want to get clarification of
10 one point. I heard subject to refund, and at the time --
11 not now, but at the time of the merger, if it is approved,
12 is that correct?

13 Is it all right if I ask Mr. Devlin?

14 **COMMISSIONER EDGAR:** That is my understanding,
15 but I would ask Mr. Devlin to clarify for all of us.

16 **MR. DEVLIN:** Yes, Madam Chairman. That was what
17 I was proposing. The effective date of place money
18 subject to refund would start with the date of --
19 effective date of the merger.

20 **MR. HORTON:** Okay. Thank you.

21 **COMMISSIONER EDGAR:** Thank you.

22 Commissioner Skop, are you in a position to
23 maybe help us craft a motion? Please do so.

24 **COMMISSIONER SKOP:** Thank you, Madam Chair.

25 And if I mess up, hopefully staff can bail me

1 out. But I would, in lieu of the staff recommendation as
2 to Issue 55, the docket should not be closed. It will
3 remain open, and the criteria that staff has articulated,
4 the three criteria, and I'll articulate those, shall come
5 into effect upon the consummation of a merger. And that
6 criteria, and correct me if I'm wrong, staff, will be a
7 requirement to file MMRs within 180 days of the
8 consummation date of the merger for the 2011 test year.

9 They will have to file record testimony
10 reflecting at a minimum of the effect of the merger the
11 synergies of the merger and the change in capital
12 structure, and that the monies that are collected will be
13 held subject to refund from the date of the -- the date
14 that the merger is consummated.

15 **COMMISSIONER EDGAR:** And you may have said it
16 and I missed it, but on the first point of the MFRs and
17 within 180 days, that would be for test year 2011?

18 **COMMISSIONER SKOP:** Yes, Madam Chair. And I
19 misspoke. I said MMRs. It's late in the day, but I meant
20 to say MFRs.

21 **COMMISSIONER EDGAR:** Any comments on that from
22 our staff as we work our way through this?

23 **MR. DEVLIN:** (Inaudible. Microphone off.) --
24 have it down except for if you want to put a deadline on
25 the testimony. It may be definite 180 days, but it's at

1 your discretion.

2 **COMMISSIONER EDGAR:** Commissioner Skop.

3 **COMMISSIONER SKOP:** I will defer to staff.

4 Again, I am trying to best craft the motion. But, again,
5 if staff has some better suggestions, certainly I think
6 staff articulated their thoughts probably perhaps better
7 than I could have.

8 So, with staff, is that the filing of the
9 testimony -- would staff suggest that that should, also,
10 180 days or should it be a longer period?

11 **MR. DEVLIN:** Normally they come in the same day.
12 I don't see any advantage to the testimony coming in
13 earlier, but I haven't thought it through.

14 **COMMISSIONER SKOP:** Okay. So my motion would be
15 crafted then to reflect the intent of not only the
16 staff -- the gist of what staff has proposed, but that
17 both the MFRs and the docketed -- the testimony would be
18 filed would be 180 days after the consummation date of the
19 merger.

20 **COMMISSIONER EDGAR:** Thank you, Commissioner
21 Skop.

22 Commissioners, any further questions or
23 comments? Okay.

24 **CHAIRMAN CARTER:** At the appropriate time, Madam
25 Chairman, I would second the motion.

1 **COMMISSIONER EDGAR:** Thank you, Commissioner
2 Carter. That is now. I appreciate you chiming in.

3 Commissioners, we have a motion before us. It
4 will address Issue 55, and the additional concerns and
5 questions I believe that we have had today. All in favor
6 of the motion say aye.

7 (Simultaneous aye.)

8 **COMMISSIONER EDGAR:** Opposed? Shows it adopted.

9 Commissioners, I believe that closes out our
10 discussions.

11 **CHAIRMAN CARTER:** Madam Chairman, one second.

12 **COMMISSIONER EDGAR:** Commissioner Carter.

13 **CHAIRMAN CARTER:** Did you -- or did I miss it
14 about giving staff the leeway to make the necessary
15 revisions and things of that nature that we normally defer
16 to them?

17 **COMMISSIONER EDGAR:** Commissioner Carter, we
18 have done that. Thank you for asking.

19 **CHAIRMAN CARTER:** Okay, I'm sorry.

20 **COMMISSIONER EDGAR:** Okay. Commissioners, and
21 Commissioner Carter and Commissioner Skop in particular,
22 your work here today is done.

23 Commissioner Argenziano and Commissioner
24 McMurrian, we have one more item to address, and that is
25 the panel of the three of us for Issue 16. We will give

1 our staff a moment to switch out.

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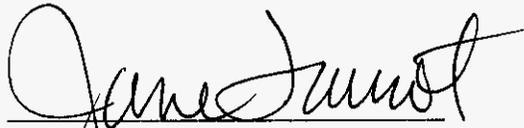
COUNTY OF LEON)

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

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

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

DATED THIS 18th day of May, 2009.



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