

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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, : FILED 10/20/1993
25-30.035, 25-30.036, 25-30.037, : DOCUMENT NO. 11259-1993
25-30.060, 25-30.110, 25-30.111, : FPSC - COMMISSION CLERK
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. :

MORNING SESSION
VOLUME I

Pages 1 through 161

PROCEEDINGS:

SPECIAL AGENDA

BEFORE:

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

DATE:

Thursday, October 7, 1993

TIME:

Commenced at 9:30 a.m.

PLACE:

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY:

JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
PAMELA A. CANELL
Official Commission Reporters

1 APPEARANCES:

2 WAYNE SCHIEFELBEIN and FRANK SEIDMAN, Gatlin,
3 Woods, Carlson and Cowdery, 1709-B Mahan Drive,
4 Tallahassee, Florida 32308, Telephone No. (904) 877-7191,
5 appearing on behalf of Florida Waterworks Association and
6 Florida Cities Water Company.

7 KENNETH A. HOFFMAN and BRIAN ARMSTRONG,
8 Messer, Vickers, Caparello, Madsen, Lewis, Goldman &
9 Metz, P.A., 215 South Monroe Street, P. O. Box 1876,
10 Tallahassee, Florida 32302, Telephone No. (904)
11 222-0720, appearing on behalf of Southern States
12 Utilities.

13 JACK SHREVE, RICK MANN and KIMBERLY DISMUKES,
14 Office of Public Counsel, Claude Pepper Building, Room
15 812, 111 West Madison Street, Tallahassee, Florida
16 32399-1400, Telephone No. (904) 488-9330.

17 NOREEN DAVIS, FPSC Division of Legal
18 Services, 101 East Gaines Street, Tallahassee, Florida
19 32399-0863, Telephone No. (904) 488-2740, appearing on
20 behalf of the Commission Staff.

21 CHRISTIANA MOORE, FPSC Division of Appeals,
22 101 East Gaines Street, Tallahassee, Florida
23 32399-0863, Telephone No. (904) 488-7464, appearing on
24 behalf of the Commission Staff.

25

1 ALSO PRESENT:

2 MARY BANE, Deputy Executive Director/Technical,
3 FPSC Executive Suite.

4 CHARLES H. HILL, Director, FPSC Division of
5 Water and Wastewater.

6 BOB CROUCH, FPSC Division of Water and
7 Wastewater.

8 ANN CAUSSEAU, FPSC Division of Auditing &
9 Financial Analysis.

10 BETH SALAK, FPSC Division of Auditing &
11 Financial Analysis.

12 PATRICIA W. MERCHANT, FPSC Division of Water
13 and Wastewater.

14 MARSHALL W. WILLIS, FPSC Division of Water
15 and Wastewater.

16 JOANN CHASE, FPSC Division of Water and
17 Wastewater.

18 GREG SHAFER, FPSC Division of Water and
19 Wastewater.

20 SHELLEY ROBBINS, FPSC Division of Water and
21 Wastewater.

22 ROBERT TODD, President, Florida Waterworks
23 Association.

24 FRANK SEIDMAN, President, Management and
25 Regulatory Consultants.

FOREST LUDSEN, Southern States Utilities.

I N D E X

	<u>RULES:</u>	<u>PAGE NO.</u>
1		
2		
3	.020	6
4	.025	6
5	.030	7
6	.033	7
7	.034	15
8	.035	16
9	.036	26
10	.430	26
11	.455	26
12	.456	62
13	.475	77
14	.565	77
15	.0371	77
16	.037	103
17	.039	104
18	.117	105
19	.433	108
20		
21		
22		
23		
24		
25		

P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

CHAIRMAN DEASON: We'll go ahead and get started this morning.

This is a special agenda conference for hopefully final disposition of water and wastewater rules.

Ms. Moore, there's no need for any type of reading of notice or anything of that nature, is there?

MS. MOORE: No, I don't believe so.

CHAIRMAN DEASON: Okay.

MS. MOORE: There was notice in the Florida Administrative Weekly on September 17th of this special agenda.

CHAIRMAN DEASON: I would note that obviously Staff is here. Parties are here. Parties are here to answer questions, but not to make presentations. Very well.

Commissioners, we have followed a slightly different procedure in this case. We discussed it thoroughly at the hearing on August the 12th. We have Staff's recommendation, and then we have the parties' comments to Staff's recommendation and those comments have been compiled by Staff and have been placed in a side-by-side comparison for our benefit. And Staff has taken -- appropriately so, has taken the liberty of

1 grouping rules into different categories, those being
2 noncontroversial, those being ones that the Commission
3 had given direction on, and those where there were
4 substantial disagreements and where the Commission
5 decided not to give any type direction. That basically
6 would be Issues 1, 2 and 3.

7 MS. MOORE: That's correct.

8 CHAIRMAN DEASON: Okay. I would propose that
9 we go issue-by-issue, that being Issue 1, and then
10 we'll, if need be, we'll address individual rules
11 within each issue.

12 COMMISSIONER CLARK: Okay.

13 CHAIRMAN DEASON: So we'll start off with
14 Issue 1, the noncontroversial rule.

15 COMMISSIONER CLARK: Mr. Chairman, can I just
16 make a comment before we start in.

17 I wanted to commend the Staff for putting
18 together what I felt was a very easy to follow
19 recommendation and format for these rules, and likewise
20 I want to thank the parties because I understand the
21 parties comments were put verbatim on the other side.
22 And, you know, I could read through them and understand
23 what the point was that was being made and I think it
24 was very well done.

25 CHAIRMAN DEASON: I would echo those comments

1 as well.

2 COMMISSIONER CLARK: And I can move Staff on
3 Issue 1.

4 COMMISSIONER JOHNSON: Second.

5 CHAIRMAN DEASON: It's been moved and seconded
6 that we approve Staff's recommendation on all rules
7 contained within Issue 1. All in favor say, aye.

8 (Commissioners Deason, Clark, Lauredo and
9 Johnson vote aye.)

10 CHAIRMAN DEASON: Any opposed? Show Issue 1
11 is approved unanimously.

12 Issue No. 2.

13 COMMISSIONER LAUREDO: These are the ones
14 where the initial decision has already been made?

15 CHAIRMAN DEASON: Some initial direction was
16 given for these rules, but I do note that there are at
17 least five rules to which there were comments filed by
18 the parties.

19 COMMISSIONER LAUREDO: Can we take them one
20 at a time and move them all?

21 CHAIRMAN DEASON: Yes.

22 COMMISSIONER LAUREDO: I move 25-30.020.

23 COMMISSIONER CLARK: Second.

24 CHAIRMAN DEASON: Without objection, .020 is
25 approved. We have a motion to approve .025.

1 COMMISSIONER CLARK: I so move.

2 CHAIRMAN DEASON: Without objection, .025 is
3 approved. .030.

4 COMMISSIONER CLARK: I move it.

5 CHAIRMAN DEASON: Without objection, .030 is
6 approved.

7 According to my notes there were some
8 comments filed on .033, and that had to do with some
9 affiliate transaction language. And I'm going to at
10 this time exercise the discretion that we have and ask
11 a question to the parties. I believe the comments were
12 filed by Public Counsel on .033; is that correct?

13 COMMISSIONER CLARK: Uh-huh.

14 CHAIRMAN DEASON: Ms. Dismukes, I thought
15 that we had discussed this at the hearing, and the
16 purpose -- your concern is that affiliate transaction
17 language be included in the certificate -- this is a
18 certificate, application for a new certificate; is that
19 correct? I believe it is.

20 MS. DISMUKES: Yes.

21 CHAIRMAN DEASON: And what is your concern
22 with the affiliate transaction? Let me ask you that
23 directly.

24 MS. DISMUKES: Well, I think in Section 1(c),
25 we suggested that you add in there that the names of

1 any affiliates be added to that section. Right now it
2 just stands that any persons owning an interest in the
3 applicant's business be identified. And we just added
4 affiliate so that the affiliates would also be identified.

5 COMMISSIONER CLARK: Mr. Chairman, would it
6 be appropriate to say "or any other persons or entity"?

7 MS. DISMUKES: I think --

8 COMMISSIONER CLARK: You were getting at
9 nonpersons who might have an interest.

10 CHAIRMAN DEASON: You're suggesting that we
11 may want to insert after "persons," "any other persons
12 or entities owning an interest in the applicant's
13 business"?

14 COMMISSIONER CLARK: Yeah.

15 MS. DISMUKES: Right.

16 CHAIRMAN DEASON: Does that address your
17 concern, Ms. Dismukes?

18 MS. DISMUKES: In terms of ownership, yes.

19 CHAIRMAN DEASON: Okay. But you also had a
20 concern about getting some financial information on the
21 affiliated entities; is that correct?

22 MS. DISMUKES: We made a comment with respect
23 to Section S, and here again we just -- the Staff --
24 yeah, the Staff had proposed a change which I think
25 moved to some degree in our direction in terms of --

1 and it was at the Commission's direction in terms of
2 anybody that they were relying upon in terms of
3 funding. And when we originally made our comments, our
4 comments were made with the concern of funding from an
5 affiliated entity. And our comments here --
6 posthearing comments, were just to add for
7 clarification purposes in Subsection S, I believe it
8 is, -- yeah, after the shaded part of Subsection S,
9 just to add including affiliates. There again it is
10 just declaratory in the sense that that was the intent.
11 I believe the Commissioners did address our concern and
12 were somewhat in favor of it, and Staff's language
13 moves partway there and this posthearing comment is
14 just to further identify that it deals with the
15 affiliate and to address that issue.

16 COMMISSIONER CLARK: You're just concerned
17 that the term "entities" doesn't automatically include
18 affiliates with respect to Subsection S?

19 MS. DISMUKES: Subsection S doesn't even talk
20 about entities, but it does say "upon which the
21 applicant is relying to provide funding."

22 COMMISSIONER CLARK: It says, "A list of all
23 entities --"

24 MS. DISMUKES: Oh, I'm sorry, you're right.
25 It does say, "A list of all entities." Again, you

1 know, my comments stand in the sense that purely to
2 emphasize that if there are any affiliates involved, if
3 you added that language, I don't think it would change the
4 intent of what is there to begin with. It would just --

5 COMMISSIONER LAUREDO: I agree, and I would
6 move that we amend the rule by changing the words
7 "entities" where the word "companies" was suggested on
8 "C." And amend "S" as per Public Counsel. I think it
9 is an elaboration on a theme that we are all -- we're
10 just trying to pierce through. And this makes it a
11 little bit clearer in layman's terms.

12 CHAIRMAN DEASON: Well, I guess I'm a little
13 confused, Ms. Dismukes. What is the actual language
14 that you would propose for Paragraph S?

15 MS. DISMUKES: Our language would be -- as it
16 reads now, it says, "A list of all entities upon which
17 the applicant's relying to provide."

18 COMMISSIONER LAUREDO: That's on Page 16.

19 MS. DISMUKES: And then it goes on to
20 funding. And we said to insert after, "A list of all
21 entities," the words "including affiliates."

22 MS. CHASE: Commissioners, if you look on
23 Page 16, their suggested language is on Page 16.

24 COMMISSIONER LAUREDO: What I moved is just
25 their proposal with changing the word "companies" to

1 "entities". That's my motion as reflected in Appendix A.

2 COMMISSIONER CLARK: Wait a minute.

3 COMMISSIONER LAUREDO: Because entities, as per
4 Commissioner Clark, is a little broader than companies.

5 COMMISSIONER CLARK: What section are you
6 talking about?

7 COMMISSIONER LAUREDO: Okay. Page 16.

8 COMMISSIONER CLARK: Okay.

9 COMMISSIONER LAUREDO: Appendix A is OPC's
10 recommendation.

11 COMMISSIONER CLARK: All right. You
12 recommend changing the language in "C" and "S" as
13 they've indicated?

14 COMMISSIONER LAUREDO: No. On "C," I would
15 move the language as recommended except instead of
16 inserting the words "or companies," I would insert the
17 words "or entities." That was your suggestion.

18 COMMISSIONER CLARK: Okay.

19 COMMISSIONER LAUREDO: I think it's a good
20 suggestion.

21 COMMISSIONER CLARK: Okay.

22 COMMISSIONER LAUREDO: And in "S," I would
23 leave as it is as per their recommendation.

24 COMMISSIONER CLARK: I can second that.

25 CHAIRMAN DEASON: Okay. It has been motioned

1 objection? Hearing none, does Staff have proper
2 direction on those changes?

3 COMMISSIONER CLARK: I would also recommend
4 making the change suggested by, I guess it was Florida
5 Waterworks Association?

6 CHAIRMAN DEASON: Yes.

7 COMMISSIONER CLARK: With this change, I
8 would say "the Commission may consider a written
9 easement or other cost-effective alternative".

10 I look at this as just giving -- you know,
11 we're just trying to give direction of what might
12 possible qualify. We are not making any commitments
13 that they will, in fact, be accepted.

14 COMMISSIONER LAUREDO: I'm glad you caught
15 that, because in the rush following my notes I would
16 agree with that, and I would change that throughout the
17 rules where a 99-year lease comes up.

18 COMMISSIONER CLARK: Yeah. Who is the
19 gentlemen from Keystone Heights?

20 MS. MOORE: Bob Todd.

21 COMMISSIONER CLARK: Yes. I think he made a
22 very good argument that there may be some other
23 property-type interests that are a better way to
24 approach it. And, you know, I'm not indicating you all
25 have to accept it or recommend it, but let's give them

1 a chance to come in and say they think this is the way
2 to go.

3 COMMISSIONER LAUREDO: And dropping the words
4 "such as a 99-year lease" which appears about 20 times?

5 COMMISSIONER CLARK: No, no. You leave that
6 in there and add a second sentence that says, "The
7 Commission may consider a written easement" -- well,
8 that would be the last clause in that sentence, I
9 guess.

10 COMMISSIONER LAUREDO: I just don't know what
11 it lends, this 99-year lease language.

12 COMMISSIONER CLARK: That's a typical sort of
13 alternative to a fee simple is a 99-year lease. I
14 mean, it's common practice in law where you want to
15 give a --

16 COMMISSIONER LAUREDO: Yeah, but a continued
17 use of land, I just --

18 COMMISSIONER CLARK: It's just an example.

19 COMMISSIONER LAUREDO: It's an example. I
20 just thought it was redundant. But that's fine with
21 me.

22 CHAIRMAN DEASON: Mr. Schiefelbein, I know
23 that you've had a concern about this. And this is your
24 proposed language to add -- and this would be added to
25 the example of a 99-year lease? And this would be

1 wherever there's a reference to 99-year lease, you'd
2 like a reference made to this alternative.

3 MR. SCHIEFELBEIN: Yes, sir. And I think
4 with Commissioner Clark's modification it works.

5 COMMISSIONER LAUREDO: Her modification
6 leaves the words, as an example, throughout, such as "a
7 99-year lease."

8 MR. SCHIEFELBEIN: Well, my preference would
9 be not to have the 99-year lease held up as the
10 featured example, but my real concern here I think is
11 taken care of by the addition of her new language.

12 COMMISSIONER LAUREDO: I personally don't see
13 that it lends anything, a 99-year lease. I mean, but
14 if somebody feels strongly about it -- I was just being
15 -- the construction is much tighter. If you just say,
16 you know, "an agreement which rightfully continues the
17 use of the land." And we'll make the judgment as to
18 that or the other. But I can live with it either way,
19 Commissioner. But I think we ought to do it for all of
20 the rules because I think it happens several times.

21 COMMISSIONER CLARK: Yeah. It's logical to
22 make it everywhere that that appears so there isn't any
23 confusion that we might want to allow it in one place
24 and not the other.

25 CHAIRMAN DEASON: Correct.

1 COMMISSIONER LAUREDO: Does the term "99-year
2 lease" give Public Counsel any comfort? I mean,
3 semantics, I just don't -- doesn't make --

4 MS. DISMUKES: We were in favor of Staff's
5 recommendation as it stood in terms of the 99-year
6 lease at least gives, you know, an indication of what
7 is expected, and that does give us a, you know, sense
8 of comfort in terms of what would be expected.

9 COMMISSIONER LAUREDO: Well, I move the addition
10 that Commissioner Clark -- I second it, I mean.

11 CHAIRMAN DEASON: And that would be?

12 COMMISSIONER LAUREDO: The words, "The
13 Commission will consider a written easement or other
14 cost-effective alternative."

15 CHAIRMAN DEASON: But now Commissioner Clark
16 suggested we change the term "will" to "may."

17 COMMISSIONER LAUREDO: That's fine. You're
18 right.

19 CHAIRMAN DEASON: Without objection, hearing
20 none, Staff has that modification; is that correct?

21 I think that then would dispose of .033.

22 COMMISSIONER LAUREDO: And we don't need to
23 bring it up again the rest of the day.

24 CHAIRMAN DEASON: The 99-year lease question.

25 COMMISSIONER LAUREDO: Right. I move .034.

1 CHAIRMAN DEASON: .034 without objection,
2 .034 is moved and adopted. .035.

3 COMMISSIONER JOHNSON: I needed for OPC to
4 explain their disagreement with Staff's position that
5 the language wouldn't add anything because of the
6 grandfathering clause. Why would you still want that
7 information included if it's something that we really
8 can't consider anyway?

9 MR. SHREVE: As soon as we find it.

10 COMMISSIONER JOHNSON: Okay. Yeah. It gets
11 -- (pause) maybe it's just a different interpretation
12 of the statute.

13 MR. MANN: In reading the statute,
14 Commissioner, I guess the Staff had indicated in their
15 comments here, and the recommendation, that they did
16 not include a requirement because grandfather
17 certificates are granted as a matter of right. And
18 they don't need to demonstrate adequate funding.

19 In reading that statute, what is provided in
20 that statute, before the grandfather certificate is
21 granted as a matter of right, the Commission has to
22 determine -- or requests of the utilities various items
23 of information, and one of those items indicates -- as
24 I've indicated in the third paragraph of our comments,
25 "that the utility shall provide" -- and that's a

1 requirement -- "such other financial information as may
2 be required by the Commission." And the point was at
3 the beginning, and the point still is, that the
4 identification of affiliates is such other information
5 that can be required by the Commission before allowing
6 that grandfather certificate. The statute provides for
7 the Commission to lay certain --

8 COMMISSIONER JOHNSON: So it's almost like it's
9 a condition precedent and if they don't do this then we
10 don't get to the next stage of grandfathering them?

11 MR. MANN: Right. The granting of the
12 grandfather certificate does not become a matter of
13 right, unless they meet those conditions precedent.

14 CHAIRMAN DEASON: But if they provide that
15 information, that information could not be utilized to
16 deny the grandfather certificate? I'm trying to
17 understand.

18 MR. MANN: Yeah, I understand what you're
19 saying.

20 If you assume that the statute provides for
21 the grandfather certificate as a matter of right, and
22 all of the conditions, the requirements imposed by this
23 Commission in order to grant that are met, all those
24 conditions precedent, such as providing the affiliate
25 information, then I would say yeah, then they've met

1 those conditions precedent and they've complied with
2 the statute.

3 CHAIRMAN DEASON: And then what would be the
4 purpose of that information? Just to have --

5 MR. MANN: To have that information
6 available. Yes, sir, right up front.

7 CHAIRMAN DEASON: We could utilize that for
8 our ongoing regulation.

9 MR. MANN: Yes, sir.

10 COMMISSIONER CLARK: I can't follow. You
11 cited a section saying "The statute does, however,
12 provide that granting of a grandfather certificate is
13 contingent upon a utility complying with all the
14 statutes requirements, one of which provides that the
15 utility should provide such other financial information
16 as may be required." I can't follow where that appears
17 in the statutes.

18 MR. MANN: Commissioner, I don't have the
19 statute in front of me, I've cited 367.171.

20 COMMISSIONER CLARK: It's just not making
21 sense to me. I want to follow it. (Hands document to
22 counsel.)

23 MR. MANN: Well, it says in 367.1712 --
24 actually (b), there is a typo in there and I apologize.
25 It's 2(b)(3).

1 COMMISSIONER CLARK: And what does it say?

2 MR. MANN: That says that --

3 COMMISSIONER CLARK: Doesn't that relate to
4 the tariffs?

5 MS. CHASE: Commissioner, maybe I can help.
6 The way that has been interpreted in the past would be an
7 annual report. We get a tariff, and then we usually try
8 to get an annual report for the latest period of time.

9 COMMISSIONER CLARK: I'm under a real dilemma
10 because, I guess, we're requiring information, we don't
11 have an immediate need for, and we can't act on that
12 information to deny the certificate. I guess it
13 doesn't have relevance to the grandfather provision.

14 MR. MANN: Okay. I guess I'm reading it
15 within 90 days after the date this chapter becomes
16 applicable to it the utility applies for the
17 grandfather certificate by filing with the Commission
18 and has listed three things.

19 COMMISSIONER CLARK: Yes.

20 MR. MANN: And a third of those is a tariff
21 listing all rates and charges, and such other financial
22 information as may be required by the Commission.

23 COMMISSIONER CLARK: Okay. It does say that,
24 down at the end of 3?

25 MR. MANN: Yes, ma'am.

1 MS. CHASE: The dilemma that Staff has with
2 this is these are utilities that are out there
3 operating, and I think realistically they are coming to
4 us with customers that are providing service. If we
5 don't give them a certificate, I don't know what you
6 do. If you don't give them a certificate, somebody's
7 got to provide the service. And if they're not
8 entitled to do it, they've got to stop providing the
9 service.

10 COMMISSIONER CLARK: 90 days doesn't give you
11 enough time to do anything with their financial
12 information?

13 MS. CHASE: No, it doesn't do that. And
14 that's why we're opposed to this, not because it's not
15 nice to know, but it's not required and it's nothing
16 that we're going to act on in this grandfather docket.

17 COMMISSIONER CLARK: Mr. Mann, what would you
18 think about leaving that out for the time being and
19 seeing if it does cause us problems. And I guess where
20 I'm coming from is one of the things I think we're
21 trying to do by these rules is to streamline this as
22 much as possible and only require the information we
23 really need and can act on.

24 MR. SHREVE: One thing -- I can understand
25 that part of it. One thing that I just happened to

1 notice that I'm not sure may not need to be corrected
2 in here and I may be wrong, it may appear somewhere
3 else. I would assume under Paragraph 7, one original
4 and two copies of a sample tariff. Now, I suppose you
5 mean the current tariff or existing tariff of a
6 utility?

7 COMMISSIONER CLARK: That's correct.

8 MR. SHREVE: I think it should say that
9 because then you go to A, the statement specifying what
10 date and under what authority the current rates and
11 charges were established. And I think that should be
12 filed under oath by the president of the utility
13 because I know in situations where a utility has
14 furnished rates that were not in existence, and then
15 they were put into effect over the customers by the
16 Public Service Commission when it had been
17 misrepresented, so I think this information should be
18 furnished under oath because the Commission is
19 accepting what they're saying as far as the rates. And
20 I know of situations where that has happened.

21 COMMISSIONER LAUREDO: Are you suggesting
22 changing the word "sample" to what?

23 MR. SHREVE: Well, to me I know what the Staff
24 intends there, but they don't just want to sample that's
25 put together. They want the current or existing rates.

1 MS. CHASE: When this rule was first adopted,
2 the word "sample" was put in there by our legal staff
3 because they were concerned if we asked for a tariff
4 that starts a 60-day time clock and we have a 90-day
5 time clock for grandfathers, so they were trying to get
6 away from that problem.

7 COMMISSIONER CLARK: "Sample" suggests sort
8 of like something that doesn't necessarily reflect
9 what's in place.

10 MS. CHASE: Our intention is to get what's in
11 place.

12 COMMISSIONER LAUREDO: Then let's say it.
13 What would be a word?

14 COMMISSIONER CLARK: Copy of the existing
15 tariffs.

16 MR. SHREVE: Well, there may not be any
17 existing tariffs. You may have a utility that has not
18 had any tariffs established.

19 MS. CHASE: We could simply take the word
20 "sample" out. Copy of the tariff containing all rates,
21 classifications and so forth.

22 COMMISSIONER LAUREDO: And then how can we --
23 the verification of the oath part that he wanted?

24 COMMISSIONER CLARK: We may be treading on
25 some difficulties there because I know at one time the

1 APA committee would reject the requirement that things
2 be under oath because it's subjected you to a penalty
3 of perjury which was beyond our authority to do. If we
4 need to do that, we can do that, but there is a statute
5 in the criminal statutes that makes it a misdemeanor to
6 provide inaccurate information to a public entity in
7 pursuance of a public duty.

8 MR. SHREVE: I'm not familiar with the APA
9 part of that which you're speaking of, but I think that
10 any time that an oath is filed, you wouldn't the ones
11 doing the prosecuting anyway. This would be turned
12 over to the state attorney, as I think anyone that
13 files misinformation, it's a crime for anyone to file
14 false information with the Commission. So you're just
15 talking about two different levels.

16 One would be the crime if someone furnished
17 information that was false and where the rates were in
18 effect at that time. The other would be that that
19 information should be furnished under oath. I don't see
20 anything that would prevent you from requiring it to be
21 under oath because you wouldn't do the prosecuting.

22 COMMISSIONER CLARK: It's the issue of
23 increasing a penalty that has otherwise been provided
24 by statute. That penalty being the specific language
25 in the criminal statutes that says that it's a

1 misdemeanor to provide misinformation to a public
2 employee in pursuance of their public duty. By us
3 making an oath, we've, in effect, ad hoc increased the
4 penalty to a felony. You know, I know they've rejected
5 it before, that's all.

6 MR. SHREVE: I totally disagree with you
7 because it's already in the law but it is an oath --

8 COMMISSIONER CLARK: You don't need to
9 disagree with me, Jack, you can disagree with the APA
10 committee because they are the ones --

11 MR. SHREVE: Well, I'll disagree with them,
12 too.

13 COMMISSIONER CLARK: Am I correct, Chris?

14 MS. MOORE: That's correct. We need specific
15 authority in the statute to require something under
16 oath. I've been through it with the JAPC and that's
17 their position and the rationale.

18 MR. SHREVE: Maybe we ought to take it up
19 with the state attorney because I've prosecuted a lot
20 of cases, too; not with the JAPA because they don't do
21 any prosecution either.

22 What I'm saying is here that I think this
23 Commission has a duty to take some action when false
24 information has been turned over to the Commission and
25 they know it.

1 CHAIRMAN DEASON: Perhaps if we wanted to
2 strengthen the language, we could change "specifying"
3 to "certifying," or is that the same as an oath?

4 COMMISSIONER CLARK: In fact, I think that
5 may be -- but who certifies? Isn't it only a court
6 that can certify?

7 COMMISSIONER LAUREDO: Is notarizing only
8 certifies the signature, right, not only the content?

9 CHAIRMAN DEASON: Jack, I agree with what
10 you're saying. I just don't know what the law of it
11 is.

12 MR. SHREVE: I understand and I think it's
13 something maybe we should take a look at because I
14 think there are any number of filings that the
15 Commission would want under oath clearly. I even think
16 the MFRs should be under oath and I don't know that
17 there's going to be -- if you require something to be
18 under oath, you require an affidavit to be filed on
19 something. I don't think that interferes anywhere with
20 the criminal process. I think that's something we can
21 go on and I'll take a look at that.

22 COMMISSIONER LAUREDO: I move .035 with the
23 deletion of the words "sample tariffs" on Section 7.

24 CHAIRMAN DEASON: Without objection, .035
25 then is approved with that change.

1 COMMISSIONER LAUREDO: And I move .036.

2 COMMISSIONER CLARK: Second.

3 CHAIRMAN DEASON: Without objection, .036 has
4 been moved and seconded.

5 COMMISSIONER LAUREDO: I don't need to point
6 out the changes again on the -- okay.

7 CHAIRMAN DEASON: Rule .430, without
8 objection, hearing none. Staff recommendation is
9 approved.

10 Rule .455.

11 COMMISSIONER CLARK: Mr. Chairman, I think
12 with respect to the Florida Waterworks' suggestion, I
13 think we probably do need to add something that
14 indicates that the only action we would take is
15 acceptance. We're on .455?

16 COMMISSIONER LAUREDO: Yes.

17 CHAIRMAN DEASON: Yes, .455.

18 COMMISSIONER LAUREDO: Staff-assistance, Page
19 95.

20 COMMISSIONER CLARK: Staff, can you respond
21 to the comments of The waterworks on that issue?

22 MR. SHAFER: Yes, Commissioner. I certainly
23 wouldn't have any problem with the change that they're
24 recommending there.

25 COMMISSIONER CLARK: It needs to be

1 clarified, doesn't it, in some way similar to what
2 they're suggesting?

3 MR. SHAFER: Yes.

4 COMMISSIONER LAUREDO: And what is your
5 comment to OPC?

6 MR. SHAFER: I think the Staff is real
7 concerned at this point about making that change.
8 There was some considerable discussion at the hearing
9 previously about some of the problems that we
10 envisioned regarding making a change like that. We
11 have agreed to look at constructing some changes to the
12 rule that would perhaps address concerns and allowing
13 some of the bigger utilities to take advantage of that.

14 But, just briefly, some of the concerns that
15 we would have would be staffing. The staff-assisted
16 rate case program was designed initially to address the
17 mom-and-pop utilities, and, typically, this agency has
18 not been in the business of preparing rate proceedings
19 for any utilities. That was the whole process that
20 evolved out of identifying a specific need because of
21 the sizes of some of these smaller utilities not having
22 the expertise to take that burden on themselves or to
23 successfully do it.

24 We could envision a situation where Southern
25 States or Utilities, Inc., or some of the larger

1 companies could effectively inundate this Commission,
2 not only with filings for smaller systems, but
3 simultaneously with a full-blown file and suspend rate
4 cases for multiple systems, and effectively closing off
5 that option for some of the smaller companies that were
6 truly in need of that type of a system.

7 So it's not something that we are absolutely
8 100% dead set against. There may be some unique
9 circumstances where it would be a reasonable
10 alternative, but at this time I don't think we want to
11 open the door completely with this type of change to
12 this rule. Rather we would like an opportunity to
13 continue to beat it around a little bit and see if we
14 can't find a way that will address the concerns that we
15 have about potential abuse and still allow certain
16 circumstances for that to happen.

17 COMMISSIONER CLARK: I'm in agreement with
18 that. I think we need to leave it on the table, not
19 adopt it as part of the rule and see if the
20 circumstances come up. I guess now might be a good
21 time to mention that I think, likewise, we should leave
22 on the table a notion of once you go to statewide
23 rates, that's where you're going to stay.

24 I think that rule should be left pending
25 until we deal with Southern States. And likewise, I

1 think this is sort of an issue that can be -- may be
2 explored in that proceeding. I think Southern States
3 may be a good one to look at in terms of whether it
4 makes sense to allow them to file staff-assisted for
5 their small ones.

6 So I would propose not making the change and
7 with the understanding, and I'm also going to propose
8 that with respect to a subsequent filing, after you've
9 gotten statewide rates, you would make it statewide
10 rates. I just think we need to leave that pending
11 until the whole Commission has the opportunity to
12 explore the issue of statewide rates in the proceeding
13 for Southern States.

14 MR. SHAFER: Another point that I might make
15 on that is that typically in a Staff-assisted rate
16 case, the utility is not held to the same type of
17 standard, a smaller utility, that we would hold to
18 Southern States or Utilities, Inc., to in terms of the
19 precision of the information and the detail of the
20 information and so forth. And I think the Staff would
21 be in a bit of a quandary in terms of, well, okay, this
22 is Southern States, but it's just a smaller system.
23 Where is the standard? What am I expecting out of the
24 utility here versus something I would expect out of a
25 smaller company?

1 COMMISSIONER JOHNSON: What kind of
2 discretion do we have with respect to whether or not we
3 actually conduct a Staff-assisted rate case? If they
4 ask for it, do we have to assist?

5 MR. SHAFER: There are some very basic
6 criteria. Do they have a current annual report on
7 file? Do they have their books and records in
8 accordance with the Uniform System of Accounts? Are
9 their regulatory assessment fees current? And I
10 think's one other that I --

11 COMMISSIONER JOHNSON: And once we've checked
12 off "yes" in all of those, then they qualify.

13 MR. SHAFER: And on occasion there will be a
14 "no" amongst those and we will talk to the utility,
15 work with the utility, try to get some level of
16 conformance.

17 Typically, they don't have their books and
18 records in order. That's the one that they're almost
19 always in default on. And we will generally look at
20 whether or not they've had a case before, whether
21 they've been ordered to conform their books before, and
22 if they have not, then we just say, "Okay. We'll do it
23 this time. Next time you need to be good and try to
24 keep your records a little better." But at the very
25 minimum the main ones would be the annual report and

1 the regulatory assessment fees.

2 CHAIRMAN DEASON: But we are under no
3 obligation, even if they meet all of their criteria, if
4 we don't have the staff and the time and the resources,
5 they do not have a statutory right to have a case
6 processed under Staff-assisted.

7 MR. SHAFER: I'm not real sure about the
8 statutory-right piece of that. I know we do have a
9 rule that says if we have this amount of case load, we
10 have the right to temporarily defer any action on this
11 case until we can get staff available. It doesn't
12 amount to a denial of the application on that basis,
13 it's more or less we queue them up if we get to that
14 point. And we haven't ever had to invoke that
15 situation yet.

16 COMMISSIONER LAUREDO: What harm would come
17 to the system or inversely what good would come by
18 adopting as versus just not adopting this rule?

19 MR. SHAFER: Adopting the change that's being
20 proposed?

21 COMMISSIONER LAUREDO: Let's say not adopting
22 the changes.

23 MR. SHAFER: The changes, okay. By not
24 adopting it, we effectively foreclose Southern States
25 and Utilities, Inc., from filing a Staff-assisted rate

1 case for a smaller system.

2 Again, in my opinion, I think the Commission
3 has a vehicle to deal with the situation where they
4 believe that a particular system could be addressed on
5 a stand-alone basis and that would be the limited
6 proceeding statute.

7 And, in fact, we have done smaller systems
8 under that vehicle for Utilities, Inc., in the past.
9 It's not something -- again, it's not something that we
10 have viewed as being what we want to see happen on a
11 routine basis. It's something that if they can justify
12 some unique circumstances, then perhaps that is the way
13 to go. And, to me, that makes a whole lot more sense,
14 being able to put the burden on the utility to justify
15 that it's important in this particular case to view
16 that system on a stand-alone basis as opposed to, you
17 know, as part of a bigger case.

18 COMMISSIONER LAUREDO: Well, the changes
19 suggested by OPC concerns Section 1, the first five
20 lines.

21 MR. SHAFER: Right.

22 COMMISSIONER LAUREDO: And I don't know why.
23 I just don't understand the substance of the change.
24 The word "systems" after --

25 MR. SHAFER: Sure. Right now I believe the

1 language says, "utilities." They considered Southern
2 States to be one utility. Whereas, if you change that
3 word to "systems," then the interpretation and the
4 implication by OPC is that if you have a system that
5 generates or falls within this revenue threshold, then
6 the larger utility ought to be able to take advantage
7 of Staff assistance for that system. And, you know,
8 the rationale being the reduction of rate case expense
9 and so forth.

10 Unfortunately, much of that burden then falls to
11 the Staff. It's going to be a lot more difficult and a
12 lot more staff-intensive to do a Staff-assisted rate case
13 for Southern States or one of the larger utilities, simply
14 because there's going to have to be an audit on that
15 particular system. And, ultimately, that audit leads back
16 to some allocations on the president's salary and so on
17 and so on and so on and the overhead cost. Then we're
18 going to have to go in and review that audit and make some
19 judgments on the allocations.

20 COMMISSIONER LAUREDO: You're a little bit
21 ahead of me. Let me just go back to basics here.

22 Now, what you're saying is the suggested
23 inclusion of word "systems" triggers qualifying, in
24 essence, subsidiaries of, let's say, Southern States,
25 that would, otherwise, if they're not part of Southern

1 States, it would be a "mom and pop," as you call it.

2 MR. SHAFER: And I believe that that
3 interpretation is consistent throughout the rules.

4 COMMISSIONER LAUREDO: What interpretation?

5 MR. SHAFER: The interpretation of the word
6 "system" versus "utility" or --

7 COMMISSIONER LAUREDO: Let me think now.
8 Practically if Southern States has a system -- if it
9 weren't Southern States, it would be a mom and pop. It
10 could not, under your rule, be Staff-assisted.

11 MR. SHAFER: That's correct.

12 COMMISSIONER LAUREDO: But Public Counsel
13 says it should or may, they may petition. And then we
14 have to decide we're not obliged, I think following
15 Commissioner Johnson's questions, we're not obligated
16 to tell them, yes; notwithstanding that meeting all of
17 the requirements you listed, we can still say no,
18 correct? So I'm missing here something fundamental.
19 Doesn't OPC's suggestions give us more flexibility as
20 to the citing?

21 MR. SHAFER: I don't think that we have the
22 authority to say no to them if we put the word "system"
23 in and they meet the criteria.

24 MS. MOORE: Commissioners, the statute that
25 authorizes Staff-assisted rate cases says, "The Commission

1 may establish rules by which a water or wastewater
2 utility." So I think if you wanted to change it to
3 "system," it would require a statutory change.

4 CHAIRMAN DEASON: And that's a very good
5 point. I've raised that very question. And I'm having
6 someone look at that question in relation to our
7 legislative package that we'll be considering in an
8 upcoming internal affairs meeting.

9 MS. CHASE: Commissioner, we will be
10 addressing that in the upcoming internal affairs on
11 legislative package.

12 COMMISSIONER LAUREDO: But if we accept --
13 let me just understand now -- if we accept your
14 recommendation, if there is a system out there that
15 everybody and their grandmother agree is the best way
16 to deal with it to save money and to be efficient and
17 to make sure there's no interrupting the service, the
18 quality of service, all of those criterias that are
19 over and above the rule, that's a public policy,
20 common-sense objective. We could not do it because of
21 this rule.

22 MR. SHAFER: We could not do it and call it a
23 Staff-assisted rate case. In my opinion, I believe that
24 they could file as a limited proceeding all of the --

25 COMMISSIONER LAUREDO: So your answer is

1 there is another vehicle to enhance --

2 MR. SHAFER: The difference in that scenario
3 would be that Staff wouldn't be doing all the work, the
4 utility would still be doing the work.

5 COMMISSIONER LAUREDO: Then you don't meet
6 the saving expenses passed that I'm putting in my
7 hypothesis.

8 MR. SHAFER: And, again, I would remind you
9 that the savings is being shifted from the customers of
10 the utility to the Commission.

11 COMMISSIONER LAUREDO: And so what?

12 MR. SHAFER: Well, at the current staffing
13 levels, I think you're looking at potentially maybe
14 increasing the number of Staff-assisted rate cases
15 every year by a factor of at least a half if not --

16 COMMISSIONER LAUREDO: Now we're getting
17 close to where I want to get to. So the problem is you
18 don't really have a philosophical problem with it, you
19 really have a practical staffing budgetary problem with
20 what OPC -- okay.

21 MR. SHAFER: Once you pass the philosophical
22 threshold of whether this Commission ought to be in the
23 business of preparing rate filings for a utility the
24 size of Southern States, personally, I have some
25 problem with that; but once I get past that, then I've

1 got some practical problems in terms of the impact in
2 our division on the amount of work load that we've got
3 and whether or not that impact is going to cause some
4 Class C utility somewhere that's desperate for a rate
5 case, doesn't have the expertise, to be delayed for the
6 rate relief because the Staff --

7 COMMISSIONER LAUREDO: When do we waive the
8 discretion to chose between a Southern States one as
9 versus the other one? I'm getting into just a --

10 COMMISSIONER CLARK: Wait a minute. Under
11 our current proceedings, Southern States could not
12 qualify; isn't that right?

13 COMMISSIONER LAUREDO: Right. That's the
14 issue that I'm trying to understand.

15 COMMISSIONER CLARK: So we're just codifying
16 that. Now, the issue is should we allow a Southern
17 States' small system to do it? This rule doesn't
18 preclude that.

19 MR. SHAFER: It doesn't preclude the
20 Commission from accepting Southern States for a
21 Staff-assisted rate case, is that what you're saying?

22 COMMISSIONER CLARK: Their application, in
23 reviewing it, does it? Would you argue it does because
24 they wouldn't meet the criteria?

25 MR. SHAFER: I guess as a practical matter we

1 never have even entertained this.

2 COMMISSIONER LAUREDO: All I'm trying to have
3 answered in my simple scenario is if everybody --
4 company to Public Counsel to the Governor or the people
5 running against the Governor, Speaker of the House, all
6 of the population, all of the representatives say we
7 ought to have System A here with the 500 customers that
8 is owned by Southern States, it is in the best interest
9 of everybody, from an economic point of view, from a
10 public policy point of view, from a public relations
11 point of view, from every other conceivable point of
12 view that we do a Staff-assisted rate case. And having
13 reached all of those hypothetical absurdities that I've
14 just outlined, we could not do it if we accept your
15 rule. Is that a correct statement?

16 MR. SHAFER: I think you could do it under
17 that circumstance. I think you could find a way to do
18 it. The attorneys may disagree with me, but, you know,
19 we play language games --

20 COMMISSIONER CLARK: But you said in your
21 statement, it's sort of the crux of the issue, that I
22 think that the thought that you would ever reach that
23 scenario, that it was the most cost effective, is
24 absurd. Because if Southern States doesn't know that
25 system and know all the information about it better and

1 more cost effect -- can't they present it more cost
2 effectively than our Staff going down there and trying
3 to, you know, starting from scratch. I guess it's a
4 circumstance that I just don't see ever occurring.

5 COMMISSIONER LAUREDO: Well, all I'm trying
6 to fight for, as I will in almost all of these rules,
7 is flexibility and discretion of the Commission. I
8 mean, philosophically I'm not very willing to give up
9 the discretion, and rulemaking does give you that
10 uncomfortable feeling as a Commissioner. You just kind
11 of shut away -- and I was just wondering --

12 MR. SHAFER: It's not a dead issue in terms
13 of us trying to analyze and come up with some criteria
14 and limitations that would make us a little more
15 comfortable.

16 COMMISSIONER JOHNSON: What about the
17 threshold issue of whether or not we even have the
18 legal authority to make this change?

19 MS. DAVIS: Commissioners, it's my opinion
20 that when the Staff-assisted rate case portion of the
21 statute was passed during the last sunset, its intent
22 was to codify the policy of the Commission, that the
23 purpose of the Staff-assistance program is for the
24 small company. It doesn't have the expertise to do a
25 rate case in-house and is too small to economically

1 hire an accountant or an engineer to help put the case
2 together because of the small customer base and the
3 impact that those rate case expenses would have on the
4 customer base. So this was a very focused program that
5 was developed for the small mom and pop.

6 The utility language in the statute reflects
7 that. The utility means the whole entity, not a
8 system, a water system or a wastewater system alone.
9 So Southern States or Utilities, Inc., by virtue of the
10 definition, that utility taken as a total entity, far
11 surpasses the monetary threshold set out in the
12 statute, plus it contradicts the original intent of the
13 program, which is to help small companies.

14 COMMISSIONER LAUREDO: May I interrupt you a
15 minute? Public Counsel, could you -- I would like to
16 understand that because that's a very appealing
17 argument that the intent was to help the little, real-
18 world mom and pop's.

19 MR. SHREVE: And I've said many times, that's
20 probably one of the best programs that the Commission
21 has, to help the little mom and pop, or to help the
22 small utility system that has very few customers. Now,
23 why they would want to abandon a small group of
24 customers -- if Southern States comes in and buys ABC
25 Systems that always before has been entitled to have a

1 Staff-assisted rate case and have the benefits of
2 saving on rate case expense, Southern States buys them,
3 but then Southern States decides, "Hey, we need a rate
4 increase here, but there are only 100 customers out
5 there. We don't want to go through a full-blown rate
6 case, we would like to use a Staff-assisted rate case."
7 Why would you abandon that group of customers if in
8 reality you're trying to save rate case expense for
9 them? That group of customers didn't say "Southern
10 States can buy us."

11 COMMISSIONER LAUREDO: Well, why would you
12 abandon the flexibility to do that?

13 MR. SHREVE: Keep the flexibility. The
14 problem we've had, the Staff has maintained they
15 haven't had the flexibility in the past, and right now,
16 they're trying to move so they do not have the
17 flexibility to give Southern States, Utilities, Inc. --
18 I can give you specific examples and go back and pull
19 the cases where Deltona begged the Staff to have a
20 Staff-assisted rate case in Pine Ridge; 100 customers.
21 We're talking several years ago, before Southern States
22 bought them.

23 Pine Ridge out by themselves, very small;
24 rate base very small, customer base. Deltona was very
25 efficient in preparing the information for the Staff

1 efficient in preparing the information for the Staff
2 and, as Commissioner Clark said, they should have been
3 able to help the Staff more than the Staff having to do
4 it themselves. Why would you abandon that group of
5 customers if it's left up to the utility to request it?

6 One reason that -- in a Staff-assisted rate
7 case too many times the customers are placed in a
8 position of not having a Staff-assisted rate case and
9 then the utility going straight on to a hearing with
10 enormous rate case expense and almost used like
11 blackmail to keep them from defending themselves. They
12 have no choice because there is no way that you can win
13 enough issues in a small case to overcome that.

14 As far as -- I'm surprised the attorneys
15 didn't mention this. There is no way you can handle a
16 rate case on a limited-issue basis. That is not an
17 option that you were told was available; not on a
18 limited issue, it can't be done.

19 MS. DAVIS: The PAA option is available.

20 MR. SHREVE: PAA is not a limited option.

21 MS. DAVIS: That's true.

22 MR. SHREVE: It is not a limited rate case.

23 MS. DAVIS: That may have been what Staff was
24 referring to.

25 MR. SHREVE: Well, PAA is fine, but if you're

1 the Company and the customers the rate case expense.
2 You should have the option; it's a good procedure. Why
3 would you want to abandon the individual customers when
4 they have no choice in the matter?

5 CHAIRMAN DEASON: Let's back up for just a
6 moment.

7 Let's address -- the most fundamental
8 question in my mind is the one that I had when we were
9 talking about a legislative package.

10 Ignoring the very good arguments pro and con
11 as to whether we should modify our rule to do one or
12 the other, do we have the authority in the statute, if
13 we were so inclined, to allow Staff assistance for a
14 system of a larger utility?

15 MS. MOORE: No. I don't believe we do.

16 CHAIRMAN DEASON: Okay. Mr. Shreve, what's
17 your -- the question is basically a legal one.
18 Assuming that we accept your argument that this would
19 be good policy, to give the Commission the flexibility
20 to do that, if we were inclined, and make sure we had
21 the flexibility to tell the Company, "No, we don't have
22 the resources to do it right now." Given that we want
23 that flexibility, do we have the legal authority to
24 have that? Does the statute, the way it is written
25 now, preclude us from doing that in the sense that it

1 uses the term "utility," not "system"?

2 MR. SHREVE: I don't think so. I think
3 you're talking about an interpretation of the word
4 "utility." I think you have the authority to go ahead
5 and do it; I've thought it all the time. I think if
6 you had wanted to do it, you could have.

7 CHAIRMAN DEASON: Do you think it would be a
8 good idea to clarify that to make sure that we have the
9 authority?

10 MR. SHREVE: I think would it be a good idea
11 to go ahead and start interpreting and let the
12 Commission set the policy now and then clarify it.
13 Because I don't think if a utility comes in and
14 requests that you do a Staff-assisted rate case and
15 it's done, who is going to challenge them on it? Not
16 the utility. They are the ones that made the request
17 because they thought it was in the best interest of
18 their customers. But this small group of customers who
19 was a utility last week now is bought by Deltona or
20 Utilities, Inc., or Southern States, now becomes no
21 utility just because of the purchase. So I think you
22 have the authority now. I think you should go ahead
23 and set that policy and perhaps clarify it if anybody
24 has any questions. But the utilities are not going to
25 challenge it if they request it.

1 CHAIRMAN DEASON: Mr. Hoffman, do you have
2 any feel as to the statutory authority to do this? I
3 ask you that, first of all the legal question, and then
4 ask you from Southern States' perspective, would it be
5 good for the Commission to have this flexibility that
6 Public Counsel is suggesting?

7 MR. HOFFMAN: Mr. Chairman, my opinion is
8 that Chapter 367 makes a legal distinction between the
9 term "utility" and the term "system." So I would agree
10 with Staff on the legal issue.

11 Secondly, from Southern States' perspective,
12 we're not going to play any games. We're going to
13 approach rate relief from a total company perspective.
14 So I agree with Commissioner Clark that it is very
15 difficult for me to foresee a situation where we would
16 choose to come in for rate relief for one small system.

17 CHAIRMAN DEASON: Mr. Schiefelbein, let me
18 ask you on behalf of the Waterworks Association: Do
19 you think the Commission should have the flexibility to
20 entertain a request from a small system that is part of
21 a larger utility?

22 MR. SCHIEFELBEIN: We wouldn't oppose the
23 idea of you all having that option and utilities having
24 that option, certainly. I would throw in my voice,
25 though, with Staff and Mr. Hoffman that the way the

1 statute is written right now it could be clarified and
2 improved.

3 COMMISSIONER CLARK: You know, Jack has
4 brought up a very good point, I think, when he talked
5 about the Pine Ridge and that sort of thing. And I
6 really can see a situation where I said it was absurd,
7 but maybe it's not absurd. And, you know, I don't know
8 if we should go ahead, in view of the fact that the way
9 the law is written, but I think maybe we should pursue
10 the statutory change that would at least allow us to --
11 if we conclude it's a good idea, have that flexibility.

12 COMMISSIONER LAUREDO: Somebody can challenge
13 it. And if not on the one hand and on the other hand --
14 on the other hand, it gives impetus to the legislative
15 drive, because we've now expressed in the most concrete
16 way -- in fact, if you heard the explanation as to the
17 statute, the preamble was that it was adopted to codify
18 in statute our policy. So our most significant way of
19 making policy, I guess, is to put it in a rule.

20 I think it has appeal. I mean, if I were a
21 corporate executive of SSU, I would be for it. Because
22 all I'm doing is giving the choice. And, you know, and
23 it may make sense -- the bottom line is, as we all
24 know, and we just had a pretty bad case last week --
25 anytime rate expense goes up, you know who pays. And

1 so if there's any mechanism that at least give us the
2 flexibility to minimize that; we're reasonable men. I
3 don't assume, in this job, the companies are always
4 unreasonable. They are very enlightened managers that
5 say, "Look, --" you used an example, I don't have the
6 experience to come up with other examples -- "this
7 little system we have here, it doesn't make any sense
8 for us to go through all the paper work and stuff."
9 Now, I know we have the other management problem here.
10 I'm sympathetic to which --

11 COMMISSIONER CLARK: But I don't think that
12 is going to come up that often, because I think you are
13 going to see -- once that utility -- that system is
14 acquired and being run by that utility for any length
15 of time, they are going to be in the best positions to
16 most cost effectively present it. But I think what Mr.
17 Shreve was talking about is when they first take over
18 something and they really need to get the rate relief
19 done, it may make sense to do. It comes out of the
20 category of being absurd to me at that point, that it
21 may have that. But, you know, I think, as I recall the
22 statute and the cases we've had interpreting the
23 statute are pretty clear that there's a difference
24 between systems and utility.

25 MS. MOORE: There are definitions for each,

1 system and utility, and the legislature chose in the
2 Staff-assisted rate case to use the word "utility,"
3 which encompasses systems.

4 COMMISSIONER LAUREDO: This would not be so
5 important to me. If it is, it wouldn't be evident to
6 me, anyway, that we're in a transition period in the
7 water and wastewater systems in the state or industry
8 in the state. And we have an unspoken policy of
9 encouraging more efficient management of them by --
10 although we'll have a big debate about system-wide
11 rates and all of that; but there's a general acceptance
12 in principle, at least, superficially that there may be
13 efficiency in having SSU type companies come in and run
14 little mom and pops.

15 And so while we're in this transition period,
16 or the shake-down period, as I would call it, I just
17 would be more inclined to have total flexibility rather
18 than restricted. And this gives me a more restrictive
19 sense.

20 And I'm not a lawyer. And I don't know how
21 to -- and I speak as a Commissioner. If I put my hat
22 on as an executive of a company, I would like it. And
23 so I don't know whether one can vote something that
24 Staff has told us is not the statute. Can we get put
25 in jail for that, Mr. Chairman?

1 CHAIRMAN DEASON: I certainly hope not but
2 I'm sure that we probably have done it, maybe
3 inadvertently, but I'm sure we've done it from time to
4 time.

5 Mr. Hill?

6 MR. HILL: I think that we should do anything
7 and everything we can to hold down expense. And if the
8 Commission decides that opening up Staff assistance to
9 the large company with multiple systems, then we could
10 pursue that. Whether we can or not is a question that
11 I'm not qualified to answer.

12 I would like to make the Commission aware of
13 there would be a fiscal impact. If you look at the
14 last Southern States rate case, several of those
15 systems would have qualified had you interpreted the
16 statute or had a change in the statute. And that would
17 not reduce the number of rate cases in one bureau, it
18 would only increase the number of rate cases in another
19 so that there will be some problems there that we will
20 overcome.

21 And one that can't be quantified that I just
22 want to bring to your attention is that in the
23 Staff-assisted rate case, unlike a file and suspend
24 where the Commissioners are there as judges, if you
25 will, and the parties are represented in defending

1 themselves and putting on their cases, in a
2 Staff-assisted rate case the Commission is putting on
3 the case. And I have conducted more customer meetings
4 than I can count and I have attended many more, and the
5 customers don't like us. The bottom line is they hate
6 us, and, in fact, I remember one in Panama City when
7 Mr. Schiefelbein was with the Commission. He and Mr.
8 Lowe and I were in a church, and Mr. Bobby Miller about
9 came over a rail, and Mr. Schiefelbein grabbed a chair
10 just in case we needed it to hit the fellow.

11 So there will be some difficulties in that we
12 are perceived as taking on the part of the Company when
13 we do a Staff-assisted rate case. And those meetings
14 get very hostile. And it will be difficult for Staff,
15 and even more difficult as we take on larger and larger
16 companies. And as long as you're aware of that, then
17 I've done my job and we'll do that. But it is more
18 difficult than any hearing that I've ever been in,
19 because we are perceived as helping the Company do this
20 to the customers.

21 COMMISSIONER CLARK: Mr. Chairman, would it
22 be appropriate to go ahead and move the adoption of
23 this rule and then open up a separate rulemaking or
24 investigation to look into whether or not we should do
25 it on a system basis? And the outcome of that would be

1 sort of a draft rule and a request for a legislative
2 change.

3 COMMISSIONER LAUREDO: May I ask you a
4 question on the last part before we vote?

5 The hostility that you rightfully expressed,
6 is it absence by the mere fact that it's -- is it
7 triggered by the ownership? Or if it's a mom and pop
8 of a hundred, you would still have the same hostility
9 as if -- if you blinded everybody in that system and
10 they don't know that SSU owns it. I don't think that
11 that would change.

12 COMMISSIONER CLARK: I think it would be
13 worse. I mean at least in a mom and pop you can have
14 some understanding that they might not have the
15 expertise. But why is the Staff putting on the case
16 for this big huge utility?

17 COMMISSIONER LAUREDO: Well, then, we have
18 ourselves -- I think there's a lot of room for creative
19 thinking here. I can come up with some mechanism by
20 which there's a refund mechanism; we can create our own
21 profit center. And this Commission is not operating in
22 the old ways by which the Company would contribute to
23 the expense, but it would still be lower than the
24 normal rate case expense.

25 So I think there's a lot of creativity that

1 if we put, you know, men of goodwill can put our heads
2 together and we can come up with -- I mean, things are
3 changing from under us and we have to think anew. And
4 we have to be creative and we have to be bold. This
5 doesn't strike me as bold or creative. This strikes me
6 as restrictive. And I don't know, maybe your
7 suggestion --

8 COMMISSIONER JOHNSON: Let me ask one
9 question: Assuming that we have the statutory
10 authority to codify or promulgate this rule, do we need
11 this rule? If we have the statutory authority, do we
12 need this rule? Do we need to codify it right now, or
13 could we be doing this on a case-by-case without this
14 rule?

15 MS. MOORE: Well, the statute requires it to
16 be implemented by rule.

17 COMMISSIONER LAUREDO: But what we're doing
18 here is amending the rule.

19 COMMISSIONER CLARK: But you still have to
20 have a rule that says how you do Staff-assisted cases.

21 MS. MOORE: The Commission may establish
22 rules by which Staff-assisted rate cases --

23 COMMISSIONER JOHNSON: "May" is different.

24 MS. MOORE: We don't have to have a program
25 at all.

1 COMMISSIONER JOHNSON: But if we don't have
2 rules, we can't. This is an area where we can't have
3 an incipient policy, is what you're saying, in no
4 circumstances. Before we even try out something, we
5 have to have a rule. Is that what you're saying the
6 law says?

7 MS. MOORE: Yes. And were we're past that
8 point, I think.

9 COMMISSIONER JOHNSON: Not with respect to
10 changing this.

11 COMMISSIONER LAUREDO: Wait a minute. That's
12 why I asked --

13 COMMISSIONER JOHNSON: If we wanted to make a
14 change and take a different direction, you're saying
15 that the law requires us to have a rule in order to do
16 that? We couldn't do it on a case-by-case basis?

17 MS. MOORE: Right. We already have a rule
18 and we would have to change the rule.

19 COMMISSIONER JOHNSON: No. To make this
20 change, can we not codify the change but to go on a
21 case-by-case basis?

22 MS. DAVIS: Are you talking about the change
23 that Public Counsel is proposing?

24 COMMISSIONER JOHNSON: Yeah.

25 MS. DAVIS: Well, I think that the legal

1 analysis is that the threshold question prohibits you
2 making the change Public Counsel wants without changing
3 the statute. And if the Commission wants to change the
4 policy, you certainly may, but I think that would
5 necessitate a statutory change first.

6 COMMISSIONER CLARK: I think you completely
7 missed what she was trying to get at. What she's
8 saying is let's assume we have the authority to do it
9 on a system-by-system basis; we don't have any
10 prohibition there. But the law says you shall
11 establish or may establish by rule the procedures for
12 doing Staff-assisted.

13 If we choose a procedure that we didn't put
14 in a rule, can we do it that way on a case-by-case
15 basis? That's what she's saying. If we adopt this
16 rule and it applies to all of the systems that qualify,
17 not part of a system that's part of a larger utility,
18 could we still do it for them without having the rule,
19 given the fact the statute says that we implement the
20 requirements for a Staff-assisted through rulemaking?

21 CHAIRMAN DEASON: That is a very confusing
22 question.

23 COMMISSIONER CLARK: We understand it.
24 (Laughter)

25 COMMISSIONER LAUREDO: I asked a question a

1 while ago that is a corollary to this question. What
2 if we vote to repeal 25-30.455?

3 MS. DAVIS: You still have the underlying
4 statute that says --

5 COMMISSIONER LAUREDO: Fine. But we don't
6 have a rule. We have the statute which gives us the
7 broadest of possibilities.

8 MS. DAVIS: Now, the statute doesn't give you
9 the broadest of possibilities. The statute defines a
10 utility, a total entity, with a threshold revenue level
11 with 150,000 for the water system, 150,000 --

12 CHAIRMAN DEASON: Commissioners, it seems to
13 me that if we want to pursue this, that we need to get
14 a statutory change. Just get it up front, clear, as to
15 what we can and can't do; the session is going to be --
16 it's just right around the corner and it's closer than
17 what we realize or perhaps want. And if we go over to
18 the legislature and if we're proposing it and Public
19 Counsel thinks it's a good idea and the Waterworks
20 Association thinks it's a good idea and Southern States
21 doesn't care, I think we've got a very good likelihood
22 of getting it passed.

23 And who knows, the Waterworks Association and
24 Public Counsel may go to the legislature and say, "We
25 need additional budget to handle the additional

1 workload as a result." I don't know if they'd say that
2 or not, but they may. And we all may come out winners
3 in this. It's a possibility.

4 MR. HILL: And we are bringing to the next
5 internal affairs, Mr. Chairman, if you remember the
6 last time we met on legislation, you had suggested that
7 we bring this issue to the Commission at the next
8 legislative internal affairs. So we will be bringing
9 this issue to you.

10 COMMISSIONER CLARK: Mr. Chairman, in light
11 of your comments I move Staff on Rule --

12 CHAIRMAN DEASON: I think the consensus, from
13 what I gather, is that we certainly have a great deal
14 -- we believe that you make a good argument and that
15 the Commission should have the flexibility.

16 But in an abundance of caution and to make
17 sure we don't screw things up in the meantime and do
18 something contrary to the statute, what we're going to
19 do is consider a statutory change. And once we get
20 that statute changed, then we can go and modify this
21 rule and then we can start processing these cases if
22 the Staff has the resources and the time to do it.

23 MR. SHREVE: I think that's the right way to
24 think it through. However, if the statute allows
25 something, it allows it. If the statute is

1 restrictive, it restricts it.

2 If you do away with the rule, then you are
3 limited or not limited by the statute and you can do
4 what you want to do, then go change the statute and you
5 won't have to come back in for any rulemaking changes.

6 CHAIRMAN DEASON: Well, now, what I hear is,
7 the way that statute is currently worded that to
8 implement that statute we have to have a rule in place.

9 COMMISSIONER LAUREDO: You may; you don't
10 have to. That was the key question I was asking. You
11 may write a rule. You don't have to.

12 CHAIRMAN DEASON: So you're saying we could
13 just repeal the rule, and we go under statutory
14 authority, and once the statute is changed, our
15 authority changes and --

16 MR. SHREVE: That's right.

17 CHAIRMAN DEASON: -- then there would be no
18 need to go back and redo it. But we probably would
19 want to codify it in a rule at some point; in fact,
20 there's an obligation to --

21 MR. SHREVE: Well, when you set a policy,
22 this Commission, not you or not even the ones before
23 you, maybe in the rule; but beyond that you've never
24 voted on any policy. This has always been done by the
25 Staff, as far as in the past denying or not denying

1 whether a case would come under a Staff-assisted. One
2 other thing I'd like to --

3 CHAIRMAN DEASON: And I was real happy for
4 them to do that.

5 MR. SHREVE: One other thing I'd like to
6 clarify. In Mr. Hill's remarks he's probably right;
7 there may be a budget change; you may not need as much
8 money. Because, as Commissioner Clark points out, the
9 utilities that are larger may have better information,
10 be able to better prepare something to give Staff for a
11 Staff-assisted rate case. We are not talking about a
12 Staff-assisted rate case, instead of Southern States
13 making a filing, we are talking about a situation where
14 if Southern States or if Utilities, Inc., decides to
15 file an individual rate case for a utility, they have
16 that option. The question is whether they would be
17 allowed to request a Staff-assisted as an opposed to a
18 regular rate case.

19 There is no way that you would have the rate
20 case expense or expense for the Staff on a
21 Staff-assisted that you would have for a full-blown
22 case going to a hearing, as you ran into in Jasmine
23 Lakes.

24 CHAIRMAN DEASON: Mr. Hoffman, is there
25 anything Southern States wants to at to this?

1 MR. ARMSTRONG: Commissioners, if I could,
2 just one fact pertinent to Southern States. We did
3 have the giga proceedings, as we are all aware. And in
4 that proceeding the rate case expense for the 127
5 systems averaged about \$10,000. If you amortize that
6 expense over four year, it's about \$2500 a year to our
7 customers. I don't even know that Southern States
8 could do a Staff-assisted rate case for any amount
9 less, certainly not significantly less than \$2500.

10 CHAIRMAN DEASON: But see the point is we're
11 not making it apply to you. You don't have to use it
12 if you don't want to. And if it doesn't apply to your
13 situation, you really shouldn't care one way or the
14 other.

15 MR. ARMSTRONG: Right. And I confirm what
16 Mr. Hoffman said, but that's just a little fact for the
17 consideration of the Commission, that's all.

18 MR. SHREVE: Which, had they had the option
19 and the Staff accepted it, of filing 90% of that case
20 as Staff-assisted, they may not have had the rate case
21 expense they had. That's a possibility.

22 COMMISSIONER CLARK: Mr. Chairman, I move
23 Staff on 30.455.

24 COMMISSIONER LAUREDO: Mr. Shreve, may I ask
25 you: In the real-world scenario that Mr. Hill has

1 outlined, if you're advocating this for the reasons
2 that I share with you, I hope it goes that you wouldn't
3 be out there agitating against the Staff if we were
4 doing that. I mean, I hear in-between the lines -- and
5 I mean agitating in the good sense, not in the --

6 MR. SHREVE: Well, we always agitate in the
7 good sense. (Laughter)

8 COMMISSIONER LAUREDO: They're saying, you
9 know, it's bad enough we get a lot of heat for being
10 Staff, now you're pushing the Company aside and we're
11 taking the brunt of all of the antagonism which may or
12 may not be helped by Public Counsel as well. I can
13 sympathize with that.

14 MR. SHREVE: I can, too. Of course, I think
15 to serve the public is the main goal here, not to be
16 concerned about whether or not who's going to get
17 blamed for it. However --

18 COMMISSIONER LAUREDO: No, but you can
19 certainly articulate in the public forum that "the
20 reason the Staff is doing what they are doing, folks,
21 in plain English, is because we have this thing called"
22 -- yeah, just tell people. "And the reason I supported
23 this, folks that I'm representing, is because this
24 would save you money."

25 MR. SHREVE: I can certainly do that.

1 However, when it goes beyond that, if the customers
2 want to oppose that PAA, we have to get --

3 COMMISSIONER LAUREDO: I'm not talking about --

4 MR. SHREVE: I would encourage the
5 Staff-assisted rate case and say this is a rate case --
6 and I've said this in the past, on the Staff-assisted
7 rate cases that we have had, that it is probably the
8 best move that the Public Service Commission has made
9 in trying to do anything about rate case expense. And
10 I think that will be the same case here, and I will be
11 glad to say that.

12 COMMISSIONER LAUREDO: Well, that's a
13 commitment. I think it's an important clarification to
14 these people that you're actually doing a public good
15 and trying to save and not --

16 CHAIRMAN DEASON: We have a motion and a
17 second to approve Staff's recommendation for Rule .455,
18 with the understanding that an upcoming internal
19 affairs, addressing legislative package, we're going to
20 look at potential statutory changes.

21 MS. MOORE: Mr. Chairman, with that
22 clarification for the accepted applicants.

23 MR. SHAFER: With the Florida Waterworks
24 clarification.

25 CHAIRMAN DEASON: With the suggested change

1 by the Waterworks Association, that is, inserting the
2 language for accepted applicants. That is the motion,
3 Commissioner Clark, and the second.

4 COMMISSIONER CLARK: That's it.

5 CHAIRMAN DEASON: Okay. All in favor say
6 "aye." Any opposed?

7 (All Commissioners vote aye.)

8 CHAIRMAN DEASON: Okay. That disposes of
9 .455. We're going to take ten minutes at this time.

10 (Brief recess.)

11 - - - - -

12 CHAIRMAN DEASON: I believe our next rule
13 within Issue 2 is Rule .456. (Pause) And I think that
14 the real question in .456 is Paragraph 12; is that
15 correct? Paragraph 12 would create an alternative
16 regulation scheme for small utilities.

17 COMMISSIONER LAUREDO: And I would move
18 Waterworks' addition to 6 so we can get rid of it.

19 CHAIRMAN DEASON: That's just a technical
20 correction; is that correct?

21 MS. MOORE: Yes, the same as in the previous
22 rule.

23 CHAIRMAN DEASON: Okay. Without objection,
24 show that correction accepted. (Pause)

25 Commissioners, what's your pleasure on .456?

1 COMMISSIONER CLARK: How can we accomplish
2 the suggestion of sort of testing this? I think the
3 Public Counsel indicates that it's not opposed to it.
4 But I think -- can we do this on a case-by-case basis?

5 MR. SHAFER: Commissioners, I don't see that
6 you do it any other way. I mean, it's much like a
7 Staff-assisted rate case, a company files, we've
8 allowed them to file. The Staff does the analysis
9 along established guidelines and procedures and
10 Commission policies that have been tried and true for
11 some period of time. And all we're doing here is
12 trying a slightly different approach. You know, we're
13 going to be totally open with what's going on in terms
14 of the Staff analysis. And much of the analysis that
15 we'll be doing will be identical to what we're already
16 doing. It's just limiting focus a little bit. And it
17 will come before the Commission for a decision, and to
18 the extent the Commission doesn't like the results,
19 they have ultimate discretion to deal with that.

20 I mean, I fully expect that the first few of
21 these cases that come before the Commission will
22 receive considerable attention; they're going to
23 receive considerable attention from the Staff to make
24 sure that we're happy with the results and we're happy
25 with the way things appear to be going.

1 COMMISSIONER JOHNSON: What about the two
2 comments of Public Counsel that the rule doesn't state
3 what comparison will be made to determine the revenue
4 requirement or if it will be up to a Staff member
5 reviewing the case? Is that some ambiguity that can be
6 cured or --

7 MR. SHAFER: I guess I'm concerned about the
8 level of detail that's contained in the rule. We don't
9 have a rule on a Staff-assisted rate case that says,
10 you know, this is the formula that we use for every
11 single item and every single adjustment that we make.

12 Certainly, what we will try to do is stay
13 within the current practices that we use in terms of
14 analysis on any case. You know, there will be
15 benchmark analysis much like we do in the
16 Staff-assisted rate case in terms of, okay, here's what
17 the utility is claiming. How does that stack up with
18 what other systems and companies of similar size have
19 received in the past?

20 That's the standard way that the analysis is
21 done, and there's not going to be any departure from
22 that through this method. It's just that we're not
23 establishing rate base, we're simply looking at the
24 expenses.

25 MR. HILL: Commissioner, if I may, this came

1 MR. HILL: Commissioner, if I may, this came
2 up at hearing as well. And while it's not in the rule,
3 we have already written a standard operating procedure
4 for this which we gave to all the parties; Public
5 Counsel had a copy of that as well. And we will follow
6 those procedures that are written until a change is
7 necessitated and we would change those. So while it's
8 not in the rule, it is in writing.

9 COMMISSIONER CLARK: Mr. Chairman, may I ask
10 Ms. Dismukes about this rule?

11 CHAIRMAN DEASON: Surely.

12 COMMISSIONER CLARK: Tell me, you're not
13 opposed to the rule; you're saying you have concerns
14 that it is untested but let's try it. If the
15 Commission wants to try it, you won't yell and scream.

16 MS. DISMUKES: We won't be able to scream?

17 (Laughter)

18 COMMISSIONER CLARK: Well, if I think about
19 Jack, I probably should have not put that condition on
20 it.

21 You're not adamantly opposed in the sense
22 that it might work, it might have a beneficial effect.
23 But you do think (12) needs to be changed, Subsection
24 (12)?

25 MS. DISMUKES: Yes, basically. And that is,

1 specific; we really don't know what's going to happen
2 or how it's going to work.

3 COMMISSIONER CLARK: Can we make (12)
4 specific, more specific?

5 MR. SHAFER: Commissioners, I would hesitate
6 to make it more specific at this time until we have
7 some practical experience in this process so that we
8 are comfortable with whatever limiting factors we want
9 to stick in there.

10 At this point it's rather arbitrary. The
11 word says we will compare. Let's say we change it to
12 say, you know, we will give the Utility 120% of their
13 test year expenses and go with that. Well, we may find
14 that that 120% is way too much or way too little, or
15 what have you.

16 COMMISSIONER CLARK: This doesn't say what
17 you will do, it says that you will look at it.

18 MR. SHAFER: Right.

19 COMMISSIONER CLARK: Okay. And then you're
20 indicating -- how you're carrying out that rule, what
21 you're telling your people in-house through your SOP is
22 some of the things you might do. But Public Counsel
23 would always have the opportunity to say that's not the
24 way you ought to do it.

25 MR. SHAFER: Sure. And it's not like this is

1 an index where the Commission never sees it. Each one
2 of these is going to come before the Commissioners.
3 And we'll do our best to be completely forthright on
4 what has been done. And to the extent that the outcome
5 is undesirable and we want to tweak it here and there
6 and make some adjustments in the decision-making
7 process, that's how we learn and how we get to where we
8 want to be.

9 COMMISSIONER CLARK: With the understanding
10 that this is just a requirement that you look at it, it
11 won't preclude the Public Counsel for saying the way we
12 are recommending the action Staff is recommending is
13 not something you can still take issue with. Does it
14 still cause you concern?

15 MR. MANN: Well, Commissioner, I think the
16 concern comes with the fact that this still is a
17 Staff-assisted, and we run into the same difficulties
18 we have in voicing concerns about any of the
19 Staff-assisted rate cases in that Staff has already
20 been involved; has done their thing. And then it's a
21 little more difficult to come in at the time of the PAA
22 with rate case expense hanging over us and voice those
23 concerns.

24 COMMISSIONER CLARK: What is your
25 alternative? What do you suggest we do differently?

1 MS. DISMUKES: Well, I would suggest that
2 basically you remove that and that Staff go through a
3 process whereby they actually test prior Staff-assisted
4 rate cases to see what, in fact, would happen under
5 these circumstances. Would they allow 125% of
6 expenses, 90%, whatever it's going to be, and see how
7 that compared to what the actual Staff-assisted rate
8 case -- what the results of those were.

9 CHAIRMAN DEASON: I thought Staff already did
10 that comparison.

11 MS. DISMUKES: Staff did do a comparison. We
12 had some problems with the comparison that we raised at
13 the last hearing. The comparison that they did was
14 basically to give them 100% of their expenses plus a
15 return, I believe, on working capital. And that's not
16 what's written in this rule as to what they're going to
17 do. We still don't know what Staff is going to do in
18 this alternative rate-setting process.

19 COMMISSIONER CLARK: So you're suggesting
20 that we put in the rule what they will do.

21 MS. DISMUKES: Well, eventually, yes.

22 COMMISSIONER CLARK: Okay.

23 MS. DISMUKES: Once it's been --

24 COMMISSIONER CLARK: So what's wrong with
25 saying that this is one of the steps, one of the things

1 you have to look at and make a judgment on, just as the
2 whole host of other things? I guess it's really just
3 saying, "We're going to look at this." What's wrong
4 with that?

5 MS. DISMUKES: Okay. But what you're going
6 to look at, you're going to look at it on a
7 case-by-case basis, on a going-forward basis; and is
8 it, in case one, are they going to get 125% of their
9 revenues. And in case two, is it going to be 100%?

10 COMMISSIONER CLARK: What do you want us to
11 do?

12 MS. DISMUKES: Well, if you go back and do it
13 based upon what's happened in the past --

14 COMMISSIONER CLARK: I see.

15 MS. DISMUKES: -- you would have a basis upon
16 which to draw upon to make an informed decision as to
17 what the correct or the best formula might be. And
18 that's, I think, the whole --

19 COMMISSIONER CLARK: You think we should put
20 the formula in here?

21 MS. DISMUKES: Yes.

22 COMMISSIONER CLARK: Okay. But you don't
23 have a formula; you think we should go back and look at
24 what the results have been. I got you.

25 CHAIRMAN DEASON: Does the comparison that

1 Staff compiled earlier and, I think, filed as an
2 exhibit --

3 MR. HILL: Yes, sir.

4 CHAIRMAN DEASON: I know that it just
5 compared the bottom-line results; and it indicated, I
6 think, that the substantial majority, if not all of the
7 cases, indicated that following this procedure would
8 have resulted in a smaller increase than the final
9 outcome of the Staff-assisted case.

10 MR. SHAFER: That's correct. And we used the
11 100%, just as Ms. Disbukes said. And all I would argue
12 is that in keeping the language a little bit ambiguous
13 in the short-run, that gives us and the Commission,
14 particularly the Commission, some flexibility. And
15 until such time as we get some experience under our
16 belt and can say, "Okay, we feel comfortable with
17 100%," or "Well, 100% doesn't seem to be working, let's
18 try something else," without having the burden of a
19 protracted rule proceeding in order to get that
20 percentage changed to what we prefer, I would much
21 rather proceed with the ambiguity in the rule until
22 we've got some experience, and then we can say, "Gosh,
23 the 100% is not doing too bad," or "maybe 75% is going
24 to be a little better."

25 We just need -- I would prefer that

1 flexibility on a going-forward basis until we've got
2 some practical experience.

3 COMMISSIONER CLARK: As you go through this
4 process, will you be keeping Public Counsel informed
5 maybe on a sort of monthly basis or every three months
6 say, "This is what we've done in these cases"? I think
7 they want --

8 MR. SHAFER: Certainly, we can do something
9 like that. I don't have any problem doing that.

10 CHAIRMAN DEASON: Well, once the incentive
11 for -- I mean, we want to get some experience with
12 this. We want some companies to file under this, save
13 the companies time and expense; save us time and
14 expense; Public Counsel, everyone involved; and,
15 ultimately, the ratepayer is everyone's ultimate
16 concern.

17 What is a company's incentive to fall under
18 this? If they don't know, they may end up with just
19 50%, or they may end up with something substantially
20 better, but they don't know that. If we were to put
21 something in there, just say 100%. They know if they
22 go in that when they come out, they're not going to be
23 losing money anymore. They're going to recover all of
24 their expenses and there's going to be a little bit of
25 return on some working capital.

1 Now, that is probably going to be less than
2 they would get under some type of broader-look-type
3 case. But they know going in they're going to get at
4 least that and they're not going to be losing money
5 anymore. And that's kind of an incentive for them to
6 follow this procedure.

7 MR. HILL: I think, Mr. Chairman, there is ---
8 it may be an incentive. At the same time, there is a
9 lot of balancing that occurs and you try to make it a
10 reasonable increase because there are so many
11 fail-safes.

12 CHAIRMAN DEASON: Well, I know there is a 50%
13 limitation.

14 MR. HILL: Yes. And a company coming in, if
15 you put it in a rule, that particular calculation may
16 result in an immediate protest, and then they're not
17 getting their rate. Now we fall to a SARC and then
18 possibly even a hearing. And so I think with some
19 latitude for the Commission, you might be able to avoid
20 a protest but yet help that utility keep up with their
21 expenses.

22 MS. ROBBINS: Commissioners, if I may clarify
23 on the study, hopefully it will make you feel a little
24 more comfortable about it.

25 The 100% of expenses that are included in

1 that, that is 100% of Commission-approved expenses in
2 that it does include Staff's and the Commission's
3 judgments on those expenses, just the same as we would
4 be doing with this method as well. There would be
5 judgments made for reasonableness of expenses.

6 COMMISSIONER CLARK: Mr. Chairman, I move
7 30.456 with the amendment of Subsection 6 as suggested
8 by Florida Waterworks. But I would ask that you keep
9 Public Counsel informed as to what's developing in this
10 and what looks like what our policy becomes and then
11 let's get it in the rule.

12 MR. SHAFER: We can certainly do that.

13 COMMISSIONER JOHNSON: Second.

14 CHAIRMAN DEASON: Okay.

15 .456 is moved and seconded without objection.
16 Show it approved as moved.

17 Rule .475. (Pause)

18 COMMISSIONER CLARK: Mr. Chairman, I'd like
19 to ask a question with respect to OPC's objection, and
20 there's just something in the back of my mind that is
21 bothering me.

22 I think in the early '80s we had an issue
23 come up in the electric and gas industry, it was. And
24 they bill in arrears. And there was some real question
25 as to whether you could change the rates without notice

1 to give people the opportunity to adjust their
2 consumption based on the fact of what they knew their
3 new bill would be. And the only person I can suggest
4 you talk to about this is Joe McGlothlin because I
5 remember him being the attorney; that it was a big deal
6 at a Commission agenda. And what I recall we finally
7 concluded is, until those people -- you have to do it
8 in the next billing cycle; you can't prorate it. And
9 beyond that, I have no -- I can't provide you any more --

10 CHAIRMAN DEASON: Did we, the Commission
11 then, did it decide that you couldn't prorate, or was
12 it just the decision that --

13 COMMISSIONER CLARK: Yeah.

14 CHAIRMAN DEASON: -- just allow 30 days and
15 that way you know that 30 days after the decision and
16 everybody is put on notice that --

17 COMMISSIONER CLARK: Yes, something like
18 that.

19 CHAIRMAN DEASON: I think it was, basically,
20 the decision was 30 days after. You could not
21 implement or charge the higher rate until at least 30
22 days had passed from the vote date.

23 COMMISSIONER CLARK: That's exactly it.

24 MS. MOORE: I think that's included in
25 Subsection 1.

1 COMMISSIONER CLARK: All right. So we're
2 clear on that? All right.

3 And what you're now saying is, regardless of
4 where that 30 days falls, they ought to be able to
5 start charging it and not have to wait until the next
6 billing cycle.

7 MR. HILL: Went through years of -- effective
8 dates have been a nightmare in this industry because we
9 have some that are monthly reoccurring and some flat,
10 and some quarterly and some biweekly. And we try to
11 just cut this down and say, "Look, this can really be
12 simple, and if a utility is going to take the effort to
13 go out and read meters, then fine." Provided the
14 customers have had notice so that they can adjust their
15 consumption, then you can prorate it. But if they're
16 not --

17 CHAIRMAN DEASON: But it's still 30 days
18 after the date of the vote; is that right or not?

19 COMMISSIONER LAUREDO: I'm trying to find out
20 where that is in this rule.

21 CHAIRMAN DEASON: What Commissioner Clark's
22 concern is is that customers need to be able to know
23 what the rate is and adjust their consumption if they
24 so choose.

25 MR. HILL: And it would be after the

1 customers have been notified of what the new rates
2 were. Again, that's what Subsection 1 says is that as
3 long as the customers have been notified.

4 COMMISSIONER LAUREDO: Yes. But it does not
5 speak about 30 days.

6 COMMISSIONER CLARK: She's provided the
7 customers -- well, I'm not sure. 30 days may have been
8 the magic number because of the way the statute was
9 worded in the electric statute. But the key there was
10 providing notice so people who needed to adjust their
11 consumption would have that opportunity. So you're
12 still requiring that?

13 MR. HILL: Yes.

14 COMMISSIONER CLARK: And Public Counsel's
15 only objection is that it's confusing. You know, you
16 will have different bills. You will have a change.

17 MS. MESSER: And I would just add, I added
18 this comment at the other proceeding, but we prorated
19 bills in both the mega and the giga Southern States
20 dockets. And I'm aware of one customer calling to
21 question that proration.

22 CHAIRMAN DEASON: Do we have a motion?

23 COMMISSIONER CLARK: I move.

24 COMMISSIONER JOHNSON: Seconded.

25 CHAIRMAN DEASON: Move and seconded without

1 objection. Show .475 adopted.

2 .565. I believe there were no comments on

3 .565. Without objection, show .565 adopted.

4 I believe that concludes all of the rules
5 within Issue 2.

6 We can proceed now to Issue 3. (Pause) The
7 first rule in Issue 3 is .037, but in reviewing this,
8 it may be better to address .0371 before we address
9 .037. So I would propose that we address .0371 at this
10 time. (Pause)

11 I don't want to be taking these out of order
12 if there's not a reason, but when I was reviewing this,
13 it appeared to me that in .037 there was a question
14 about putting a burden on the utility to show why
15 negative should not be approved, talking about
16 acquisition adjustments. And it seems to me that we
17 probably ought to look at acquisition adjustments and
18 then see how that affects whether they have some burden
19 to show that there should or should not be a negative.

20 COMMISSIONER JOHNSON: On --

21 CHAIRMAN DEASON: Does that make sense?

22 MS. MOORE: Yes, it does.

23 CHAIRMAN DEASON: Okay.

24 COMMISSIONER JOHNSON: Staff has recommended
25 that we delete the last section or last sentence of

1 Section 1 requiring the Commission to consider the
2 conditions of the assets at the time of the transfer.
3 What was the rationale for that? That's something that
4 we do now, don't we?

5 CHAIRMAN DEASON: That was in .037, isn't it?

6 MS. CHASE: No. That is in .0371.

7 CHAIRMAN DEASON: Okay.

8 MS. CHASE: On Page 41, starting on Line 12,
9 that sentence.

10 We had -- Staff had recommended that be put
11 in through testimony so that we could consider the
12 conditions of the asset in setting rate base so that if
13 there was an item that needed to be, that shouldn't be
14 in rate base that was not functioning, we could take it
15 out.

16 COMMISSIONER JOHNSON: And I thought that I
17 recall from testimony that we stated that this is what
18 we do anyway, as a matter of course.

19 MS. CHASE: We do have the right to do that,
20 and we sometimes do that more often in rate cases and
21 in transfers, but it can be done.

22 COMMISSIONER CLARK: But in the most recent
23 Jacksonville Suburban, didn't we approve the transfer
24 and we're still grappling with the acquisition
25 adjustment?

1 MS. CHASE: That's true.

2 COMMISSIONER CLARK: I guess what it is is we
3 generally do it, but there have been situations where
4 we have felt that we need to go ahead and approve the
5 transfer and give further consideration to the
6 acquisition adjustment, which I think is -- although
7 we've approved the transfer, but it's still sort of
8 pending, the acquisition adjustment is pending as an
9 ongoing part of that docket.

10 MS. CHASE: That's correct. We approved the
11 transfer setting rate base, and the acquisition
12 adjustment issue is still to come before you.

13 COMMISSIONER JOHNSON: So we're really
14 removing it here so we could have flexibility -- have
15 more flexibility. You don't want to consider it at --

16 MS. CHASE: We're recommending that we can
17 take the statement out. Some of the parties had
18 problems with the sentence and we will take it out.

19 The Commission has the right, when they set
20 rate base, to retire any plant that they feel and it's
21 done PAA. It can be protested, so --

22 COMMISSIONER JOHNSON: It's not necessary.

23 MS. CHASE: It's not necessary, we're just
24 suggesting we take it out.

25 COMMISSIONER JOHNSON: Okay.

1 CHAIRMAN DEASON: What you're saying is
2 something we're going to look at anyway.

3 MS. CHASE: Uh-huh. We will look at it
4 anyway, yes.

5 CHAIRMAN DEASON: So if we are going to look
6 at it, why not have it in the rule? That's what rules
7 are; they put parties on notice of everything that we
8 are going to do, so nobody is caught off guard.

9 COMMISSIONER CLARK: My recollection of this
10 was we were concerned about its impact on the notion of
11 extraordinary circumstances. And it's my feeling that
12 the issue of whether or not the asset -- if we have
13 deteriorated and perhaps have to be retired, that's an
14 issue that transcends the transfer. It doesn't really
15 matter in whose hands the transfer is, because if they
16 should be retired for deterioration, and if you
17 conclude it was the utility owner, whether it is the
18 current owner or the prior owner whose fault it was.
19 If it's as a result of imprudence, it's out and the
20 utility ratepayer shouldn't have to pay for it.

21 MS. CHASE: That is correct.

22 COMMISSIONER CLARK: If they did everything
23 prudently, and it still deteriorated, or whatever, it
24 really doesn't matter who owns it.

25 MS. CHASE: Right. All this sentence is

1 saying is that the Commission will consider it and we
2 do that. But the sentence did create a lot of concern,
3 both on the part of the Commission and the parties, and
4 so we're just saying you can take it out; we don't need
5 it.

6 COMMISSIONER JOHNSON: What was the
7 confusion?

8 COMMISSIONER CLARK: The confusion was the
9 impact on does it modify extraordinary circumstances
10 for allowing an acquisition adjustment positive or
11 negative.

12 MS. CHASE: That's true. The purpose of the
13 sentence was simply to try to clarify what net book
14 value might be at the time of transfer, and it is that
15 number that you would compare to the purchase price to
16 determine whether or not there is an acquisition
17 adjustment.

18 COMMISSIONER LAUREDO: There's a reference
19 about the second round of revisions of these rules.

20 MS. CHASE: Excuse me.

21 COMMISSIONER LAUREDO: Or other rules in the
22 water and wastewater. There's another docket or
23 another procedure moving forward where things --

24 MR. HILL: I have another package of rules,
25 yes, sir.

1 COMMISSIONER CLARK: Phase II.

2 MR. HILL: Yes, ma'am.

3 COMMISSIONER LAUREDO: And what's the
4 schedule of that, more or less?

5 MR. HILL: It's sitting right now until we --
6 it was too much for even me to handle, and I had to put
7 it on a back burner until we get some decisions here.
8 It's a pretty good stack, but we can roll anything into
9 it you'd like.

10 COMMISSIONER LAUREDO: Well, I'm just
11 persuaded, you know -- you heard me go through the
12 spiel about limiting flexibility, and particularly
13 sensitive in times of changing new Commissioners. And
14 this is one of those areas that I personally don't have
15 a strong feeling and, therefore, I don't want to be
16 precluded, and we may have one or two new
17 Commissioners. I, myself, am fairly new, and another
18 Commissioner is fairly new. If we can roll this into
19 Stage II, rather than turning it down; is that
20 possible?

21 MR. HILL: Certainly.

22 COMMISSIONER CLARK: You know, one thing that
23 I wanted to look at more, and I think, Commissioner
24 Lauredo, you've stated many times that you're just not
25 comfortable with -- you don't have enough background in

1 a case-by-case basis of allowing or disallowing an
2 acquisition adjustment, and notwithstanding the fact
3 that it's my belief that Commission policies developed
4 by the Commission as a body, regardless of who's
5 sitting here. I think we are subject to a valid
6 criticism that we have a policy that we haven't adopted
7 in rule.

8 But Public Counsel has suggested a 20/80
9 split on some savings. We do that in other utilities.
10 You know, the question comes up in my mind, then the
11 sword no longer really cuts precisely both ways. But
12 even if it doesn't, I mean what we're trying to do is
13 provide incentives, and if you have -- maybe their
14 split isn't right, but maybe it's appropriate to look
15 at some sort of sharing of that benefit. And I don't
16 think -- I don't know how Commissioner Johnson feels.
17 I know Commissioner Deason has taken the position he
18 doesn't think we should have. We should not make the
19 negative acquisition adjustment. I would --

20 CHAIRMAN DEASON: Recognize the negative
21 acquisition adjustment, absent -- since you're stating
22 my policy, let me state it, or my position.

23 The position is really very clear, and it's
24 simple, and that is that the Commission should have a
25 policy of first automatically recognizing a negative

1 acquisition adjustment absent extraordinary
2 circumstances, not the opposite that you don't
3 recognize it, absent the ordinary circumstances. I
4 think it puts the burden on the appropriate person,
5 that is the utility company. I think when the utility
6 is able to purchase a system at the low book value it
7 raises a question: How did that happen? And it may be
8 very legitimate and they may be entitled to the book
9 value. They may even be entitled to a positive
10 acquisition adjustment, even though they paid less than
11 book value, who knows? But that's they're burden to
12 show it. And if they want to prove their case, they
13 can prove it. I think that we should be ultra
14 conservative and take the customer's point of view and
15 protect them and have it -- absent extraordinary
16 circumstances, we're going recognize the negative and
17 set rate base at the purchase price, and that allows
18 the utility to recover a return of and return on what
19 they actually have invested. Nobody can ask for more
20 than that. I take that back. They can ask but whether
21 it is granted is a whole different question.

22 Now, Public Counsel raises a very unique
23 argument that has, quite frankly, has some appeal. I'm
24 tired of arguing about acquisition adjustment. I think
25 everybody in this room is tired of arguing about

1 acquisition adjustments.

2 I would be inclined to look at whether we
3 could give the proper incentives. I think that there
4 is an argument for incentives. I've never said that
5 there isn't, but I always felt like it was the
6 company's burden to show that they needed an incentive
7 and what the appropriate incentive was. Just saying
8 that allowing -- not recognizing a negative -- in some
9 cases there's probably way too much incentive and in
10 some cases perhaps there's not enough incentive to buy
11 some of these systems.

12 And with our current policy, what we're going
13 to be doing is encouraging companies to buy those
14 systems that they can buy at enough below book value,
15 and then there's others out there that need to be
16 bought up by well-run systems, but they can't get them.
17 So we need to be flexible on the positive side.

18 But that's what my position is. But I think
19 that to get us past all of these arguments, and it's no
20 fun litigating these things in each and every case; if
21 we could come up with a policy of 80/20 or something
22 else appropriate and say, "That's going to be the
23 standard absent extraordinary circumstances," I'm not
24 opposed to that. And that would give the utility an
25 opportunity to say, "Well, even though we're getting

1 20% of that negative, that's not enough for these
2 reasons." And Public Counsel could argue against it.
3 And in some cases maybe the 20% is enough and nobody
4 would argue about the case, and we could get on with
5 things.

6 I think there's some appeal to that. I know
7 I'd like to get this issue behind us. I think
8 everybody in this room would like that.

9 MR. HILL: Mr. Chairman, we have been to
10 hearing; that was discussed at hearing. I'm like you,
11 I'd just soon be finished with acquisition adjustment,
12 and I think you've got a record basis and the
13 Commissioners to vote. I wouldn't see anything wrong
14 with you just voting out the policy right now today,
15 and we don't have to worry about Phase II or III or IV,
16 or however many it would take.

17 COMMISSIONER LAUREDO: Well, what's the magic
18 of 20/80?

19 CHAIRMAN DEASON: I don't think there's
20 anything magical about it. Is that a question to
21 Mr. Shreve?

22 COMMISSIONER LAUREDO: Yeah.

23 MR. SHREVE: There's nothing magical about
24 it. I think the utility is entitled to a return on
25 their actual investment, which would be purchase price

1 or net book value, whichever is lower. However, we
2 have had this argument so many different times and so
3 many different places in the legislature and everything
4 else, and the utilities -- not all of them, will
5 insist, "Well, now we're not willing to take just a
6 return on our money. We don't have the incentive to
7 purchase them."

8 Well, I think the 20% -- and it was picked
9 out -- would give them -- 20% of the difference, would
10 give them a reason to get as good a deal as they could,
11 which without some type of incentive -- maybe the logic
12 is that they would not have that incentive to do it.
13 This would give it to them. But I agree with the
14 Chairman, they should have the opportunity to argue
15 there's a reason to get more, but they would always be
16 assured of having that 20% if they did a good job on
17 purchasing the system.

18 As far as the positive acquisition
19 adjustment, generally speaking, I don't think they're
20 entitled to it. There are situations that we have had
21 that I think, yes, they could not purchase the system
22 and we didn't argue with that because the customers
23 were well-served by them taking it over and they got
24 the positive acquisition adjustment. It gives them an
25 opportunity to argue it, but the 20% would give them a

1 reason to go ahead and get as big a spread as they
2 could and do as good a job as they could in purchasing
3 the system and make 20% more on that difference than
4 their fair return.

5 COMMISSIONER CLARK: Well, Mr. Chairman, I
6 was going to suggest that -- we still have a divergence
7 of opinion as to what should happen. I think we do
8 have a policy, but I think we may be in the throes of
9 wanting to change that policy. But I think we can all
10 agree that we need to get a policy. And I think we
11 ought to break this out, and if it involves going
12 through the same type of hearing we went through with
13 different Commissioners on the rationales that argue
14 for making a negative acquisition adjustment and not
15 making it, the new Commissioners need to hear that and
16 we need to do it as quickly as possible. That's all
17 I'm saying. So the people that espouse the policy as
18 articulated by Commissioner Deason can put on the case
19 for that; and, likewise, the people who feel that we
20 should continue doing what we have been doing can put
21 on a case of that, and just break it out into a
22 separate proceeding. I think it's been done before,
23 but I think we obviously need to spend more time on it.

24 COMMISSIONER JOHNSON: Is that a motion?

25 COMMISSIONER LAUREDO: I second that.

1 COMMISSIONER CLARK: I would move we not -- I
2 don't know if we need to adopt any other changes to the
3 rule that sort of aren't with respect to that, but I
4 think we have an agreement that we need to get a
5 policy, and not all of us are happy with the current
6 policy, and maybe there is a middle ground.

7 COMMISSIONER LAUREDO: I would second that.
8 I would only hope that we prioritize our time, and you
9 have that other -- to me this was a very difficult
10 exercise. I mean, I understand it was needed. But if
11 we can kind of focus on this, and maybe some other
12 issues we discussed today, and forget about that pile
13 you have on your desk. Because if these fall on that
14 same pile, I am going to lose focus.

15 MR. HILL: I wouldn't want to do that either,
16 Commissioner. I'd like to try to --

17 COMMISSIONER LAUREDO: We're trying basically
18 -- you know, I'm from, I mentioned before, the
19 incremental school of negotiation. Let's get out of
20 way what we can agree to and then we can kind of focus
21 on this.

22 So I personally feel that this kind of focus
23 -- and I think as a general courtesy -- I mean, this
24 idea of a policy is not some intangible thing that
25 happens. There are five people who make those

1 decisions and I haven't really -- you know, I say, is
2 that your policy? And I may very well agree with it,
3 but I certainly, as a courtesy to what is evidently
4 coming in, two new Commissioners, and the time -- I
5 think it would be appropriate.

6 But properly segregate it. I don't want it
7 inundated with all this other stuff because I just
8 can't -- I really can't handle it.

9 COMMISSIONER CLARK: And I think one of the
10 things that needs to be done is we need to look at what
11 has happened in the past ten years. Because that
12 policy has an underlying assumption that you need this
13 incentive, and Commissioner Deason doesn't believe that
14 that is the right incentive, and I think we have the
15 opportunity to look at what is there. He may be right.

16 CHAIRMAN DEASON: What I'm saying, it would
17 be completely by accident that the dollar amount that
18 was associated between purchase price and book value
19 was the appropriate incentive.

20 COMMISSIONER JOHNSON: Uh-huh, I agree.

21 COMMISSIONER CLARK: And I think we ought to
22 look at that.

23 CHAIRMAN DEASON: In some cases it's way too
24 much; in some cases it's probably not enough, but we
25 don't know that.

1 The problem is on the other hand, though, is
2 to look at it in detail, is that you're talking about
3 time and expense in litigating every one. And that's
4 where the attractiveness of a rule comes into play,
5 where something -- where everybody can kind of live
6 with and we're not litigating everyone of these. But
7 what I'm hearing at least one Commissioner say is that
8 he's really not made up his mind yet, and he has
9 pointed out a very valid fact; and this is, that
10 there's going to be at least one new Commissioner who
11 is going to be living with this policy, and he or she
12 may have some input, would want some input into that.

13 COMMISSIONER LAUREDO: You and I being here,
14 because of the breath of this exercise, it's been hard
15 for me to focus. I wish I could get -- I would like to
16 kind of give another run at it.

17 CHAIRMAN DEASON: Then on the other hand,
18 there's this argument that we've got to adopt a rule
19 because it's required by law.

20 COMMISSIONER LAUREDO: Well, I can't accept
21 -- and I will argue before any court, I'll go back and
22 read my first year law school, that any reasonable
23 jurisprudence embodied in a judge or judges will not
24 accept the premise that just looking at the facts of
25 the involvement of this Commission, with first and last

1 name, that you can deduct that there's a policy. And I
2 came in after the policy and Julie came after the
3 policy, and the new guy or girl coming in, or the two
4 coming in next week or next month, I mean, that to me
5 flies in the face of just the basic fairness about the
6 reality. So I know, I understand that some people
7 would make that argument.

8 CHAIRMAN DEASON: It's not me making it.

9 COMMISSIONER LAUREDO: Oh, okay.

10 CHAIRMAN DEASON: I'm not making the
11 argument.

12 COMMISSIONER LAUREDO: We have to be organic
13 about this thing. I mean, this is an evolving body,
14 literally of bodies, and you can't just say -- I don't
15 know any judge that I know that would disagree with me.
16 I mean, you know; within reason.

17 It just happens that historically we have hit
18 a period here where, one, this industry is going
19 through tremendous changes; otherwise, we wouldn't have
20 all these arguments. And one of the keys to those
21 changes, I want to understand more in depth is this
22 idea of incentives. You know, I believe in incentives
23 to the private sector, but I want to spend more time on
24 it.

25 So it all coincides with a whole new bunch of

1 bodies, and I think it's just not fair. And this
2 exercise has been very helpful. But believe me --
3 because you all sometimes forget we have other rate
4 cases and other things -- it's been hard to focus. I
5 wish we had done just three of these subsections. So
6 I'm asking for the referral and segregation. I mean,
7 that was a motion. I don't know if that was --

8 COMMISSIONER CLARK: Yes. I guess, just to
9 make it clear, I would propose we go to rulemaking on
10 this issue, and the same -- but the generic proceeding
11 that we held -- I don't know when -- as to whether or
12 not we should have this policy, it would be that type
13 of hearing because I think we have done enough
14 acquisition adjustment -- I mean done enough
15 acquisitions where we've had positives and negatives
16 that we can look at what has happened, the track
17 record, and try and make some judgments as to -- as
18 Commissioner Deason says, you know, if the incentive
19 needed to acquire the system matches the difference
20 between the book value and what they paid for it, is
21 probably an accident. And we may be able to get some
22 middle ground, because I think we do need to provide
23 incentives. And more importantly, or just as
24 importantly, the utilities need to know on the front
25 end what they are getting into. They need to know

1 whether or not they can expect an adjustment or not,
2 because they've got -- I guess I'm arguing to some
3 extent to minimize the risk is part of the incentive to
4 acquire it.

5 MS. MOORE: I would recommend codifying the
6 policy you've got and going to rulemaking to amend it,
7 but the policy is not evolving --

8 COMMISSIONER CLARK: Chris, we're not going
9 to do that today. You know, I could vote for it, but I
10 don't think there's going to be any support for that.

11 MR. HILL: If I might seek a little
12 clarification what the Commission wants. Would you
13 like another generic docket into establishing policy
14 and then go to rulemaking, or do you want to jump right
15 into rulemaking on it? Again, just some direction for
16 me.

17 COMMISSIONER LAUREDO: I just want a plain
18 old vanilla deferral on this thing.

19 MR. HILL: Yes.

20 COMMISSIONER LAUREDO: Meaning, let me think
21 about it some more and let's give the testimony and
22 rates to this issue and maybe others today and put them
23 into this little segregated, whatever you all call it
24 in procedures and hand it to the new Commissioners when
25 they come in, and say, "We're going to deal with this

1 in the next -- I don't mean postponing it -- in the
2 next three or four months after he's sworn in, or she's
3 sworn in, or the two people sworn in, and it's an
4 exercise in focusing for me. It is not passing
5 judgment on it, because I really, as I said, I already
6 tipped my hand. I believe in incentive. I don't
7 believe necessarily another point of view is expressed,
8 because historically we're in a particular historical
9 transition in this industry. And so while I may not
10 agree with some principles generally, it may be that I
11 can be persuaded that -- but I'm just not focused,
12 that's all I'm saying. So I would make it as simple,
13 if deferring it is the proper -- you know, I failed all
14 the procedural classes in this Commission. I certainly
15 don't want to sit through, you know, a redundancy of --
16 God Almighty, we already did that last week, didn't we?
17 I was lucky I missed one day; I got sick -- where you
18 hear the same thing 20 times.

19 CHAIRMAN DEASON: Maybe that's what made you
20 sick.

21 COMMISSIONER LAUREDO: Yeah. So, I don't
22 want to encourage the parties to have another time to
23 go through four, five levels. I mean, we've got enough
24 evidence on the record already, just reading the record
25 is almost enough.

1 CHAIRMAN DEASON: Okay. Now, what I hear is
2 a fundamental difference between what you're saying and
3 what Commissioner Clark is saying.

4 My feeling is that I do not want to go
5 through and subject, not only ourselves but the
6 parties, to relitigating all of this again. I think
7 that the main benefit of deferral, or whatever we do
8 here, is to have a fully constituted Commission, that
9 being five Commissioners, whoever those five
10 individuals may be, and hopefully review on what has
11 gone on before and make a decision. Now, can that
12 legally be done procedurally or not?

13 COMMISSIONER LAUREDO: I mean, I could just
14 move for deferral.

15 MS. MOORE: You're suggesting the new
16 Commissioner or whoever the Commissioners are review
17 the entire record and then make a decision?

18 MR. HILL: Yes.

19 COMMISSIONER JOHNSON: Do we have enough
20 information in the record? When you raise the issue,
21 Mr. Chairman, about how much of an incentive is enough
22 of an incentive, that's something I have been trying to
23 deal with myself and in meeting with Staff. And it
24 seems as if we could be provided with more -- at least
25 factual information to better understand how much -- a

1 lot more accounting in terms of this is how much --
2 this is what they got from this deal. And breaking
3 that out into over the last ten years; what the facts
4 have been; what kind of monetary incentive; how much of
5 the utilities have benefited? And I know Public
6 Counsel raised an issue with respect to the information
7 that we got during this series of hearings was that
8 some of it wasn't completely accurate, and that there's
9 more to be discovered with respect to the kinds of
10 incentives and the kinds of benefits that have been
11 occurring from the acquisition adjustments. That's
12 some of the information that I'd like to hear, so that
13 perhaps we could quantify our percentages. Perhaps we
14 could say if there's -- if the purchase price is 25%
15 less than net book value, fine. We won't even look at
16 it. But, you know, and we understand, this is all the
17 incentive they have needed in all these cases, so they
18 shouldn't need any more. But to me, that means more
19 work. That means more numbers crunching.

20 COMMISSIONER CLARK: Likewise, didn't we
21 discuss -- I remember Commissioner Deason bringing up
22 the issue of when you have costs in acquiring, how do
23 you factor them in, depending on what you do?

24 Mr. Chairman, my proposal is to withdraw the
25 rulemaking, the changes to the rule. Is this a new

1 rulemaking, the changes to the rule. Is this a new
2 rule completely?

3 COMMISSIONER JOHNSON: Huh-uh.

4 COMMISSIONER LAUREDO: Almost in its
5 entirety.

6 COMMISSIONER CLARK: This is a new rule. I
7 would recommend we move this one to the withdrawal
8 category, but that we go to rulemaking. We actually
9 put out another proposed rule, and it could be a
10 proposed rule that does, you know --

11 COMMISSIONER LAUREDO: Can we do something --

12 COMMISSIONER CLARK: Wait a minute. We could
13 put out a proposed rule that says, you know, "X
14 percentage of acquisition adjustments." I would
15 certainly be happy to look at ahead of time with the
16 Staff what's occurred in the past and what might be
17 reasonable. I think Commissioner Johnson might be
18 willing to do that and maybe work more closely with the
19 Staff before we propose the rule, but go -- try and get
20 it done all in the same proceeding. Don't have a
21 generic proceeding and then go to rulemaking. Go to
22 rulemaking and just get it all done at one time.

23 MS. CHASE: You're talking about a new
24 docket.

25 COMMISSIONER CLARK: And all we're going to

1 MS. CHASE: Commissioners, I will point out
2 this rule, this acquisition adjustment piece is only
3 No. 2. The other is just setting rates. We could pull
4 the whole thing out, maybe that makes more sense. But
5 if you only want to deal with the idea of acquisition
6 adjustment, that's No. 2.

7 CHAIRMAN DEASON: It's Paragraph 2 of .0371.

8 MS. CHASE: Paragraph 2 of the rule.

9 COMMISSIONER CLARK: Okay. If that's -- if
10 we were clear on the rest of it --

11 MS. CHASE: We would simply take out
12 Paragraph 2 and deal with that in a separate
13 proceeding.

14 COMMISSIONER JOHNSON: What else did we
15 change? Oh, I'm sorry, all of this is new. All of the
16 underlined.

17 COMMISSIONER CLARK: It seems to me all that
18 is there is sort of all the background you need to deal
19 with acquisition adjustments, so I think you should
20 just take this rule and this will be our starting
21 point, and what we'll work with is Subsection 3.

22 MR. HILL: Commissioner, I don't disagree
23 with what you're saying. The remainder of .0371 is
24 codifying what happens right now when we're in these
25 certification and --

1 COMMISSIONER CLARK: But the purpose of
2 defining net book value and finding net book value has
3 to do with the rate base you're going to accept. And
4 before you set rate base you have to look and decide on
5 an acquisition adjustment. So all of that stuff is the
6 backup and peripheral to the real issue which is the
7 acquisition adjustment.

8 CHAIRMAN DEASON: Well, Commissioner, right
9 now in some cases we -- well, I may be wrong on this,
10 but I think that we basically go through all this
11 procedure and sometimes we say, "Well, we're just going
12 to ignore acquisition adjustment for right now, and
13 when we get to a rate case we'll litigate it. But
14 we're going to do everything else like we normally do."
15 And what I'm hearing Staff say, correct me if I'm
16 wrong, is that if you just remove Paragraph 2, that's
17 what we would be doing. We'd just be doing everything
18 we're doing now, except there would be nothing in our
19 rule about acquisition adjustment, but how you define
20 what constitutes net book value and all these other
21 things would be in the rule.

22 MR. HILL: But whatever your pleasure is.

23 COMMISSIONER LAUREDO: Is there a possibility
24 that there may be other rules in this proceeding that
25 we may give the same treatment to?

1 MR. HILL: I hope not.

2 COMMISSIONER LAUREDO: Assuming that there is
3 a hypothetical possibility, wouldn't it be more
4 management efficiency to defer this until the end of
5 the hearing, so that we may be able to -- if at the
6 end, we'll have more than two we can combine them?

7 COMMISSIONER CLARK: No.

8 COMMISSIONER LAUREDO: Are we such prisoners
9 to procedure that we can't just deal with -- I guess we
10 are.

11 COMMISSIONER CLARK: To me it's not being a
12 prisoner of procedure, it's you had asked for, and I
13 think we need to focus only on acquisition adjustments
14 and the policy and the ramifications.

15 COMMISSIONER JOHNSON: I agree.

16 MR. HILL: And we have no objections in just
17 pulling this whole rule and we'll deal with it in a
18 separate rule proceeding.

19 COMMISSIONER LAUREDO: Okay. So that was a
20 motion or do you want me to make the motion, in its
21 entirety, not just sections.

22 COMMISSIONER CLARK: Yes, I think we should
23 withdraw --

24 COMMISSIONER LAUREDO: .0371.

25 COMMISSIONER CLARK: Yes. In it's entirety

1 and go to rulemaking on that -- an acquisition
2 adjustment rule or setting a rate base at time of
3 transfer, do that in a separate proceeding, and I would
4 -- that's my motion.

5 COMMISSIONER LAUREDO: Okay. Second.

6 COMMISSIONER JOHNSON: Second.

7 CHAIRMAN DEASON: Okay. Move and seconded.

8 All in favor say aye.

9 COMMISSIONER JOHNSON: Aye.

10 COMMISSIONER LAUREDO: Aye.

11 COMMISSIONER CLARK: Aye.

12 CHAIRMAN DEASON: All opposed?

13 Nay.

14 .0371 is withdrawn from this proceeding, and
15 that entire rule will be the subject of a separate
16 rulemaking proceeding.

17 MR. HILL: Yes.

18 CHAIRMAN DEASON: Sometime in the future.

19 MR. HILL: Yes. And with your approval, we
20 won't fire that up until we get a full Commission, and
21 that way allow a new Commissioner some time to get his
22 or her feet on the ground before they are thrown into a
23 rule hearing. A hearing will take us some time down
24 the road to get anyway, so, I mean, we won't
25 deliberately delay but we will schedule it with

1 Chairman to allow the new Commissioner some time to get
2 on board.

3 CHAIRMAN DEASON: That disposes of .0371.
4 .037.

5 COMMISSIONER LAUREDO: It's a lot of
6 repetition here on this rule.

7 MS. CHASE: In .037?

8 COMMISSIONER LAUREDO: Yes.

9 MS. CHASE: Yes, it is, Commissioner.

10 COMMISSIONER LAUREDO: We can't do it any
11 simpler way legally?

12 MS. CHASE: We tried. There are different
13 types of transfers, there's a transfer --

14 COMMISSIONER LAUREDO: You need to list
15 everything.

16 MS. CHASE: It's really much simpler that
17 way, believe it or not.

18 CHAIRMAN DEASON: I believe Public Counsel
19 suggested some changes similar to those that were
20 expressed for .033; is that correct?

21 MS. CHASE: That's correct and we will make
22 those same changes here.

23 CHAIRMAN DEASON: Okay. So whatever we did
24 with .033, we will be consistent here.

25 MS. CHASE: Okay.

1 MS. CHASE: Okay.

2 COMMISSIONER CLARK: Then can I move? Is
3 that it or is there more to it?

4 CHAIRMAN DEASON: Well, there's a question of
5 acquisition. On acquisition adjustment there was a
6 question of whether the acquiring company had some
7 burden to show why there should not be a negative, but
8 I guess all of that -- Staff recommended that that be
9 taken out. We should be fine because we're delaying
10 any decision on acquisition adjustments generally until
11 a later time, anyway.

12 MS. CHASE: That will be fine.

13 COMMISSIONER CLARK: With those changes I
14 move .037.

15 COMMISSIONER LAUREDO: Second.

16 CHAIRMAN DEASON: Without objection.

17 CHAIRMAN DEASON: I think now would be an
18 appropriate time to break for lunch. We'll take a
19 lunch break and we'll reconvene at 1:00.

20 (Thereupon, lunch recess was taken at 12:00
21 p.m.)

22 - - - - -

23 CHAIRMAN DEASON: Commissioners, I believe
24 that we're on Rule .039.

25 COMMISSIONER LAUREDO: I move .039.

1 that .039 is adopted.

2 COMMISSIONER CLARK: What page is that on?

3 COMMISSIONER LAUREDO: 44.

4 CHAIRMAN DEASON: Do you have a question?

5 We'll hold up for just a moment. (Pause)

6 COMMISSIONER CLARK: No questions.

7 CHAIRMAN DEASON: So show .039 adopted.

8 Rule .117. The Accounting for Pension Costs.

9 Rule .117.

10 COMMISSIONER CLARK: I move Staff on that.

11 This is only a suggestion that Public Counsel also
12 believes we should put the regulatory treatment besides
13 the accounting treatment --

14 COMMISSIONER LAUREDO: I second it.

15 MS. MERCHANT: That's correct.

16 COMMISSIONER CLARK: So I move Staff also.

17 CHAIRMAN DEASON: Let me ask a question.

18 Public Counsel has a concern that we maintain the
19 flexibility to treat it however we see fit for
20 ratemaking purposes; is that right? Or is that not
21 Public Counsel's position?

22 MS. MERCHANT: Public Counsel just recommends
23 that it be funded and escrowed and that's all.

24 CHAIRMAN DEASON: But everyone agrees that
25 adopting this rule does not mandate how it is treated

1 adopting this rule does not mandate how it is treated
2 for ratemaking purposes?

3 MS. MERCHANT: That's correct.

4 CHAIRMAN DEASON: This is strictly for
5 accounting purposes and how it's to be reported.

6 MS. MERCHANT: That's correct.

7 CHAIRMAN DEASON: Show .117 adopted without
8 objection.

9 COMMISSIONER LAUREDO: I have just a little
10 question. I don't agree with it, but is that -- we don't
11 require any of the industries to do funding, do we?

12 MS. MERCHANT: I think the general -- no.

13 COMMISSIONER CLARK: It depends. I mean,
14 some of the smaller telephone companies we might
15 require them to do it. It depends on whether or not
16 you want to bank on the financial strength of the
17 regulated entity or the entities from which they would
18 -- in which they would invest their funds.

19 MS. MERCHANT: I think generally what is done
20 is the utilities are funding that amount which is
21 deducted for tax purposes, not necessarily the amount
22 that's -- the regulatory amount. But there has not
23 been, to my knowledge, a requirement that it be funded
24 unless Ms. Salak can answer.

25 COMMISSIONER LAUREDO: I agree with the way

1 think this issue, I hope it comes up again somewhere
2 along the line. I know it's come up in rate cases.

3 COMMISSIONER CLARK: The funding versus
4 nonfunding? I think it will come up every time, won't
5 it?

6 MS. MERCHANT: I think it should.

7 MS. SALAK: There have been instances in
8 other industries where there was a complaint about not
9 fully funding, and it's been addressed before. We have
10 never required full funding. It's always been based on
11 tax, tax considerations.

12 COMMISSIONER CLARK: And considerations about
13 the viability of the company.

14 COMMISSIONER LAUREDO: Exactly. And though,
15 ironically, I don't want to get into it, you know, the
16 other day we waived, for example, and I made half jest
17 -- I know that gets me in trouble at times, but Sprint
18 doesn't have to fund it, something in -- or in escrow
19 or whatever. And Sprint is losing mucho money. But
20 somehow, you know, we think big --

21 COMMISSIONER CLARK: Big is better.

22 COMMISSIONER LAUREDO: What is it in banking
23 it used to be called, "too big to fail." If you were a
24 small, particularly a minority-owned bank, they can
25 close you. But, you know, if you were City Corp, "Oh

1 boy, we've got a problem here. We can't close City
2 Corp, now." So it's a little bit of the same parallel.
3 Anyway, this is not the form for that.

4 CHAIRMAN DEASON: Okay. I believe the next
5 rule is Rule .433. I'm sorry, Rule .433 is a rather
6 involved rule. Perhaps it would be best to look at it
7 section by section. We'll begin with Section 1 of Rule
8 .433.

9 COMMISSIONER CLARK: What page?

10 CHAIRMAN DEASON: It's on Page 71.

11 I believe Public Counsel makes the argument
12 that we should include in the rule a provision for a
13 penalty for quality of service which is found to be
14 unsatisfactory. That's our normal policy, is it not,
15 if we find service to be unsatisfactory?

16 MR. CROUCH: You have the prerogative of
17 having some punishment; usually so many basis points if
18 they are not meeting acceptable quality of service.
19 There have been many cases in the past where there has
20 been some punishment left.

21 MS. MERCHANT: It's not necessarily -- it's
22 not always a return on equity penalty because sometimes
23 it could be a reduction in the manager's salary or
24 another allowed expense. And the Commission has done
25 that in the past so it's not -- sometimes the return on

1 equity does not have that big of an impact on the
2 rates, a reduction by 100 basis points.

3 CHAIRMAN DEASON: There's true. We have made
4 disallowances, for example, in the president's salary.

5 MS. MERCHANT: That's correct.

6 CHAIRMAN DEASON: I guess my question is
7 would it be appropriate to include language that the
8 Commission may make disallowances or reduce return on
9 equity if a finding of unsatisfactory service is made
10 or something to that effect?

11 MS. MOORE: My concern with that is in other
12 cases the inferences that you may not, that every time
13 you put in something saying "we may do this" that you
14 may preclude yourself from --

15 CHAIRMAN DEASON: Well, maybe we should put
16 "we shall." I keep hearing that if we have a policy,
17 we have to put it in a rule. And time and time again,
18 if we make the finding, we make the penalties. So does
19 it have to be in a rule?

20 COMMISSIONER LAUREDO: Certainly, the word
21 "may" -- I agree with you.

22 MR. CROUCH: "May" gives you latitude where
23 "shall" doesn't give you as much latitude.

24 CHAIRMAN DEASON: I agree with that, too.

25 COMMISSIONER LAUREDO: But I think it serves

1 a purpose of highlighting it by "may."

2 COMMISSIONER CLARK: Where is that?

3 COMMISSIONER LAUREDO: Subsection 1. I would
4 agree, so I'll move because you can't move. He's
5 suggesting it or he's discussing it in his issues.

6 CHAIRMAN DEASON: Well, this is actually
7 Public Counsel's proposal, unless I'm misreading
8 something. Is that correct, Ms. Dismukes? Your's is
9 "shall," but I think we've suggested "may." You do
10 recognize the fact, though, that sometimes the
11 Commission needs flexibility and that sometimes it may
12 be preferable for a penalty to take the form of some
13 type of a disallowance, of a president's salary or some
14 other appropriate mechanism.

15 MS. DISMUKES: Right. And I don't think by
16 using the word "penalty" that you necessarily mean that
17 that's a return on equity penalty. It could be
18 anything.

19 COMMISSIONER CLARK: What it really indicates
20 is a penalty in terms of a fine and penalty authorized
21 by statute. That may have been why we concluded to
22 take it out the last time.

23 CHAIRMAN DEASON: Well, see, one case that
24 comes to mind is that we didn't want to impose a
25 penalty and just have those funds given to the State,

1 we wanted to do something that would benefit the
2 customers who were suffering from the particular
3 situation at that time.

4 So a return on equity was not an appropriate
5 vehicle, so we made the disallowance of a portion of
6 the president's salary, which had two benefits. One,
7 it sent a signal to the utility that it was a penalty
8 for actions that were not appropriate; and, two, it
9 reduced revenue requirements for the benefit of the
10 customers. So it had a double benefit where if it was
11 just a penalty, for example a fine, you would only have
12 one of those benefits.

13 MS. DISMUKES: I guess what we're just
14 talking about here is semantics. I view a penalty as
15 being broader than just a fine or -- but maybe if
16 that's what a penalty means, then we can change the
17 language to be consistent with whatever.

18 COMMISSIONER CLARK: It may just be that the
19 Commission may take appropriate action when quality of
20 service does not meet the appropriate standard.

21 COMMISSIONER JOHNSON: Looking at their
22 language, I had interpreted OPC to -- you want it to be
23 mandatory.

24 MS. DISMUKES: Right.

25 COMMISSIONER JOHNSON: If we find the quality

1 of service -- then we shall impose some kind of
2 penalty. You aren't telling us what kind, you're just
3 saying if this is proven as a fact, a penalty will be
4 imposed so that we don't have the discretion so that
5 when there is quality of service, if they prove it up,
6 something is going to happen.

7 CHAIRMAN DEASON: Let me share a concern with
8 that. There could be instances where we have a case,
9 and maybe ownership has changed or something, I don't
10 know, and we find that, yes, quality of service is
11 unsatisfactory, Management is aware of it. They've
12 taken steps, they're going to be -- we think we're
13 getting cooperation. It would be unfair to impose a
14 penalty at this time when things are getting better.

15 I think the Commission needs that flexibility so
16 that we can find if there is unsatisfactory service, but
17 there may be reasons to not impose some type of a penalty.
18 I think we've done that before in the past, too.

19 MR. CROUCH: That's correct.

20 COMMISSIONER LAUREDO: I would move we
21 include the word somewhere near "may impose that."
22 Just send a signal --

23 CHAIRMAN DEASON: Ms. Moore, I don't know if
24 -- that created a problem in your mind.

25 MS. MOORE: I'm trying to recall the discussion

1 we had in the hearing and decided not to do it.

2 COMMISSIONER JOHNSON: I think it was on a
3 different issue, but it was the same point. When you
4 start putting this language of "may" in one particular
5 instance, there are other instances where we may do
6 that but we haven't specified it. And that was the
7 argument you were raising before, that there are other
8 instances that where we may impose penalties, and if we
9 put it in one, we need to either put it in all or not
10 put it in any.

11 MS. MOORE: That was one and there was also
12 discussion, particularly of penalty. Maybe one of the
13 parties can help me out, but there was -- and I don't
14 recall now exactly, but there was the conclusion that
15 we shouldn't.

16 COMMISSIONER LAUREDO: But you agree that we
17 do do it on a case-by-case basis. We just recently did
18 it?

19 MS. MOORE: To make adjustments based on that
20 but we don't call it penalties.

21 COMMISSIONER LAUREDO: We don't call them
22 penalties maybe..

23 CHAIRMAN DEASON: Well, if we're strictly
24 going to do it on a case-by-case basis, maybe it should
25 be in the rule.

1 MS. MOORE: It's very susceptible to
2 individuals.

3 COMMISSIONER CLARK: I understand what Ms.
4 Dismukes is getting at. The notion that there ought to
5 be some consequences for having poor quality of
6 service. The problem is saying consequences equates to
7 penalty. I think that is the term of art that I think
8 indicates that we would have to fine them according to
9 the statute.

10 I guess I would also put forth the notion
11 that we may chose not to do anything to them because,
12 unfortunately, for numerous reasons that you're not
13 going to get anywhere if you do anything. And you've
14 got to sort of maybe escrow monies or do other things.
15 You've got to find alternative methods of coercions
16 other than a strict discipline. I would recommend
17 leaving it out.

18 COMMISSIONER JOHNSON: I would agree with
19 that recommendation.

20 CHAIRMAN DEASON: Okay. If you lawyers just
21 keep us straight. I keep hearing we've got to have
22 things in rules because we do it and now it's okay to
23 have it flexible and we do it case-by-case as long as
24 you are all comfortable.

25 COMMISSIONER LAUREDO: It depends on which

1 side of the issue you are on.

2 CHAIRMAN DEASON: I'm just an accountant. I
3 can't understand all of this legal content. But I can
4 tell you this, we're going to do the right thing, so
5 everyone is put on notice to that.

6 Okay. Paragraph 2.

7 COMMISSIONER LAUREDO: Did the Waterworks
8 tell me about the addition -- the proposal of the word
9 "cash"? Explain.

10 COMMISSIONER CLARK: I thought it should be
11 changed to "an allowance for working capital shall be
12 calculated as one-eighth of one -- of operation and
13 maintenance expense." I mean, that's what you're
14 talking about, isn't it, allowing them that amount in
15 the revenue requirement?

16 MS. MERCHANT: That's correct. Well, it
17 would be the return on that. The cash, the reference
18 to the cash working capital ties in more to the
19 Waterworks' opinion on Issue No. 3 where they're
20 talking about -- excuse me, Section No. 3, where
21 they're talking about the other deferred debits.

22 What the Waterworks really wants to do is
23 segregate Section No. 2 and say, "That's only the cash
24 working capital requirement." And Section No. 3 is the
25 midterm or whatever portion of items that should be

1 included in working capital or in rate base. So that's
2 where their language "cash" comes from. They want to
3 distinguish Section 2 from that of Section 3 regarding
4 the other deferred debits not being included in rate
5 base.

6 Staff's opinion is that it's not just cash
7 working capital, it's a proxy for the working capital
8 calculation. And that's what Section 2 intends, in
9 Staff's opinion that's what Section 2 does.

10 COMMISSIONER CLARK: If we don't change it,
11 there's really no misunderstanding of what this means.
12 When you're deciding what your working capital needs to
13 be for terms of earning a return, it's the one-eighth
14 of O&M.

15 MS. MERCHANT: That's correct.

16 COMMISSIONER CLARK: I'm comfortable with
17 that. I've been here when we've had this rule, and
18 then we went to the balance sheet and now we're back
19 again. I think probably this is one way of saving
20 money. I realize it may not be as accurate as the
21 balance sheet, but I just think it's one of those
22 instances where it doesn't make sense to spend a lot
23 more money to get that accuracy.

24 CHAIRMAN DEASON: Well, Commissioner, I
25 intend to disagree with you. I'm not convinced that

1 doing a balance sheet approach is any more expensive or
2 a great deal more expensive, particularly for the
3 larger companies, but in the spirit of compromise, I
4 would be willing to agree to allowing the one-eighth of
5 O&M for smaller companies. But I would, at least for
6 As, and perhaps even for Bs, I would still think the
7 balance sheet is appropriate.

8 COMMISSIONER CLARK: I think that's a good
9 compromise because I would presume they're doing
10 something similar to that anyway.

11 CHAIRMAN DEASON: I would think so.

12 COMMISSIONER LAUREDO: Any comments from this
13 side of the table?

14 MR. SEIDMAN: No, I think we've pretty much
15 presented how we feel on the thing, and our position
16 still is that the formula, the one-eighth O&M formula
17 historically has been to determine just the cash
18 working capital portion of working capital to
19 prepayments, inventories and things of that nature or
20 in addition to the one-eighth portion that was
21 determined, and that it's not just a case of the
22 balance sheet approach for working capital versus the
23 formula approach for working capital. In my mind it's
24 the balance sheet approach for cash working capital versus
25 the formula for cash working capital plus the prepayments

1 and O&M -- prepayments and inventories. Something's
2 missing when you confine it. There are assets that the
3 utility will not be allowed to earn a on.

4 CHAIRMAN DEASON: So you're arguing in favor
5 of the, I guess for a lack of a better term, the
6 modified one-eighth formula, that being allowing the
7 one-eighth formula and then going to the balance sheet
8 and picking up deferred debits and inventories.

9 MR. SEIDMAN: Those debits that are not
10 picked up now, yes, by either.

11 CHAIRMAN DEASON: See, Commissioner Clark, it
12 just shows how much reliance they put on the balance
13 sheet. It's all right to do it for deferred debits and
14 credits.

15 COMMISSIONER CLARK: Well, I like your
16 compromise.

17 CHAIRMAN DEASON: Would it be for A and B to
18 require the balance sheet? I can't make a motion, I'll
19 just make suggestions.

20 COMMISSIONER CLARK: I'll make a motion.

21 COMMISSIONER LAUREDO: She made a motion and
22 I'll second it.

23 CHAIRMAN DEASON: And then that would be for
24 all other companies --

25 COMMISSIONER CLARK: One-eighth.

1 CHAIRMAN DEASON: The one-eighth formula.
2 I have a motion and a second. All in favor
3 say aye.

4 (All Commissioners vote aye.)

5 CHAIRMAN DEASON: Any opposed? Does that
6 give Staff proper direction?

7 MS. MERCHANT: Yes, sir.

8 MR. SCHIEFELBEIN: Excuse me. May I
9 interject something on this?

10 CHAIRMAN DEASON: I'll ask you a question.
11 Mr. Schielfelbein, do you have something to add?
12 (Laughter)

13 COMMISSIONER LAUREDO: After we've voted?

14 MR. SCHIEFELBEIN: Yes.

15 COMMISSIONER LAUREDO: Well, I asked you if
16 you had any comments before.

17 MR. SCHIEFELBEIN: Well, I wouldn't have
18 asked it until you had voted that way.

19 The decision that you've just made was not --
20 and this will come up a few more times perhaps as we go
21 through rest of the rules, for As and Bs you are doing
22 a rather substantial change from what you had proposed
23 in your notice of rulemaking in March right, wrong or
24 indifferent. And it seems to me that when that
25 happens, two things ought to be considered by you at

1 this juncture.

2 First of all, you obviously, I think it's
3 fair to say, have not done any formal study of the
4 economic impact of that decision because the economic
5 impact statement that was prepared in connection with
6 your March proposals didn't anticipate this happening.
7 I would request that before you actually adopt this
8 rule, at a minimum that you do an economic impact
9 evaluation under the applicable rules.

10 COMMISSIONER CLARK: Let me ask you
11 something. What is the status now? What do you
12 companies have to file for working capital?

13 MR. SCHIEFELBEIN: Strictly one-eighth.

14 COMMISSIONER CLARK: They file one-eighth,
15 they don't have to do a balance sheet? Marshall, what
16 do they do now?

17 MR. WILLIS: I missed your question,
18 Commissioner.

19 COMMISSIONER CLARK: What do all the
20 utilities have to file? A balance sheet or a
21 one-eighth O&M?

22 MR. WILLIS: A one-eighth.

23 COMMISSIONER CLARK: When did we change from
24 doing a balance sheet or is a balance sheet still
25 required somehow in the MFRs?

1 MR. WILLIS: No. The balance sheet method
2 for working capital is not required by the MFRs. They
3 were changed right after the rule docket; I think that
4 was in '81.

5 MS. MERCHANT: '89.

6 MR. WILLIS: '89. '89 is when they started
7 doing that.

8 MS. MERCHANT: Shortly after that, the MFR
9 rule was changed and that rule form -- we were just
10 discussing that, the rule form now requires the
11 utilities to file the balance sheet -- I mean, file
12 working capital using the one-eighth of O&M; and we
13 were going to see if we could work that into this rule
14 package, which that same section is .437, which is
15 subsequent to what we're going to discuss this
16 afternoon.

17 So that .437 would now say that, based on your
18 vote, that the utilities are required to file using the
19 balance sheet approach. And it's just a page in the form
20 that says that that would need to be changed.

21 COMMISSIONER CLARK: I feel like I've seen a
22 balance sheet in a case recently; have I?

23 MS. MERCHANT: Only if it was an issue, and
24 generally the issue was raised by Public Counsel. And
25 that would be when you would see a balance sheet

1 calculation. It has not been filed by a utility since
2 the MFR form was changed. Because it says -- the MFR
3 form says that if you use the balance sheet approach,
4 the Commission will not consider rate case expense
5 related to that.

6 COMMISSIONER CLARK: Chris, let me ask you a
7 question. Is there a problem with notice of this
8 change to this rule?

9 MS. MOORE: No, I don't believe so. It's
10 been made during the course of the proceedings.

11 COMMISSIONER CLARK: Oh, it would be based on
12 the record? Okay.

13 MS. MOORE: Are you talking about specific
14 economic impact concerns?

15 MR. SCHIEFELBEIN: Well, I'm concerned with
16 two things: First of all, because we have what I think
17 is fairly characterized as a very substantial departure
18 from what your policy has been for the several years
19 and also what had been noticed in this proceeding, I
20 think you have an economic impact problem and
21 potentially you have a point of entry problem.

22 I don't know whether or not something like
23 this would properly be the subject of a rule challenge
24 over at DOAH or not. But certainly there's never be a
25 point of entry provided to anybody to challenge this

1 decision; and if you simply go to notice of adoption of
2 rules on this, you know, we've been deprived -- all the
3 parties have been deprived of any opportunity to get
4 this set before an independent hearing officer.

5 CHAIRMAN DEASON: Here again this is an
6 accountant speaking in legal terms and so I'm going to
7 take this risk, but I always thought that if a rule --
8 in a rule proceeding, we proposed a rule, put everybody
9 on notice as to what the rules are going to be
10 addressed. And we have a hearing on it, we take
11 comments from everybody, and that the final version
12 could be totally different from that proposed -- 180
13 degrees different, as long as we feel that it's the
14 appropriate policy and we've received comments
15 consistent with that to have a basis to do that. And
16 when I gather what comments that Public Counsel gave,
17 certainly are the support for that; and just because it
18 was not proposed that we change, does not mean that
19 nobody had notice that this could happen.

20 Notice was given to everyone that one of
21 rules that's going to be looked at is working capital.
22 And we could have done anything under the sun. I guess
23 we could have required a lead lag study; or we could
24 have said, "There's not going to be any working capital
25 allowance"; or, "We're just going to give a flat

1 \$10,000 to every company regardless of size." I guess
2 the possibilities are endless.

3 And a party cannot anticipate where the
4 Commission is going to be and say, "Well, we don't
5 think they're going to be depart from previous policy
6 and so, therefore, we don't have to participate." If
7 they make that decision, they're putting their own
8 selves at risk for choosing not to participate.

9 Now, that's an accountant's understanding of the
10 rulemaking process. Ms. Moore, tell me where I'm wrong.

11 MS. MOORE: I don't believe you are wrong.

12 COMMISSIONER LAUREDO: Well, what's your
13 concern in layman's terms rather than legal is that
14 this change would impose on companies you represent
15 undue expense?

16 MR. SCHIEFELBEIN: Yes.

17 COMMISSIONER LAUREDO: So we're back to the
18 same argument, and the argument that some things you do
19 anyway and, with computers, the cost should be lower.

20 COMMISSIONER CLARK: Well, I'm satisfied with
21 the notion that we filed our procedures appropriate.

22 MR. ARMSTRONG: Mr. Chairman?

23 MR. SCHIEFELBEIN: Even on the economic
24 impact that there's never --

25 COMMISSIONER CLARK: Yes.

1 MR. ARMSTRONG: Could I just request a
2 clarification? What you have voted on today, is that
3 saying that Class As and Bs shall be required to use
4 balance sheet?

5 COMMISSIONER CLARK: Uh-huh.

6 CHAIRMAN DEASON: Well, the whole Rule .433
7 is prefaced with the opportunity to request -- I guess
8 request waivers or to request different treatment if it
9 can be shown that any of the requirements in .433 are
10 unduly burdensome or, I guess, for other good cause shown.

11 So, if, for example, there's a good reason
12 why balance sheet should not be used, certainly I think
13 that any utility it is permissible that they show why
14 it's not applicable to them or why it's not good policy
15 or why it's burdensome.

16 MR. ARMSTRONG: Commissioner, just the
17 concern that we have in that regard is then if we do
18 have issues regarding litigation of what is the
19 appropriate balance sheet method, are we also going to
20 have litigation in the situations where one-eighth O&M
21 might produce a lower working capital allowance, are we
22 going to have to then litigate whether or not it should be
23 -- are we going to be faced with we're going to take the
24 lower of balance sheet or working capital? Is that what
25 we can foresee now as a result of this rule? Or rather,

1 are we going to be required to use balance sheet?

2 CHAIRMAN DEASON: No, I think it's balance
3 sheet. And I think that for a number of companies they're
4 just going to -- the balance sheet is going to be higher
5 than one-eighth. Particularly when you start considering
6 unique circumstances of various companies.

7 MR. ARMSTRONG: I guess, given the
8 Commission's, you know, motion and vote today, I think
9 the company then, if we're faced with balance sheet, we
10 prefer to see "shall use the balance sheet method," if
11 that's the Commission's vote today. That's the only
12 comment we have.

13 CHAIRMAN DEASON: Well, isn't that the
14 terminology, "shall"?

15 MS. MERCHANT: Yeah.

16 CHAIRMAN DEASON: But the thing is, though,
17 at the beginning of .433, there's this provision which
18 gives -- unless my memory fails me.

19 MS. MERCHANT: You're correct.

20 MR. ARMSTRONG: It does say you can ask for a
21 waiver.

22 MS. MERCHANT: It's on Page 71.

23 MR. WILLIS: I think it's prefaced that it
24 has to be an unreasonable burden upon the utility. And
25 it can be proposed by any party as an unreasonable

1 burden. I don't see how you can look at the one-eighth
2 and trying to substitute the one-eighth for the balance
3 sheet just because it's lower as being an unreasonable
4 burden.

5 COMMISSIONER LAUREDO: Yeah, the first "shall"
6 on Line 2, I guess, that's a controlling "shall."

7 MR. ARMSTRONG: And what we would see is a
8 substitution of balance sheet for Class A and B. Okay.
9 That's fine. Thank you.

10 CHAIRMAN DEASON: I want to make the record
11 abundant and clear, the effort is not to get the lower
12 of the two.

13 MR. ARMSTRONG: Right.

14 CHAIRMAN DEASON: It's not to do both
15 calculations and say we're going to take the lower of
16 the two. That's not the intend whatsoever.

17 MR. ARMSTRONG: No, no, I just was worried
18 about litigation expense, too. As I've said, you've
19 voted and we accept that.

20 COMMISSIONER CLARK: The rule tells you to do
21 a balance sheet method if you're an A or B. I don't
22 see how we could -- it would be hard for us to say that
23 you misspent money complying with the rule. And the
24 rule indicates it has to be an undue burden, not that
25 it results in a higher expense.

1 MR. ARMSTRONG: Thank you.

2 MS. MOORE: Commissioners, before we leave this,
3 though, such a change will result in another change in a
4 subsequent rule to an existing form. We would also have
5 to change the form and adopt it by rule.

6 MS. MERCHANT: That's in Section .437, which
7 is also to be discussed later on this afternoon.

8 CHAIRMAN DEASON: Okay. Why don't we bring
9 that up at that time? Obviously, we need to be
10 consistent throughout our rules --

11 MS. MERCHANT: That's correct.

12 CHAIRMAN DEASON: -- and just remind us at
13 that time when we take that rule up and I'm sure we'll
14 make that change then.

15 MS. MERCHANT: Okay.

16 MR. SCHIEFELBEIN: Commissioners, so I'm not
17 -- I don't mean this in any sort of anything other than
18 on the face of what I'm saying, and I'm sure this won't
19 affect your decision. But I do think, on the economic
20 impact question, that that has not been properly
21 addressed; and I will be recommending to my client what
22 they do is up to them -- that they consider filing a
23 formal request as a nonprofit association as provided
24 under the rules for one to be done. And that would be
25 -- there's a certain timetable established in the

1 Administration Procedures Act for that. And they may
2 tell me to fly a kite, but I didn't want you to be sore
3 at me that I didn't mention that here today.

4 COMMISSIONER LAUREDO: We have been sore at
5 you for a while now.

6 MR. SCHIEFELBEIN: I know. (Laughter)
7 Where have I gone wrong? Anyway, thank you.

8 CHAIRMAN DEASON: All right. Thank you.
9 That disposes of Paragraph (2).

10 Section (3) of .433.

11 COMMISSIONER CLARK: I move Staff.

12 MS. MERCHANT: Commissioners, excuse me for
13 interrupting, but the second -- I mean, excuse me, on
14 Page 72, Line 4 through 6, that refers to the formula
15 method. Would we -- maybe we could add on for Class C
16 utilities or maybe it just reads -- (Pause)

17 CHAIRMAN DEASON: Well, I think it's pretty
18 clear because this would only -- that sentence would
19 only apply if we're using the formula; and if we're
20 using the balance sheet --

21 MS. MERCHANT: It wouldn't apply.

22 CHAIRMAN DEASON: -- it wouldn't apply.

23 MS. MERCHANT: Okay. Okay.

24 CHAIRMAN DEASON: Okay. Section (3) has been
25 moved. Without objection show Section (3) adopted.

1 Section (4).

2 COMMISSIONER CLARK: Move Staff.

3 COMMISSIONER LAUREDO: Second.

4 CHAIRMAN DEASON: And this is just whether
5 we're going to use the simple average or whether it's
6 going to be a 13-month average; is that correct? Show
7 without objection, Section (4) is adopted. Section
8 (5).

9 COMMISSIONER CLARK: Let me understand the
10 parties' position on this. What you're suggesting is
11 if the property tax can be shown to have appropriately
12 been allocated to only used and useful, you would allow
13 the whole thing?

14 MS. MERCHANT: It depends on how the county
15 taxes the property. Some counties tax only the used
16 and useful portion, and in those situations it would
17 not be appropriate to make a nonused and useful
18 adjustment. That's why we worded it that way, so that
19 the latitude would be there if -- depending on how --
20 all the counties do it differently. They have
21 different ways, many ways, to do that. So it would
22 leave the issue open as to how each county does it,
23 whether an adjustment should be made.

24 COMMISSIONER CLARK: I can move Staff on that
25 issue.

1 COMMISSIONER JOHNSON: Second.

2 CHAIRMAN DEASON: Without objection, show
3 Section (5) adopted.

4 We need to go back and revisit (4). I think
5 we may have a little bit of an inconsistency.

6 We've previously determined that we want to
7 use the balance sheet approach for As and Bs. Well,
8 under my understanding of the balance sheet approach,
9 that's basically taking the balance sheet and getting a
10 13-month average. The balance sheet loses, in my
11 opinion, would lose some of its validity if you're just
12 taking a beginning and year-end average for balance
13 sheets, so that would be inconsistent. I think that we
14 either need to clarify that you use 13-month averages
15 for the balance sheet approach or just clarify that
16 we're going to use a 13-month average for As and Bs.
17 But it's got to be clarified one way or the other.

18 MR. WILLIS: I agree, Commissioner. That's
19 one thing we thought about when you brought this up,
20 but we weren't sure if you wanted to use a simple
21 average for that or not. But it's your pleasure.

22 CHAIRMAN DEASON: No. I think we need to
23 clarify that when we use the balance sheet for As and
24 Bs, that's to be done on a 13-month average basis. And
25 my opinion is that for As and Bs there's not that much

1 of a burden to do 13-month average for all balance
2 sheet calculations -- I mean, for all rate base
3 calculations, period, including the working capital.
4 But my main concern at this point is that we be
5 consistent.

6 Commissioners, so you understand what the
7 issue is -- I guess perhaps you do understand, but the
8 issue is, we've adopted a policy for working capital
9 which by its very nature requires the compilation of
10 13-month averages.

11 COMMISSIONER CLARK: That's what balance
12 sheet does.

13 CHAIRMAN DEASON: That's basically what a
14 balance sheet analysis is for working capital. And
15 then you're talking, to do a full rate base
16 determination, you're just talking about a few more
17 accounts. Doing a 13-month average, you're basically
18 talking about net plant in service, depreciation,
19 accumulated depreciation, and property held for future
20 use, and a few other catagories. But the most of your
21 13-month averages are going to crunch out when you do
22 the balance sheet analysis to begin with.

23 Marshall, that's about right, isn't it?

24 MR. WILLIS: That's correct.

25 COMMISSIONER CLARK: I would move that we

1 make those changes, then.

2 MR. WILLIS: The only problem you may have is
3 it's going to cause a tremendous change to the MFR
4 package right now. Because all schedules are done by
5 simple average; and how we're going to deal with that,
6 I guess the same way that we're dealing with the
7 balance sheet approach. But it is going to be a big
8 change to a lot pages in the MFRs, so we'll have to
9 somehow go through rule proceedings or do it as part of
10 this one at the same time.

11 MS. MERCHANT: I think the change for the
12 working capital calculation was very simple for the MFRs,
13 but changing the schedules from beginning and end-of-year
14 average to 13-month average is going to take a lot of
15 work. And it's not going to be something, I would think,
16 that you would have to have it --

17 CHAIRMAN DEASON: Well, my main concern is
18 with the balance sheet. That's the very nature of
19 doing the balance sheet is you look at every month of
20 the year; and working capital is more susceptible to
21 changes during the year. I guess net plan is certainly
22 susceptible to a change, too. But for there to be a
23 meaningful effect on the beginning and year-end average of
24 plant in service, you'd have to like, for example, close a
25 big addition to plant or new plant; and those things are

1 pretty obvious and stand out on their own anyway.

2 Commissioners, what I'd suggest is that we
3 just clarify at this point that the balance sheet
4 analysis for As and Bs, by necessity, is going to have
5 to require the utilization of 13-month average data,
6 which is limited --

7 MS. MERCHANT: You mean the balance sheet for
8 working capital?

9 CHAIRMAN DEASON: The balance sheet for
10 working capital is going to necessitate the use of the
11 13-month average data and we'd limit it to the working
12 capital calculation.

13 MR. WILLIS: Okay. Commissioner, I wasn't
14 trying to indicate that we couldn't do it. I just wanted
15 to let you know what kind of problems we have to deal with
16 with these schedules as far as this MFR package. Because
17 if you truly want to do that, mix apples with apples
18 instead of apples with oranges, you know, we'll work it
19 out. I just wanted you to be aware --

20 CHAIRMAN DEASON: Well, let me ask you this.
21 I'm trying to be agreeable with Staff; because I know
22 when everything is said and done and we leave the room,
23 you all are the ones that are going to have to deal
24 with all of this stuff every day.

25 What would you prefer? Given that we've made

1 the decision to use balance sheet for As and Bs, given
2 that and that necessitates 13-month average data -- at
3 least for those accounts in the work capital
4 calculation -- given that, what would you prefer?

5 MS. MERCHANT: I personally would prefer to
6 stick with the beginning and end-of-year average,
7 because it's just a lot simpler. And with the latitude
8 that you could look at the 13-month average to see if
9 they've really made any -- if there had been any
10 manipulations made from those balances, that would
11 always be a test of reasonableness that you would have
12 available. And even then, either the 13-month average
13 or the beginning and end-of-year average, you would
14 still have the latitude to go inside those amounts and
15 see whether are not they're reasonable.

16 So, I mean, just because they had a cash
17 balance of a certain amount throughout the year, that
18 does not mean that cash account is reasonable, or any
19 other account. There certainly could be other
20 adjustments necessary beyond just what the actual
21 13-month picture shows, or the beginning and end-of-
22 year picture shows.

23 CHAIRMAN DEASON: Are you suggesting then
24 that you do the balance sheet analysis for working
25 capital on a beginning and year-end basis?

1 MS. MERCHANT: Yes, sir. And that would be
2 consistent with the rate base and the capital
3 structure, if we used the beginning and end-of-year
4 average for both of those components. And then to use
5 it as a test to see what the 13-month average looks
6 like, that would be part of your discovery process.

7 That's my personal --

8 CHAIRMAN DEASON: But why are we -- I mean,
9 if we're going to test it against 13-month average, why
10 not just use 13-month average? I don't see where the
11 savings are.

12 MS. MERCHANT: Well, I think you're going to
13 be looking -- I mean, you're not going to be looking --
14 you've got to look at every single component in it
15 anyway. You're going to be looking in great detail at
16 the whole calculation. So, I mean -- (Pause)

17 CHAIRMAN DEASON: Does that conclude your
18 comments?

19 I'm going to ask for comments from each party
20 on this because I want to make sure that what we do is
21 consistent and we don't send the wrong signals. I'm
22 just going to just go down. Mr. Seidman?

23 MR. SEIDMAN: If we're going to be doing
24 working capital on a balance sheet approach, I don't
25 see where there has to be 13 months for all balance

1 sheet accounts.

2 I know we talked about the balance sheet
3 approach as being the total balance sheet; but for the
4 working capital portion, you're not going to be looking
5 at plant in service, and accumulated depreciation, the
6 CIAC, the long-term debt and the equity portions,
7 you're going to be looking at the current liabilities
8 and the deferred debits. And only those portions that
9 are going to be considered as being components of
10 working capital, I think, need to be considered on a
11 13-month basis.

12 And the reason is, I think, is as you've
13 pointed out, that there's a lot of volatility on
14 current assets and liabilities. And even if there are
15 differences from month-to-month on the long-term assets
16 and liabilities, it's not going to affect what the
17 working capital result is.

18 CHAIRMAN DEASON: Okay. Mr. Hoffman.

19 MR. HOFFMAN: Mr. Chairman, I think Mr.
20 Ludsen can explain this in detail in terms of the
21 burden that we think this imposes on Southern States.

22 CHAIRMAN DEASON: Okay.

23 MR. LUDSEN: With respect to the issue of
24 whether rate base for ratemaking should be calculated
25 on a 13-month average balance, from our standpoint I

1 very strongly object to that. It's definitely going to
2 increase rate case expense. It's extremely burdensome
3 when you have to calculate 13 months for 150 systems
4 for all the different components of rate base.

5 As far as the actual cash working capital, I
6 wouldn't have as much problem with that because that's
7 calculated on a total company basis and then allocated.

8 CHAIRMAN DEASON: Okay. Ms. Dismukes.

9 MS. DISMUKES: We would go along with using
10 13-month average rate base in capital structure to be
11 consistent with working capital. With the exception of
12 Southern States, I think the increment in the other
13 utilities is pretty small in terms of the addition
14 requirements.

15 Anytime I've ever done a balance sheet
16 approach to working capital, I always do the entire
17 balance sheet on a 13-month average basis in order to
18 pull out my components and make sure all the totals
19 total up properly. So you're not talking about a great
20 deal of incremental work, in my opinion.

21 CHAIRMAN DEASON: Commissioners, we need to
22 decide what we're going to do. I can make a
23 suggestion. My suggestion is that, even if it's going
24 to necessitate changes in the forms, we be consistent
25 and for As and Bs we do 13-month average for every rate

1 base category.

2 I understand that imposes a burden on
3 Southern States, but we've already indicated that if
4 there's not much volatility in the plant accounts and
5 those are the only ones that are on a system-by-system
6 basis, I think you'd be free to petition the Commission
7 or to show where its burden and there's not much
8 volatility in the plan accounts anyway; and that beginning
9 and year-end averages may be completely suitable and
10 perhaps preferable for a situation like Southern States.

11 But we're writing the rule for the general
12 case; and I think it's preferable to be consistent and
13 require a 13-month average for As and Bs for not only
14 working capital, but for all rate base components. And
15 I realize that's going to necessitate some changes, but
16 so be it.

17 That's what I'd suggest. Now, that's just a
18 suggestion. But we need to do something.

19 MS. MERCHANT: Are you proposing that we just
20 make the changes based on your vote, and then you
21 wouldn't revote on the form, based on that? The
22 changes to the form? Because, I mean, it's essentially
23 just going to be changed --

24 CHAIRMAN DEASON: Instead of two columns,
25 you're going to have 13.

1 MS. MERCHANT: That's right. Okay.

2 CHAIRMAN DEASON: I think.

3 MS. MOORE: Okay. And when we get to the
4 rule that incorporates it, we'll have to state that, I
5 believe. Does Staff have -- the form, the new form
6 will have to be filed within about 14 days.

7 COMMISSIONER LAUREDO: But Staff is still of
8 the opinion that you'd rather leave it as stated in the
9 proposed rule? You said that in as much. I mean,
10 we're all -- and I agree with you.

11 COMMISSIONER CLARK: Well, no. "As stated in
12 the rule" carries with it the connotation that we
13 should go back to one-eighth of O&M?

14 MR. WILLIS: Or you do a balance sheet with
15 beginning and year-end average, and I think you lose a
16 lot of the substance of the balance sheet analysis by
17 doing that.

18 COMMISSIONER CLARK: Yes. So I guess, then,
19 it is -- if you're going to do the balance sheet, you
20 ought to do, to do it right and to get the benefits
21 that you intend to get by requiring it, you've got to
22 do 13 months. Now, the question is do we want to do
23 that because of what it engenders in terms of changes
24 to the MFRs?

25 CHAIRMAN DEASON: If we're going to use

1 beginning and end-year average -- which there are some
2 arguments to do, I'm not saying there aren't any -- if
3 we're going to do that, I think we need to go back and
4 revisit the working capital. And perhaps -- I'd have
5 as much faith -- maybe I'm overstepping my bounds. I'd
6 have almost as much faith in a one-eighth formula as I
7 would in the beginning and year-end average of balance
8 sheet. I haven't done the analysis, balance sheet
9 analysis, myself, personally, on beginning and year-end
10 average. I don't know what kind of results you could
11 come out with.

12 You're basically talking about taking
13 December 31st data for one year and December 31st data
14 for the following year, and you don't know what variations
15 happened during the year. You don't know whether
16 consumption changes from summer to winter. You don't know
17 when the company declares its dividends. A lot of things
18 can change during the months of the year; and if you're
19 going to do a balance sheet analysis to do working capital
20 with just basically two data points, I don't know whether
21 you're going to have a real meaningful number or not. And
22 that's what my concern is.

23 So if we're going to accept the argument that
24 we only need beginning and year-end average, I think we
25 need to go back and revisit the requirement to do

1 balance sheet working capital for As and Bs.

2 COMMISSIONER CLARK: Why don't we do this: I
3 would suggest that we go back and make it one-eighth of
4 O&M, and then we look at the notion of changing it for
5 As and Bs later on, Phase II maybe. Could we do it in
6 Phase II?

7 MR. WILLIS: Yes, we could do it.

8 MS. MERCHANT: Certainly.

9 COMMISSIONER CLARK: Then we would have more
10 specific -- I could understand -- I think I have a
11 flavor of what we're talking about, but I would benefit
12 by more information on this, maybe a presentation at
13 Internal Affairs, as to what's in our MFRs and more
14 specifics as to balance sheet, or you can just come talk
15 to me about it. So I guess I would go back to the
16 one-eighth.

17 MR. WILLIS: If we do it in Phase II, we could
18 also have along all the changes in the MFRs with it.

19 MS. MERCHANT: That's correct.

20 MR. WILLIS: And that would make it a lot
21 cleaner.

22 COMMISSIONER CLARK: So we're just putting
23 off --

24 CHAIRMAN DEASON: All right. Let's get back
25 to some procedure here. I basically take your motion

1 as a motion to reconsider the vote on utilizing the
2 balance sheet method of working capital for Class A and
3 B utilities.

4 COMMISSIONER CLARK: Yes, I would make that
5 motion.

6 CHAIRMAN DEASON: All right. You move that
7 we reconsideration? We have a motion to reconsider.
8 Do we have a second?

9 COMMISSIONER JOHNSON: Second.

10 CHAIRMAN DEASON: Moved and second that we
11 reconsider. All in favor say, aye.

12 (Commissioners Clark and Johnson vote, aye.)

13 CHAIRMAN DEASON: All those opposed say, nay.

14 (Chairman Deason and Commissioner Lauredo
15 vote, nay.)

16 CHAIRMAN DEASON: Now, where are we? Motion
17 fails.

18 COMMISSIONER CLARK: Yes.

19 CHAIRMAN DEASON: Okay. We did not reconsider.
20 So the vote stands on utilizing balance sheet analysis for
21 working capital for Class A and B utilities.

22 Now, the question comes up on Section 4 where
23 it talks about utilizing the beginning and year-end
24 average methodology, how do we reconcile that with the
25 utilization of balance sheet for working capital?

1 My suggestion would be is that we have the
2 13-month average for As and Bs for all rate base
3 calculations, including working capital.

4 COMMISSIONER LAUREDO: The controlling word
5 is you said "have to"?

6 CHAIRMAN DEASON: Well, no, you do not have to.
7 But then the question comes to mind, do you lose the
8 accuracy that you gain by utilizing 13-month average?

9 COMMISSIONER LAUREDO: And what's the
10 tradeoff? And the tradeoff is a lot of cost and
11 additional work?

12 COMMISSIONER JOHNSON: That's one thing I
13 didn't understand, Staff's argument as to why using the
14 13-month approach would be so burdensome. What's the
15 problem? And I think Public Counsel is saying it's an
16 incremental difference and perhaps for Southern States it
17 may be a problem, but generically, you all do it anyway.
18 Right? They do it anyway. Kim does it anyway.

19 MS. MERCHANT: I think basically it's just
20 when you get a lot of different plant adjustments,
21 you've got -- I'm sure that it's probably more my
22 personal preference kicking in than savings. But there
23 is a lot of thought going into these plant adjustments,
24 getting them into the right month and getting
25 accumulated depreciation set up straight. And that's

1 basically where, if you have numerous plant
2 adjustments, then it could get time-consuming on
3 Staff's position.

4 Now, as far as the utility's position, if
5 they're setting up their schedules, they're just going
6 to be pulling these amounts off their balance sheet and
7 their plant ledgers, so that the expense to the utility
8 is not going to be that much greater.

9 COMMISSIONER JOHNSON: And it will provide a
10 lot more accurate information?

11 MS. MERCHANT: I think it will give you a
12 picture of what's going on throughout the year. It's
13 not going to be --

14 COMMISSIONER JOHNSON: And that's what we
15 would need for the formula approach, a more accurate
16 picture?

17 MS. MERCHANT: For the balance sheet
18 approach?

19 COMMISSIONER JOHNSON: Yes, I'm sorry.

20 MS. MERCHANT: Well, it would be a lot less
21 easy to manipulate. The 13-month average would be a
22 lot less.

23 MR. WILLIS: Commissioners, truthfully, if
24 you're going to use a 13-month average for the balance
25 sheet approach, you need to look at any cost savings

1 that might be produced by not going for the 13-month
2 average on all. Because at that point, Mr. Deason is
3 perfectly correct, that you pulled in a hefty chunk of
4 the balance sheet accounts already for the working
5 capital allowance. And truthfully, the reason why we
6 did the beginning year end average is strictly because
7 of the cost savings that was upon the industry, not
8 upon Staff workload or anything else because we're
9 funded, we're not part of rate case expense. And that
10 is where we were trying to develop cost savings.

11 Now, if you're going to go to the 13-month
12 average on the working capital and that's a real
13 consideration to do that, then it's not really going to
14 be that much more cost burdensome to do a 13-month
15 average on plant in service or accumulated
16 depreciation. And if it is, then you have the preamble
17 to the rule where the utility can come forward, like
18 Southern States, and say, "I'm having to do 127 of
19 these things and it's going to be really burdensome to
20 do 13-month averages." I would have to agree with
21 them. I would have to come down here and ask the
22 Commission to waive that requirement for them to do 127
23 of those things.

24 CHAIRMAN DEASON: But for working capital
25 they have a consolidated balance sheet instead of

1 working capital. It's only a 13-month average one
2 time, not 127 times.

3 MR. WILLIS: Right. But it would just be a
4 waiver of certain components is all it would be. I
5 mean, that would have to be done case-by-case waiving
6 the requirements for those things, but you're perfectly
7 correct about working capital. It's just done one time
8 and they could do that 13-month average. There's no
9 reason why they shouldn't.

10 CHAIRMAN DEASON: Commissioners, what's your
11 pleasure on 4?

12 COMMISSIONER LAUREDO: The argument boils
13 down to one of consistency between 4 and 2 as it
14 relates to more accuracy and accurate information as
15 versus the cost, which is now, after further
16 discussion, being shifted away from Staff, which is
17 where we started the discussion, to companies; and they
18 admitted that the consideration is more towards
19 companies and then it's basically one company primarily
20 impacted, which is Southern States, but a significant
21 player in the industry.

22 CHAIRMAN DEASON: I think you've pretty well
23 summed it up.

24 MR. SEIDMAN: Any company that has multiple
25 systems is going to face that same problem of having to do

1 the, you know, run on 13 months on each individual system
2 for plant purposes and CIAC purposes and depreciation and
3 all of that. Also, I think you have to consider how is
4 this going to impact projected test years.

5 COMMISSIONER LAUREDO: And you don't feel
6 comfortable with the appeal clause because that just
7 gives you no certainty, no predictability? It's up to
8 the Commission?

9 MR. SCHIEFELBEIN: An escape clause is or
10 appeal clause is better than nothing, but there's no
11 standards. I mean, there's no guidance and I don't
12 know what the guidance ought to be, but as to whether
13 something might be granted or not, there's no objective
14 way to try to predict to yourselves whether we're
15 wasting our time or not.

16 CHAIRMAN DEASON: What is the -- we classify
17 utilities into classifications by revenue, annual revenue?

18 MR. WILLIS: Yes, we do.

19 CHAIRMAN DEASON: And what is the minimum
20 annual revenue for a B?

21 MS. MERCHANT: 150,000.

22 MR. WILLIS: The break off is a Class A's
23 minimum, 750,000; and Class B is from that down to
24 150,000.

25 CHAIRMAN DEASON: So we could have a system

1 as small as \$150,000 or \$150,001 in annual revenue that
2 we would be requiring a 13-month average?

3 MR. WILLIS: That's correct. One of our
4 original proposals way back before we noticed all of
5 this stuff was to just have Class A do the 13-month
6 balance sheet.

7 CHAIRMAN DEASON: And Class A is 750,000?

8 MR. WILLIS: 750 up. Because you do have a
9 lot of Bs in there that have just moved up.

10 CHAIRMAN DEASON: Commissioners, I would move
11 -- I can't move.

12 COMMISSIONER LAUREDO: Well, I move for
13 reconsideration of Issue 2. Did I read your mind?

14 CHAIRMAN DEASON: Okay. We have a motion to
15 reconsider -- yes, you did. We have a motion to
16 reconsider the vote on Paragraph 2.

17 COMMISSIONER CLARK: Who's moving it this
18 time?

19 COMMISSIONER LAUREDO: I moved it.

20 COMMISSIONER CLARK: I'll second it.

21 CHAIRMAN DEASON: It's been moved and
22 seconded. All in favor say, "aye."

23 (All Commissioners vote aye.)

24 CHAIRMAN DEASON: Now we can reconsider it.

25 COMMISSIONER LAUREDO: And the

1 COMMISSIONER LAUREDO: And the
2 reconsideration will be to include only systems -- A
3 systems instead of A, B.

4 CHAIRMAN DEASON: Is that your motion?

5 COMMISSIONER LAUREDO: Yes.

6 COMMISSIONER CLARK: We are wondering if
7 that's your suggestion?

8 CHAIRMAN DEASON: I would suggest that, yes.

9 COMMISSIONER LAUREDO: Yes.

10 CHAIRMAN DEASON: Commissioner Lauredo is
11 reading my mind.

12 COMMISSIONER LAUREDO: I depend on you for
13 these accounting things. I'm following you.

14 CHAIRMAN DEASON: We have a motion to -- in
15 Section 2 of Rule .433 to require the utilization of
16 the balance sheet approach for Class A utilities only
17 and to require the use of the one-eighth formula for
18 all other class utilities. That's the motion.

19 COMMISSIONER JOHNSON: Second.

20 CHAIRMAN DEASON: Moved and seconded. All in
21 favor say, "aye."

22 (All Commissioners vote aye.)

23 CHAIRMAN DEASON: Any opposed? Staff has
24 that change.

25 COMMISSIONER CLARK: Mr. Chairman, then on

1 Issue, is it (3) we have to deal with, is it Subsection
2 (3) or (4)?

3 COMMISSIONER LAUREDO: (4).

4 CHAIRMAN DEASON: (4).

5 COMMISSIONER CLARK: I would direct Staff to
6 make the appropriate language that a 13-month average
7 be used for all appropriate schedules for the A.

8 MS. MERCHANT: Now, there is a slight problem
9 with that. We've got a form for A and B, so we have to
10 create a new form for B but we can do that and do that
11 in the next version, if you want. Because that's not --

12 MR. WILLIS: We can talk about that when we
13 get to the --

14 CHAIRMAN DEASON: We'll talk about that at
15 that time, but it may be that -- I mean, you've already
16 got the form existing. It's basically just creating
17 new forms for As.

18 MS. MERCHANT: That's correct.

19 COMMISSIONER CLARK: Chris' concern is that
20 you've got to adopt the form as a rule. You've got to
21 file it over at the --

22 MS. MERCHANT: That's correct.

23 CHAIRMAN DEASON: And you got to do that
24 within what period of time?

25 MR. WILLIS: 14 days.

1 COMMISSIONER CLARK: 21 days after you file
2 the rules?

3 MS. MOORE: No. 21 days from the conclusion
4 of the hearing is when it has to be filed for adoption.

5 CHAIRMAN DEASON: Well, while we have the
6 subject at this time, is that going to be a problem to
7 get the new forms done within that period of time?

8 MS. MERCHANT: I could see it could be a
9 problem for the As just for Staff time to make sure it
10 was all correct. Now making a change --

11 COMMISSIONER LAUREDO: But could that be
12 waived by the parties or the intervenors? Or is that
13 something --

14 CHAIRMAN DEASON: No, that's a requirement of
15 rulemaking.

16 MS. MOORE: A statutory requirement.

17 MS. MERCHANT: I would feel a lot better if
18 we could have a little bit more time. But we could
19 certainly try to do that.

20 CHAIRMAN DEASON: I guess, if nothing else,
21 we could delay this final vote until a regular agenda
22 conference to actually have that as the final day that
23 triggers the 14 days. I mean, that's kind of
24 circumventing the --

25 MR. WILLIS: But it would give us more time.

1 MS. MOORE: It would be another public meeting.

2 CHAIRMAN DEASON: And we could do that at a
3 regularly scheduled agenda conference?

4 MS. MOORE: Yes.

5 COMMISSIONER LAUREDO: But people will leave
6 here today with a clear knowledge of what we did, in
7 fact, vote for so we're not being --

8 CHAIRMAN DEASON: It would just be to bring
9 it -- we could just bring it back to a regular agenda
10 conference for the final vote as far as the rule that
11 pertains to the forms.

12 MS. MERCHANT: That's correct. That's .437.

13 CHAIRMAN DEASON: I see. That doesn't really
14 accomplish what we want to do.

15 MS. MOORE: Well, it's better to have that
16 rule and this one that makes the change that would be
17 required.

18 CHAIRMAN DEASON: Would it then be required
19 to separate that out from all the other rules and then
20 put them on their own timetable or we do it all at one
21 time?

22 MS. MOORE: You're not required to but you
23 can. We could go to the ones you've voted to adopt
24 today, I can go ahead and file them for adoption.

25 COMMISSIONER LAUREDO: And pass this on --

1 COMMISSIONER CLARK: I don't think there's
2 any reason to break it out. You can use that time to
3 accomplish getting the papers together that you need to
4 and we'll just bring it back later. I mean, we've been
5 doing this for a while, another two weeks isn't going
6 to hurt us. So I think just delay the whole package.

7 CHAIRMAN DEASON: Bring everything back for
8 one final look at and one final vote. And it should
9 be, hopefully, just a matter of two or three minutes
10 because we're doing all of this work now. And we could
11 do it at a regularly scheduled agenda conference. That
12 would give Staff enough time to make sure that all of
13 the forms are in the proper format.

14 MS. MERCHANT: Yes, sir.

15 COMMISSIONER LAUREDO: Mr. Shreve.

16 CHAIRMAN DEASON: Is there a problem with
17 that, Mr. Shreve?

18 MR. SHREVE: I really don't understand where
19 we are. We originally voted out balance sheet approach
20 for As and Bs, and in the past we had had the
21 opportunity to file a case using the balance sheet
22 approach for As and Bs if we thought we wanted to do that.
23 Now, as I understand it, the balance sheet approach would
24 just go for As and we would be prohibited from filing the
25 balance sheet approach on Bs.

1 So it seems to me we're moving, not only away
2 from where we were in the past, but away from where you
3 were going with the As and Bs. It seems to me it would
4 almost be better to go ahead and accomplish what you
5 were accomplishing in the first place on the As and Bs
6 and straighten out the rest of it with the MFRs and the
7 filings in any direction you wanted to go as far as the
8 13-month average.

9 CHAIRMAN DEASON: The problem is requiring
10 13-month average calculations for companies as small as
11 \$150,000 in annual revenue. That's the problem.

12 MR. SHREVE: I understand that. So if you
13 ignore the 13-month average problem, at least you can
14 go back to where you were on the balance sheet approach
15 is the direction you wanted to go. Because right now
16 we're losing the ability, as I understand it, to file
17 the balance sheet approach on Bs.

18 CHAIRMAN DEASON: That's a good question.
19 When we adopt a rule saying we're going to utilize the
20 balance sheet, are we going to utilize the one-eighth
21 formula? Does that mean that all parties are precluded
22 from ever raising that as an issue?

23 MS. MERCHANT: It says, "shall."

24 COMMISSIONER LAUREDO: And it says, "an
25 applicant or an intervener demonstrates that these

1 rules is an unreasonable burden." Does that take OPC
2 as -- under that umbrella, the first sentence in the
3 rule?

4 MR. WILLIS: It doesn't preclude anybody from
5 raising it as an issue, because if somebody can prove
6 it's an unreasonable to do this and it's --

7 MR. SHREVE: Burden on the company?

8 COMMISSIONER LAUREDO: No, on you.

9 MR. WILLIS: This is intervener to party
10 also.

11 COMMISSIONER LAUREDO: It says, "The
12 applicant or any intervener demonstrates that these
13 rules result in an unreasonable burden."

14 MR. SHREVE: I guess what I'm saying,
15 couldn't you ignore the problem that you have? And
16 understand, we would prefer the consistency, too. The
17 utilities would prefer to go ahead and have the -- not
18 have the 13-month average even though you have the
19 balance sheet approach with a 13-month average. You've
20 already made a decision that the A and B were better
21 with the balance sheet approach.

22 CHAIRMAN DEASON: We considered that.

23 MR. SHREVE: Right. And it seems to me that
24 rather than letting the problem -- maybe it would be
25 preferential -- it would be preferred to have it

1 consistent, but should we lose where you were with the
2 balance sheet approach because of that, or come back
3 later and straighten out that part of it and straighten
4 out the MFRs, make a decision on whether or not you
5 should have a 13-month average.

6 CHAIRMAN DEASON: Well, the way I view all of
7 this -- I understand that concern, but at some point
8 we've got to reach closure on these rules. We've got
9 to make some decisions what's best for everyone
10 concerned, and one of the motivating forces behind this
11 whole rule change was trying to streamline the process.
12 And I know that sometimes when you streamline, some
13 people may win, some people may lose. But what we've
14 got to do is try to figure out what is best for all
15 involved given the entire situation.

16 I think what the Commission is saying is that
17 we're uncomfortable requiring all of this information
18 for a company as small as \$150,000 of annual revenue.
19 And we're also uncomfortable with having 13-month
20 averages used for one purpose in rate base and having
21 beginning and year end averages for another purpose,
22 that we try and want to be consistent. And just giving
23 the whole ball of wax, we just want to mandate the
24 13-month average for everything for As and not mandate
25 that for Bs and smaller. I see where there's some give

1 and take there. Obviously, there is.

2 MR. SHREVE: And I understand that. I just
3 don't want to lose, and I don't think that's what you
4 have in mind, is us having the same opportunity that we
5 had before to file a balance sheet approach. And I
6 think there may be some disagreement on that, and maybe
7 it's something you should take a look at but I don't
8 think that's what you intend for us to lose that
9 opportunity when, in fact, a few months ago we were
10 saying it was mandated for both.

11 CHAIRMAN DEASON: But then, on the other hand,
12 what's the purpose of having a rule if we're going to
13 litigate it every case. I mean, that's part of the
14 attraction of having the rule is that we think that on the
15 whole this is the most advantageous and most expeditious
16 way to do it, and hopefully it's going to reduce rate case
17 expense and et cetera, and other benefits.

18 MR. SHREVE: I understand that. Of course,
19 if you're going to reduce rate case expense, you might
20 as well do it the right way.

21 CHAIRMAN DEASON: I understand that, too.

22 MR. SHREVE; Which is your position.

23 COMMISSIONER LAUREDO: Is there anything that
24 prohibits us from passing whatever we passed today in
25 like designating this .433 for a second look in the

1 second round?

2 CHAIRMAN DEASON: I would much prefer just
3 going ahead and let's dispose of it today. I guess,
4 any rule that we adopt can always be reviewed again
5 sometime in future. Just because we adopt it today
6 does not mean it can never be changed.

7 COMMISSIONER LAUREDO: Okay. Upon whose
8 motion? Any Commissioner's motion?

9 COMMISSIONER CLARK: Just talk to the --
10 yeah, you can move to go to rulemaking.

11 COMMISSIONER LAUREDO: Okay. I think what
12 we've arrived at is the best we can do today. It's not
13 perfect. I mean, it's a little bit of a step back in
14 some areas, but giving that we have that flexibility to
15 revisit with new Commissioners and new ideas and more
16 focus, I can live with the short-term damage, if that's
17 what you can call it.

18 CHAIRMAN DEASON: Let's just make sure that
19 we've got everything clear as to where we are.

20 With the votes on Paragraphs 2 and 4 we are
21 going to be requiring the balance sheet approach, using
22 13-month averages for working capital. We're also
23 going to require the utilization of 13-month averages
24 for all rate base calculations for Class As. And for
25 Class Bs and smaller, we're going to permit the

1 utilization of the -- I'm sorry, the formula approach
2 for working capital, and we're only going to require
3 the use of beginning and ending year averages for other
4 rate base components.

5 MR. WILLIS: You might want to clarify your
6 13-month average on your As to bring into account cost
7 of capital calculations, too, because they're part of
8 the balance sheet.

9 MS. MERCHANT: Section 4 does say that, rate
10 base and cost of capital. And we'll just modify it to
11 say, "As would be 13-month average, Bs and Cs would be
12 beginning and end of year average."

13 CHAIRMAN DEASON: Now, by doing this, this is
14 going to necessitate a change in the forms. Right now
15 we have forms for As and Bs. And since we're making a
16 distinction between As and Bs for these calculations,
17 we're going to have to have separate forms for As and
18 separate forms for Bs. That can be done. It's just a
19 matter of having sufficient time to do that.

20 MS. MERCHANT: Certainly.

21 CHAIRMAN DEASON: What I would suggest is
22 that Staff take another look at that, and before we
23 conclude today, hopefully, we can get through it, the
24 rest of this today. Before we conclude today, maybe we
25 will have a better feel for exactly how much time is

1 going to be needed to get those forms modified and
2 submitted. And if we need to take some alternate
3 action at a later date to accomplish that, we'll make
4 that decision before we leave here today. And if we go
5 over until tomorrow, we can make that decision before
6 we conclude tomorrow.

7 MS. MERCHANT: Yes, sir.

8 CHAIRMAN DEASON: Right now we're going to
9 take ten.

10 (Brief recess.)

11 (Transcript continues in sequence in Volume
12 II.)

13 - - - - -

14

15

16

17

18

19

20

21

22

23

24

25