

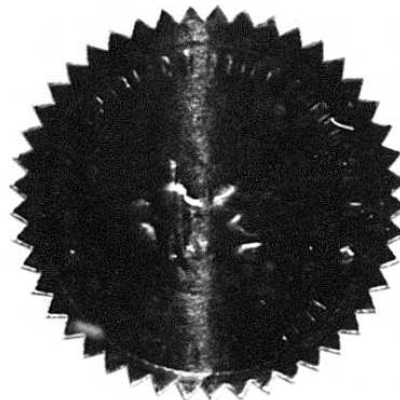
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the matter of
Proposed Revisions to Rules

DOCKET NO. 911082-WS

25-30.020, 25-30.025, 25-30.030,
25-30.032, 25-30.033, 25-30.034,
25-30.035, 25-30.036, 25-30.034,
25-30.035, 25-30.036, 25-30.037,
25-30.060, 25-30.110, 25-30.111,
25-30.135, 25-30.255, 25-30.320,
25-30.335, 25-30.360, 25-30.430,
25-30.436, 25-30.437, 25-30.443,
25-30.455, 25-30.515, 25-30.565,
NEW RULES 25-22.0407, 25-30.0408,
25-30.0371, 25-30.038, 25-30.039,
25-30.090, 25-30.117, 25-30.432
to 25-30.435, 25-30.4385,
25-30.4415, 25-30.456, 25-30.460,
25-30.465, 25-30.470, AND
25-30.475; AND REPEAL OF RULE
25-30.441, F.A.C. PERTAINING TO
WATER AND WASTEWATER REGULATION.



FIRST DAY - AFTERNOON SESSION

VOLUME II

Pages 105 through 262

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER LUIS J. LAUREDO
COMMISSIONER JULIA L. JOHNSON

DATE:

Thursday, August 12, 1993

DOCUMENT NUMBER-DATE

08931 AUG1893

FPSC-RECORDS/REPORTING

FLORIDA PUBLIC SERVICE COMMISSION

1 TIME: Commenced at 9:30 a.m.

2

3 PLACE: FPSC Hearing Room 106
4 Fletcher Building
5 101 East Gaines Street
6 Tallahassee, Florida

6

7 REPORTED BY: JOY KELLY, CSR, RPR
8 Chief, Bureau of Reporting
9 SYDNEY C. SILVA, CSR, RPR
10 PAMELA A. CANELL
11 Official Commission Reporters

10

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12 APPEARANCES:

12

(As heretofore noted.)

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I N D E XEXHIBITS - VOLUME II

<u>Number:</u>	<u>Identified</u>	<u>Admitted</u>
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8	(Staff) Allowance for Funds Prudently Invested, Calculation of Carrying Costs for Each ERC	200
9	(Swain) August 5th, 1993 Supplemental Comments of Debra D. Swain Regarding 25-30.434	201

P R O C E E D I N G S

(Hearing reconvened at 1:00 p.m.)

(Transcript continues in sequence from Volume I.)

CHAIRMAN DEASON: Call the hearing to order, please.

I understand that the discussion of .037(1) has been concluded and that we're now at .037.

And reviewing .037 it appears that that particular rule provision is directly related to .037(1) and that there's probably not going to be any resolution of .037. And it may be expeditious simply just to have .037 addressed by Staff in the final recommendation, unless there's some burning desire on the parties to address .037 at this time.

MS. CHASE: Commissioners, excuse me, could I clarify? We did discuss .037 in its entirety except for (2)(m), which was a change I made as exhibit JC-1 to my testimony. So the only thing that would be left to discuss in the recommendation would be that particular rule, .037(2)(m).

CHAIRMAN DEASON: And what does (2)(m) do?

MS. CHASE: 2(m) takes the current language, says that -- requires a statement setting out the reasons for inclusion of an acquisition adjustment if

1 one is requested.

2 My change would say, "A statement setting out
3 the reasons for a positive acquisition adjustment if
4 one is requested or, if appropriate, a statement
5 setting out the reasons why a negative acquisition
6 adjustment should not be included."

7 That's the only rule that was left undecided,
8 and that's the one that we could address in the final
9 recommendation.

10 CHAIRMAN DEASON: Are there any comments on
11 the provision of .037(2)(m)? Any comments from any of
12 the parties? Very well.

13 Just include that in your final
14 recommendation.

15 MS. CHASE: Okay.

16 CHAIRMAN DEASON: We'll move on now to rule .038.

17 MS. CHASE: Commissioners, Rule 25-30.038 is
18 a new rule. It does not codify current Commission
19 practice or policy.

20 This rule was written over a period of time
21 as an option to .037, the transfer rule, and it would
22 apply for large utilities that are acquiring a small
23 system which has either very low rates or no rates at
24 all. This rule is intended to reduce the regulatory
25 lag in acquiring the systems and implementing a

1 reasonable rate.

2 A little bit of the background of the rule:
3 It was originally proposed when, back in the time when
4 particularly Southern States was acquiring a lot of
5 systems and this situation would occur often.

6 So we proposed the rule -- the problems that
7 we saw that were occurring is the time involved in a
8 utility acquiring the transfer; going through the
9 transfer case, which takes about eight months, six to
10 eight months when you're setting rate base; and then
11 having to come in for a rate case to set a reasonable
12 rate, which would take another eight months, and also
13 the costs involved in all of these proceedings.

14 We tried to address that regulatory lag and
15 expense in this rule by not setting rate base in the
16 transfer docket and, therefore, we could significantly
17 reduce the time needed to process the transfer case and
18 also allow the buyer to implement a rate which we would
19 believe would be reasonable immediately, without a full
20 rate proceeding.

21 Specifically, the rule would require the
22 utility to notice the transfer up front to the
23 customers, the neighboring utilities and so forth, and
24 also require them to notice a proposed rate case
25 change.

1 If no objection to the notice is received,
2 the Commission would approve or deny the transfer and
3 the rate change within 90 days, but the rates would be
4 considered temporary and subject to refund for a period
5 of one year.

6 At the end of one year the utility would file
7 financial data on that system, which would indicate
8 whether or not the implementation of those rates would
9 cause the utility to overearn. Based on that
10 information, Staff would bring it back to the
11 Commission and set a permanent rate.

12 There's been a lot of discussion about this
13 rule in the workshops. The problems that have been
14 pointed out by the company were basically that the
15 rule, while it's well intended, doesn't go far enough.
16 They are saying, first of all, if the customers are
17 noticed up front of a rate change, that they are going
18 to protest. So the idea that you could ever get to
19 agenda and approve something in 90 days would just
20 never happen. They are thinking that there would
21 always be a hearing on this and, therefore, the time
22 and the cost would not be waived.

23 They are also saying if you implement the
24 rate on a temporary basis, subject to refund, that
25 they, then, would be subjected to a long period of

1 uncertainty and increasing rate refund liability.

2 Staff recognizes the industry's concerns with
3 the rule as proposed, but we do not believe that at
4 this time we could propose anything to really address
5 those concerns. However, we do think there is a need
6 for the rule or for the concept of the rule. We
7 believe that perhaps what we should do is simply
8 withdraw the rule at this time and try to address this
9 in future cases as it comes up.

10 There's nothing that we're doing in this rule
11 that the Commission couldn't do on a case-by-case
12 basis. And perhaps what we need to do is to get some
13 experience with it, test the concept in some specific
14 cases, and come back with a rule when we have a little
15 bit more experience with the idea.

16 So, bottom line, Staff is proposing, at this
17 time, to withdraw the rule for consideration.

18 CHAIRMAN DEASON: Comments?

19 MR. SCHIEFELBEIN: We certainly wouldn't have
20 any opposition to withdrawal of the rule. And, in
21 fact, the Florida Waterworks Association does not
22 oppose the rule as written, although we are responsible
23 for the comment that Ms. Chase referred to that it's a
24 well intended but flawed rule.

25 I'd just like to take a quick minute, if

1 we're going to be considering withdrawing the rule, to
2 make one point that I successfully stifled inside
3 myself when we were talking about acquisition
4 adjustments.

5 I think that one of the great disincentives
6 besides acquisition adjustment policy, uncertainty and
7 all of that, one of the great disincentives for buying
8 up small, troubled systems is the regulatory lag that
9 can be involved in getting a transfer, an acquisition
10 approved by the Commission.

11 As it is, the Commission exercises a
12 tremendous amount of liberality to customers who may
13 file a protest to a proposed transfer. There's an
14 abundance of due process, and if there is a protest to
15 a transfer, you're basically generically looking at an
16 eight- to ten-month process from the time you come in
17 with your application to when you know whether or not
18 the transfer will be approved and on what terms and
19 conditions.

20 And if you're looking at buying a system
21 that's maybe got a 20, 30 or \$50,000 rate base and
22 you're faced with the prospect of having to spend, 30,
23 40, \$50,000 in attorneys fees and consultants fees, or
24 whatever, to advance that acquisition before the
25 Commission, it just doesn't make economic sense. And I

1 can speak from firsthand experience from clients I have
2 represented where they have pulled out of acquisitions
3 are not pursued acquisitions because of that situation.

4 And I don't really have the answer as to how
5 you deal with that. I'm certainly not advocating
6 cutting off due process rights of customers but we've
7 got a problem there. And the regulatory lag and
8 expense involved in approving a transfer of a small,
9 troubled system at this point, the system just breaks
10 down.

11 Perhaps, lastly, you might just consider --
12 and I guess you probably all know this firsthand
13 anyway, but many times what you see in a protest given
14 your liberality of reviewing protests of something like
15 that, what you're seeing is a manifestation of
16 customers upset with the former developer-owner of a
17 utility who may have wronged them on the construction
18 of their house or whatever. And this is an opportunity
19 to complicate their lives by writing a letter and
20 protesting something, and that those launch an often
21 costly and expensive proceeding. And there are
22 companies that are refraining from doing that because
23 of those concerns.

24 The rule as written is creative. It's
25 probably worth a shot on an experimental basis. But

1 understand, even if it were to work perfectly, the
2 system will require anywhere from a year and a half to
3 two years to process that application and for a utility
4 to really know what terms or conditions and rates they
5 are getting. And I don't know if that's really a net
6 gain.

7 Thank you.

8 MR. HOFFMAN: Commissioners, this rule, as
9 revised in Ms. Chase's testimony and exhibit, had a
10 provision in it which was also present in .037. We
11 addressed this during the first round of these
12 hearings.

13 I thought that we were through with it, and
14 it's been brought up again today with a slight revision
15 to the language in your Exhibit JC-1. So with your
16 indulgence, I just want to go back to that point. Now
17 that it appears as though we may be withdrawing .038, I
18 want to go back to one point on .0372)(m).

19 And the point is pretty simple, and we
20 discussed it last time. And that is, the way that your
21 rule is proposed, in addressing acquisition
22 adjustments, it says that the utility should include a
23 statement setting out the reasons for the inclusion of
24 an acquisition adjustment if one is requested.

25 So, if purchase price exceeds net book value

1 of the assets, you may find the utility requesting a
2 positive acquisition adjustment. So they should set
3 out the reasons why that's appropriate, if that makes
4 sense.

5 If the purchase price is less than the net
6 book value of the assets, you won't find the utility
7 asking for a negative acquisition adjustment. And it
8 doesn't make sense, and I think it's inconsistent with
9 case law to impose a burden on the utility to set out
10 the reasons why it is not seeking a negative
11 acquisition adjustment.

12 You do not ask a utility in a rate case to
13 demonstrate why certain property is not used and
14 useful. It's the utility's burden to demonstrate why
15 the property is used and useful. And I think that the
16 same principle applies. It's a very well accepted
17 principle of law that one who seeks the affirmative of
18 a certain matter has that burden.

19 Utilities do not seek negative acquisition
20 adjustments. The Public Counsel does. So I think that
21 the procedure that would make sense is that if Public
22 Counsel seeks to intervene and requests a negative
23 acquisition adjustment, Public Counsel should make its
24 case as to why a negative acquisition adjustment is
25 appropriate, and the utility can respond.

1 I think that the way the rule as originally
2 proposed under Section (2)(m) -- and I'm back in .037
3 -- makes sense. Because I think it applies the
4 appropriate burden on the utility, if the utility seeks
5 a positive, and on Public Counsel or some other
6 customer or intervenor who may seek a negative
7 acquisition adjustment. By the very simple statement
8 that "A statement setting out the reasons for the
9 inclusion of an acquisition adjustment, if one is
10 requested."

11 So I'm asking you to reconsider on .037
12 subsection (2)(m) and stick with the original language
13 in your rule package.

14 MS. CHASE: Commissioner, can I just clarify?
15 I don't believe that you passed (2)(m) as my exhibit
16 said. You simply deferred the decision until the
17 agenda.

18 COMMISSIONER CLARK: What was your language
19 again?

20 MS. CHASE: The language that I had in (2)(m)
21 was a statement setting out the reasons for the
22 inclusion of a positive acquisition adjustment if one
23 is requested, or if appropriate, a statement setting
24 out the reasons why a negative acquisition adjustment
25 should not be included.

1 The purpose was simply to try to get the
2 information that Staff needs in order to evaluate
3 whether or not extraordinary circumstances exist.

4 We agree that there may be a different way of
5 asking for that information. I have one proposal here
6 but I wasn't, you know -- we were really just going to
7 try to leave that until the agenda conference since the
8 acquisition adjustment policy has not been decided on.

9 MS. CHASE: I do have an alternative to that
10 if you do want to talk about it today.

11 COMMISSIONER CLARK: Let me see. What you're
12 saying is that you want to change the language if we
13 adopt the Rule 30.0371?

14 MS. CHASE: That's true.

15 COMMISSIONER CLARK: Okay.

16 COMMISSIONER LAUREDO: But I think it's
17 important to start cleaning up this language as we go
18 along.

19 MS. CHASE: Okay.

20 COMMISSIONER LAUREDO: Remember that we
21 Commissioners are not just --

22 MS. CHASE: We can do that, Commissioners.

23 COMMISSIONER LAUREDO: I think that the way
24 it's originally stated it's pretty -- it gives you,
25 again, more flexibility. As a broader construction it

1 gives us -- so I would just intuitively be against
2 narrowing it.

3 COMMISSIONER CLARK: Being more specific.

4 MS. CHASE: Ms. Daniel is passing out another
5 exhibit, which I guess will need some identification.
6 What this does, what I would be proposing now is to
7 leave .0372(m) alone. In other words, if they're
8 requesting an acquisition adjustment, state the
9 reasons. Leave that one alone. This would be an
10 additional rule requirement, and all it would say is
11 "Describe the factors and conditions considered by the
12 buyer and the seller in determining the purchase
13 price."

14 What we are trying to evaluate here is what
15 are the circumstances that led to you that purchase
16 price so that Staff could evaluate whether or not the
17 circumstances are extraordinary. The way the
18 application works right now, we don't know that. We
19 will only know that if they're requesting a positive.

20 We're just simply trying to get to the
21 circumstances surrounding the case to help us make our
22 evaluation and our recommendation to you whether or not
23 we believe the circumstances are extraordinary enough
24 to warrant a negative.

25 COMMISSIONER LAUREDO: Well, let me tell you

1 something. I don't know. I'm not a lawyer. I don't
2 know about statutory construction, but the more you try
3 -- I mean, I think that less flexibility we have,
4 you're going to replace 2(m)?

5 MS. CHASE: No, Commissioner.

6 COMMISSIONER LAUREDO: Or just insert another
7 2(m) in here?

8 MS. CHASE: That's exactly right. We would
9 leave 2(m) as it currently is, which Mr. Hoffman's
10 saying he agrees with. We would leave that alone. If
11 they're requesting an acquisition adjustment --

12 COMMISSIONER LAUREDO: Do you know what
13 you're asking for here? I mean, you're talking about
14 micromanaging. I mean, this is micromanagement to the
15 nth degree. I mean, "What were you thinking, Chief
16 Executive Officer?" I don't see the need for this. I
17 really don't. I understand where you're coming from.

18 COMMISSIONER CLARK: May I make a suggestion?
19 We've heard Mr. Hoffman on this point. The Staff can
20 recommend a change to 2(m) or not as you come to
21 agenda. I would just request that you alert us to that
22 fact that we had a request. Somehow focus our
23 attention on that so we can make a decision one way or
24 the other.

25 MS. CHASE: Okay.

1 COMMISSIONER LAUREDO: That is the most
2 important thing we said today. I mean, I can see
3 agenda. We're going to get so lost. That's why I
4 would rather vote things up and down today because
5 we're going to move on to other items, other rate
6 cases.

7 COMMISSIONER CLARK: Well, you're right. But
8 we have a full day set aside just for this. We have a
9 special agenda for this, right?

10 MS. CHASE: Two days.

11 COMMISSIONER CLARK: Two days. And to some
12 extent, we'll spend that time refreshing our memories.

13 COMMISSIONER LAUREDO: As long as they point
14 it out because I'm ready to vote.

15 COMMISSIONER CLARK: Well, they've done a
16 very good job here, so I think they'll know what the
17 points were that we weren't exactly conclusive on and
18 make sure that we do reach a decision.

19 COMMISSIONER LAUREDO: Of course, if you have
20 two recommendations, which one are you going to
21 recommend? Are you going to just decide between now
22 and October? You have two alternatives, right?

23 COMMISSIONER CLARK: That's their job.

24 MR. HILL: We will tell you what our
25 recommendation is and throw out all the alternatives

1 then you all can have at it.

2 COMMISSIONER CLARK: Okay. Now, Mr. Hoffman,
3 now that you've returned us to .037, is there anyone
4 else who wants to finish to comment once again on .037?

5 MR. TODD: One comment on the proposed 2(m).
6 It would be very difficult, beyond what Commissioner
7 Lauredo talked about micromanaging the Company, it
8 would be very difficult for the company to accurately
9 probably represent what seller --

10 COMMISSIONER LAUREDO: You're getting into a
11 highly subjective -- I mean, why did I choose blue
12 versus red?

13 MR. TODD: Or why did he chose blue versus
14 red?

15 COMMISSIONER LAUREDO: I don't see it serves
16 any purpose. We do have pretty broad -- it seems to me
17 that if we have pretty broad power through discovery,
18 the more we codify them, the less power we have. Do I
19 have faulty logic?

20 COMMISSIONER CLARK: No, you don't. Keep in
21 mind one of the reasons this whole rulemaking was put
22 in motion was to try and reduce the cost of regulating
23 water and sewer companies because sometimes when you
24 compare what they're asking for in an increase and what
25 you have to spend in rate case, it's ludicrous.

1 So what we're trying to do is, if you will,
2 take out as much discretion as we can consistent with
3 reducing the overall cost of it. I mean, you don't
4 want to spend \$3 to make a \$1 adjustment, and that's
5 the reason why a lot of these things are being
6 proposed. And, frankly, in some cases I think you will
7 wind up allowing a greater expense than you might have
8 allowed if you had gone to a rate case; but when you
9 consider the amount of money you spend, it's not worth
10 it.

11 COMMISSIONER LAUREDO: But doesn't this open
12 up a whole expense item?

13 COMMISSIONER CLARK: Yeah, I don't disagree
14 with you on this particular item. And I think it's
15 likely to be quite burdensome, and I'm not sure you
16 would really reach an accurate conclusion of everything
17 that went into determining that price. I mean, they
18 may not just remember.

19 MS. SUMMERLIN: Commissioners, can I just
20 make one comment on them? I think it may be that these
21 particular two subsections that are being suggested are
22 not necessarily the best way to do it. But the problem
23 that I have seen is that the Staff has to make the
24 recommendation on whether or not an acquisition
25 adjustment needs to be made before anybody that might

1 be interested in the negative acquisition adjustment
2 subject gets involved. And then what we have is a
3 situation where the Staff has to pull out of the thin
4 air all the information to make that adjustment on it
5 to make a recommendation.

6 COMMISSIONER CLARK: No, they can talk to the
7 Utility. They can talk to the Utility. It's not
8 pulling it out of thin air. My point is you may have a
9 net book value of \$10,000, they buy it at 8,000 -- and
10 do you want to require them to go through all those
11 things on the front end when it's not a significant
12 adjustment?

13 MS. SUMMERLIN: I think that this may not be
14 the way to do it, but the problem that's trying to be
15 addressed is that if there's a good reason why they
16 shouldn't be a negative acquisition adjustment, I think
17 that it's an appropriate thing to ask somebody to give
18 that kind of information. And that's what's trying to
19 be got at, I believe, by these questions. And I think
20 it leaves the Commission Staff in a difficult posture
21 when we have to pursue that without having a filing
22 requirement that covers that subject matter. I think
23 that's what the point was of this.

24 COMMISSIONER CLARK: Anything else on .037?

25 MR. MANN: Yes, Commissioner. I would just

1 like to say that we agree with Ms. Summerlin's comment
2 about 2(m); and, that is, No. 1, I don't believe that
3 what you're looking at is micromanagement in 2(m). I
4 think what you're looking at is justifying either the
5 inclusion of a positive acquisition adjustment or the
6 exclusion of a negative acquisition adjustment. That's
7 something that we believe the Utility has the burden of
8 demonstrating.

9 Mr. Hoffman has explained why he doesn't feel
10 that there's a burden on the Utility to justify what he
11 considers to be a negative in not including a negative
12 acquisition adjustment.

13 The Citizens certainly support and, supported
14 originally, and still do, Ms. Chase's amendment to 2(m)
15 in the addition of those words that she's put in there.

16 COMMISSIONER CLARK: Anything else?

17 MR. MANN: And back, if I may, to finish up
18 on I think what we started with before Mr. Hoffman was
19 -- .038. And as we made the point in our original
20 comments, we disagree entirely with 25-30.038.

21 COMMISSIONER CLARK: So you don't have any
22 objection to the Staff recommendation to do away with
23 it?

24 MR. MANN: No, ma'am, we certainly don't.

25 COMMISSIONER LAUREDO: Can I informally move

1 to it to get it out now?

2 COMMISSIONER CLARK: I'm trying to think.
3 How did we do this last time? Didn't we sort of go
4 through and give you a sense of the Commission -- I'm
5 not inclined to want to adopt this rule. I think we
6 should try and work it out on a case-by-case basis, and
7 then if we find we're consistently doing the same thing
8 and we find something that works, we can do it. What
9 did we do last time, Chris?

10 MS. MOORE: On the rule having to do with
11 multiple systems, as I recall, there was a vote to
12 delete it; and what I intended to do was to just end
13 the final recommendation for final agenda. Just
14 recommend withdrawing the rule.

15 COMMISSIONER LAUREDO: What purpose does it
16 serve if the Commission says delete it to bring it
17 back? If nothing else, it reduces my carrying amount
18 of paper. I'm mean, it gets to a point where one's
19 mind get so cluttered. If there's a consensus of
20 things, you know, let's move on and throw the paper out
21 so we can better focus on the more controversial.
22 That's the way I look at it.

23 COMMISSIONER CLARK: The only concern I have
24 is are we going to -- there are time frames that we
25 have to adhere to in the APA; and if we vote to

1 withdraw this rule, do you have to hurry up to meet
2 some time frame? I guess what I'm suggesting is do we
3 need to treat it as a whole package?

4 MS. MOORE: I don't think we do, and I also
5 -- I checked with JAPC to make sure and, no, it can be
6 adopted piecemeal.

7 COMMISSIONER CLARK: It can? Okay. Julia?

8 MS. MOORE: As long as it's not filed for
9 adoption, you know, more than 21 days after the last
10 public hearing at rule.

11 COMMISSIONER LAUREDO: I would move that --

12 MS. MOORE: I don't see a problem with it.

13 COMMISSIONER LAUREDO: -- all the parties
14 agree that it's not necessary, we should take it out,
15 move it out.

16 COMMISSIONER CLARK: What is the final
17 hearing though? That's my concern. This may be the
18 final hearing, which means you've got to deal with this
19 rule within 20 days.

20 MS. MOORE: We publish a notice of
21 withdrawal.

22 COMMISSIONER CLARK: See, I don't see any
23 reason to do that separately. I think we can
24 accomplish that by simply telling you we don't want to
25 see it again. Just include it in the final

1 recommendation as sort of the noncontroversial things
2 we've already voted on and just get it out as a
3 package.

4 MS. MOORE: That would be easier for Staff
5 and for me as far as publishing FAW notices and
6 Secretary of State filings.

7 COMMISSIONER LAUREDO: Forgive me, I just
8 heard a horrible story today from someone who was in
9 the middle where there was one plant or one gas issue
10 or something in New England where all of the governors
11 want it, all of the public counsels in those states
12 wanted them, everybody in the -- the environmentalists
13 wanted it, the energy companies wanted it. It took
14 FERC five years still to make the decision.

15 I have nightmares at how much bureaucracy we
16 have and how much procedural -- I'm of the school if
17 it isn't relevant, throw it away so I can have my
18 energies focused on it. But if you want to bring it
19 back --

20 COMMISSIONER CLARK: Commissioner Lauredo, it
21 really has nothing do with that. It's just a matter of
22 making it administratively easier to deal with in
23 trying to get it adopted through the system. And I can
24 see having had to do that on this kind of mammoth
25 undertaking. We can accomplish the same thing and the

1 Staff will get it out of -- you know, put it in the
2 noncontroversial, already-decided part of it and we'll
3 just vote it out at that time.

4 Julia, did you have anything else?

5 COMMISSIONER JOHNSON: No, I concur.

6 COMMISSIONER CLARK: But three of us don't
7 want to see it back again.

8 We're on .039.

9 MS. CHASE: Commissioners, Rule .039 is also
10 a new rule. It is codifying Commission practice with
11 the exception of one change in the rule as proposed,
12 which is that the customers be noticed of the name
13 change. Currently, that's not a requirement. And in
14 my testimony --

15 COMMISSIONER LAUREDO: What section is that?
16 The notice?

17 MS. CHASE: The customer notice is --

18 COMMISSIONER LAUREDO: (f)?

19 MS. CHASE: (f), yes, Commissioner.

20 COMMISSIONER LAUREDO: And that's what Public
21 Counsel --

22 MS. CHASE: And that's new. We don't
23 currently require that. The rest of the rule does
24 codify what we currently do on name changes.

25 In my testimony, I added a requirement that

1 they also provide evidence that they've change the name
2 on the land documents.

3 COMMISSIONER CLARK: Where would that go,
4 Joanne?

5 MS. CHASE: I have that as (i). It would be
6 the last, .0392(i).

7 COMMISSIONER LAUREDO: That it would be --
8 what was it again?

9 MS. CHASE: It's attached to my testimony as
10 Exhibit JC-2, but that would be the evidence that they
11 change the name on the documents for the land. The
12 land ownership that reflects the new name of the
13 Utility.

14 MS. MOORE: That's the last page in Tab 17 of
15 your notebook.

16 COMMISSIONER LAUREDO: What's the purpose of
17 that?

18 MS. CHASE: The purpose of that is that we
19 require utilities, when they first get certificates and
20 in rate cases and all along to own the land on which
21 the treatment facilities are located and that that land
22 be in the name of the Utility. So when the Utility
23 changes its name, we want to see that those documents
24 are also changed to reflect that new name. That's the
25 sole purpose.

1 COMMISSIONER LAUREDO: All you have to do is
2 file with the clerk of the court? You don't have to
3 amend the deed or anything? I mean, that's a whole
4 other bureaucracy. I hate to open up another whole set
5 where they have to pull out all the transfer date deeds
6 and amend them and, Jesus. Is it a piece of paper you
7 just file with the clerk? Does anybody know?

8 MS. SUMMERLIN: Commissioner, what this
9 contemplates is that the deed would be changed to
10 reflect to change the new name. And the concept behind
11 that is to keep the Utility's ownership of that land
12 and facilities clearly in the name of the entity if the
13 Utility --

14 COMMISSIONER LAUREDO: What if the --

15 MR. TODD: That creates doc stamps.

16 COMMISSIONER LAUREDO: I tell you, that's
17 another cottage industry we hadn't thought about.

18 COMMISSIONER CLARK: Well, should we hear
19 from the parties? Go ahead, Mr. Schiefelbein.

20 MR. TODD: Yeah. The only point is if you
21 are in fact going to take a deed transfer, be it a quit
22 claim or a fee title or whatever else, that will create
23 doc stamps on the value of that property that will be
24 incurred by the receiving utility and it will be
25 another expense to the customer that's created

1 arbitrarily.

2 COMMISSIONER CLARK: Let me ask you, how are
3 we assured that the purchasing utility in fact owns all
4 the --

5 MR. TODD: This is not a purchase, this is a
6 change of name.

7 COMMISSIONER CLARK: Well, again, how are we
8 assured --

9 COMMISSIONER LAUREDO: How about a
10 certificate of "doing business as, d/b/a"? File it
11 with the clerk for the public record and file it with
12 --

13 (Simultaneous conversation)

14 MR. TODD: The ownership is still exactly the
15 same so the legal entity hasn't changed except for its
16 name.

17 COMMISSIONER CLARK: All right, but on a deed
18 the name has changed. I mean, the name has not
19 changed.

20 MR. TODD: That is correct.

21 COMMISSIONER CLARK: So how are you able to
22 determine that the new -- the name change is in fact
23 the same? I mean, what do you look for to determine
24 that the ownership is the same and that only the name
25 has changed? I guess that's what I want to say.

1 COMMISSIONER LAUREDO: Isn't the purpose of
2 public records as notice to the public? And when you
3 do a title search, everything, without necessarily
4 making a transfer right there? So if you put something
5 in that record saying that on such-and-such a date,
6 such-and-such a company changed its name or is doing
7 business as so-and-so utility, doesn't that accomplish
8 the same thing as a notice? Rather than having to do a
9 deed transfer with all the legal expenses and --

10 MR. TODD: You haven't lessened the rights
11 any by changing the name, I don't think. I mean, I
12 think the property still remains with the company
13 regardless of what its calling itself, the fee title is
14 still recorded with the entity that owns it.

15 MS. SUMMERLIN: Commissioner, we currently
16 require that the deed be in the name of the utility;
17 and if the utility changes its name, then the deed
18 needs to be reflecting the new name. That's Staff's
19 view, anyway.

20 MR. SCHIEFELBEIN: But in you're ABC Company
21 and now you want to be ABC Company doing business as
22 Happy Water, ABC Company still owns the land. And
23 there's been -- I mean, a d/b/a, a fictitious name,
24 does not affect --

25 COMMISSIONER CLARK: Where do you change the

1 name, do you change it here? What is the requirement
2 for filing, you just change your name here with the
3 Commission; is that right?

4 MR. SCHIEFELBEIN: If you were to change your
5 actual corporate legal name, I believe that would
6 involve a filing with the Secretary of State Division
7 of Corporations. If you were to go from ABC, Inc. to
8 DEF, Inc. -- and I think there are complications
9 involved in that, But if you are merely doing a
10 fictitious name or a d/b/a change, that's with the
11 Clerk of the Circuit Court. And it's rather routine
12 information, Just so if somebody is mad at Happy Water,
13 they can go down there and find out who they really are
14 and who the appropriate people are.

15 COMMISSIONER CLARK: You mean you have to
16 file the notice of change of name at the circuit level,
17 too?

18 MR. SCHIEFELBEIN: If you are going to start
19 doing business under a fictitious name, you have to
20 register with the circuit court --

21 MR. TODD: You have to publish it in the
22 paper, too.

23 COMMISSIONER CLARK: Okay.

24 COMMISSIONER LAUREDO: Do you have to have
25 public notice in a publication?

1 MR. TODD: Sure.

2 COMMISSIONER CLARK: So you apply for a name
3 change both here and at the Secretary of State if it's
4 a corporation.

5 MR. SCHIEFELBEIN: If it is an entity change
6 in the name as opposed to a fictitious name, yes.

7 COMMISSIONER CLARK: Okay. And if you use a
8 fictitious name, you register in the circuit court.
9 And if somebody looked up the records and who owned the
10 property and then also went to the fictitious name
11 file, they would be able to demonstrate that they owned
12 the property? Is that right?

13 MR. SCHIEFELBEIN: Essentially -- okay.

14 MR. HOFFMAN: Commissioner, my understanding
15 is that the procedures and the statutes pertaining to
16 fictitious names changed a couple of years ago so that
17 whereas at one time the filings were made with the
18 circuit court, I think that now they're made with the
19 Secretary of State's office.

20 MS. MOORE: That's correct.

21 COMMISSIONER LAUREDO: But besides that, you
22 can file on to the record of the land, the title
23 document, you can file a piece of paper, a notice that
24 you're doing business as So-and-So Utility.

25 COMMISSIONER CLARK: Let me ask a question.

1 Why does it require doc stamps? If you're not making a
2 purchase or sale --

3 MR. TODD: If the deed is transferred to a
4 different entity, then it requires doc stamps.

5 COMMISSIONER CLARK: But you just said
6 yourself it was a name change, not a --

7 (Simultaneous conversation.)

8 MS. MOORE: It shouldn't be on the value of
9 the property, either.

10 COMMISSIONER CLARK: If you just change the
11 name, why do you pay doc stamps?

12 COMMISSIONER LAUREDO: I failed Real Estate
13 Law 101.

14 MR. TODD: You don't if you just change the
15 name, that's correct.

16 COMMISSIONER CLARK: What's wrong with
17 requiring a change of name on the deeds and be
18 recorded?

19 COMMISSIONER LAUREDO: I was just concerned
20 about the cost, --

21 MR. SCHIEFELBEIN: Right.

22 COMMISSIONER LAUREDO: -- who pays. It
23 always wind up being the customer anyway.

24 COMMISSIONER CLARK: Right. Well, but it's a
25 notice thing, too. I think we need to be assured, it

1 seems to me there have been circumstances where we're
2 not quite sure who owns it and it would have been
3 helpful to --

4 MS. CHASE: Commissioner, there is --

5 COMMISSIONER CLARK: -- to have it established on
6 the actual deed that the names are the same.

7 MS. CHASE: Commissioners, I might add, too,
8 that later on in the rules and in the rate case one of
9 the rate case requirements that is being added is that
10 they provide evidence that they own the land. So if
11 they've changed their name and they come to a rate
12 case, they're going to come across this very problem in
13 their rate case. If they don't do it here, they are
14 going to have to do it there, do something.

15 COMMISSIONER CLARK: Mr. Schiefelbein and Mr.
16 Todd, I don't think we're interested in incurring doc
17 stamps again or anything like that, but we do have a
18 desire that all public records accurately reflect the
19 person who owns it and the name under which they're
20 doing business. I mean, what is the cost going to be
21 to simply make that change on those recorded --

22 MR. TODD: Recording fees, I would suspect,
23 would be the only cost.

24 COMMISSIONER CLARK: I'm not familiar with
25 the recording fees.

1 MS. MOORE: \$6 a page.

2 COMMISSIONER CLARK: Okay.

3 COMMISSIONER LAUREDO: Can we have that
4 information when we vote finally?

5 COMMISSIONER CLARK: I think that would be
6 worthwhile.

7 COMMISSIONER LAUREDO: Yeah, in case if it
8 triggers, because of a consideration clause or
9 something, the whole value of the land --

10 COMMISSIONER CLARK: Mr. Shreve, do you have
11 any light to shed on this particular rule?

12 MR. SHREVE: It should be fairly simple
13 language. Everybody wants the same thing but --

14 COMMISSIONER LAUREDO: What happened that has
15 happened, you alluded to it, maybe you can voice, you
16 had problems here before with somebody you tried to
17 figure out who owned the land?

18 MR. SHREVE: Yes, but it never really came
19 from a change of the name situation. That's where it
20 was really you just were not able to follow it up to
21 that party who owned it. I think here we're talking
22 about assuming there's a clear title to the party and
23 all they want to do is change the name.

24 COMMISSIONER LAUREDO: I'm trying to figure
25 out what the onus is we're trying to cure. I'm trying

1 in the real world to figure out a scenario where the
2 utility would try to hide the ownership of the land, is
3 that by one of the principals owning it and leasing it?
4 I don't understand. Has anything happened prior to me
5 being here that makes that --

6 MR. SHREVE: I think we have run into some
7 problems where there were some interests, personal
8 interests, that might have some of the property leased.
9 Here again, I don't think it was from this type of
10 problem where there was a change of name type thing.
11 There really we'd be talking about the connections
12 between the utility and another party.

13 I guess in the change of the name of the
14 corporation, I don't see where it would really be that
15 much of a problem and --

16 (Simultaneous conversation)

17 MR. SHREVE: We can certainly do some checking and
18 see exactly what the requirements would have to be and what
19 type of notice would be out there. Is there no notice to
20 the county at all when you do a --

21 COMMISSIONER LAUREDO: Can I ask you a more
22 simple and fundamental question if you can answer very
23 briefly? What is the underlying concern with this
24 thing? What brought this about? What is the onus?
25 Can you come up? Why do you need to have the land in

1 the title and the correct name of the utility?

2 MS. CHASE: Commissioner, we're making this
3 change to make it consistent with what we do in all
4 cases with the utility that we're concerned about they
5 own the land. And when they have a name change --

6 COMMISSIONER LAUREDO: Well, stop right
7 there. Why is there a concern about them owning the
8 land? That's what I don't understand. I wasn't here
9 when that bridge was crossed.

10 MS. CHASE: Because the utility's land is
11 part of the investment that the customers are paying
12 for, so we want to make sure it is in the name of the
13 utility and not in the developer or some third party.
14 That is our concern with the land ownership. In this
15 particular case, it is simply a name change and we
16 thought --

17 COMMISSIONER LAUREDO: I understand that,
18 please. Let's go back. I understand what you're
19 trying to do on this name change. I'll try to
20 understand what your concern is.

21 MS. CHASE: The main concern comes in if the
22 utility is sold or later transferred and we find out
23 that the utility didn't own the land to it and suddenly
24 now the owner of that land wants to sell it to the
25 utility at some price, the customers end up having to

1 pay that.

2 COMMISSIONER LAUREDO: And the utility
3 accrued the benefit of having it in plant as part of
4 the rate base?

5 MS. CHASE: And they already have paid for
6 it, true, in the rate base.

7 COMMISSIONER LAUREDO: And that's happened?

8 MS. CHASE: That has happened.

9 COMMISSIONER LAUREDO: Wow. Some pretty
10 sharp minds out there.

11 MR. HOFFMAN: May I just kind of add to the
12 pot here that I don't think that there would be a
13 conveyance in a situation where you had a company
14 that's incorporated and doing business as ABC, then
15 changes to DEF, I don't think that there would be any
16 need or that there would be any requirement to record a
17 deed reflecting that conveyance because ultimately
18 you're talking about a transfer of ownership between
19 the same entity. So I don't think there's even going
20 to be any type of conveyance in that type of situation.

21 COMMISSIONER LAUREDO: What do we do, pass it
22 and come back?

23 COMMISSIONER CLARK: I think we just leave it
24 part of what needs to be addressed in the --

25 COMMISSIONER LAUREDO: With the focus on

1 cost.

2 COMMISSIONER CLARK: -- final rulemaking.

3 Yes, but I think we would all like to know -- I would
4 like to know the mechanics of it and what costs would
5 be incurred.

6 Have we concluded, does that --

7 MS. MOORE: Perhaps the parties could address
8 that in any post-hearing filings if they have a concern
9 about the costs.

10 COMMISSIONER CLARK: Well, I would like us to
11 look into it, too.

12 MS. MOORE: Okay.

13 COMMISSIONER CLARK: Does that conclude .039?

14 MS. MOORE: Yes, it does.

15 COMMISSIONER CLARK: Now we're on 30.117.

16 MS. MERCHANT: Commissioners, Chapter
17 25-30.117 is a new rule that we're proposing so that
18 all water and wastewater utilities that account for
19 their pension expenses -- excuse me, account for their
20 pensions, would establish defined benefit plans, should
21 be required to account for those costs pursuant to the
22 statement of Financial Accounting Standards No. 87.

23 COMMISSIONER LAUREDO: This is what we have
24 been doing in every rate case?

25 MS. MERCHANT: No. That's 106, which is

1 other postretirement benefits other than pensions.

2 COMMISSIONER LAUREDO: Okay, other than
3 pensions.

4 MS. MERCHANT: This is pension and this is
5 basically they account for their pensions in accordance
6 with FAS 107 -- excuse me, 87. I'm getting them mixed
7 up myself.

8 OPC filed comments that a requirement should
9 be added on that the costs be funded and properly
10 escrowed. And our position on that is that, in
11 general, most utilities are going to fund only the
12 amount that they can deduct for taxes, and that that
13 may or may not even have any relationship to the amount
14 that's allowed for regulatory purposes. And we believe
15 that any issue regarding funding or escrow should be
16 addressed on a case-by-case basis and that the rules
17 only require that they account for their pension costs
18 in accordance with the financial standard.

19 COMMISSIONER LAUREDO: So your answer to OPC
20 is that it doesn't preclude us looking at the funding
21 of the escrow?

22 MS. MERCHANT: Precisely, and that it should
23 be done on a case-by-case basis.

24 COMMISSIONER CLARK: Any objection to this
25 rule?

1 MR. MANN: Yes, Commissioner, I think we have
2 some comments to make, particularly to Ms. Merchant's
3 comment about the Staff's looking on a case-by-case
4 basis at the funding in escrow; and Kimberly Dismukes
5 will make some comments on this one.

6 MS. DISMUKES: I don't really have anything
7 to dispute Ms. Merchant's request that it be done on a
8 case-by-case basis, but OPC believes that there's no
9 reason why you couldn't put it into a rule that it be
10 funded and correctly escrowed. Because those monies
11 are going to be collected from ratepayers; and at least
12 if you do that, we know that those funds will be used
13 for the purpose that they're collected. If they're not
14 funded and not escrowed, you run the risk that those
15 monies will not be given to the employees, that the
16 funds will be used otherwise; and that's the intent and
17 purpose behind our comments.

18 I don't see, even if you have this broad rule
19 that says it has to be done, you can still address on a
20 case-by-case basis; you need the circumstances of that
21 particular utility that, for tax purposes or whatever,
22 may vary the amount. I'm not that familiar with the
23 tax laws and why things can or cannot be funded, but I
24 don't think the rule precludes fine-tuning it on a
25 case-by-case basis if it were to include our language.

1 COMMISSIONER CLARK: Well, this is just
2 telling you how to account for it, this doesn't tell
3 you the regulatory treatment. And you're suggesting
4 that for water and wastewater companies, we ought to
5 require them to fund it.

6 COMMISSIONER LAUREDO: What are we doing in
7 the other?

8 COMMISSIONER CLARK: Some of them fund it,
9 some of them don't.

10 MS. DISMUKES: That's my understanding, yes.

11 COMMISSIONER CLARK: What drives your
12 decision, very often, is what the tax implications are
13 and, I guess, the financial viability of the Company,
14 too, whether they're "good for it," so to speak, in the
15 long term.

16 COMMISSIONER LAUREDO: Well, and the use of
17 the funds. I imagine it would be a big concern, the
18 use of funds that comes from a dedicated purpose from
19 ratepayers --

20 COMMISSIONER CLARK: I know -- excuse me.

21 COMMISSIONER LAUREDO: It's tough --

22 COMMISSIONER CLARK: In the united case it
23 will be unfunded and the way you would account for it
24 would be a reduction in rate base -- which is
25 appropriate, since it is a liability or a reduction to

1 your investment, because it's money you will have to
2 pay out.

3 See, I just don't know -- I'm comfortable
4 with the accounting but I'm not there yet that we
5 should say, "All water and wastewater companies ought
6 to fund it and escrow the amount." I just don't know
7 about that. There's part of me that says that's
8 probably the way we're going to have to go, but I'm
9 just not sure.

10 MS. MERCHANT: Commissioners, I don't think
11 that this has ever been an issue in a rate case that I
12 have ever been involved in for water and wastewater
13 utilities.

14 COMMISSIONER CLARK: Funding it and not
15 funding it?

16 MS. MERCHANT: Right.

17 COMMISSIONER CLARK: What did we do?

18 MS. MERCHANT: It just has not been an issue.

19 MR. WILLIS: That was my concern.

20 COMMISSIONER CLARK: Well, what were they
21 doing then?

22 MR. WILLIS: Some were funding, some weren't.
23 I would suggest that, you know, our rule basically
24 addresses nothing but the accounting treatment. I
25 think if you desire to go and look more into the area

1 of whether or not a utility ought to fund or not fund,
2 it's something you probably want to address on a
3 generic basis for all industries, because all
4 industries are doing one or the other.

5 COMMISSIONER CLARK: Any other comments?

6 MS. DISMUKES: I'll just say real briefly,
7 you mentioned financial viability, and I think when you
8 look at the water and wastewater industry, the
9 financial viability is a lot less than when you look at
10 the telephone and electric. Self-evident.

11 And just one quick one, Commissioner Lauredo.
12 You may recall from the Jasmine Lakes case they were
13 spending -- requesting recovery of a fairly sizeable
14 401 K plan for their employees and I don't believe that
15 that's going to be funded.

16 COMMISSIONER LAUREDO: Well, I don't have any
17 problem with Standard 87. I want to revisit this
18 because there is a social covenant in a sense that if
19 you are putting money in the bank -- you know, I mean
20 if I am helping make the company viable by funding
21 their pension fund, which theoretically is helping them
22 attract excellent people to work and therefore provide
23 excellent service, I want to make sure I turn around
24 and when he gets to the end of that person's
25 employment, he has his pension. I mean, as a ratepayer,

1 I'm putting money in bank, --

2 COMMISSIONER CLARK: Yeah, but you are --

3 COMMISSIONER LAUREDO: I don't want to get
4 into micromanagement, but this is a very interesting
5 question to follow up on. I don't know if --

6 COMMISSIONER CLARK: But I look at it from
7 the standpoint of it's really who holds the funds? I
8 mean, who is the more financially liable? In some
9 cases it may be the regulated utility that is, as
10 opposed to insurance companies or anyone else.

11 COMMISSIONER LAUREDO: Yeah.

12 COMMISSIONER CLARK: I mean, they have had,
13 likewise, their financial difficulties and have not
14 been able to pay in some instances.

15 Anything further on this rule?

16 COMMISSIONER LAUREDO: So we're going to
17 defer discussion on OPC's proposal until --

18 COMMISSIONER CLARK: Well --

19 COMMISSIONER LAUREDO: Can we highlight that?

20 COMMISSIONER CLARK: Yeah. But I guess, just
21 to state my views, I'm comfortable with dictating the
22 accounting treatment, I'm just not prepared to adopt a
23 rule that says it will be funded.

24 COMMISSIONER LAUREDO: So we'll pass the
25 language as is and have Staff kind of point us out in

1 the same spirit about this, if you have more input on
2 this?

3 COMMISSIONER CLARK: Yeah.

4 COMMISSIONER LAUREDO: Will the parties be
5 able to speak at agenda?

6 COMMISSIONER CLARK: No. You can point out
7 that this was the rule that Public Counsel suggested we
8 add that it -- a funding requirement.

9 COMMISSIONER LAUREDO: And "funding" and
10 "escrow" are two different things. Maybe you ought to
11 break it out to --

12 COMMISSIONER CLARK: Well, let me be sure
13 that I understand it. What do you perceive -- in this
14 case, I thought they were the same thing.

15 COMMISSIONER LAUREDO: Well, you can fund it by
16 going to a third party financial intermediary, an insurance
17 company or a bank, or you can say, "I'm funding it here. I
18 have this account at Nations Bank --"

19 COMMISSIONER CLARK: Well, but it --

20 COMMISSIONER LAUREDO: "-- and I'm funding it
21 here but I'm the only guy who signs." Theoretically it
22 is in escrow; but if I ever get into a cash crunch, I
23 could just write a check to pay the electric bill.

24 COMMISSIONER CLARK: Well, I didn't think you
25 could do that for escrow accounts, but when we use the

1 term escrow accounts it was to be used for that purpose
2 for which the escrow was set up.

3 MS. MERCHANT: Yes.

4 COMMISSIONER CLARK: But in my mind it's the
5 same thing, you're either giving it to a bank as escrow
6 or you're going to turn it over to some other financial
7 institution as funding a program that will make sure
8 the money is there when the benefits are to be paid.

9 Are we ready to move on?

10 MS. MERCHANT: Yes, Commissioner.

11 COMMISSIONER CLARK: 30.360.

12 Staff, why don't you tell me what the next
13 one is.

14 COMMISSIONER LAUREDO: Test year approval is
15 next.

16 MS. MOORE: It's .430, test year approval.

17 COMMISSIONER LAUREDO: Yeah, the .360 was
18 already stipulated, right?

19 COMMISSIONER CLARK: Good.

20 MS. MERCHANT: Commissioners, there are only
21 two changes to the test year approval rule, .430. And
22 that's to delete the portion requiring prefiled
23 testimony and switching that over to Section .436(2),
24 and the other change is that the director of the
25 Division of Water and Wastewater will have the

1 capability to grant extensions of MFR filings.

2 COMMISSIONER CLARK: Parties?

3 MR. SCHIEFELBEIN: This is one of the rules that
4 we had proposed was noncontroversial and it should be
5 stipulated, yet has not been stipulated among the parties.

6 COMMISSIONER CLARK: Oh, I see, this is one
7 you've proposed. Any comments?

8 MR. HOFFMAN: No comments.

9 COMMISSIONER CLARK: Public Counsel, do you
10 have comments on the .430?

11 MR. MANN: I don't believe we have any
12 comments.

13 COMMISSIONER CLARK: Okay.

14 COMMISSIONER LAUREDO: But you're not
15 stipulating it in?

16 MR. MANN: No, we still have a little problem
17 with that, but --

18 COMMISSIONER LAUREDO: On the big picture,
19 when you have rules, rather than the flexibility I have
20 been advocating, just case-by-case, does that preclude
21 parties on the overall big picture rate case from
22 stipulating everything, and in a stipulation in essence
23 violate the rules? If Public Counsel --

24 COMMISSIONER CLARK: Good question.

25 COMMISSIONER LAUREDO: -- and the company get

1 together.

2 COMMISSIONER CLARK: Commissioner, I think
3 they still can. I mean, I think if you look back to
4 the Centel case, they sort of agreed on a revenue
5 requirement with no agreement as to what went into that
6 revenue requirement.

7 I think it's still possible, you know. You
8 agree on a revenue requirement and normally that
9 includes working capital and all those things, but you
10 didn't go through and say your working capital is X
11 amount of this and X amount of that. I think you still
12 can do it. And the Public Counsel and the companies
13 are free to give-and-take on those issues, outside
14 these rules.

15 COMMISSIONER LAUREDO: Because the only way
16 we're ever going to get -- ironically is one of the
17 underlying philosophies is to save on rate case
18 expenses, not by doing this cumbersome process. But by
19 having the parties agree more and more and stipulate
20 issues. And I imagine if you had a stipulation that
21 you can outline where it violates individual rules,
22 then we can waive it, couldn't we? We can always
23 waive rules?

24 COMMISSIONER CLARK: I'm not even sure you'd
25 bring it up, I guess.

1 COMMISSIONER LAUREDO: Oh, okay. I'm getting
2 too far ahead.

3 COMMISSIONER CLARK: I mean, I think you just
4 sort of -- the stipulations usually addressed what they
5 accomplish and what they don't accomplish.

6 COMMISSIONER LAUREDO: In other words, I just
7 don't want to be prisoners of rules, fighting our other
8 push for a more lean approach and philosophy about rate
9 case setting, by having the parties be more reasonable
10 with each other. Just as long as you keep that in
11 mind. Sometimes you forget the big picture when we get
12 some involved in the --

13 COMMISSIONER CLARK: Right. That concludes
14 .430. How about .433?

15 MS. MERCHANT: Okay. Commissioners, we've
16 already done the first three sections of .433 so the
17 next one would be 4. Excuse me, and that deals with
18 using the simple average to calculate rate base, which
19 is the average of the beginning and end-of-year
20 balances. Previously, we used the 13-month average,
21 but in probably the last three years -- three, four
22 years we have been using the simple average. And this
23 would be just codifying the Commission's current
24 practice into rules.

25 COMMISSIONER CLARK: Go ahead, Wayne.

1 MS. MERCHANT: I don't think that that's a
2 controversial issue unless --

3 COMMISSIONER CLARK: What page are you on in
4 the rule?

5 COMMISSIONER LAUREDO: I'm on 76.

6 COMMISSIONER CLARK: 100?

7 COMMISSIONER LAUREDO: We all have different
8 pages.

9 MS. MERCHANT: I'm not working from the same
10 thing you're working from.

11 COMMISSIONER LAUREDO: Which is, by the way,
12 a problem.

13 MS. MERCHANT: I'm working from the same section,
14 but I'm not in the same document that you're in.

15 COMMISSIONER CLARK: Okay.

16 COMMISSIONER LAUREDO: I would hope for the
17 next hearing, we would all be working out of the same
18 set of documents.

19 COMMISSIONER CLARK: Well, I'm using, you
20 know, what I had last time.

21 COMMISSIONER LAUREDO: Well, for example,
22 what do you have, Page 76?

23 COMMISSIONER CLARK: No, from the last time I
24 have Page 100.

25 COMMISSIONER LAUREDO: I'm on Page 76.

1 MS. MOORE: I think you're looking at the
2 order and the notice, Commissioner Lauredo.

3 COMMISSIONER CLARK: I don't think there's
4 any controversy on Subsection 4. Hearing none. How
5 about 5?

6 MS. MERCHANT: Subsection 5 is basically a
7 change that states that --

8 COMMISSIONER CLARK: Wait a minute. Do you
9 have a comment on 4?

10 MR. MANN: I'm sorry, Commissioner. I
11 thought you had said one. I didn't understand 4 until
12 you just now said Subsection 4.

13 COMMISSIONER CLARK: That's the first one
14 we're on.

15 MR. MANN: Okay. I apologize. I'm not
16 hearing very well today.

17 We do have comments, we prefiled comments on
18 these and Ms. Dismukes does want to make some oral
19 comments at this time.

20 COMMISSIONER LAUREDO: For the averaging.

21 MS. DISMUKES: Pardon me.

22 COMMISSIONER LAUREDO: Is that what we're on,
23 averaging?

24 MS. DISMUKES: Yes. The use of the beginning
25 and ending average for establishing rate base and

1 capital structure.

2 OPC is proposing to revert back to the
3 13-month average approach to establishing rate base in
4 capital structure. And I just want to briefly respond
5 to the Florida Waterworks Association's comments.

6 Their first comment was that it would be more
7 costly and increase the chance of error. And I believe
8 that in this day and age of computers that the cost
9 would be fairly small to go from getting an ending year
10 average to a 13-month average. Furthermore, it
11 wouldn't surprise me if for many companies, especially
12 the larger companies, the Florida Cities, the Southern
13 States, if that information is not already on computer.

14 They also indicated that it would increase
15 the chance of errors. I don't believe that. All you have
16 to do is do cross-checks and you can correct errors on a
17 13-month average balance sheet very quickly.

18 Florida Waterworks also suggested in response
19 to our comments that the beginning and ending year
20 average rate base can just as easily understate rate
21 base as overstate rate base. And I disagree that most
22 utilities are adding investments, especially in the
23 state of Florida. So a beginning and ending year
24 average rate base is more than likely going to
25 overstate rate base than understate it. Because the

1 investment is going to be at the end of the year, so when
2 you add them together, you're going to get half way as
3 opposed to one-thirteenth weight, if they're adding
4 investment over the year, which is the more typical case.

5 And then finally, the beginning and ending
6 year average rate base is more easily subject to
7 manipulation than a 13-month average rate base, and
8 that's primarily because the utility can come in, right
9 at the end of its test year, close all the CWIP to
10 plant-in-service and then basically get 50% of the
11 weight of that investment in their rate base as opposed
12 to one-thirteenth. Those are basically our comments in
13 response to Florida Waterworks.

14 COMMISSIONER CLARK: So your concern is at
15 the end, you load up at the end?

16 MS. DISMUKES: I was just responding to
17 Florida Waterwork's comments.

18 We prefer the 13-month average because it's a
19 more accurate method of establishing rate base; it's
20 done in telephone and electrics and everybody knows
21 that. In water and wastewater they've gone from
22 13-month average to beginning and ending year average
23 in an effort to save expenses, is my understanding
24 would be the reason to do it. I don't think that in
25 this day and time that that's really --

1 COMMISSIONER LAUREDO: So 13-month is: (a)
2 more accurate.

3 MS. DISMUKES: It's more accurate.

4 COMMISSIONER LAUREDO: And (b) is what we do
5 in all the other industries?

6 MS. DISMUKES: Yes.

7 COMMISSIONER LAUREDO: What is your response
8 to that?

9 MS. MERCHANT: I can respond briefly is the
10 policy, the change in the Commission policy for the
11 water and wastewater industry came about after a docket
12 was open to investigate ways to reduce the cost to the
13 water and wastewater industry. And that was one of the
14 main ways that they found, the Commission found, in
15 that docket to reduce the cost to this industry.

16 COMMISSIONER LAUREDO: When was that? Just
17 roughly. Early '80s.

18 MS. MERCHANT: I would say about five years
19 ago.

20 MR. WILLIS: Yes, about five, six years ago.

21 COMMISSIONER LAUREDO: Okay. And how is it
22 less costly?

23 MS. MERCHANT: Well, for one thing you've got
24 minimum filing requirements. The amount of information
25 that you have to submit. When you had the 13-month

1 average you had to give -- state the balance, by month,
2 by account, for plant, accumulated depreciation; you've
3 got all those filing requirements for each monthly
4 balance.

5 COMMISSIONER LAUREDO: For 13 months?

6 MS. MERCHANT: 13 months.

7 COMMISSIONER LAUREDO: And under the
8 methodology your're proposing, how do you do it?

9 MS. MERCHANT: Just two: the beginning and
10 end of year average.

11 And I would also like to point out that you
12 have -- in water and wastewater cases you have -- the
13 plant additions are so material generally. I mean if
14 you're going to have a major plant come on line, it's a
15 big hit to the rate base. And a lot of times those are
16 projected test years, and those are coming in at full
17 weight regardless of whether it came in -- I mean, the
18 minimum filing requirements are set up so that the
19 utility will be able to earn a fair rate of return on
20 that full investment of the material cost increase in
21 plant.

22 COMMISSIONER LAUREDO: Let me ask you this:
23 Is plant-in-service something you have -- if you have a
24 board of directors and you have a meeting every month,
25 is that part of what the directors get as a financial

1 condition of the company every month? They can call it
2 something else, call it assets on the balance sheet.

3 MS. MERCHANT: I'm confused by what you're
4 asking.

5 COMMISSIONER LAUREDO: Well, I'm trying to
6 figure out where this data that is so cumbersome.

7 MS. MERCHANT: It comes off of the
8 financials. Some companies don't close their books on
9 a monthly business.

10 COMMISSIONER LAUREDO: They don't?

11 MS. MERCHANT: I mean, a lot of water and
12 wastewater companies don't.

13 COMMISSIONER LAUREDO: They don't do an end
14 of the month P&L?

15 MS. MERCHANT: Some of them don't. But
16 generally the Class A's generally do, and the Class B's
17 generally do. We still have some that --

18 COMMISSIONER LAUREDO: The Prodigy or what is
19 that other software that just does it for you.

20 MS. MERCHANT: They can go in and calculate a
21 balance but it's just not a closed-out balance, precisely.

22 MR. WILLIS: Commissioners, we have some
23 Class E utilities that don't even own computers.
24 They're so small.

25 COMMISSIONER LAUREDO: That can't even what?

1 MR. WILLIS: We have some Class E utilities
2 that are so small and unsophisticated they don't even
3 own a computer and probably don't know what one is, how
4 to use it.

5 COMMISSIONER CLARK: Let me ask you this.
6 Does Betmar have one?

7 MR. WILLIS: Betmar? I couldn't tell you
8 that.

9 COMMISSIONER LAUREDO: But I mean you're
10 imposing this method on everybody else that does have
11 computers?

12 MR. WILLIS: The beginning year end.

13 MS. MERCHANT: You mean everybody else
14 meaning electric and gas and telephone?

15 COMMISSIONER LAUREDO: No. Southern States
16 has computers. They run daily balance sheets and P&Ls.

17 MS. MERCHANT: With Southern States that
18 would even be more dramatic.

19 And also another thing that you have to take into
20 account is Staff's time working on the 13-month average;
21 it's a lot, you know, and the other intervenors. To make
22 one adjustment to a plant account you'd have to go through
23 and make that calculation on a 13-month average and apply
24 that through the accumulated depreciation.

25 For Southern States having 127-some-odd

1 systems, that would be very dramatic filing. I mean
2 the filing that they had in the last rate case was very
3 dramatic, but it would even be more so with the
4 13-month average information.

5 I don't believe that in the past that we've
6 lost that much in accuracy going from the 13-month
7 average to the beginning and end of year balance. I
8 think it's been more of a cost savings.

9 COMMISSIONER JOHNSON: Public Counsel, what's
10 your argument, or your rationale for saying that it
11 isn't more costly? The 13-month.

12 MS. DISMUKES: Primarily it's tied to the
13 fact that we've moved, and the water and wastewater
14 industry has, as well, moved a lot greater into the
15 computers than they had five years ago.

16 I know I spoke with the vice president of
17 Southern States, who, I think, came there three or four
18 years ago and he said they didn't even have computers
19 back then, but now they are all up on to computers. Of
20 the smaller Class B utilities I've dealt with since
21 I've been at Public Counsel all had computer systems.
22 So the Class Cs, now I think that's a valid point.
23 I've never dealt with a Class C utility. I would think
24 that would be a special circumstance where I don't
25 think you'd want to go to the 13-month average in that

1 --

2 COMMISSIONER LAUREDO: Well, what is the
3 difference in the big picture from your point of view,
4 aside from the cost, which is kind of an excuse to the
5 real reason. Having a 13-month average does what?

6 MS. DISMUKES: It's just a more accurate
7 reflection of the investment in the utility. It is
8 more consistent with your income statement, which is,
9 in effect, a 13-month average. You don't take it and
10 do it that way but that's what it reflects. If you get a
11 situation where you have a utility that has a lot of
12 investment towards the tail end of the year, your rate base
13 is going to be overstated, so to speak, relative to your
14 income because of the fact that you don't have consistency.

15 MR. TODD: Commissioners, I'd like to make
16 two comments to that. Number one, part of the cost
17 that Ms. Dismukes is talking about, the computer
18 systems, if they have those, that's great. And as long
19 as your spreadsheets and all are footed and done
20 correctly, and most of the big companies are going to
21 do them like that and not have any problem. But when
22 there is an error found in the balances on a
23 spreadsheet and you have many, many more accounts to
24 do, when you fix those, then you have additional costs,
25 which is paper, which is mailing, which is

1 reproduction, which is all clerical time and
2 orientation. I mean that's all money out of pocket.
3 And I think that's the big part of the cost; not the
4 ability to add them up the first time.

5 The second thing, what she was talking about,
6 the investment being later in the year, it does, in
7 fact, would, in fact, under the simple average skew the
8 rate base higher. But I think just as many companies,
9 when they are making a large investment that takes six
10 months, a year, you know, all the construction
11 schedules go longer typically than you estimate. As
12 many companies are going to have balances fall in the
13 beginning of the year, and when that happens that's to
14 the detriment of the Utility not to the benefit. I
15 think that's a two-edged sword that really cuts both
16 ways, and what we're trying to talk about is not
17 something that is substantially less accurate, but is
18 substantially easier to do and hence less costly.

19 MR. WILLIS: Commissioners, I'd just like to
20 add something do. I don't think anybody would argue
21 that the 13-month average method is more accurate.

22 The argument that you're seeing here and that
23 the Commissioners saw in that past docket was is that
24 accuracy worth it? Because in the water and wastewater
25 industry, unlike the other industries, you're not going

1 to be doing most of this stuff in-house. Probably some
2 of the Class As will. The majority of our utilities
3 that you see will be out there hiring consultants who
4 will be sitting there churning around and churning
5 through their own computers --

6 COMMISSIONER LAUREDO: What's Jasmine? For
7 example, you sat on that case with us. What is Jasmine
8 in the classification, is it a "B" or "C"?

9 MR. WILLIS: A "B."

10 COMMISSIONER LAUREDO: And they had no
11 in-house accounting at all.

12 MR. WILLIS: No. They would have hired a
13 consultant. Their consultant would have done that all
14 that because the majority of your cost is sitting there
15 doing the MFRs. Those MFRs cost. You saw the price of
16 those in the cases you've sat on; you're just going to
17 see increased cost. You're going to see more time for
18 the consultants to sit there and churn out those
19 13-month averages. The Commission really had to
20 consider that past docket is the accuracy of a 13-month
21 average really worth it in the water and wastewater
22 industry to have all this extra cost put into the MFRs.
23 We looked at it and said, no, it's not. Because -- you
24 know, we did at that time, we went back and we looked
25 at the average, we did comparisons of the simple

1 average beginning year end versus 13-month average,
2 there wasn't that much difference. As Ms. Merchant
3 said a minute ago, any utility that has very large
4 plant additions is going to make sure that those plant
5 additions occur in a projected test year. The test
6 year they chose is going to be a full year subsequent
7 to that plant item coming on line. And, therefore,
8 they're going to make sure they get a full impact of
9 that rate base item. They're not going to sit there
10 and put it in the middle of the year, the end of year
11 or any other year, you know, any utility that's out
12 there trying to do a decent job of getting --

13 COMMISSIONER LAUREDO: You're saying that the
14 cost/benefit analysis of higher accuracy, the cost
15 outweighs the benefit?

16 MR. WILLIS: That's correct. That is
17 absolutely correct.

18 COMMISSIONER LAUREDO: Let me ask you a
19 question. Do we have any leverage? Do we informally
20 tell the companies -- I was very offended, by the way,
21 in Jasmine, and I'm not going to do that anymore. But
22 the fact is I couldn't believe the amount of -- and
23 it's reflective on great expense through accounting
24 consulting fees -- of the absolute lack of any numbers
25 internally generated. Do we go in when we do something

1 like this and talk to them about, I mean, the 1,500
2 IBM2 that is now \$1,100 for some little software they
3 can keep? I mean, you know, in that case that we were
4 at --

5 MR. WILLIS: Well, Commissioners, I've seen
6 the gambit on rate case expense. I saw one utility
7 filed with a local accountant that did it for \$10,000
8 and that accountant called us on a daily basis to ask
9 how to do things. And we're very happy to turn around
10 and tell people how to file things cheaply. All they
11 have to do is ask.

12 Under today's requirements sometimes it gets
13 kind of difficult with the ex parte rules and
14 everything, but we try and achieve that, you know,
15 talking to utilities to tell them how to file things
16 appropriately and correct the first time around. Some
17 utilities just don't talk to us. They never call when
18 they have a problem; some do.

19 Those that call and ask when they have
20 problems, they don't understand something, they get the
21 help they need to fill it out correctly the first time.
22 And we do encourage that.

23 COMMISSIONER CLARK: Is there anything?

24 MR. HILL: The response to your question is,
25 no, Betmar does not have a computer. The majority of

1 our companies do not have computers. It took extensive
2 testimony on this issue in a previous docket and found
3 cost benefit was -- it was not worth of additional -- I
4 don't believe Public Counsel even knows how many
5 companies we regulate. The majority don't have
6 computers.

7 COMMISSIONER CLARK: Let me ask this. Has
8 everyone graduated from a shoe box to a file cabinet?

9 MR. HILL: Most now have at least cardboard
10 filing cabinets.

11 COMMISSIONER LAUREDO: Well, I tell you,
12 aside from this, I'm ready to move on this item. I
13 guess the only way we catch it is by denying expenses.
14 I guess that hasn't been decided yet but I shouldn't be
15 using any one company. But I really am offended by
16 having a president of a company come before us and
17 every -- and his testimony is one page. And all he
18 says is "Ask the consultant, ask the consultant and ask
19 the consultant."

20 I mean, the IBMs -- this is the lowest price
21 ever in the market. It's \$1,100 for quite a capacity
22 to have a program. I don't want to sophisticated thing
23 but some of these companies are just turning the shoe
24 box over to somebody, not just for rate case, but I
25 mean, just for the general accounting. I just think we

1 need to start putting a little pressure that the costs
2 are really not that much.

3 And, I mean, it's frightening when they turn
4 to these very capable consultants. But, I mean,
5 they're doing \$50.00-an-hour work that it should be at
6 \$5 an hour work. And it's all who pays. And in the
7 end, they push it up to rate case, you know. And I
8 hadn't talked to you about it before, and this all
9 brought up all of that and in that case that I was
10 talking about it was very salient.

11 MR. HILL: Part of that, Commissioner, is
12 fear.

13 Quite frankly, if you get some large Class A
14 utilities, they'll hire in-house people and they'll
15 take their bruises in front of the agency and they
16 don't care. They may care, but they'll take their
17 bruises. When you get a smaller company, they're
18 scared death of this agency.

19 And they're going to hire an outside
20 consultant because purportedly they're the experts and
21 they this agency and they know the rules and the
22 policies and the procedures. And that's what they're
23 buying for their money. Not an accountant that closes
24 their books every month or every quarter or every year.
25 They're hiring an expert to come before this agency and

1 put on testimony on their behalf.

2 COMMISSIONER LAUREDO: I tell you what, I
3 cannot imagine how we can sit with a straight face and
4 allow what I saw in another case where there was no
5 testimony from the chief executive office on finance.
6 None, not one.

7 I mean, I understand what you're saying but
8 we kind of have to kind of edge the system a little bit
9 towards the balance. If you're being paid \$80,000 a
10 year, you should have a general idea of the financial
11 -- or maybe they do it because of the fear factor.
12 Maybe I'm prejudging. Maybe they don't want to say
13 anything on the record because -- but it's coming
14 across to this Commissioner is just to pass it on to a
15 consultant and we'll recuperate it in rate case.
16 That's just a feeling I have.

17 Well, what you're saying, even if they had an
18 IBM2 or whatever, it's still the cost going through all
19 this work, including your work as you review it. It's
20 not worth the benefits. That would otherwise seem
21 evident to Public Counsel because as you know, you
22 know, I guess I'll have to side with you on that. The
23 impact is not that significant.

24 MS. DISMUKES: I would just point out that I
25 know when the utilities had the information on disk, I

1 asked for it on disk so I can work from the information
2 that the utility has already done. I believe that
3 Staff would have that same opportunity, so the
4 difficulties in making change, the expense is already
5 on computer; it's fairly simple to make a change and it
6 just ripples through.

7 COMMISSIONER LAUREDO: Well, can you
8 highlight this for us next time? This is an
9 interesting item.

10 MS. MERCHANT: I beg your pardon?

11 COMMISSIONER LAUREDO: We were talking
12 earlier about highlighting when we come to agenda. Can
13 you make sure we talk about this again?

14 MR. WILLIS: We will.

15 MS. MERCHANT: Okay. Yes, sir.

16 COMMISSIONER CLARK: Anything else on (4)?
17 Mr. Mann, do you have anything else on (4)?

18 MR. MANN: No, Commissioner, I believe we
19 have nothing further on (4).

20 COMMISSIONER CLARK: What's the next one,
21 Trish?

22 MS. MERCHANT: Commissioners, No. (5) is that
23 "Nonused and useful plant adjustment shall be applied
24 to the applicable depreciation expense." And that's
25 just basically a fallout that we wanted to codify in

1 the rule. It's always been done as long as I've been
2 with the Commission.

3 COMMISSIONER CLARK: Any objection?

4 MR. MANN: Yes, Commissioner, we do have an
5 objection to that as proposed; and Ms. Dismukes, again,
6 will bring some comments to your attention.

7 MS. DISMUKES: We don't disagree at all with
8 the application of nonused and useful percentage to a
9 depreciation expense. What we're proposing is that the
10 Commission add to that the application of the nonused
11 and useful percent to property taxes.

12 That has been this Commission's policy for a
13 long time that if the utility has property that is
14 nonused and useful, depreciation is not allowed to be
15 collected from current customers, the plant is not
16 allowed to be collected and, likewise, the property
17 taxes are not. They're all moved into the AFPI charges
18 and collected from future customers.

19 It's my understanding that the Staff doesn't
20 disagree with the fact that property taxes associated
21 with nonused and useful plant should not be collected
22 from current customers, but that because of the
23 different treatment of property taxes in the different
24 counties that it should be decided on a case-by-case
25 basis.

1 What I want to do is just put a pitch in for
2 the fact that if you don't put it in a rule, you're
3 going to have Southern States or any other utility
4 coming in and arguing again and again, "We don't want
5 property taxes collected from future customers, we
6 think it's a current expense. We should collect in the
7 instance case."

8 That's what they did in the last giga
9 dockets. So if you write it into a rule, you might be
10 able to discuss what the exact dollar amount --
11 depending upon what the taxing authority's
12 peculiarities are in that rate case, but in terms of
13 whether or not that tax is going to be collected from
14 current or future ratepayers, that issue will not be
15 litigated if it's written into a rule. And our feeling
16 is that it is something that the Commission has done in
17 the past, there's no reason not to codify the policy.

18 I do want to speak to the comments of Mr.
19 Cresse. He had written comments. His comments were
20 basically that since property taxes are an end
21 recurring cost, all of these costs should be treated as
22 an operating expense and collected from current
23 customers.

24 I don't disagree with the fact that it's a
25 current expense, but so is the interest expense

1 associated with the debt that they're not allowed to
2 recover the return on. That that return on that
3 property is also collected through AFPI, the interest
4 expense on the debt is a current expense and is
5 collected through AFPI.

6 So I really think his argument really doesn't
7 have a lot of validity to the AFPI charge as it's
8 currently calculated. They are both current and
9 noncurrent components or current and noncash components
10 of AFPI. That's basically our comments.

11 COMMISSIONER CLARK: Anything on (5)?

12 MR. HOFFMAN: Commissioners, former
13 Commissioner Cresse did file some comments on this. I
14 think he addressed it at the last hearing that we had.
15 He is not able to be here right now. He is over at the
16 cabinet meeting that's going on right now.

17 I would say, very briefly, first of all in
18 response to Ms. Dismukes, that I think we've reached
19 the point in this proceeding where we all understand
20 that what the Commission has done in the past as a
21 matter of policy is not exactly the central point in
22 terms of what you, Commissioners, choose to do in terms
23 of formulating your policy to be incorporated into a
24 rule.

25 Certainly, Public Counsel is not saying that

1 since you've had a certain acquisition adjustment
2 policy over the last ten years that it is that policy
3 that should be incorporated into your rule. So I don't
4 think that that argument has any weight at all.

5 As Mr. Cresse said last time, as he says in
6 his comments, the utilities do not have any control
7 over the levels of these assessments. The utilities
8 should be in there, challenging the assessments if it's
9 prudent to do so. But the bottom line is that the
10 utilities have to pay these costs to stay in business,
11 and that for this reason we believe that the property
12 taxes that they pay on all their property should be
13 treated as an annual operating expense.

14 COMMISSIONER LAUREDO: You also said at the
15 beginning that consistency is not a virtue around here.

16 MR. HOFFMAN: Well, Commissioner, all I'm
17 saying is --

18 COMMISSIONER CLARK: No, a foolish
19 consistency. (Laughter)

20 MS. MERCHANT: I have some other comments
21 unless Mr. Schiefelbein --

22 COMMISSIONER CLARK: Is there anything on (5)
23 from you?

24 MR. SCHIEFELBEIN: We concur with Mr. Hoffman
25 and Southern States.

1 COMMISSIONER CLARK: You're just saying you
2 ought to pay taxes -- it ought to be included in total
3 and no used and useful adjustments be made.

4 MR. HOFFMAN: Correct, for the reason I
5 stated, correct. Yes, that is our position.

6 COMMISSIONER CLARK: And Ms. Dismukes is
7 saying we've done it before and we have had established
8 some policy and we ought to go ahead and codify it in a
9 rule. But nobody really has any problem with what's in
10 the rule now. They just wanted it added, too.

11 MR. HOFFMAN: Well, Southern States is
12 satisfied with the rule as proposed by the Staff and
13 Commission. And Public Counsel wishes to add the
14 provision that an adjustment should be made for the
15 property taxes.

16 COMMISSIONER LAUREDO: What I was making a
17 joke out of is what you're saying also is that they
18 can't have it both ways. If they want to codify a
19 previous policy --

20 MR. HOFFMAN: You understood me,
21 Commissioner? Okay.

22 MS. MERCHANT: I do have a minor correction
23 that I had in my testimony on this rule. The current
24 rule as it states says, "Nonused and useful plant
25 adjustments," and I propose to take out the "plant"

1 wording and just say "Nonused and useful adjustments
2 shall be applied to the applicable depreciation
3 expense." And that just basically -- any nonused and
4 useful adjustment would apply to the depreciation
5 expense.

6 Also, with respect to the property tax issue,
7 I don't know how you can word it. It is the Commission
8 practice that you would make a used and useful
9 adjustment to a property tax, but we have so many
10 different methodologies that the counties use. And I
11 couldn't even begin to tell you all of them; that every
12 case that comes up has a different way that a county
13 deals with property tax that I just don't believe that
14 it would be appropriate to put a rule at this point.

15 COMMISSIONER CLARK: Let me ask you this: If
16 you consider a plant 75% used and useful, then you
17 would make a 75% adjustment to depreciation?

18 MS. MERCHANT: That's correct.

19 COMMISSIONER CLARK: The percentage is the
20 same, but what you're saying is you wouldn't
21 necessarily make a 75% adjustment to the property
22 taxes.

23 MS. MERCHANT: That's correct because based
24 on the way the County --

25 COMMISSIONER CLARK: This is the calculation.

1 MS. MERCHANT: Correct. See, some counties
2 do not tax nonused and useful plant.

3 COMMISSIONER CLARK: So you make no
4 adjustment.

5 MS. MERCHANT: That's right.

6 MS. DISMUKES: That's basically my point is
7 that you would establish the amount on a case-by-case
8 basis, but to get rid of the litigation cost and assess
9 it with the companies coming in and litigating whether
10 or not any adjustment should be made because of nonused
11 and useful plant. Just put it into a rule very
12 generally. It is not specifying how it's going to be
13 done, it's just that an adjustment will be made.

14 COMMISSIONER CLARK: So utilities don't come
15 in and keep making the argument that it's a current
16 expense.

17 MS. DISMUKES: I mean, in the last Southern
18 States case they said because of economies of scale we
19 ought not to pay for it. I mean, they're creative and
20 they're going to come in and think of new reasons and
21 continue to litigate it. Maybe they won't once they
22 learn their lesson and get, you know, get denied
23 several times they'll stop; but I'm just saying if the
24 purpose is to reduce rate case expense as a past
25 Commission policy, I see no reason why not to put it in

1 a rule in a very general fashion.

2 (Simultaneously conversation)

3 MS. DISMUKES: The language --

4 COMMISSIONER JOHNSON: It's not in your
5 testimony, is it?

6 MS. DISMUKES: It's in our comments. The
7 word "end property tax" is --

8 MS. MERCHANT: Property tax is added on to
9 the end.

10 COMMISSIONER JOHNSON: Would that do it?

11 MS. MERCHANT: No, I don't believe that would
12 do it because that would assume that it would be made
13 all the time. We were proposing -- we hadn't thought
14 about it, we just came up with it, but property taxes
15 paid on nonused and useful plant will not be allowed or
16 not -- but that is the Commission's practice that
17 property tax expense on nonused and useful plant not be
18 allowed.

19 MR. WILLIS: I think that will achieve what
20 Ken wants.

21 MS. MERCHANT: And then in that situation if
22 the Company was only taxed on used and useful plant,
23 then there would be no adjustment.

24 COMMISSIONER JOHNSON: That would satisfy
25 your concern, wouldn't it?

1 MS. DISMUKES: Could you read it one more
2 time, Trish? I didn't quite get it.

3 MS. MERCHANT: This is not written down.
4 Property taxes paid on nonused and useful plant shall
5 not be allowed.

6 COMMISSIONER LAUREDO: And you're also going
7 to take out the word "plant"?

8 MS. MERCHANT: Yes. That would be in the
9 first part of the rule. Nonused and useful adjustments
10 shall be applied to the applicable depreciation expense
11 and property tax paid on nonused and useful plant shall
12 not be allowed.

13 COMMISSIONER JOHNSON: So that if we agreed
14 to go with current Commission policy, this would be the
15 language that we would add. If we agreed with the
16 comments of Mr. Cresse, then his is really a change in
17 current policy?

18 MR. WILLIS: In current policy, yes.

19 COMMISSIONER JOHNSON: Then we would strike
20 all of this?

21 MS. MERCHANT: You would strike the portion
22 related to property tax.

23 COMMISSIONER JOHNSON: The part that we just
24 added or that we're just discussing?

25 MS. MERCHANT: Right.

1 MR. HOFFMAN: Commissioners, can I add a few
2 more comments? I strongly disagree with Ms. Dismukes
3 representation that we're going to be saving on
4 litigation costs by adding this language. It ain't
5 going to happen.

6 It takes two sentences of testimony to give
7 you a general position about whether or not you believe
8 there should be an adjustment to your property taxes on
9 nonused and useful property and then two sentences in
10 Ms. Dismukes' testimony to give the opposite position.
11 Where all of the deposition time and cross examination
12 time and other litigation time, the brief, is spent on
13 the amount.

14 And what happens in the various counties
15 throughout the state is the appraisers are going to
16 have different methods for coming up with the amount of
17 property taxes. One may use a replacement cost less
18 depreciation method. One may use an income method for
19 coming up with the value of the property. It's a
20 different situation than applying a nonused and useful
21 adjustment to depreciation expense because you're
22 working with the same pool of dollars.

23 In addition, for example, I think down in Lee
24 County where we had the Marco Island rate case
25 recently, you're dealing with a situation down there,

1 for example, where, with respect to nonused and useful
2 property, the tax is not imposed on the total value of
3 the property. It is imposed on some lesser percentage;
4 whereas, with the appraiser down there believes to be
5 used and useful property that levy is made on 100% on
6 his value on that property.

7 So you run into a number of different
8 methodologies; you're constantly running into a
9 different pool of dollars when comparing your
10 regulatory dollars for rate base and depreciation as
11 opposed to the value of property for property tax
12 expense purposes.

13 So it's for that reason that I strongly
14 disagree with Ms. Dismukes that you're going to avoid
15 cost of litigation by adopting her proposal or some
16 assemblage thereof. I think you should leave it out
17 and take it on a case-by-case basis.

18 And the only other thing I would add is I
19 would reiterate Mr. Cresse's comment that you've got to
20 pay all of those expenses to stay in business. And
21 those are legitimate, annual O&M expenses of the
22 utility and they should be recovered in full. Thank
23 you.

24 COMMISSIONER CLARK: Anything else on this
25 issue? I think for my own position, I'm comfortable

1 with what's in (5); and I need to think further on the
2 suggestion of adding the language on the taxes. And,
3 of course, make the recommendation you feel appropriate
4 at agenda.

5 We've been doing this for about an hour half.
6 Do you want to take a ten minute break? We'll come
7 back at ten till.

8 (Brief recess.)

9 - - - - -

10 COMMISSIONER CLARK: If I can have your
11 attention, I think we need to take an assessment of
12 where we are; and if there is any possibility of
13 finishing today if we work through a little bit of the
14 evening? Mr. Schiefelbein thinks that's possible; I
15 would like to hear from the other parties.

16 Now, we can wait for Mr. Cresse, but we may
17 not be able to wait forever.

18 MR. HOFFMAN: Commissioner, we have one
19 little section of .436 that, really, all I have is a
20 question on when we get there; and, then, apart from
21 that, the two subjects that Mr. Cresse was going to
22 talk about, and that's it.

23 COMMISSIONER LAUREDO: We have an even
24 tradeoff anyway, we don't have our Chairman, see,
25 because of the same thing, so it's a tradeoff.

1 COMMISSIONER CLARK: Public Counsel?

2 MR. MANN: Commissioner, we have comments on
3 quite a few of the sections yet to be covered: .433, on
4 a bunch of the subsections; .436, we have comments on,
5 as well as the two Staff assist, the Staff assist .455
6 and the alternative .456.

7 COMMISSIONER CLARK: All right. Wait a
8 minute. You have .436 and then?

9 MR. MANN: .433; .436; .455 and .456.

10 (Pause)

11 There were a couple on that list of
12 stipulations that we had problems with that we'll look
13 at as we go along to see if we want to make comments
14 presently rather than to wait for written comments.

15 COMMISSIONER CLARK: Well, then, I think
16 there may be a possibility to get through today.

17 Excuse me. (Pause)

18 Does Staff think we can do this? What if we
19 stay until about 7:00, do you think we can get it done?

20 MS. MERCHANT: I don't think our comments are
21 that great, but it depends on what everybody else does.

22 (Laughter)

23 MR. SCHIEFELBEIN: Another stipulation?

24 MS. MERCHANT: Excuse me, in terms of volume.

25 I have been corrected by my attorney.

1 COMMISSIONER LAUREDO: The quality is great.

2 MS. MERCHANT: Right.

3 COMMISSIONER LAUREDO: I want to ask, while
4 she's on that. A kind of a stupid question, and I hope
5 I don't offend anybody or certainly the process. But
6 what's the point of these public hearings, in a sense?
7 We clearly know that the real public is not here. And
8 we have read, it's a redundancy of what's on the
9 record. I mean, it's fine with me to just sit here and
10 say what I have submitted in writing and rephrase it
11 verbally, but it doesn't strike me as a very efficient
12 way of doing business.

13 COMMISSIONER CLARK: Well, you know --

14 COMMISSIONER LAUREDO: Because that's all
15 we're doing.

16 COMMISSIONER CLARK: I sometimes feel that
17 way, too. But a lot of times, hearing it provides the
18 opportunity to ask real-time questions, if you will,
19 and sort of reach some resolution in my mind. I would
20 suggest that we plow on.

21 COMMISSIONER LAUREDO: Yeah. That was a lead
22 kind of to the parties to just be very brief about
23 their things because we already read it. So just get
24 to the salient point rather than feeling you have to --

25 COMMISSIONER CLARK: Okay.

1 MR. MANN: Commissioner, let me also point
2 out in addition to what Commissioner Clark says --
3 Chairman Clark at the moment. Not only do you all have
4 the opportunity to hear as well as having read but,
5 more importantly, most of our comments are confined to
6 responses to written comments submitted by Staff and by
7 the utilities, as well, which you have not heard
8 before.

9 COMMISSIONER LAUREDO: Right. And you won't
10 have a chance at the agenda so this is the last --

11 MR. MANN: Correct. We don't have that
12 chance. We do have the opportunity to file written
13 comments again.

14 COMMISSIONER LAUREDO: You know, I lost that
15 fight. I lost that fight. I wanted to change the
16 rules so you would have it. That's when I think they
17 are the most useful because that's when you start --

18 MR. MANN: Well, we can be prepared.

19 COMMISSIONER LAUREDO: I know, but I already
20 lost the vote when I first came.

21 COMMISSIONER CLARK: All right. Where did we
22 leave off? We did No. (5), so we're on --

23 COMMISSIONER LAUREDO: On (5).

24 MS. MERCHANT: It's my understanding that (6)
25 has been deferred and that we will be dealing with No.

1 (7), which is the income tax expense.

2 That one states that income tax expense will
3 not be allowed for Subchapter S corporations,
4 partnerships or sole proprietorships. And basically,
5 it's been Commission practice that those entities that
6 do not pay income tax should not have that expense
7 allowed through their rates, and that is income taxes
8 that flows through to the shareholders.

9 COMMISSIONER LAUREDO: I would like to hear
10 the opposition to that. (Pause) Because, I mean --

11 MR. SCHIEFELBEIN: Commissioner, I'm not a
12 tax person, but let me just refer briefly to our
13 comment regarding that rule proposal.

14 The rule proposes that income tax expense not
15 be allowed for Sub S corporations, partnerships or sole
16 proprietorships. We believe that income tax expense is
17 just as a legitimate cost of doing business for those
18 business organizations as for C corporations.

19 COMMISSIONER LAUREDO: Even if they don't pay
20 it?

21 MR. SCHIEFELBEIN: Well, the tax is paid by
22 the individual owners.

23 COMMISSIONER CLARK: The tax is paid by the
24 individual stockholders.

25 COMMISSIONER LAUREDO: And so why don't we

1 pick up the taxes on the people who get the dividends
2 on the regular corporations to be totally fair?

3 MR. TODD: I want to correct something,
4 Commissioner Clark. Dividends paid by the shareholder
5 only on the distribution of the dividends, not on the
6 normal course of business.

7 COMMISSIONER CLARK: I agree with that.

8 COMMISSIONER LAUREDO: That's what I'm
9 saying. Why don't we in the same logic pick up the tax
10 on the distributed income to shareholders on regular
11 corporations? I mean, you're giving the shareholder of
12 a Chapter S that benefit. (Pause)

13 I mean, it doesn't make any common sense to
14 me, folks, I'm sorry, if you don't pay it while you
15 recuperate it. (Pause)

16 It is so immanently common sense to me that
17 I'm sure I'm missing something. When I'm sure, sure
18 about something, I know I'm missing something
19 important. I don't mean to prejudge it, I'm looking
20 for that something.

21 MR. TODD: Only under that Subchapter S they
22 do not have the option of deferring that income, just
23 like a corporation does not have the option of
24 deferring the income.

25 If you're a shareholder of the corporation,

1 on the other hand, there is absolutely no reason in the
2 world they have to take that dividend. They choose or
3 they do not choose. It's not part of doing business.
4 That's an economic and a financing decision of the
5 individual shareholders or the board of directors of
6 the corporation. But when you're doing business as a
7 sole proprietorship or as a partnership or as a
8 Subchapter S, it's just as it is to the corporation,
9 the tax is itself is the result of doing business.

10 COMMISSIONER LAUREDO: The only reason you do
11 a Chapter S is to avoid double taxation. I mean, that
12 is the only reason -- trust me, it is the primary
13 reason. And you're telling me the logic of opposing
14 this is I want the benefit of avoiding double taxation
15 but I'd like to get the double benefit as if I paid
16 double taxation.

17 I'm over simplifying, but --

18 MR. TODD: A little bit but not a whole lot.
19 I just think the converse side is, if you are not a
20 Subchapter S corporation, you have the opportunity and
21 the benefit to defer that tax and use that capital.

22 COMMISSIONER LAUREDO: But that's the choice --

23 MR. TODD: And if you use that capital as an
24 investment, i.e., to go ahead and buy a new PP&E to
25 use --

1 COMMISSIONER CLARK: These individuals can
2 choose to incorporate as a regular corporation.

3 COMMISSIONER LAUREDO: Absolutely. The
4 option, Chapter S is a privilege which is only granted
5 once every five years, so it's something that the IRS
6 really protects. Because, obviously, from the IRS
7 point of view, they're not receiving that much income,
8 so that is something you consciously, business-wise
9 decide to do. And I just don't think it's fair to
10 collect something you don't pay. I really don't.

11 COMMISSIONER CLARK: Anything else?

12 MR. SCHIEFELBEIN: Not on that rule.

13 COMMISSIONER CLARK: Mr. Hoffman?

14 MR. HOFFMAN: No.

15 COMMISSIONER CLARK: Public Counsel?

16 All right, the next one.

17 MS. MERCHANT: Commissioner, the next one is
18 No. (8), "Nonrecurring expenses shall be amortized over
19 a five-year period unless a shorter or longer period of
20 time can be justified." And I believe at the last
21 hearing that Mr. Cresse stated that a four-year period
22 was recommended to coincide with rate case,
23 amortization of rate case expense. And we don't
24 strenuously object to that, but --

25 COMMISSIONER CLARK: Well, all right.

1 MS. MERCHANT: It would still give you the
2 latitude either way.

3 COMMISSIONER CLARK: You have a comment.
4 Four or five years?

5 MR. SCHIEFELBEIN: We've taken no position.
6 We can live with either.

7 MR. MANN: We do have comments; Ms. Dismukes
8 will make those.

9 MS. DISMUKES: Real briefly. We believe it
10 should be four years, but at the end of four years you
11 should reduce the rates because it is nonrecurring. If
12 it is not four years, then we won't go along --

13 COMMISSIONER CLARK: According to the same
14 rationale as rate case expense?

15 MS. DISMUKES: Basically, yes.

16 COMMISSIONER CLARK: That's not addressed
17 here, right?

18 MS. MERCHANT: That's not --

19 COMMISSIONER CLARK: We can change it to four
20 years and deal with her suggestion as a separate issue?

21 Does Staff want to comment on that,
22 amortization of -- if we reduce the rates after the
23 amortization of the expense?

24 MS. MERCHANT: The only problem, rate case
25 expense is required to do that by statute. And I think

1 you've got to look, there are all kinds of changes in
2 rates or expenses that can occur, in an amount of time
3 you can have other expenses go up when those expense go
4 down, so I think you would have to do a total revenue
5 calculation to determine whether or not there were
6 overearning. And we could review their earnings level
7 at that point in time, we do every year for every
8 utility, so I don't think that would be a problem.

9 MR. WILLIS: Commissioners, the only comment
10 I would make is that you may have costs that go up and
11 down during that period of time. You also are going to
12 have different deferral periods. You can have somebody
13 come in like Jacksonville Suburban with many, many
14 tanks out there that they have storage tanks and they
15 have a tank-painting program and they defer those
16 costs. Those may be shown to be deferred over three
17 years; they have rate case expense over four years;
18 some expense may be five years. You're going to have
19 each year a write-off of those costs, and you're going
20 to have confusion with the ratepayers. You're going to
21 have rates going up and down, up and down. You're
22 going to have a hard time telling customers exactly why
23 their rates are going up and down and fluctuating all
24 over the place.

25 COMMISSIONER CLARK: Okay. Is there anything

1 else to add to this?

2 MS. DISMUKES: I was going to say we're just
3 proposing that at the end of four years when you reduce
4 rates for rate case expense -- or increase, it could go
5 up -- that it wouldn't be something that would be done
6 annually. So there wouldn't be the customer confusion.

7 COMMISSIONER CLARK: Any expenses amortized
8 for a four-year period, just as the rate case expense
9 was, would likewise be figured into how much the rates
10 would be reduced?

11 MS. DISMUKES: Right, up or down.

12 COMMISSIONER CLARK: Okay.

13 MS. MERCHANT: The problem with that is that
14 this rule contemplates that a shorter or longer period
15 of time can be justified.

16 COMMISSIONER CLARK: I understand that. I
17 just invite you to make your recommendation. I think
18 we all understand Ms. Dismukes --

19 MR. HOFFMAN: Commissioner, if I may very
20 briefly just support the comments of Mr. Willis and Ms.
21 Merchant. I think four years gives a uniformity to a
22 policy of amortization; but in terms of a distinction,
23 there is a requirement there that pertains to an
24 adjustment of rates in the rate case expense. But with
25 respect to the other expenses, I think what the

1 Commission ought to be looking at is whether or not at
2 the end of that amortization period the company is
3 earning outside of its authorized range of its return
4 on equity. And if it is not, there's no need for an
5 adjustment.

6 COMMISSIONER CLARK: Anything else?

7 Are we on Issue No. -- what's the next one, (9)?

8 COMMISSIONER LAUREDO: May I ask a very brief
9 question in case I missed something?

10 On Chapter S, we don't have state taxes on
11 that. And last year there was a bill or something;
12 that didn't pass, did it? If that was the case, my
13 whole argument would be moot. Well, find out and make
14 sure.

15 UNIDENTIFIED SPEAKER: I can't recall.

16 MS. MERCHANT: No, they didn't. I'm seeing a
17 head shake in the back.

18 COMMISSIONER LAUREDO: It didn't pass?

19 MS. MERCHANT: It did not pass.

20 COMMISSIONER LAUREDO: Sorry. I didn't want
21 to cause undue harm.

22 COMMISSIONER CLARK: (9)?

23 MS. MERCHANT: Commissioner, Section No. (9)
24 establishes an amortization period for forced
25 abandonment or the prudent retirement of plant before

1 the useful life of assets has expired. Basically, this
2 rule codifies Commission practice, long-standing
3 practice, that calculates the amortization period based
4 on the amount of expense or return that would occur had
5 it remained in service. (Pause)

6 This has been consistently applied in many
7 cases that I can think of.

8 COMMISSIONER CLARK: Mr. Schiefelbein?

9 MR. SCHIEFELBEIN: We don't take issue with
10 the rule as written. We have provided rebuttal to
11 Public Counsel's comments on Page 29 of our May 17
12 filing.

13 MR. HOFFMAN: We support the rule as written.

14 COMMISSIONER CLARK: Okay. Public Counsel?

15 MR. MANN: Yes, Commissioner. We believe
16 that the rule as proposed is unfair to the ratepayers,
17 and Ms. Dismukes has some comments on the rule.

18 COMMISSIONER CLARK: Go ahead.

19 MS. DISMUKES: Basically, OPC believes that
20 the abandoned plant, none of those costs should be
21 recovered from ratepayers; that the property is not
22 used and useful and it shouldn't be collected from
23 ratepayers. But in the alternative, realizing that
24 that probably wouldn't fly with the Commission, we
25 would like to see a longer amortization period to more

1 evenly spread the cost between the ratepayers and the
2 stockholders, basically.

3 What we're proposing is that the abandoned
4 plant be amortized either over the remaining life of
5 the plant or 15 years, whichever is shorter. A 15-year
6 amortization period results in a split between the
7 ratepayers and the stockholders of about 50/50; 50% is
8 absorbed by stockholders, 50% of it is absorbed by
9 ratepayers.

10 And the reason for that is the unamortized
11 portion is not included in rate base. So when you
12 figure out the actual revenue requirements and how much
13 is being collected, 50% comes from the ratepayers and
14 50% comes from the stockholders.

15 COMMISSIONER CLARK: Okay. And that's your
16 view, that should be done regardless of whether or not
17 -- you know, if they prudently put the plant in and
18 then somebody else dictates they take it out, that it
19 should be a sharing of that risk?

20 MS. DISMUKES: Yeah. Basically, what's
21 happening is the customers are being asked to pay for
22 it twice, essentially: once because they are being
23 required to collect it through the amortization
24 process, pay for it through the amortization process;
25 and then if they have to come in with a situation where

1 the county has to provide that service, they're also
2 paying for those facilities again.

3 COMMISSIONER CLARK: Okay. Is there anything
4 to add to No. (9)?

5 MS. MERCHANT: Commissioners, I would just
6 point out that this same position from OPC was argued
7 in several cases in the past year, year and a half; and
8 the Commission voted on Commission practice as opposed
9 to OPC's proposed methodology.

10 COMMISSIONER CLARK: Okay. Item 10,
11 subsection (10).

12 MS. MERCHANT: Commissioners, I think Item
13 (10) is subject to -- this item is the requirement to
14 own the land, and it deals with the 99-year lease. And
15 I'm not really sure how you finalized it in the earlier
16 sections. It flows throughout the whole water and
17 wastewater rules, and that will be deferred to whatever
18 you decide so it will be consistent with all the rest
19 of the rules.

20 COMMISSIONER CLARK: That's fine. No. (11),
21 then?

22 MS. MERCHANT: No. (11) states that, "In
23 establishing an authorized rate of return on common
24 equity, the Commission, in lieu of evidence, may use
25 the current leverage formula." And that's basically

1 just codifying the Commission's practice of using the
2 leverage graph formula to calculate equity.

3 COMMISSIONER CLARK: Is there any comment on
4 that? Okay. Let me sort out where I am.

5 MS. MERCHANT: At that point, that ends
6 Staff's proposed rule, and we go into Public Counsel's
7 proposed new rule.

8 COMMISSIONER CLARK: Okay. Public Counsel
9 has some suggestion -- additions to this rule.

10 MR. HOFFMAN: Commissioners, do we want to
11 give Mr. Cresse some additional time to get here or do
12 you want to just go into this now?

13 COMMISSIONER CLARK: All right. Clarify for
14 me, is he commenting on what they want to add?

15 MR. HOFFMAN: He prefiled comments on the two
16 subsections they proposed to add.

17 COMMISSIONER CLARK: When did he prefile
18 those? Is it recently, or before?

19 MR. HOFFMAN: Back before the first hearing.

20 COMMISSIONER CLARK: Oh, I have them. Well,
21 then I would suggest for the time being we conclude
22 with 433 and then just come back. And let's get
23 through the rest of them.

24 How about 30.434?

25 MR. SCHIEFELBEIN: Yes.

1 MS. MERCHANT: It was my understanding that
2 we finished .434.

3 MR. SCHIEFELBEIN: That's not my
4 understanding.

5 COMMISSIONER CLARK: Okay.

6 MR. SCHIEFELBEIN: I don't propose, unless it
7 pleases the Commissioners, that we go back through the
8 issue. I think there was plenty of opportunity at the
9 last hearing for all sides to be heard on that. But
10 subsequent to the May hearing, Staff has filed, and
11 they may want to identify as an exhibit, on July 7th an
12 analysis of the different approaches using net and
13 gross plant.

14 COMMISSIONER CLARK: Right.

15 MR. SCHIEFELBEIN: I would be content that we
16 merely identify -- on August 5th, excuse me, the
17 Florida Waterworks Association filed a response to the
18 Staff exhibit, supplemental comments of Debbie Swain,
19 who is not here today. And I would ask that those
20 supplemental comments become a part of this record.

21 COMMISSIONER CLARK: Tell me the gist of her
22 comments. Did she disagree with the analysis done by
23 Staff? I mean, were the numbers correct?

24 MS. MERCHANT: I can answer that. No, I
25 spoke with Ms. Swain and she did not -- the numbers

1 were not -- they were just pulled from a case, and I
2 don't think she disagreed with the actual numbers.
3 They are basically a fallout just showing how each
4 methodology would -- what number would fall out from
5 each methodology and that is what my exhibit does,
6 which is being handed out right now.

7 COMMISSIONER CLARK: Why don't we label this
8 an exhibit and then we'll label Wayne's an exhibit.

9 COMMISSIONER CLARK: This will be Exhibit 8,
10 and it would be "Allowance for Funds Prudently
11 Invested, Calculation of Carrying Costs for Each ERC."

12 (Exhibit No. 8 marked for identification.)

13 MS. MERCHANT: It's three different
14 methodologies.

15 COMMISSIONER CLARK: Okay. And, Mr.
16 Schiefelbein, what's Ms. Swain's exhibit?

17 MR. SCHIEFELBEIN: I don't have extra copies.
18 We filed it on August 5th, an original and 15 copies,
19 sent copies to all parties and Staff. That could be
20 entitled, "August 5th, 1993, Supplemental Comments of
21 Debra D. Swain Regarding 25-30.434."

22 COMMISSIONER CLARK: I'd like to see a copy
23 of that.

24 MS. MERCHANT: I've got it.

25 COMMISSIONER CLARK: We can label it No. 9.

1 (Exhibit No. 9 marked for identification.)

2 MS. MERCHANT: Commissioners, I don't know
3 how you want to proceed from here. I can explain the
4 exhibit or let it stand for itself.

5 MR. SCHIEFELBEIN: We would be content,
6 unless the Commissioners wanted to get into it, to
7 merely have both exhibits admitted into the record, and
8 you all know where they are and we would hope that you
9 would read it.

10 COMMISSIONER LAUREDO: It sounds good to me.

11 MS. MERCHANT: That's fine with me, too.

12 COMMISSIONER CLARK: Okay. Any further
13 comments? Let's do that. Because I have been through
14 the exhibit by Staff, and I have not yet seen
15 Ms. Swain's comments. Are there any further comments
16 on -- now I've lost my sheet.

17 MS. MERCHANT: That's all the comments I have
18 on .434. The next one is .436.

19 COMMISSIONER CLARK: Okay.

20 MS. MERCHANT: Commissioners, .436 describes
21 the general information and instructions --

22 COMMISSIONER LAUREDO: Excuse me a second.
23 435 we approved already? Is that why we're not taking
24 it up, the multiple systems?

25 MR. SCHIEFELBEIN: .435, I believe you all

1 voted to ditch the rule, withdraw it.

2 MS. MERCHANT: That's correct. .436 is the
3 current rule that requires general instructions for
4 Class A and B water and wastewater utilities in the
5 application for a rate increase. We're proposing that
6 -- I'm somewhat confused here right off the bat, but I
7 understood the other day -- excuse me -- at the prior
8 hearing that the Commission decided to have prefiled
9 direct testimony to be filed with the application?
10 (Pause) Excuse me, unless the case was PAA. If it was
11 going to go directly to a hearing, then the company
12 would be required to file prefiled direct testimony at
13 that time of filing.

14 MR. HOFFMAN: Commissioners, just for the
15 record, I think that the amendment that was made on
16 that issue was that the testimony was not required to
17 be filed with the application. However, the
18 application would not be deemed complete until the
19 testimony was filed.

20 COMMISSIONER CLARK: Is that your
21 understanding?

22 MR. WILLIS: It's basically the same thing.
23 The eight months don't start until the testimony is
24 filed.

25 COMMISSIONER CLARK: Okay. Any further

1 comments on that?

2 MS. MERCHANT: There's more to that section,
3 more changes.

4 COMMISSIONER CLARK: Okay. Let's go through
5 them.

6 MS. MERCHANT: Okay. There are some general
7 housekeeping changes that I don't think we need to
8 discuss, but I'll discuss the major controversial
9 areas.

10 Section (f) states if the capital structure
11 contains zero negative --

12 COMMISSIONER LAUREDO: (1)(f)?

13 MS. MERCHANT: -- equity that the leverage
14 graph be used --

15 COMMISSIONER CLARK: Trish.

16 COMMISSIONER LAUREDO: Is it (1)(f)?

17 COMMISSIONER CLARK: Commissioner Lauredo
18 needs clarification.

19 MS. MERCHANT: I beg your pardon. (3)(f).

20 COMMISSIONER LAUREDO: OKAY.

21 MS. MERCHANT: If they have zero or negative
22 equity, that the Commission establish a return on
23 equity just in case they come in for their next rate
24 case and have an equity balance, then you would use
25 that equity -- excuse me -- that cost of equity to

1 establish interim rates or any other need that you
2 might have subsequent to that rate case.

3 Should I go through this whole package or
4 should I just stop on each one of these little
5 sections? I can do it either way.

6 COMMISSIONER LAUREDO: Well, what we have in
7 front of us is what you propose.

8 MS. MERCHANT: That's correct. Each one of
9 them could be controversial individually and might not.

10 COMMISSIONER LAUREDO: But not as to you, as
11 to the parties.

12 MS. MERCHANT: That's correct.

13 COMMISSIONER CLARK: Let's go one by one, and
14 starting -- I guess we have to move back then. What
15 was your first?

16 MS. MERCHANT: The first one was the
17 testimony, direct testimony.

18 COMMISSIONER CLARK: Okay. And that's gets
19 filed -- the filing is not deemed complete until it's
20 filed, unless it's a PAA. It's when they expect to go
21 to hearing. Any further comments from Waterworks
22 Association? From Public Counsel?

23 Okay. Go ahead.

24 MS. MERCHANT: Okay. The second one that we
25 discussed was the determination of a cost of equity in

1 case they had zero equity in a rate case. The one that
2 I just discussed.

3 COMMISSIONER LAUREDO: (3)(f)?

4 MS. MERCHANT: (3)(f).

5 COMMISSIONER CLARK: Okay.

6 COMMISSIONER LAUREDO: And you want comments
7 from the parties?

8 COMMISSIONER CLARK: Yes.

9 COMMISSIONER LAUREDO: Okay.

10 MR. SCHIEFELBEIN: No comments.

11 MR. MANN: First of all, I'm not able to find
12 a (3)(f). I assume it's (4)(f) or --

13 COMMISSIONER CLARK: Yes, it's (4)(f), the
14 original rules, Page 110, is what I have.

15 COMMISSIONER LAUREDO: 110, right. That's
16 what I have.

17 MS. MERCHANT: I beg your pardon?

18 COMMISSIONER LAUREDO: It's (4)(f).

19 COMMISSIONER CLARK: Okay.

20 MR. MANN: I can sit back comfortably for a
21 moment then, thanks. We don't have anything yet.

22 COMMISSIONER CLARK: So no comments at this
23 time to (4)(f).

24 MR. MANN: No, ma'am.

25 COMMISSIONER CLARK: Anyone else? No?

1 Nothing further on (4)(f).

2 Okay, Trish, what's the next one?

3 MS. MERCHANT: Okay. Excuse me.

4 COMMISSIONER LAUREDO: If .432 and .433 are
5 already part of the rules, why do you need to restate
6 them here?

7 MS. MERCHANT: Those are sections that say
8 what policy is, and this is just a filing -- these are
9 the filing requirements saying that you should comply
10 with those two sections if you're going to file a rate
11 case; that's why. One is a policy. This is a filing
12 requirement.

13 COMMISSIONER CLARK: What is the next one?

14 MS. MERCHANT: The next one is that any
15 system that has cost allocated to it --

16 COMMISSIONER CLARK: (h), is that right?

17 MS. MERCHANT: (h), correct, (4)(h). In
18 addition to those costs reported on the MFRs on
19 Schedule B-12, that they would have to submit
20 additional information with their application. I'm not
21 going to -- it's stated in the rule.

22 Basically, this has been a request from the
23 Commissioners and the senior management of the
24 Commission that we go through and we have all of this
25 information so that we can determine whether or not the

1 allocated costs coming down from other companies are
2 sufficient to approve reasonable rates for each
3 company. And this is telling the company up front that
4 they have to submit this information.

5 COMMISSIONER CLARK: Mr. Schiefelbein.

6 MR. SCHIEFELBEIN: Thank you. We do not take
7 issue with the rule as proposed. We oppose Public
8 Counsel's improvements to the rule. Those are located
9 on Pages 58 and 59 of Public Counsel's comments.

10 Public Counsel has amended the section to
11 require the filing of extensive work papers, contracts
12 and agreements that may well be voluminous with the
13 MFRs, and we think the burden and costs related to
14 those documents requiring them to be filed, the
15 multiple copies to be filed with the Commission as part
16 of the MFRs, is somewhat inconsistent with Public
17 Counsel's avowed concern for rate case expense in
18 their proposed Rule 25-30.433(15).

19 Mr. Seidman's supplemental comments also
20 discuss that some of the information that would be
21 covered by Public Counsel's extension of the rule may
22 involve non-utility affiliate information and may
23 contain confidential information. And, frankly, that
24 those sort of documents that Public Counsel is trying
25 to put in the rule are available to them through the

1 discovery process and should not become a part of the
2 MFRs. But we support the rule as drafted by Staff.

3 MR. HOFFMAN: Southern States supports the
4 comments of the Association.

5 COMMISSIONER CLARK: Go ahead.

6 MR. MANN: Commissioner, we believe that the
7 rule in general is good and we agree with the rule in
8 general, but we do wish to --

9 COMMISSIONER LAUREDO: Improve it.

10 MR. MANN: Well, be sure that you understand
11 why we believe those improvements, as Mr. Schiefelbein
12 says, are indeed improvements.

13 We, of course, do have a concern with rate
14 case expense. I think that only stands to reason. And
15 we happen to believe that attempting to get these
16 documents later on through the discovery process leads
17 to a greater increase in rate case expense than to get
18 it up front. But Ms. Dismukes will provide some
19 information to you about our improvements.

20 MS. DISMUKES: We've proposed some changes to
21 the language that the Staff proposed in Subsection
22 (4)(h), Subparts 1, 2 and 3, and I won't belabor the
23 point on that, that's in our written comments, but it's
24 basically a clarification to clarify words like what
25 does "any source" mean? And we've said that "any

1 source" means any related party, parent, sister
2 company, et cetera, because this is all dealing with
3 affiliated transactions.

4 Public Counsel has time and time again dealt
5 with affiliated transactions, feels like it's an
6 important and critical issue in rate cases, and just
7 clarified those sections and subsections of the
8 proposed rule.

9 We then also went on to add, as
10 Mr. Scheifelbein said, some additional requirements
11 that we feel and believe are important. They are
12 basically what he characterized them to be, the work
13 papers associated with the allocations, a detailed
14 organizational chart of the relationship of the
15 companies. It's a single sheet of paper. It's really
16 important to try to understand what all the
17 relationships are, who the parent and sister companies
18 are, and then a copy of the contracts for any charges
19 between affiliated companies.

20 And I would just like to point out that I
21 think his concern about providing 15 copies is a valid
22 concern. Potentially some of this information could be
23 voluminous, and to get around that problem, all they
24 have to do is provide one copy to OPC and one copy to
25 the Staff. And I may be incorrect on this, but I

1 believe in terms of additional engineering information
2 that the utilities are required to provide, OPC does
3 not get a copy of that unless we go over to the
4 Commission and ask for it.

5 So I don't know what the criteria is or how
6 they get around providing that information, but we do
7 not get it for the water and wastewater companies.
8 This same kind of information could fall under whatever
9 provision allows them to file fewer copies. And I'm
10 assuming -- we don't get a copy, to avoid that concern
11 of the Florida Waterworks Association.

12 COMMISSIONER CLARK: Anything else?

13 MS. DISMUKES: No.

14 COMMISSIONER CLARK: Let me ask a question.
15 I just want to -- as I understand Ms. Swain's comments,
16 they are just a reiteration of her testimony. She
17 doesn't take issue with the calculations?

18 MR. TODD: It's just what is allowed in them.

19 COMMISSIONER CLARK: Yes.

20 MR. TODD: Correct.

21 COMMISSIONER CLARK: I mean, it's the same
22 argument that we heard. Okay. Go ahead.

23 MS. MERCHANT: Commissioners, with respect to
24 Ms. Dismukes' comments, we have one problem with some
25 of these concerns is the materiality limit. This could

1 be a lot of voluminous information. We actually don't
2 have trouble with No. 1, No. 3, No. 6 and No. 7. And
3 No. 2 we wouldn't have a problem with if there was some
4 kind of limit placed on the amount of costs that you
5 want detail on.

6 COMMISSIONER LAUREDO: Which ones you do not
7 have problems with?

8 MS. MERCHANT: We do not have trouble with
9 No. 1, 3, 6 and 7. And we don't have trouble with No.
10 2 if there were some limit placed on No. 2. No. 4 and
11 No. 5 we think would be too voluminous. And that would
12 be something that would be subject to discovery.

13 COMMISSIONER LAUREDO: If Staff doesn't have
14 any problem with those, couldn't we incorporate them
15 into the rule for the second go-around?

16 MR. TODD: Commissioners, we have one problem
17 with Item 6.

18 We're a subsidiary of a subsidiary of IT&T.
19 And the number of companies that are affiliated or
20 associated that have absolutely nothing to do with the
21 utility business or the real estate business or any
22 land business or any business in Florida far outweigh
23 the number of companies that are in Florida that have
24 any affiliation with the utilities. We'd like to think
25 about trying to put the total corporate structure at

1 any given moment and the flow chart of it on one sheet
2 of paper is, as you say, impossible.

3 COMMISSIONER CLARK: But you don't have any
4 problem with 1, 3, 7 and the limitation on 2?

5 MR. TODD: I have no problem with 1; none
6 with 3. I think the limitation on 2 sounds reasonable
7 at face value, as well. I agree with Staff's comment
8 on 4 and 5.

9 I think 6 is again very difficult. If you
10 could scope that into some way that a detail of any
11 company making a generic company charge or allocation
12 in relationship thereof, I think that would be
13 reasonable. But since I don't do anything with Palm
14 Coast, absolutely nothing. I go down there for
15 management meetings sometimes, but I pay them, just the
16 hotel business, nothing to do with the utility. So as
17 far as we're concerned, that would be a non-affiliate.

18 COMMISSIONER CLARK: Mr. Hoffman, do you have
19 any comments with regard to Staff's suggestion?

20 MR. TODD: Absolutely not.

21 MR. HOFFMAN: Commissioners, let me address
22 OPC's proposals to add 4, 5, 6 and 7. 6 I think as Ms.
23 Dismukes said should be a one page, possibly a two-page
24 document. I don't think that's a problem.

25 7 is probably, even in the case of Southern

1 States, is not going to be over voluminous.

2 4 and 5 I think Ms. Dismukes acknowledges --
3 gets you into the area where you could be talking
4 potentially a voluminous amount of documents. These
5 are documents that have requested on discovery would
6 have to be provided, and I think it's just a question
7 of cost. I think it's a question of providing -- of
8 the cost of providing 16 copies of potentially
9 voluminous amount of documents up front versus
10 providing two or three copies one month into the
11 process. We would oppose 4 and 5.

12 MS. MERCHANT: Staff was going to propose to
13 No. (2) that we put a percentage and we were going to
14 propose that it one-tenth -- excuse me. A detailed
15 description in itemization of the cost in excess of
16 one-tenth of 1%. And for test year revenues and for a
17 company with 500,000 annual revenues, that would be
18 \$500. For a big company, it would be higher.

19 COMMISSIONER LAUREDO: Let me say that the
20 lead paragraph H requires -- it says that the operating
21 word is "shall file." That is an affirmative duty,
22 right? As of now, it is something that they would file
23 anyway as requested.

24 MS. MERCHANT: Should file, may not.

25 COMMISSIONER LAUREDO: Here's what I'm

1 getting at.

2 MS. MERCHANT: If they refuse to file, then
3 Staff's recommendation would be that the cost would be
4 dismissed.

5 COMMISSIONER LAUREDO: What I'm trying to say
6 is in order to trigger H just because there's an
7 affiliated charge, it triggers 1 through 7. Well, you
8 may not have a problem with 1 through 7. You may not
9 have a problem with the charge.

10 Why do you need -- I just don't understand
11 the way things work around here. You mean they have to
12 bring all that stuff in whether or not we're going to
13 use it?

14 MS. MERCHANT: Well, the problem is, is that
15 we see so many numbers and a number may not -- I mean,
16 you can just look at a number on the face value and you
17 may not be able to have any type of measurements.

18 COMMISSIONER LAUREDO: But there are flags.
19 I mean, if you're a professional staff, as you are,
20 there are flags that come up to you. And, namely, if
21 there is an affiliated charge that brings up a flag,
22 then you need to look at the amount of it. It may be
23 \$100, and yes, if we adopt this rule, it triggers seven
24 things. They're going to have to come in here with
25 four boxes, additional boxes of paper for you to read

1 and for them to reproduce when you may just make the
2 judgment that "I don't want to follow up on it."

3 In other words, we should have, and we do
4 have, the right to go after all of these documents but
5 on a specific-request basis. The way I look at this,
6 you're just figuring they have to turn it to you
7 whether or not you want them. And I think that's
8 certainly not cost saving, and that's certainly not an
9 efficient management and streamlining of procedures,
10 unless I'm missing something again.

11 MR. WILLIS: Commissioner, if I might throw
12 something in here, due process causes Staff and
13 probably Public Counsel many problems and time
14 limitations in requiring filing of information from
15 utility companies.

16 The reason we have been under the filing
17 requirements up front with all this voluminous
18 information is to get that information in the very
19 opening of a case, the very first day the case is
20 filed. That way, during the limited months we have
21 ahead of us to do our discovery, we have a more
22 efficient discovery process.

23 Allocations has become one of those areas in
24 which you're seeing more and more of a percentage
25 brought down from companies as far as we're looking at.

1 Some aren't, some are.

2 COMMISSIONER LAUREDO: May I stop you a
3 minute before we go on?

4 MR. WILLIS: Sure.

5 COMMISSIONER LAUREDO: Can we change the word
6 "child" to "may be required"?

7 MR. WILLIS: Well, in that case, we wouldn't
8 need the rule at all because if you want may be
9 required, we would have to wait until somebody requests
10 a discovery.

11 COMMISSIONER LAUREDO: I'm going to tell you
12 something. Unless I'm living in another world, there's
13 a charge in an affiliated company that is not on
14 Schedule B12, so that already is an extraordinary item.
15 I can guarantee that if you miss it, Public Counsel
16 ain't going to miss it. And at that time both of you,
17 independently or jointly, will make the judgment
18 whether you want to go through 1 through 7.

19 The way you have it here it's just another
20 burden of reproduction cost, accumulation of -- that
21 you may not want. And if you want to say "may be
22 required to file," it gives you that authority and
23 alienates -- I mean, outlines the specific items that
24 you feel that you have a right to.

25 Although, I don't even think you need that,

1 but if you feel more comfortable -- but "shall" means
2 they're going to have to file it whether it's relevant
3 or not and I really don't feel --

4 MR. WILLIS: Well, when Staff looked at those
5 amendments proposed by Public Counsel, one of the
6 things we looked at was the volume of data that would
7 have to be filed. And that's why we looked at the work
8 papers as saying that's one of the things you want if
9 you had a problem.

10 Work papers are probably very voluminous,
11 especially in some of the allocation process coming
12 from parent companies --

13 COMMISSIONER LAUREDO: You're missing the
14 point.

15 MR. WILLIS: I couldn't see having all of
16 that information filed because it is costly. I'm just
17 looking at getting information up front, the cheapest
18 way possible, that we might need, and some of the stuff
19 may be one page. I can't see that much of it is going
20 to be that voluminous.

21 I mean the most voluminous thing we're
22 agreeing to would be the itemization. We're trying to
23 put a limit on that. I mean, if that troubles the
24 Commission, you could forget the itemization totally
25 and go back to the way it was originally written. And

1 that would cut it down even more.

2 COMMISSIONER CLARK: I think at some
3 consensus on some of the additions suggested, and I
4 think we understand the positions of all the parties so
5 maybe we should go ahead and move on.

6 I do think it would be appropriate -- we have
7 to allow posthearing -- and I think it would be
8 appropriate to comment on Staff's suggestion as to the
9 level of materiality of (2).

10 MS. MERCHANT: I had one brief comment that I
11 wanted to make based on a recommendation from my
12 attorneys.

13 In Section 6, it refers to -- at the very end
14 of the second line it says "any related party, comma,
15 i.e. brother, sister." And related party is defined by
16 general accepted accounting principles, and I was going
17 to suggest that I research that and get the specific
18 definition. And then we can put that in there so that
19 would clarify it for anybody.

20 MS. MOORE: Ms. Merchant's referring to
21 language that OPC, Public Counsel, has suggested.

22 COMMISSIONER LAUREDO: I don't think you need
23 the work "detail" either. An organizational chart.

24 MR. TODD: Is it reasonable to limit that to
25 "the parties that have affiliated transactions" instead

1 of "every related party"?

2 COMMISSIONER CLARK: I think that's the
3 context in which it was asked. They have to have
4 transactions.

5 MS. MERCHANT: Right. So I was just going to
6 look that up to make it more official. Nobody would
7 question what "related party" meant.

8 MR. SCHIEFELBEIN: But as written it doesn't
9 have any limitation as to whether you're conducting
10 business with them or not.

11 COMMISSIONER CLARK: Well, wait a minute. Do
12 I understand correctly it falls under H? When you have
13 cost allocation from many sources, then you have to do
14 that. It triggers a cost allocation.

15 MR. TODD: But not the way the comment by OPC
16 was written. It says a full listing. In other words,
17 if I had a cost allocation from my parent company, then
18 I might have to give you the entire organizational
19 chart under the way the rule is written.

20 COMMISSIONER CLARK: An entire organizational
21 chart of what?

22 MR. SCHIEFELBEIN: Any affiliated or related
23 party.

24 MS. MERCHANT: We get something very similar
25 to that in the annual report.

1 MR. WILLIS: Commissioners, I understand
2 where you're coming from and I believe that's probably
3 correct. We can write in certain language in here to
4 make sure they are only dealing with those companies
5 where costs are being allocated. I don't see why we
6 care about any other entities out there if they weren't
7 allocating costs. I mean, that's the whole purpose of
8 this Section H to me.

9 COMMISSIONER CLARK: All right. What's next?

10 COMMISSIONER LAUREDO: Schedule B-12 referred
11 on H does not necessitate any of these things, right?
12 It says, "In addition to the information filed under
13 Schedule B-12."

14 MS. MERCHANT: That's correct. B-12 is more
15 general.

16 COMMISSIONER LAUREDO: But it does include a
17 affiliated transactions of some sort.

18 MS. MERCHANT: That's correct.

19 COMMISSIONER LAUREDO: These are
20 extraordinary affiliated transactions.

21 MS. SUMMERLIN: Commissioners, can I just say
22 one thing? On this listing here where the suggestion
23 is being made that we would get a detailed organizational
24 chart, it seems to me that when you're talking about
25 the issue of allocations, if you don't know what the

1 other companies are that are in any relationship with
2 that utility, then it's going to be harder to know
3 whether the allocations that are being made are
4 appropriate.

5 I mean, conceivably the allocation that's
6 being asked for should be smaller. You know, possibly
7 in a particular instance, and if you don't know what
8 all of the organizational structure is, then you're not
9 going to be able to know that.

10 I mean, that's just one instance. It may not
11 be true very commonly, but I think in terms of trying
12 to figure out whether an allocation is appropriate or
13 not that, certainly, information that would be --

14 COMMISSIONER CLARK: Are you disagreeing with
15 Marshall?

16 MS. SUMMERLIN: Well, maybe. Yes.

17 COMMISSIONER CLARK: I think a legitimate
18 point has been brought up, and you need to address it
19 as part of your recommendation and then the parties.
20 Will you send out a proposed recommended version or
21 whatever it is? Proposed version; people comment and
22 then you file after that?

23 MS. MOORE: I don't think our time frame
24 allows for that. Our recommendation has to be --

25 COMMISSIONER CLARK: Okay.

1 MS. MOORE: And that will take an additional
2 three or four weeks.

3 COMMISSIONER LAUREDO: I can tell you that
4 I'm very big on organizational charts, and I do it on
5 my own. I get the annual report, and I think whether
6 or not there are charges between companies; important
7 to know what the holding company does, what their
8 revenue flow is, what their strategic plan is and
9 that's all described. And you can get some of it for
10 an organizational plan, whether it's Minnesota Mining
11 and what they're doing through third-layer subsidiary
12 in Florida.

13 So to me it's very helpful. So you're
14 looking at it for charges. I'm looking at it because I
15 always like to look at the big picture. And I can
16 always tell you -- I don't want to belabor it because
17 we're trying to move fast. But I hope that you, when
18 you take a pause after this that, you look at the
19 strategic reason we're here rather than the tactical
20 reason of going step by step whether, in fact, we're
21 being consistent about saving ratepayer's money and in
22 simplifying the process. I'm getting increasingly
23 uneasy that we're moving in the opposite direction
24 unintentionally.

25 And this is just a salient example of that.

1 And I just hope that you reflect, meditate on it as we
2 come back to the agenda by October. In other words,
3 let's keep our eye on the ball on how we started this
4 in the first place.

5 MS. MERCHANT: Commissioner Lauredo, to your
6 early question about Schedule B-12, I was searching for
7 it. I knew I had it in here, but Schedule B-12 states
8 that you provide a schedule detailing expenses, which
9 are subject to allocation between systems -- water,
10 sewer, and gas -- showing allocation percentages, gross
11 amounts, amount allocated and a detailed description of
12 the method of allocation and provided description for
13 all systems other than water and wastewater.

14 So what we've been getting on this schedule
15 is a very, very general analysis. It has not been very
16 helpful to us and that's why we -- so this would be
17 your starting point on B-12. And the additional
18 information in this rule requirement would give us the
19 detail that we would be able to go out and actually
20 find something.

21 COMMISSIONER LAUREDO: B-12 doesn't do
22 anything to this passage other than to trigger the word
23 "additional." I think you ought to read it carefully.
24 I says, "Anything additional to what's in B-12 that's
25 an affiliated transaction." That's what I refer to,

1 the flag. And your analytical minds pick that
2 additional thing and then trigger whether or not you
3 need 1 through 7.

4 And my disagreement with you is the way you
5 have it here is, just get it anyway. But, you know,
6 we'll decide that in October.

7 COMMISSIONER CLARK: If I understand the
8 representations correctly, it's that this information
9 is needed. And if it's not -- our experience in the
10 past has been if it's not provided up front, it's
11 acquired through interrogatories and a more formal is
12 which means more expensive.

13 MR. HOFFMAN: It's less expensive to provide
14 it through the discovery process than as opposed to
15 providing 16 copies up front.

16 COMMISSIONER CLARK: Okay. It's the coping
17 that causes the expense?

18 MR. HOFFMAN: Yes, from my standpoint, yes.

19 MS. MERCHANT: We would certainly be willing
20 to state a number of copies to be provided. I mean,
21 there are several instances in the MFRs where it says
22 -- for example, the billing analysis, I think there's
23 only two copies provided. And I would possibly say
24 three copies so that OPC could have one, Commission
25 Staff to have one and then I think the official record

1 in Records and Reporting has one.

2 COMMISSIONER LAUREDO: All I'm trying to get
3 is to keep forcing you to look, filter through the
4 overall objective of simplification in saving. I mean,
5 constantly check yourself to make sure you're meeting
6 that objective, and sometimes the answer is yes and
7 sometimes no. I'm just using this as an example, but
8 that is throughout this whole rule. That's all.

9 COMMISSIONER CLARK: Okay.

10 MS. MERCHANT: Section 4(i). This requires
11 the utility to file copies of documents that
12 demonstrate that the utility owns the land with
13 treatment plants -- excuse me, the treatment facilities
14 are located. It also refers to the 99-year lease, so
15 that would be changed to reflect whatever changes were
16 proposed in the prior sections.

17 And it's my understanding that Southern
18 States has a difficulty with "shall file copies," and
19 that would mean that all copies of all land has been
20 owned by the Utility at any point in time.

21 So we were going to propose that in (b) to
22 demonstrate that the utility owns the land placed in
23 service since rate base was last established, so that
24 we would have a cut off point, and we wouldn't be
25 asking for documentation for something we've already

1 approved.

2 COMMISSIONER CLARK: I see.

3 MS. MERCHANT: And I would like to fine tune
4 the wording on that.

5 COMMISSIONER CLARK: You just want to make it
6 clear, once they provide it and you sign off on it,
7 that they have the requisite title; that they don't
8 have to keep reestablishing that every time there is a
9 rate case. Is there any problem with that?

10 MS. MERCHANT: We don't need it.

11 COMMISSIONER CLARK: Okay. You try it once,
12 you don't need to try it again. Anything else?

13 MS. MERCHANT: Section 7 is just a standard
14 addition to a new rule. A section that states "Within
15 60 days after the issuance of an order, the utility
16 will submit its actual rate case expense." And that is
17 something that we have been, or the Commission has been
18 doing, I would think, for the last three years by
19 order. It's a paragraph that's added on to each rate
20 case expense issue, and we basically want to add that
21 rule.

22 COMMISSIONER CLARK: Is there any objection
23 to that? Okay. Are we through with .436? .437? Does
24 anyone have comments on this?

25 MS. MERCHANT: Basically, on .437 that

1 section just kind of cleans up some of the language
2 that we've had before.

3 COMMISSIONER CLARK: Anything else?

4 MR. MANN: Yes, Commissioner. We have some
5 comments on that Ms. Dismukes will --

6 MS. DISMUKES: I just really have a question.
7 Maybe Staff can clarify whatever it's meant by it.

8 Under (6) it talks about if the utility is
9 requesting uniform rates, they have to do this. And
10 then it goes "Those systems already combined in a
11 uniform rate shall be considered as a single system
12 when submitting the required information. The
13 following schedules of form," et cetera, et cetera.

14 Does that mean the next time that Southern
15 States comes in and files for a rate increase, do they
16 file as one system so you're only going to have one
17 rate base for the whole company?

18 COMMISSIONER LAUREDO: It seems to me to
19 grandfather the practice of uniform.

20 MS. DISMUKES: I don't know how you're going
21 to establish used and useful if do you that?

22 MR. WILLIS: I think it was made pretty clear
23 after the Southern States hearing, when the Commission
24 adopted uniform rates, that that was not going to be
25 the norm in every case. I think that puts in the

1 normal thing thought do. In other words, in the next
2 rate case Southern States would be looking at uniform
3 rates again.

4 I think that has to be established in the
5 next case also. I don't think the Commission pointed
6 or made a point to say, "This is the way it's going to
7 be in every case." So I think in the next rate case
8 Southern States would have to file individually again
9 and show all of that same information. They won't have
10 one rate base.

11 COMMISSIONER CLARK: I think if that's true,
12 you don't have a problem with the rule; is that right?

13 MS. DISMUKES: Right. To me I interpret this
14 as saying that when Southern States comes in and files
15 their next rate case, they file as one system.

16 COMMISSIONER CLARK: Tell me again where you
17 are.

18 MS. DISMUKES: (6), the second sentence
19 starts with "Those systems already combined in a
20 uniform rate shall be considered as a single system
21 when submitting the required information." And then it
22 gives basically the schedules that are in the MFRs.

23 COMMISSIONER CLARK: I think you're right.

24 COMMISSIONER LAUREDO: And also the top of
25 that page, the very first line where they are not

1 already combined in a uniform rate implies something is
2 already grandfathered in. I agree with you, it has to
3 be cleaned up if the intent is --

4 COMMISSIONER CLARK: Marshall, do you see the
5 point being made?

6 MR. WILLIS: I see the point being made. In
7 the past, when the Commission did countywide rates, the
8 utility basically had -- and this happened in Southern
9 States in every one of their cases where they had
10 countywide rates where they filed one rate base.

11 COMMISSIONER CLARK: Well, I guess the
12 question is you seemed to indicate that Southern States
13 in their next rate case will still have to file on an
14 individual system basis. I would argue that this rule
15 says they don't.

16 MR. WILLIS: I think you're correct, this
17 rule does say that. And this rule is sort of in
18 conjunction with the rule that you threw out. You
19 know, the Commission took the rule on multiple systems
20 and I --

21 COMMISSIONER CLARK: Yeah, so what should we
22 do, take this out?

23 MR. WILLIS: I think you should take this
24 out, too.

25 COMMISSIONER CLARK: Any objection to taking

1 (6) out? I think that it seems to me you're correct --

2 MR. WILLIS: Commissioners, Tricia just made
3 a very good point here. We probably ought to leave at
4 least the first sentence at this point on (6),
5 basically to let those know if Southern States wants to
6 file on a uniform basis the next time, they have to
7 file the information for each system separately. And
8 scratch everything else.

9 COMMISSIONER CLARK: That's not what that
10 first sentence says.

11 MS. MERCHANT: I still think that the first
12 sentence -- if somebody comes in, if the utility comes
13 in and wants to have uniform rates, I firmly believe
14 that they need to submit the separate rate bases for
15 each system. And I think, if you were to take
16 anything, you would take out that second sentence; and
17 then because of the schedule numbers under here would
18 also have to be, those schedules refer to that --

19 COMMISSIONER CLARK: So how should it read?

20 COMMISSIONER LAUREDO: Well, first of all, I
21 think you need to --

22 COMMISSIONER CLARK: Let her answer.

23 COMMISSIONER LAUREDO: Well, if you're going
24 on a premise that you have uniform rates and what I'm
25 telling you as one Commissioner is the first thing it

1 should say is if the Commission approves the uniform
2 rate filing. Because that we're going to do on an
3 individual basis.

4 COMMISSIONER CLARK: What you want to say, I
5 gather, is that if they're requesting uniform rates
6 they still have to file separately for each system.

7 MR. WILLIS: I think what you would have to
8 do in that first sentence, where it says, the fourth
9 line down, where it says, "shall be submitted on a
10 separate basis for each system that has not already
11 been combined in a uniform rate," you need to scratch
12 where it says "that has not already been combined," and
13 put a period after "each system."

14 COMMISSIONER CLARK: Yeah, but you also have
15 to adjust the first sentence, too. You need to take
16 out "that are not already combined in a uniform rate."

17 MR. WILLIS: Yes, you would have to take out
18 that, too.

19 COMMISSIONER CLARK: So it would read, "If a
20 utility is requesting uniform rates for any system, the
21 information required by this rule shall be submitted on
22 a separate basis for each system."

23 MR. WILLIS: Yes, that's the way it should
24 read, period.

25 COMMISSIONER CLARK: And that should be the

1 end of the sentence.

2 MR. WILLIS: That's right.

3 COMMISSIONER CLARK: And that no other
4 provision in that subsection need be included; is that
5 correct? (Pause)

6 MS. MERCHANT: In (7), it is just basically --

7 MS. MOORE: No, in (6), what about the
8 remainder --

9 COMMISSIONER CLARK: (6) would now be only
10 one sentence long, the sentence we just read, "If a
11 utility is requesting uniform rates for any --"

12 MS. MERCHANT: That's correct. That's
13 correct.

14 COMMISSIONER CLARK: "-- the information
15 required by this rule shall be submitted on a separate
16 basis for each system." Period, end of subsection.

17 MS. MERCHANT: That's correct.

18 COMMISSIONER CLARK: Okay. That addresses
19 your concerns, Public Counsel's concerns, right? Okay.

20 MR. HOFFMAN: Commissioners, you know, I
21 think the issue here is, when you're dealing with a
22 situation such as Southern States, part of the
23 rationale and advantage of a uniform rate are the
24 economies that come with the uniform rate. Those
25 economies should be reflected in future rate filings.

1 I think the issue that you have to decide is
2 whether or not you want to see a utility such as
3 Southern States filing separate system information
4 after there's already been a decision imposing a
5 uniform rate; because I don't think there's any
6 question that you lose some of the economies in terms
7 of the costs of filing the future rate cases.

8 COMMISSIONER CLARK: Well, it doesn't make a
9 bit of sense --

10 COMMISSIONER LAUREDO: This makes up for --

11 COMMISSIONER CLARK: -- a bit of sense to go to
12 uniform rates if that's not going to be a fallout of it.

13 MR. SHREVE: Of course, if you don't do that,
14 you never get to the bottom of the whole situation and
15 know what the revenue requirements are, either.

16 COMMISSIONER CLARK: If we just simply take
17 this out at this time and just sort of let things
18 develop, would that be okay?

19 MR. WILLIS: Well, the problem arising when
20 Southern States files for test year approval.

21 COMMISSIONER CLARK: We deal with it then.

22 MR. WILLIS: They're going to have to -- I'm
23 not sure how you would deal with that. I guess the
24 request would come down to the full Commission and at
25 that point they would request to file one rate base.

1 And I'm not sure would that be issued as a Proposed
2 Agency Action and they would have the protest period on
3 that before the utility could ever file a case, or --

4 COMMISSIONER CLARK: Well, let me ask a
5 question. At this point, is it true we're only talking
6 about two utilities?

7 MR. WILLIS: No. We have several small ones, we
8 have Sunshine, we have several small utilities that own
9 several systems and they always file one rate base. That's
10 just been the norm, they file one rate base. But they're so
11 small nobody really cares; because you can deal with three
12 rate bases or four rate bases, but --

13 COMMISSIONER CLARK: And if we did the rule
14 the way you're suggesting it, it would increase the
15 cost of those?

16 MR. WILLIS: Right. Also you have the
17 problem with, for instance, Jacksonville Suburban in
18 Duval County, they're in three counties now. They have
19 always consistently filed, especially since I have been
20 here, they've filed one rate base. And they have many,
21 many systems that they have never considered as
22 separate systems.

23 COMMISSIONER CLARK: Then Staff does not support
24 changing the rule to the way we just changed it?

25 MR. WILLIS: Right. You're correct.

1 COMMISSIONER LAUREDO: Could you explain to
2 me? You've lost me on this. The rule strikes at those
3 who argue for multisystem filing on the basis of
4 efficiency of cost and economy of scale, because you're
5 saying, correct me if I'm wrong --

6 MR. WILLIS: That's the reason we have the
7 rule here to start with.

8 COMMISSIONER LAUREDO: Well, then, why would
9 you want to have uniform rate cases for if you're going
10 to file each system separately?

11 MR. WILLIS: No, the rule was originally put
12 in there for systems -- for instance, this would have
13 addressed the Southern States problem in the last rate
14 case where they had had systems combined by county,
15 some weren't combined, and basically the rule would
16 tell the utility company that for those systems that
17 are already combined, you would file one rate base for
18 those systems. And if they follow that in this next
19 rate case for all those 117-some-odd systems, however
20 many there were in that last rate case, the last mega
21 rate case we just processed, there would be one rate
22 base for water and one rate base for wastewater filed
23 for that case. It would encompass all 114-something
24 systems if I'm right about that.

25 That would save a tremendous amount of money

1 as far as the company goes on filing. You would come
2 from a filing that was stacked that high on the floor
3 to a filing about that big. It's a tremendous cost
4 savings.

5 To me, that's a natural flowing of what would
6 come out of a case where you had uniform rates
7 established.

8 I certainly, for one, would hate to see us in
9 Jacksonville Suburban, who has been filing uniform the
10 whole time and had their rates set uniform the whole
11 time, which is considerably smaller systemwise than
12 Southern States, to go back to doing their rates
13 system-by-system. I mean, that would be a step in the
14 wrong direction as far as I'm concerned and I don't
15 think the Commission would even consider in that case
16 doing it system-by-system.

17 MS. DISMUKES: My question is: If you do
18 that, how do you establish used and useful for Southern
19 States.

20 MR. WILLIS: The same way we do it for
21 Jacksonville Suburban, we look at each plan
22 individually and we look at the data behind it.

23 MS. DISMUKES: So they would still have to
24 file separate rate case information --

25 MR. WILLIS: They would have to file separate

1 information for you to determine used and useful in
2 each individual plant. But when you get down to the
3 bottom line, you would have one rate base for each for
4 the water systems and one rate base for the wastewater
5 systems. That doesn't get the company of having to file
6 the background information for us to do the used and
7 useful determination.

8 MS. DISMUKES: On a system-by-system basis.

9 MR. WILLIS: On a system-by-system basis.
10 There's no other way to do it. You're don't do it on a
11 company approach. But they're not going to have to sit
12 there and file 114 separate rate bases. Which is, to
13 me, it's kind of ludicrous when you set uniform rates
14 and have to file 114 separate rate bases.

15 COMMISSIONER LAUREDO: Who makes the decision
16 about uniform rates?

17 MR. WILLIS: The Commissioners.

18 COMMISSIONER CLARK: In this case there is
19 only one Commissioner sitting here who made that
20 decision. I still feel it was the right thing to do.
21 Let me ask you a question -- (Laughter).

22 COMMISSIONER LAUREDO: Now wait a minute, I'm
23 not questioning your decision.

24 COMMISSIONER CLARK: Yes, you are. (Laughter)

25 COMMISSIONER LAUREDO: No, I'm just trying to

1 get back to the efficiency part of these rules. Maybe
2 it's my English, I don't understand. But it seems to
3 me again the petition triggers a whole flow of paper
4 in respect to what this Commission may decide. That's
5 my whole focus. Is there a procedure before all the
6 paper flow that we say yea or nay on uniform rates?

7 COMMISSIONER CLARK: They can ask for a
8 change in the minimum filing requirements; can't they
9 have a waiver of minimum filing requirements?

10 MS. MERCHANT: Yes, they can.

11 MR. SHREVE: So there doesn't seem to be any
12 opportunity for anyone to oppose those changes once
13 they're requested, either, such as an extension of time
14 for testimony.

15 COMMISSIONER CLARK: I would suggest that
16 this subsection just be left out of the rule -- even
17 though I think common sense would dictate that once you
18 do uniform rates, you would combine the systems to
19 achieve what you were trying to achieve by uniform
20 rates. But I think we can add that at a later time.

21 MS. MERCHANT: If we don't have the rule for
22 the first sentence and we've got a company who wants
23 uniform rates, I guess my question to you is we would
24 get that information through discovery? Since the
25 filing requirements don't require that?

1 COMMISSIONER CLARK: What do we do now,
2 Trish? We don't have this rule.

3 MS. MERCHANT: We've interpreted it.

4 COMMISSIONER CLARK: You've interpreted it
5 this way, though, right?

6 MS. MERCHANT: Yes, ma'am.

7 MR. WILLIS: That's the way we have
8 interpreted it. We've had utilities ask us exactly
9 what we ought to file in the minimum filing
10 requirements, and that's the way we've interpreted it.
11 Now, that can be disagreed upon by anybody in the
12 world.

13 COMMISSIONER CLARK: Really?

14 COMMISSIONER JOHNSON: Really. In the
15 situation where we already have the uniform rates.
16 And this is the -- it seems like the efficient thing to
17 do. You know, if someone has a problem with uniform
18 rates, that's almost a whole other, it's related but --

19 COMMISSIONER CLARK: Once you make that
20 decision, this follows.

21 COMMISSIONER JOHNSON: This is the logical --

22 MR. WILLIS: I agree it's a normal fallout.

23 And I can tell you also in the next Southern States
24 rate case if you were to go and let the Utility decide
25 what to file, you're probably going to have a big issue

1 right up front with Public Counsel over exactly what is
2 filed and they are going to say, "Dismiss the case
3 because they didn't file the separate rate bases."

4 MR. SHREVE: Commissioners, the more you talk
5 about going through things in discovery, you keep
6 cutting out things that you should put in the MFRs
7 that the company should come in with in the first
8 place, and then you're talking about saving rate case
9 expense, but you up rate case expense because the
10 information is needed in discovery. And there's
11 absolutely no way you can sit here and say that you
12 don't need the information on the individual systems to
13 be able to properly set the revenues.

14 Now, you sit and you say you're going to save
15 rate case expense, you're going to save rate case
16 expense. That is not the only goal of the Commission.
17 The goal is to set rates at the proper level. And you
18 couldn't do it with 127 systems the way it was filed
19 under the time limits with absolutely no consideration
20 for the other side on that, and you can't do it without
21 the information on the systems.

22 You've already said you're going to have to
23 have the information on the rate base to set the used
24 and useful, that's one of the biggest problems you're
25 going to have. You're going to have to come in and do

1 all that by discovery and fight it out and go through
2 the motions and the hearings, what's going to happen to
3 the rate case expense then?

4 Get the information that you need to properly
5 do the job and not just be paranoid about saying,
6 "Look, we're going to do the customers such a great
7 favor by saving rate case expense, we're going to dump
8 the revenue on the company." That's not the only thing
9 you're here for.

10 MR. WILLIS: You see, I disagree with that.
11 The utility is going to have to file individual
12 information on used and useful by system. That doesn't
13 mean -- information by system for used and useful
14 doesn't mean filing a rate base by system. There's a
15 big difference between filing all the information for a
16 rate base and calculating rate base for 127 systems and
17 filing the information necessary to calculate used and
18 useful by system.

19 MR. SHREVE: And you think you can do just as
20 good a job by getting that type of information as you
21 can getting the total information on all the systems as
22 far as being more exact on setting the revenues and
23 rates for the customers? You can't do it.

24 That's the problem with these whole rules.
25 The justification throughout these rules is, "Look,

1 we're going to go the utility's way but we're going to
2 save on rate case expense." That's the way it is all
3 the way through there. You can look at the original
4 filing and the original proposed rules, that's exactly
5 what's there.

6 MR. WILLIS: I think we can sit here and
7 debate this all day long.

8 MR. SHREVE: I think that's a good idea.

9 COMMISSIONER CLARK: Why don't we leave this --

10 COMMISSIONER LAUREDO: Well, let me explain
11 to you, I think you hit it right on the head. I think
12 we should debate it. I think if it is an issue of
13 controversy within the public policy and it has never
14 come up before the full Commission -- and we will have
15 one or two new Commissioners -- I am from what I call
16 the incremental school of negotiation: Let's get out of
17 the way that which we can agree on; and that which we
18 can't agree on, let's take out.

19 I think this inclusion creates more problems
20 than it solves. It's a situation where a lot of us
21 still don't understand your point of view versus his
22 point of view, we haven't had the ability or the
23 opportunity to debate it, and I think it's prudent to
24 leave it out.

25 MR. WILLIS: Commissioners, we can do as you

1 please. And if you decide the take it out, we can
2 handle it when it comes along.

3 COMMISSIONER LAUREDO: We are going to look
4 at the efficiency test as the most fundamental, one of
5 the most fundamental, triggers on whether we go with
6 systemwide or not.

7 COMMISSIONER CLARK: May I make a suggestion?
8 I think I still want to think about this. Make
9 whatever recommendation you in your professional
10 opinion think the rules should be and we'll deal with
11 it at the agenda.

12 MR. HOFFMAN: Commissioners, are you saying
13 at this point we're going to leave it in and let the
14 Staff make a recommendation?

15 COMMISSIONER CLARK: Sure.

16 COMMISSIONER LAUREDO: Well, is Staff
17 recommendation what is in here or are they going to
18 amend this?

19 COMMISSIONER CLARK: Well, we've heard all
20 the comments one way or the other and then there will
21 be a final recommendation to the Commission.

22 COMMISSIONER LAUREDO: From them, okay.

23 COMMISSIONER JOHNSON: I think it would
24 really give us an --

25 MR. SHREVE: Well, where was the Staff in the

1 first place?

2 COMMISSIONER JOHNSON: -- opportunity to
3 think about this more. That's what I need. I need
4 for it to stay because I'm not ready to say it should
5 go. It just seems logical that this would be the
6 fallout of our uniform rates, but I need to think about
7 it some more.

8 MS. MERCHANT: The way that we could address that
9 would possibly be through an alternate recommendation.

10 COMMISSIONER CLARK: Do what your
11 professional opinion dictates.

12 MR. WILLIS: Don't worry, we will.

13 COMMISSIONER LAUREDO: And just remember that
14 we dropped the whole section on uniform rates the last
15 time we met.

16 COMMISSIONER CLARK: No, on multiple systems.

17 UNIDENTIFIED SPEAKER: Multiple systems.

18 COMMISSIONER JOHNSON: It's different.

19 COMMISSIONER LAUREDO: Well, slightly
20 different.

21 COMMISSIONER CLARK: Anything else? What
22 were we on? On (6)?

23 MS. MERCHANT: We were on (6). Are we ready
24 to move on to (7)?

25 COMMISSIONER CLARK: Yes.

1 MS. MERCHANT: Section (7) codifies
2 Commission practice of using the base facility charge
3 and gallonage charge rate structure using the
4 five-eighths by three-quarter-inch meter as the
5 established starting point in developing --

6 COMMISSIONER CLARK: Is there any comment on
7 this subsection? No? Okay, all right. Thank you,
8 that concludes 30.437. 30.4385?

9 MR. SCHIEFELBEIN: That's been stipulated.

10 COMMISSIONER CLARK: Okay. Public Counsel,
11 did you have any on this one?

12 MR. MANN: No, Commissioner, we did not.

13 COMMISSIONER CLARK: Okay. What about
14 30.441?

15 MR. CROUCH: Commissioners, .441 has been
16 basically deleted or repealed and .4415 put in its
17 place.

18 COMMISSIONER CLARK: Okay. So we should be
19 looking at .4415. Any comments on .4415?

20 MR. CROUCH: Basically, this is to
21 incorporate the new rules that DEP has come up with
22 telling the utilities that they are going to have to
23 plan on expanding their facilities.

24 COMMISSIONER CLARK: Any comments from the
25 utilities? (Pause) Public Counsel?

1 MR. MANN: I'm sorry. Well, we had
2 something. I had something and I can't -- basically a
3 question, Commissioner. (Pause)

4 COMMISSIONER CLARK: How about if we move on,
5 Rick? And if you think of it, we'll --

6 MR. MANN: Okay. I'm sorry, Commissioner.

7 MR. SHREVE: It was a good question.

8 (Laughter) It was great.

9 MR. MANN: Kind of like Ms. Merchant's, it
10 was great.

11 MR. SHREVE: We decided we'd just keep that
12 question to ourselves.

13 COMMISSIONER LAUREDO: You'll hold that for
14 the real important one.

15 COMMISSIONER CLARK: Okay, 30.443. Any
16 comments to that?

17 MS. MERCHANT: On .443?

18 COMMISSIONER CLARK: Right.

19 MS. MERCHANT: That's basically the Class C
20 Minimum Filing Requirement changes. A lot of it
21 piggybacks the section for Class A and B.

22 COMMISSIONER CLARK: No comments? Mr. Hoffman?

23 MS. MERCHANT: I beg your pardon, there is a
24 proposed change.

25 COMMISSIONER CLARK: By whom?

1 MS. MOORE: It's a Staff proposed change, at
2 tab 18, Page 22.

3 COMMISSIONER CLARK: Yeah. Well, Florida
4 Waterworks Association doesn't have a problem with that
5 change.

6 MS. MERCHANT: Okay.

7 COMMISSIONER CLARK: Is there anyone else?

8 MS. MERCHANT: This is just something that
9 was left out that still piggybacks the other.

10 MR. SCHIEFELBEIN: I'm sorry, which change?

11 COMMISSIONER CLARK: Tab 18, Page 22.

12 MS. MOORE: I'm sorry.

13 MR. SCHIEFELBEIN: This would be mentioned in
14 the testimony filed by Staff?

15 MS. MOORE: That is correct.

16 MR. SCHIEFELBEIN: You're correct
17 Commissioner, Clark --

18 MS. MOORE: That was as to .437, I'm sorry,
19 we're now at .443?

20 COMMISSIONER CLARK: Yes.

21 MS. MOORE: There's a little confusion over
22 here, please excuse me.

23 COMMISSIONER CLARK: Okay. Public Counsel,
24 anything on .443?

25 MR. MANN: No, Commissioners, no comment on

1 that one.

2 COMMISSIONER CLARK: I guess the next one is
3 30.455? I know Public Counsel has comments on this.

4 MR. MANN: Where are we, .455?

5 COMMISSIONER CLARK: Yeah. Does Staff have
6 anything on this?

7 MR. HILL: No.

8 COMMISSIONER CLARK: The utilities? Okay.

9 MR. MANN: Commissioner, this --

10 MR. SHREVE: The Staff-assessed rate cases
11 are one of the better things that the Commission does
12 as far as setting rates and saving the ratepayers
13 money. But there are some things that have always kept
14 it from being nearly as good as it could.

15 Now, one of the things that I don't really
16 understand the reasoning for -- and the utilities are
17 the ones that have brought this up before -- is why a
18 utility that is not on uniform rates cannot elect to
19 have a Staff-assisted rate case on one of their small
20 systems.

21 I know this has been raised by Deltona in the
22 past when they had a small system; Pine Ridge is one
23 example I recall quite a few years ago, where it was
24 just a small system and it should have been set by
25 Staff-assisted rates. Instead, they were forced into

1 filing a full-blown rate case.

2 Now, I would assume there are some other
3 systems out there at least that would put the utility
4 in a position of making that choice, and I see no
5 reason to force the utility into it by filing a
6 full-blown rate case when you could have a
7 Staff-assisted rate case.

8 MR. HILL: Commissioners, that has been
9 raised before. It has been our position all along that
10 the Staff-assisted rate case is exactly that; it is not
11 for Southern States or Utilities, Inc., who happens to
12 own a system whose annual revenues are less than
13 \$150,000. The Staff-assisted program is for a
14 mom-and-pop operation and not for a major company. I
15 think it should be for the program.

16 MR. SHREVE: I think the benefits for a
17 mom-and-pop organization could be the same thing as the
18 benefits for the small one. The benefits should flow
19 to the ratepayers, since they're the ones paying the
20 rate case expense. You're not doing that for GDU or
21 anyone else.

22 I think it should be available to the
23 companies if they elect to come in for a Staff-assisted
24 rate case on a very small utility because I don't see
25 any reason to exclude the ratepayers, whether there's

1 100 customers in Pine Ridge, from having the benefits
2 of a Staff-assisted rate case.

3 COMMISSIONER LAUREDO: Is the corollary of
4 that argument then a counter argument to uniform rates?
5 Because if you have a lot of small systems, why don't
6 we just have them all come as Staff-assisted?

7 MR. SHREVE: If the utility, or however, if
8 they came in and did have uniform rates, then I think
9 you would be in a position that they would not elect to
10 have a Staff-assisted rate case in one of the small
11 systems. So I think that's the other side of it. But
12 I think there are some systems out there, and I'm not
13 too sure --

14 COMMISSIONER CLARK: That is curious. I
15 think we probably have the utilities and Public Counsel
16 agreeing they ought to have that option. You said it
17 just that way, the option of coming in.

18 MR. SHREVE: And I've seen the utilities
19 arguing for that because they didn't want to waste the
20 money, the ratepayers' money. And I think that's the
21 way it should be. I see no reason to not have that
22 benefit available to them.

23 Southern States, I assume, would not be in a
24 position at this point to ask for a Staff-assisted rate
25 case. If they did not have uniform rates, or for some

1 reason in the future did not have uniform rates, and
2 they want to come in for some of their small systems
3 rather than having to file a full-blown rate case, I
4 think they would like to have that option. And I would
5 prefer that the ratepayers not have to pay it. And I
6 think the utilities have always felt that way. It's a
7 waste of money.

8 MR. SCHIEFELBEIN: I've represented -- other
9 than Southern States, I've represented multisystem
10 utilities which have approached Staff to pursue a
11 single systems Staff-assisted case and we were told to
12 go away.

13 COMMISSIONER CLARK: Wait a minute. A single
14 system, you mean just one of their little systems?

15 MR. SCHIEFELBEIN: Multisystem utilities that
16 had one small system and came in and said, "Let's just
17 do this as a SARC," and Staff has said, "No," and that
18 client was very unhappy. But I tend to think that
19 Staff's rationale here is that they've got limited
20 resources to go around to process Staff-assisted rate
21 cases.

22 COMMISSIONER LAUREDO: But if you file a rate
23 case, the same Staff is going to be taxed.

24 MR. SCHIEFELBEIN: Well, that's true.

25 MR. SHREVE: That's right.

1 COMMISSIONER LAUREDO: Well, that doesn't
2 hold any water.

3 MR. SCHIEFELBEIN: I think Staff was just
4 managing scarce resources when they approached this
5 issue.

6 COMMISSIONER LAUREDO: That would be valid if
7 you do, in fact, go away.

8 MR. SCHIEFELBEIN: And we did.

9 MR. HILL: I had to check, but the statute
10 does say, "Utilities with annual revenues of \$150,000
11 or less." And I just don't think that you can take a
12 company, or a utility like Southern States Utilities,
13 Inc., and break them up in little pieces and decide
14 that a system is really a utility.

15 If the Commission wants to establish a
16 program whereby we just put together rate cases for
17 anybody that wants to file at whatever level, then, I
18 mean, we can put one of those together and put together
19 a fiscal impact and get the Staff to do it; but this
20 program was designed for mom-and-pop companies.

21 COMMISSIONER LAUREDO: Chuck, you know, we're
22 not arguing here, we're kind of thinking out loud, and
23 it has some appeal. Let's don't be defensive about it.

24 I mean, if, in fact, we step back and look at
25 the big picture, say "Can we save the ratepayers money

1 and inject some degree of efficiency," we know for sure
2 we'll probably eliminate a lot of paper work if we do a
3 Staff-assisted. It's something you should think about.
4 And maybe --

5 MR. HILL: And the flip side of that is there
6 will be a fiscal impact.

7 COMMISSIONER LAUREDO: Right. And that's
8 what my next sentence was going to be, and you ought to
9 think about it in light of your resources.

10 MR. HILL: Right. And I know I'm already
11 operating in the red, which is against the law, and
12 we're already at 4.5% on a regulatory assessment fee.
13 So you will have to go up to the legislature and ask us
14 to increase that fee -- which I don't have a problem
15 with, but logically all of those things have to be
16 considered.

17 COMMISSIONER LAUREDO: I understand. But,
18 you know, it's the job of the Commission to think these
19 things through. And you sound a little defensive, and
20 it's just, you know --

21 MR. HILL: Well, I guess, because I'm trying
22 to codify what the Commission is doing in this
23 particular rule. And if we want to go beyond that,
24 that's fine.

25 COMMISSIONER LAUREDO: Because, see, your

1 approach -- my biggest concern is the impact on the
2 resources. And it would work if, in fact -- and it is
3 working because the kind of "No" you're putting out is
4 scaring them from coming into a rate case. But if they
5 turn around and go ahead and file a rate case, it does
6 not relieve you of the tax on your limited resources.
7 So I don't know what the tradeoff is in the real world.

8 MR. HILL: There's a difference, and I guess
9 this is the forum to discuss it. In a Staff-assisted
10 rate case, the Staff prepares the minimum filing
11 requirements. We go out and do all the field work; We
12 go out and dig through all of the receipts, so we put
13 together all the MFRs. In a file-and-suspend rate
14 case, that is done up front and we analyze the MFRs.

15 COMMISSIONER LAUREDO: Could you develop a
16 profit center where you would be paid for that at a
17 lower --

18 MR. HILL: I think probably if we got a
19 statutory change, we could.

20 COMMISSIONER CLARK: Well, I think Mr. Shreve
21 has brought up a good point, but I also think we
22 probably ought to leave the rule as it is. But let's
23 explore the notion of making it available when you have
24 a small system where you don't have uniform rates, that
25 it may be on a case-by-case basis that's the way to go.

1 I don't think you want to encourage a large utility to
2 do that with each of its systems because I think we
3 would not have the manpower to do it. But there may be
4 isolated cases where that's a good idea.

5 MR. SHREVE: Of course, I'm not so sure that
6 there's that much of a difference in the requirements.
7 Because if you have a full-blown rate case, and you go
8 through and you put out a PAA, you still have the
9 exposure of going through a hearing. Now, with a
10 Staff-assisted rate case, you put out the PAA and the
11 exposure of going through a hearing.

12 But why would you deny a small utility with
13 only 100 customers, one of the benefits that you would
14 give to a utility next door that might be owned by
15 someone else, when maybe you could work something out,
16 put it in the rules where the Utility, if they did, in
17 fact, have the facilities -- I keep using Deltona, of
18 course, there is no Deltona anymore. But in that
19 situation, Deltona requested Pine Ridge. They already
20 had one going with Citrus Springs, and they really
21 tried to have one, have a Staff-assisted with Pine
22 Ridge.

23 They do have more facilities and are better
24 organized. Perhaps you could work something out so
25 that more information is turned over by the company if

1 they elect to have the Staff-assisted rate cases, but
2 try to keep the primary idea here as being save rate
3 case expenses for that specific group, rather than
4 denying a group of a similar size the benefits. And I
5 know the companies have wanted to do it.

6 COMMISSIONER LAUREDO: When I said about a
7 profit center, you said legislative change. You cannot
8 charge, assess a charge, to the companies when you do
9 that, the MFRs? You don't feel you have the authority
10 to do that?

11 MR. HILL: I don't believe so. I mean, we
12 could try.

13 COMMISSIONER CLARK: You mean set the filing
14 fee for a SARC, for an affiliated SARC a little bit
15 higher?

16 MR. HILL: Well, a little bit. We have a
17 maximum we can charge for a filing that's based on
18 capacity.

19 COMMISSIONER CLARK: Okay.

20 MR. HILL: So when you're talking about a
21 system of 100 customers, I think the maximum charge
22 you're going to get is \$900.

23 COMMISSIONER LAUREDO: For the filing fee.

24 COMMISSIONER CLARK: The filing fee is in
25 part to pay for the cost of processing the filing.

1 I think that's something to think about.

2 COMMISSIONER LAUREDO: We ought to think
3 creatively about that.

4 COMMISSIONER CLARK: If it's not something
5 you feel you need more research and to look at the
6 ramifications of that, that's fine. But I would
7 certainly like it pursued; if not in these rules, as an
8 ongoing project.

9 MS. SUMMERLIN: Commissioners, you know, just
10 by reading the statute, I would be troubled that we
11 would probably have a statutory --

12 COMMISSIONER CLARK: I know, the problem with
13 the word "utility." But I can guarantee you that if we
14 went to the legislature with the utilities and
15 Mr. Shreve, we would get it changed.

16 MS. SUMMERLIN: I think that's true. I don't
17 have any problem with that at all.

18 MR. SHREVE: And you have the individual
19 utilities filing by choice a full-blown rate case.
20 Take Florida Cities, we just finished with the
21 different ones that you are familiar with.

22 COMMISSIONER LAUREDO: Chuck, you've got to
23 keep the eye on the resource ball. If you cannot take,
24 other than the filing fee, if you can't turn it into a
25 profit center where you become, in essence, a

1 "consultant," quote/unquote, your agency, your
2 subdivision, then be careful. Put, certainly, it's a
3 creative way to move as we, quote, "re-invent"
4 government. It may very well be that you can create an
5 interesting fiscal and serve the public in general by
6 bringing down costs.

7 MR. HILL: We'll actively pursue it. And in
8 that, we also need to consider, even now in a
9 Staff-assisted program, while it's one of our better
10 things that we've done, in the customer's minds we've
11 done that case for that utility, and they do not like
12 the Commission Staff or you Commissioners because we
13 put that case together for that little mom-and-pop.
14 And I think we also need to consider about the time we
15 start doing it for the large companies, as long as
16 everybody can shoulder that, then --

17 COMMISSIONER LAUREDO: That's a good point.

18 MR. HILL: -- again, we will actively pursue
19 that, that particular option. But when you start
20 putting the case together for Southern States and
21 Utilities, Inc., there will be some questions raised on
22 that.

23 COMMISSIONER LAUREDO: Well, that's a very
24 good point. Excellent point.

25 MR. HOFFMAN: Commissioners, while we're

1 think tanking on this, I think what you need to also
2 take into consideration is that with a company like
3 Southern States, while Southern States is going to have
4 some small systems with respect to the number of
5 customers, doing a rate case for a small Southern
6 States system is going to be different than doing a
7 small rate case for a traditional mom-and-pop system in
8 terms of the taxing of the resources of the Staff, even
9 if there weren't uniform rates, because of cost
10 allocations of general plant, A&G expenses. It's just
11 a more complicated scenario.

12 And secondly, if that were to happen -- that
13 is, a Staff-assisted rate case of a small Southern
14 States system -- it's going to necessarily involve the
15 personnel and resources of Southern States. And just
16 from a efficiency standpoint, I don't think at this
17 point Southern States would be inclined to do it
18 because it's just more efficient to do all of the
19 systems in one proceeding.

20 COMMISSIONER CLARK: And I don't think Mr. --

21 MR. HOFFMAN: I understand. I understand.

22 COMMISSIONER CLARK: Mr. Shreve is saying
23 it's an option. Anything else on 455? Why don't we
24 take --

25 MR. SHREVE: I do. Since we're talking about

1 putting the case on and everything, I think one of the
2 other things that could have -- one thing that really
3 keeps the Staff-assisted rate case from being as
4 effective as it is is forcing the company, after the
5 proposed agency action is possibly -- if a hearing is
6 requested by the customers, then at that point you're
7 put back into the scenario of having a full-blown rate
8 case with the company carrying the burden of proof on
9 that.

10 The company is, of necessity, forced or
11 required to bring in the evidence and supply the
12 information that is needed for the Staff to come out
13 with their proposed agency action in the first place
14 and I think would have the burden of justifying that.
15 However, if the Staff would put on the case that they
16 have developed, that they are recommending -- not the
17 company's case, not what they requested, but what the
18 Staff came out -- then you would not be in a position
19 of having some situations like we ran into over here in
20 Panama City where the customers' rates were raised by
21 about \$8 per customer per month for around a hundred
22 customers.

23 The Staff could put that on. We could hold
24 down and try to keep everything as much as we could on
25 an informal basis, and this has also been raised by

1 utilities to try to keep from having to expend rate
2 case money on the part of the customers. And that is
3 the one thing that turns the whole Staff-assisted rate
4 case around if the customers determine that they want
5 to have a hearing on it. If you could do that and keep
6 the rate cases expense down for everyone, I think that
7 would be much improved.

8 MR. HILL: That's what this rule does. It
9 lays out the parameters for exactly what the Commission
10 is going to do if it is protested, and what the utility
11 has to do. And if the utility chooses to raise
12 additional issues, then, they may not get that in rate
13 case expense.

14 COMMISSIONER CLARK: But who puts on the case
15 to support what --

16 MR. HILL: The utility must provide the
17 supporting data and the evidence for --

18 COMMISSIONER CLARK: I think this is a good
19 place to take a break and you guys get together. We'll
20 get back together at 10 to 5:00 and it's our intention
21 to go through and get these done. I think we can, and
22 I hope Mr. Cresse makes its down here. Okay. Ten
23 minutes. You guys get together and --

24 MR. SHREVE: No, I'd rather discuss this in
25 front of the Commissioners. We all understand this.

1 We've had this discussion enough times that we all know
2 where we are.

3 COMMISSIONER CLARK: All right. Well, we'll
4 be back at 4:55 and then have it.

5 MR. SHREVE: Chuck, you're right.

6 (Brief recess.)

7 (Transcript continues in sequence in Volume
8 III.)

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