

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of)	DOCKET NO. 980561-WS
Rules 25-30.420, F.A.C.,)	ORDER NO. PSC-98-
Established of Price Index,)	1289-PCO-WS
Adjustment of Rates; Requirement)	ISSUED: October 5, 1998
of Bond; filings after)	
Adjustment; Notice to Customers;)	
and 25-30.425, F.A.C., Pass)	
Through Rate Adjustment)	

PROCEEDINGS: RULE HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JOE GARCIA
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Friday, December 11, 1998

TIME: Commenced: 1:35 p.m.
 Concluded: 2:20 p.m.

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

REPORTED BY: Debra R. Krick
 Court Reporter and Notary
 Public in and for State
 of Florida at Large

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APPEARANCES:

CHRISTIANA MOORE, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf of the Commission Staff.

BRIAN P. ARMSTRONG and MATT FEIL, Florida Water Services Corporation, P.O. Box 609520, Orlando, Florida, 32860-9520, on behalf of Florida Water Services Corporation.

STEPHEN BURGESS, Public Counsel's Office, 111 Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of the citizens of Florida.

P R O C E E D I N G S

1
2 CHAIRMAN JOHNSON: We are going to go ahead and
3 begin the proceedings.

4 MS. MOORE: Counsel.

5 CHAIRMAN JOHNSON: Counsel.

6 Chris, I don't believe your mike is on.

7 MS. MOORE: Excuse me. Would you like me to
8 read the minutes?

9 CHAIRMAN JOHNSON: Yes.

10 MS. MOORE: This hearing is being held pursuant
11 to a notice of rule-making that was issued on June
12 5th, 1998, and published in the Florida
13 Administrative Weekly on June 13th, the Florida Water
14 Service Corporation's request for hearing.

15 There were several other notices changing the
16 hearing date, and all are contained within Composite
17 Exhibit No. 1.

18 CHAIRMAN JOHNSON: Okay.

19 MS. MOORE: And I am Christiana Moore, appearing
20 on behalf of Commission staff.

21 CHAIRMAN JOHNSON: Okay. We will take
22 appearances.

23 MR. ARMSTRONG: Brian Armstrong, Florida Water
24 Services Corporation.

25 CHAIRMAN JOHNSON: Yes.

1 MR. FEIL: Matthew Feil, Florida Water Services
2 Corporation. The other person here sitting at the
3 table with us is Jeffery Wilson with Florida Water
4 Rate Fund.

5 MR. BURGESS: Steve Burgess with the Public
6 Counsel's office.

7 CHAIRMAN JOHNSON: Any other preliminary
8 matters?

9 MS. MOORE: Commission staff that are here and
10 will be speaking are Robert Casey and Greg Shafer.

11 CHAIRMAN JOHNSON: Okay. Anything else?

12 MS. MOORE: Just like to have Composite Exhibit
13 1 entered into the record, and everybody has a copy.
14 It contains all the notices in the rule and the
15 parties' comments that staff, Florida Water Service
16 and Public Counsel.

17 CHAIRMAN JOHNSON: Okay. We will identify it as
18 Staff Composite Exhibit 1.

19 CHAIRMAN JOHNSON: Consisting of 13 tabbed
20 items. And we will admit it at this time without
21 objection.

22 MS. MOORE: Thank you.

23 (Whereupon, Staff Composite Exhibit No. 1 was
24 marked for identification and received into evidence.)

25 CHAIRMAN JOHNSON: Anything else?

1 MS. MOORE: No. We believe we can start with
2 the staff presenting a very short summary of the
3 rule, and then perhaps the participants can do their
4 presentations.

5 CHAIRMAN JOHNSON: Okay. I understand, because
6 it's in the context of a rule hearing, that there is
7 no need to swear anyone in. There will just be
8 discussion and dialogue on the issues being raised.

9 MS. MOORE: We believe that's sufficient.

10 CHAIRMAN JOHNSON: Okay. We will begin with the
11 staff overview.

12 MR. CASEY: The amendments to Rule 25-30.420,
13 the price index rule, codify requirements for the
14 Agency to mail copies of the order establishing the
15 annual price index to each utility; specifies what
16 the index will be applied to, and what the Agency
17 will consider in establishing the index; requires the
18 utility to furnish identification and permit numbers;
19 and requires the utility to have a certain annual
20 report on file before notifying the Agency of a price
21 index increase.

22 Some changes were also made to respond to
23 comments made by the JAPC. The amendments to Rule
24 25-30.425, which is the pass-through rule, require
25 additional information from an utility, update the

1 rule to reflect changes to the law implemented, and
2 clarify existing language.

3 In addition, staff believes the proposed
4 official date of filing change can be stricken, since
5 the existing language has not been the subject of a
6 dispute.

7 CHAIRMAN JOHNSON: Okay.

8 MS. MOORE: There was not a statement of
9 estimated regulatory cost prepared, so there is no
10 need to give a summary of it. The reason it was not
11 prepared is there is no anticipated significant
12 increase or impact; and, therefore, a statement is
13 not required.

14 CHAIRMAN JOHNSON: Thank you. That will be
15 noted for the record.

16 Then are we prepared to go to the parties?

17 MS. MOORE: Yes.

18 CHAIRMAN JOHNSON: Mr. Armstrong.

19 MR. ARMSTRONG: Thank you, Madame Chair.

20 Florida Water has several comments regarding the
21 proposal as it relates to the pass-through provision.

22 CHAIRMAN JOHNSON: Okay.

23 MR. ARMSTRONG: I think -- I don't think anybody
24 would dispute that the purpose of the pass-through
25 provision is to mitigate the need for full blown rate

1 increases. Thereby, mitigating rate case expense,
2 thereby mitigating quite a few things that
3 justifiably should be mitigated at all cost. Staff
4 effort, company effort, cost, et cetera, et cetera.

5 In the presentation from staff today, you have
6 one demonstration, one hypothetical presented, which
7 results in what could be perceived as a benefit to a
8 utility under the current situation, as regards to
9 pass-throughs. But I think it's necessary to point
10 out that there are many, many hypotheticals that
11 would be -- exactly conflict with the hypothetical
12 presented to you and the staff presentation.

13 One of those hypotheticals that I can present
14 without using numbers, and that's what I would like
15 to do, or two without using numbers; and then give
16 you a demonstration of a hypothetical that uses
17 numbers.

18 The first example would be a situation where,
19 three years ago, there was an increase in purchase
20 water cost. Two years ago, there was a decrease in
21 purchase water cost. The year -- a year ago, there
22 was no decrease or no increase. And then in the
23 present year, the utility experiences another
24 increase in purchase water cost.

25 Under the staff example, the staff scenario has

1 proposed in a rule what we would see is that you look
2 at the increase in the present, you acknowledge the
3 decreases in the past -- that would be a decrease
4 that occurred two years ago -- and you ignore the
5 increase that occurred three years ago, absolutely
6 ignore it.

7 Another situation might be where, three years
8 ago, there was a decrease in a purchase water cost.
9 Follow a year later, which would be two years ago, by
10 an increase. A year ago, nothing happens. So you
11 have a decrease, then an increase, then nothing. And
12 then you have an increase this year in a purchase
13 water cost. So the company files a pass-through.

14 Under the proposed method to be used by staff,
15 you would ignore the increase that happened two years
16 ago, but you would jump back and go to the decrease
17 that occurred three years ago, and use that as an
18 offset to the current change in rates that's proposed
19 in the way of a pass-through.

20 Now, using some numbers to give some numbers
21 that we can work with, and staff had provided one
22 example in their presentation. But if we have a rate
23 case that occurs three years ago -- and a rate has
24 established a purchase water of \$1.00 per thousand
25 gallons, say. And then the next year, we have an

1 increase in purchase water cost up to \$1.20 per
2 thousand gallons. The next year, there is a decrease
3 that knocks the purchase water cost down from \$1.20
4 to \$1.15. The next year, there is an increase, and
5 we go back up to \$1.25.

6 If under the utilities methodology, as used and
7 as required by the statutes, at least under current
8 thinking, is the utility would go in and file a
9 pass-through for purchase water cost that is equal to
10 the delta between the \$1.25 current cost and the cost
11 of a year ago, which, under my example, would have
12 been \$1.15. So there is a delta there of 10 cents.
13 And that's what we look to recover. Current cost
14 authorized in that rate case was \$1.00. We would add
15 10 cents to it, and end up with \$1.10 per thousand
16 gallons.

17 What staff is proposing here -- what is reported
18 by the Office of Public Counsel -- is that we look at
19 the delta from the present rate of \$1.25, we look at
20 what the rate was when it was a decrease down to
21 \$1.15, and we have a 10 cent delta. However, they
22 also would take another step and go back another year
23 when there was a decrease from \$1.20 down to \$1.15
24 and say we have got to take away another 25 cents.
25 So instead of a 10 cent delta, we only have a five

1 cent delta.

2 Now, as a practical matter, you apply that five
3 cents to the existing rate case authorized charge of
4 \$1.00, and you come out with \$1.05. Under the
5 hypothetical, the current cost per thousand gallons
6 is \$1.25. The utility is asking for \$1.10. So they
7 are not even asking for full recovery of the current
8 cost. But what the staff is proposing, and what OPC
9 would propose, is that the company only be permitted
10 to recover \$1.05.

11 Now, I suggest that is just as real a
12 demonstration -- and I would think even more likely
13 to occur than the presentation and the hypothetical
14 presented by staff.

15 And one thing I did discuss just briefly and
16 just before the hearing started today, and that is
17 just a concept of, we would hope that when as these
18 rule-makings -- that obviously there are advocates
19 here, and I am one of them, the company is one of
20 them -- obviously, Public Counsel has their role of
21 advocates -- but what we would hope to see is more of
22 what a staff presents right up front to a Commission
23 and everybody two examples, two hypotheticals that
24 are very easily described as what I did here, where
25 not only do you see the one example where the utility

1 benefits. The one I would also show you, the
2 examples, we had utilities suffering under the
3 current situation.

4 We believe --

5 CHAIRMAN JOHNSON: Mr. Armstrong.

6 MR. ARMSTRONG: Yes.

7 CHAIRMAN JOHNSON: The example that you just
8 provided, is that in here anywhere?

9 MR. ARMSTRONG: No, it's not. It's not in the
10 pre-filed comments.

11 CHAIRMAN JOHNSON: Okay. I didn't -- okay.

12 Are we going to have --

13 MR. ARMSTRONG: I wish it had been. We can get
14 that to you.

15 CHAIRMAN JOHNSON: It's a good example.

16 MR. ARMSTRONG: Sure, we can present that.

17 But, again -- and, you know, I guess we just
18 want to reiterate every point we can regarding, you
19 know, the statute, the Constitution of the United
20 States, the Constitution of Florida require a fair
21 and equitable treatment to the customers and the
22 company. And what we perceive as a -- is a
23 contiguous retrenching to the point of what can occur
24 that keeps rates as low as possible and can benefit
25 customers through those lower rates.

1 And although I can see that coming from
2 advocates, I would hope that we would start to see
3 the point where it's not coming from your staff, and
4 it is certainly not coming from the Commission. But
5 rather, let's look at all the facets here and not
6 pick the one side and address one side where it
7 slowly reduces rates.

8 Now, that brings us to a comment regarding the
9 OPC's comments, where they do focus on the word
10 change. And I think it's -- it's a good comment.
11 The statute says, a change in rates. And that's what
12 you should focus on. And, again, briefly, we talked
13 about this a little while ago with your staff, if
14 it's the change in rates that you're supposed to be
15 looking at, under my hypothetical, the change is from
16 \$1.00 per thousand to \$1.25 per thousand gallons.
17 That's the change.

18 The way we have been working it is the way I
19 described, where we go in after the three years, and
20 we ask for the difference between \$1.00 and \$1.10.

21 Now, I think it's -- I think it's a distinct
22 possibility that what we should be looking at is the
23 difference between \$1.00 and \$1.25. And that could
24 be explored and should be explored, because I think
25 that really gives credence to the word change as used

1 in the statute.

2 This relates to Florida Water, I am not sure how
3 many other utilities. But, you know, we do have a
4 banding going on with Florida Water, banding in the
5 rate structure. And that magnifies the problem that
6 we see if there is to be this netting of decreases
7 only, because under that banding -- and we actually
8 experienced this several years ago when we had
9 uniform rates -- the company nets out the increases
10 and decreases and won't file for any pass-throughs,
11 unless there is an incremental increase.

12 Well, if -- not only is there a complication
13 with the bands, because as the Commission said, we
14 are going to stay within the bands of the
15 pass-throughs -- not only is there a complication
16 when you are having to look at six, seven, however
17 many systems are in that band; but there is a further
18 complication and a further detriment to utilities
19 such as ours, which would do that netting over a
20 period of a couple of years, find that there are
21 decreases, but there are also increases. But they
22 basically offset, are not enough to go in for another
23 rate increase.

24 And then when we do realize -- hit that year
25 where there is a significant increase, net increase

1 in the rates, all of a sudden what we are going to do
2 is go back and find those places where, prior to that
3 time, we had netted, and it was insignificant to
4 difference. But we are going to go back and pick out
5 the decreases. And we are going to pick out those
6 decreases under what's being proposed at this point,
7 and end up being hurt.

8 Now, I think the key, and what we tried to say
9 -- and I think the Commission acknowledged back in
10 the Pasco County situation, at least as to the
11 Florida Water and several other utilities -- is that
12 the key is overearning. Is the utility overearning?
13 Just -- I guess it was Wednesday of this week, you
14 know, I was at a Florida Waterworks meeting. There
15 were 20 or so individuals there that represented more
16 than 20 utilities; and I asked a question, knowing
17 that I was coming today, how many of you all
18 represent utilities or work for utilities where you
19 have had overearnings situation in the last 10 years?

20 And out of those 20 people there, there was one
21 person who had represented multiple utility systems.
22 And one of those systems in the past 10 years had had
23 a PSC finding of overearning. Out of all the
24 hundreds, if not thousands, whatever number it is of
25 utilities you have out there that you regulate -- and

1 many of whom were represented in that room, because
2 there are several lawyers that represented multiple
3 clients, there was only that one instance.

4 So it seems like this rule unnecessarily
5 complicates a situation. And I have reiterated over
6 and over again that the method proposed in the rule
7 constitutes a netting. And I know it can very easily
8 be said, if that's not proposed in the rule, what's
9 proposed in the rule is filing the information only.

10 But I guess that's one thing where we'd like to
11 hear -- I mean, we know what staff's proposal is,
12 what they would do with this information, and that
13 would be to net. And that's really what we are
14 addressing, and that's what we are most concerned
15 about; you know, particularly, because I just want to
16 reiterate, you know, the statute certainly seems to
17 have the purpose of mitigating the need for rate
18 increases. And that's certainly the way we use the
19 statute. And we have looked at a total company and
20 not come in piecemeal with only the increases. And
21 we think that if the methodology, which might not be
22 set forth in rule, but which is being proposed is
23 adopted, that all that can happen is we would see
24 additional needs for rate filings in the future.

25 COMMISSIONER CLARK: Mr. Armstrong, where are

1 you in the rule?

2 MR. ARMSTRONG: Excuse me?

3 COMMISSIONER CLARK: Where is this requirement
4 in the rule that you're concerned about?

5 MR. ARMSTRONG: Just the filing of the three
6 historic years?

7 COMMISSIONER CLARK: Right. Where is that?

8 MR. ARMSTRONG: Okay.

9 COMMISSIONER CLARK: I see it. It's (1)(a) --
10 30.425.

11 MR. ARMSTRONG: Yes. (1)(a) -- 25-30.425(1)(a).

12 COMMISSIONER CLARK: And because it's your view
13 that there is no doubt what we intend to do with it,
14 this rule is in error -- you have no doubt that there
15 is going to be a netting; therefore, we have no
16 authority to do it?

17 MR. ARMSTRONG: Well, I can't say there is no
18 doubt; but I don't want to -- Commissioners, we want
19 to get on the record what our concerns were, because,
20 obviously, we don't want it to be said later on, you
21 didn't prepare, you didn't have any comments about
22 the rule.

23 COMMISSIONER CLARK: Okay.

24 COMMISSIONER DEASON: Let me ask Mr. Armstrong a
25 question.

1 The example that you gave, I take it that those
2 changes in purchase water cost that the utility chose
3 not to implement any of those pass-throughs until the
4 last year; and then it would be limited to the
5 difference between the 1.25 and the 1.15, and that
6 would be added to the original 1.00 that was -- I
7 guess when rates were set?

8 MR. ARMSTRONG: Right.

9 COMMISSIONER DEASON: Okay. But, obviously, you
10 would have the ability to do it year-by-year if you
11 so chose; is that correct?

12 MR. ARMSTRONG: Yes, Commissioner.

13 COMMISSIONER DEASON: Okay. Let me ask you
14 this, if you had done it the first year, you would
15 have been entitled to a 20 cent increase, correct?

16 MR. ARMSTRONG: Yes. Under my hypothetical,
17 sure.

18 COMMISSIONER DEASON: All right. And then the
19 next year, there was a decrease, but there would have
20 been no requirement to pass that through, unless
21 there were overearnings; is that right?

22 MR. ARMSTRONG: Right.

23 COMMISSIONER DEASON: Okay. And then in the
24 last year, when it goes to 1.25, what are you
25 entitled to there, the difference between 1.25 and

1 1.15, or the difference between 1.25 and 1.20?

2 MR. ARMSTRONG: If the company were filing in
3 year three?

4 COMMISSIONER DEASON: Yes.

5 MR. ARMSTRONG: Well, I know what we would do,
6 which is we would take the 1.20 and the 1.25.

7 COMMISSIONER DEASON: So that you would add
8 that, being a delta of five, and you would add it to
9 your 1.20 to come up to 1.25?

10 MR. ARMSTRONG: Right.

11 COMMISSIONER DEASON: But is it possible that
12 someone could request the difference between 1.25 and
13 1.15 for a delta of 10, and then add that to 1.20 to
14 get a rate of 1.30?

15 MR. ARMSTRONG: I -- I know it's possible. I
16 know it's possible.

17 COMMISSIONER DEASON: But you would agree that
18 that really is -- you would agree that that's really
19 not necessary, that's not -- you just want to be made
20 whole, correct?

21 MR. ARMSTRONG: Yeah. That's what this company
22 wants, is to be made whole.

23 We are picking out one category -- and that's
24 the point, too, I guess. We are picking out one
25 category of expense. And what we do is, we do try to

1 look at total company before you even make that
2 filing.

3 Our concern is, if we do say that the company is
4 subject to a detriment, if you don't file each time
5 you have a pass-through, then it -- what does it do,
6 it causes you to file more of those pass-throughs; or
7 it causes you -- if you do delay, because you don't
8 want to see rates fluctuating year-to-year-to-year,
9 and you do delay, then when you come in later on,
10 you're facing -- you won't come in with the
11 pass-throughs, you want the full blown rate case,
12 because you would be facing this netting without any
13 recognition of an increase.

14 By that, I mean, our existing rate under my hypo
15 would be \$1.25. If we followed the pass-through way,
16 it's -- we are contemplating what your Public Counsel
17 is indicating in their concept they would like to see
18 it. We would only recover \$1.05, so that mitigates
19 towards filing a full blown rate case.

20 COMMISSIONER DEASON: Let me ask staff, I know
21 that the rule right now is just to get information;
22 but what are we going to do with that information and
23 what's the problem we are going to cure with that
24 information?

25 MR. SHAFER: Commissioners, the cure that we

1 were looking for is the example that you stated just
2 a moment ago, where the utility could possibly wind
3 up with the \$1.30 in their rates rather than \$1.25.

4 All we are trying to do is make sure that there
5 is not a double recovery going on, because of a
6 decrease that was not passed through, followed by a
7 subsequent increase that did not take that decrease
8 into account. Mr. Armstrong's indicated that his
9 company wouldn't do that. I'm happy to hear that. I
10 am not comforted that the remainder of the industry
11 would not be in that position.

12 And in addition, you know, I certainly can
13 appreciate the total company picture approach.
14 However, the statute limits us on these pass-through
15 items to two or three specific categories of
16 expenses. That's what we are directed by the statute
17 to look at, and that was the focus of our concern.

18 Again, the Commission made a decision in the
19 series of Pasco County cases indicating that we would
20 look at earnings before implementing a pass-through
21 decrease. While that seemed like a very
22 straightforward concept, when it came to application
23 for the particular utilities involved in those cases,
24 what it resulted in was, rather than simplification,
25 it added a layer of complexity.

1 We have always based these index and
2 pass-through calculations on the most current annual
3 report on file by the utilities. When it became
4 clear that the earnings issue was going to be
5 considered, suddenly the utilities involved in that
6 case -- or at least several of them -- claimed that
7 the annual report was not reflective of their
8 earnings picture, and that we shouldn't be using that
9 as a basis, and we were provided with additional
10 information that required additional staff time to
11 evaluate.

12 The rule, at least this portion of the rule, was
13 formulated as a way to try to avoid that particular
14 circumstance in the future. And --

15 COMMISSIONER DEASON: Well, is this an attempt
16 to bypass the requirement that there be an earnings
17 test?

18 MR. SHAFER: I suppose you could look at it in
19 that way. It wasn't our intent to bypass the
20 Commission's judgment in that situation, but simply
21 to try to make the effective of that decision more
22 simple to deal with.

23 COMMISSIONER DEASON: And is it your -- I am
24 sorry, go ahead.

25 MR. SHAFER: So it wouldn't be our intent to

1 ever actually reduce the utilities' rates without
2 that being the desired end on their part. In other
3 words, if we looked at the situation and because
4 there had been a decrease in one of the prior years
5 that offset the increase, and created a situation
6 where the rate would be reduced, we have always
7 provided the opportunity to the utility to withdraw
8 their application under those circumstances, so that,
9 at least, they did not have to experience a rate
10 decrease.

11 COMMISSIONER DEASON: Well, I mean, is it --
12 with the utilization of this additional information,
13 would it be your intent or staff's intent in the
14 example that Mr. Armstrong gave to limit the company
15 to \$1.05 or to make sure that they don't get more
16 than \$1.25?

17 MR. SHAFER: The intent would be to make sure
18 that they didn't get more than \$1.25.

19 COMMISSIONER DEASON: Mr. Armstrong, you would
20 not have a problem with that, is that correct, if
21 that's the intent?

22 MR. ARMSTRONG: No. If that's the intent, no.
23 Obviously, that's what we see as what should happen
24 to that statute is to try to get to the 1.25 without
25 a full blown rate case.

1 MR. SHAFER: Let me clarify that to a certain
2 extent, and that is that staff has always operated
3 from the presumption that the utility will file for
4 the increases. That's not something that we have to
5 go and drum up business for them to do. And I have
6 to wonder if we aren't overstepping our statutory
7 confines if we were to try to go back and make up for
8 a series of increases that the utility had not
9 previously requested.

10 COMMISSIONER DEASON: So that you are saying
11 that maybe you would limit to that \$1.05, then?

12 MR. SHAFER: It's possible, I mean --

13 COMMISSIONER DEASON: Okay. Well --

14 MR. SHAFER: -- I haven't considered the
15 legality of that. I believe that the statute, in
16 some ways, limits us to the changes that occur within
17 a 12-month period.

18 COMMISSIONER DEASON: But then -- but that's --
19 but when you go back and consider the reduction that
20 took place the year before, that's outside the
21 12-month period.

22 MR. SHAFER: Yes, it is.

23 COMMISSIONER DEASON: So - okay. So their
24 argument could be that you are not being symmetrical
25 in the sense that, if you want to go back to a prior

1 period, it's only decreases, you don't look at
2 increases in prior periods.

3 MR. SHAFER: I think that argument could be
4 made. And what I would suggest to you is that the
5 utilities' control the application for these events.
6 And generally speaking, we don't initiate rate
7 increases when the utility hasn't requested them.

8 And, you know, I would be reluctant, I guess
9 would be the best description, to incorporate
10 increases in this mechanism that hadn't been
11 previously requested.

12 COMMISSIONER DEASON: Well, by this, are we
13 basically, then, encouraging utilities to file every
14 year, even though they may not find it necessary, but
15 just to avoid the penalty of having a decrease offset
16 against increases that weren't asked for? Every time
17 there is an increase, they are going to ask every
18 year. That's just guaranteed.

19 MR. SHAFER: It wouldn't -- it is not staff's
20 intent to put the utilities in a position of getting
21 a decrease below what the actual cost is in the rate.
22 And should that situation arise, I believe that we
23 would most certainly bring it to the Commission's
24 attention and to the utility's attention in an effort
25 to determine what would be the best way to resolve

1 it.

2 Now, we have used this like provision since, I
3 believe, 1986, in relation to the ad valorem tax
4 pass-through. And, to my knowledge, there hasn't
5 been any great concern about its application as it
6 relates to that particular expense.

7 CHAIRMAN JOHNSON: Any other questions,
8 Commissioners?

9 Mr. Armstrong, do you have additional
10 information?

11 MR. ARMSTRONG: No. Just the regular -- the
12 company wouldn't -- I wasn't aware of that, and the
13 company representatives I spoke with weren't aware of
14 that, this kind of thing, this offsetting going on
15 with the taxes. And we would have the same concerns.
16 I think it's the same situation.

17 CHAIRMAN JOHNSON: Okay. Anything else from
18 Mr. -- is that it for the company then?

19 MR. FEIL: Yes, ma'am.

20 MR. ARMSTRONG: Yes, thank you.

21 CHAIRMAN JOHNSON: Okay.

22 MR. BURGESS: Commissioners --

23 CHAIRMAN JOHNSON: Public Counsel.

24 MR. BURGESS: The language in the statute, of
25 course, is just talking about additional information

1 that's going to be required. And the rest is
2 inferential in anticipation of what the Commission is
3 going to do with it, which the Commission would do as
4 it applies the rule that's implemented.

5 I will tell you our concern with the way the
6 rule is right now, and it basically tracks the
7 concerns staff has, which is, let's say, in year one,
8 you have a reduction of 20; and in year two, you have
9 an increase of 20 from the previous reduced level.
10 So that the expense level is back where you started,
11 net gain of zero.

12 My understanding is that a utility could choose
13 not to come in in year one, has total autonomy over
14 that decision, and then come in in year two and get
15 an increase of 20 in the second year; thus paying --
16 requiring customers to pay 120 in the second year for
17 an expense that's 100. That's our concern.

18 Those areas that Mr. Armstrong raised, I agree
19 with them. I don't think that it should be a
20 situation where a utility has a jeopardy based on
21 adding one or subtracting one decrease and failing to
22 recognize that that's been offset. And I don't want
23 to get into the situation where we encourage
24 companies to come in for a pass-through when they
25 otherwise wouldn't, simply to protect themselves from

1 the whipsaw that works only one way.

2 I am not sure -- I didn't follow all the
3 specifics of Mr. Armstrong's various examples, but I
4 do think, though, that you would not -- you are
5 limited by the amount of increase in any one -- in
6 any one year. In other words, if the first year that
7 a utility comes in and is, for a pass-through, is the
8 third year and that increase for that year is a five,
9 for example, that's the most the utility will be able
10 to get as increased, simply because the statute says
11 that it shall not -- the utility may not use this
12 procedure to increase its rates as a result of -- et
13 cetera, et cetera -- more than once which increase
14 was initiated more than 12 months before the filing
15 by the utility.

16 So it's limited by what happens as far as an
17 increase by what happens in the last year. But I
18 think for the most part, from what I am hearing staff
19 saying and from what Mr. Armstrong says and from what
20 my position is, it's pretty much the same thing as an
21 issue of fairness with some limitations being as a
22 result of you cannot implement a -- it says
23 specifically an increase based on something that's
24 occurred more than 12 months prior.

25 And so I don't -- I don't know that this

1 language causes the problem that Mr. Armstrong
2 expresses. It's a problem that -- I think he raises
3 an equity issue. I think we raise a legitimate
4 equity issue. And that is, we don't want companies
5 -- perhaps Mr. Armstrong's companies would not, but
6 we are concerned if the law allows a company to come
7 in in year two for an increase after ignoring a
8 decrease in year one, we think the decrease should be
9 offset, should offset the increase. And we think the
10 statute allows for that, because in a previous
11 position in the same -- in the same subsection it
12 says, the new rates authorized shall reflect the
13 amount of change in the ad valorem taxes, et cetera.

14 So I think -- I guess it depends on what the
15 Commission does when it gets this information. But
16 the rule, itself, is simply a matter of garnering
17 information that's necessary to make an equitable
18 decision.

19 CHAIRMAN JOHNSON: Any other questions,
20 Commissioners?

21 COMMISSIONER JACOBS: This information -- I
22 guess I would have a question for Public Counsel.

23 MR. BURGESS: Uh-huh.

24 COMMISSIONER JACOBS: Would -- would the three
25 years, then, it would identify that conduct where you

1 would have the reduction in one year and the increase
2 in the next year, the offset, but yet we only have a
3 filing for the one year. If we saw that, what would
4 happen if the -- if the reduction was higher than the
5 increase.

6 MR. BURGESS: If the reduction were higher than
7 the increase, I would suggest, if a company files
8 that, and as staff indicated, the company has been
9 liberally given the opportunity to withdraw filings
10 as they so choose. But it would seem to me that the
11 proper approach for that particular potential
12 pass-through expense item would be if a previous
13 year's decrease is greater than current year's
14 increase, that that decrease -- that the net decrease
15 would be implemented, but for, I guess, there is an
16 earnings test associated that would limit it. But I
17 would suggest if a company chooses to come in, that,
18 yeah, that would be imposed. It's the company's
19 choice.

20 Now, let me go back to one of what -- like for
21 instance, if there were a first year's decrease and
22 the company ignored that, and then there is a second
23 year's increase that were greater than the first
24 year's decrease and the company ignored that, and
25 then came in for a third year's increase and were

1 seeking only that. I don't -- I am not looking to go
2 back before the intervening year, ignore the
3 intervening year and capture the entirety of the
4 offset that would take place from either one.

5 COMMISSIONER JACOBS: Okay.

6 MR. BURGESS: I realize that's none -- none of
7 that's in the rule, though. The rule just
8 contemplates the gathering of information.

9 MS. MOORE: Commissioners, I would suggest
10 that -- at least, with the rule that would give us
11 the information to determine the extent of the
12 problem and whether -- I don't even know if we know
13 how often there are decreases. And I believe the
14 rule would at least give us the information to
15 determine what is happening, and it would be the
16 Commission that would make the decision on whether
17 there is actually an offset if the company disagreed
18 with staff that there ought to be.

19 MR. CASEY: In practicality, when a utility
20 files for an index in pass-through, if we see that
21 there should be a netting, we go back to the company
22 and say, this is what we have calculated, in which is
23 the netting. If they don't agree with that, we would
24 come to the Commission. That's in our SOPs.

25 CHAIRMAN JOHNSON: Mr. Armstrong.

1 MR. ARMSTRONG: Yes. Commissioners, I guess --
2 I guess -- and it sounds like we'd all be of the
3 opinion that the statute is there -- in a perfect
4 world, the statute is there with the intent of
5 getting you to the current purchase water cost. And
6 that seems to be what everybody would agree to.
7 That's what the purpose of this statute is.

8 The question is, if you -- if you pass this rule
9 and the companies don't know what you intend to do
10 with the information, then you put a company at its
11 peril to go through the whole cost and effort of
12 putting together a pass-through filing, and then
13 coming in and finding out subsequently and possibly
14 to its detriment. And I believe if it was
15 detrimental, you would end up in appeals and
16 everything else that none of us want to see.

17 So I mean, if we are going to have this kind of
18 a rule, I think it would be best for everybody if we
19 said what the purpose and what the procedure would be
20 for the Commission upon this information being filed,
21 particularly because I think we are along the same
22 lines that the intent is really to get us to the
23 current cost; not exceed it, but to get there.

24 So, you know, we certainly, as a company, prefer
25 to see a rule that lays it out. File this

1 information. You are not being permitted to exceed
2 your current cost and have a rate that exceeds your
3 current cost, but the intent is to get you there.

4 COMMISSIONER DEASON: What we want to ensure is
5 that the rate of recovery does not exceed the actual
6 cost.

7 MR. ARMSTRONG: Right. Right.

8 COMMISSIONER DEASON: You think that that stated
9 purpose should be stated in the rule, so the
10 companies would know what -- the purpose of the
11 information and how it's to be used?

12 MR. ARMSTRONG: You know, it would be helpful
13 not only if that's stated, because I think that's the
14 correct assumption is that, you know, we should get
15 you to the cost; but I guess the process of how we
16 get to that point.

17 COMMISSIONER DEASON: Do you have any proposed
18 language that would accomplish that?

19 MR. ARMSTRONG: I wish I did, Commissioner. I
20 don't. I am sure we could --

21 MR. SHAFER: Commissioners, I would only respond
22 to that to the extent that as Mr. Burgess pointed
23 out, we are limited to the incremental change that
24 occurs within a 12-month period. So --

25 COMMISSIONER DEASON: Yeah. I think the idea is

1 not to guarantee that you would get full recovery,
2 but the guarantee is that you would not be -- that
3 they would not get more than their recovery.

4 MR. SHAFER: Correct.

5 COMMISSIONER DEASON: That they wouldn't be able
6 to go back and make up for prior years for whatever
7 reason they decided to forgo.

8 MR. SHAFER: Right. And certainly, staff would
9 not have a problem with that intent being in the
10 rule. And one of the ways that we would be able to
11 evaluate that would be to have the information on
12 hand.

13 You know, certainly, it's not our intent to
14 reduce rates willy-nilly, but simply to make sure
15 that no more cost is in the rate than the cost being
16 incurred.

17 MR. ARMSTRONG: And just to be very clear, my
18 hypothetical, that's why it's there obviously. It's
19 just to say what we would hope is that you end up
20 with, under my hypothetical, \$1.10. You start out at
21 \$1.00, you end up at \$1.10, as opposed to then being
22 netted out solely with the decrease where you end up
23 at \$1.05.

24 I think that's a bit of a demonstration. That's
25 what we dealt with. It probably would take a

1 statutory change to get up to \$1.25. Although, I
2 think we all would agree that that's probably the
3 best place to be to avoid full blown rate cases.

4 COMMISSIONER DEASON: But that's a limitation
5 within the statute.

6 MR. ARMSTRONG: Right. So we short-change that,
7 right?

8 MR. SHAFER: And I would argue, Commissioners,
9 that the vehicle for accommodating a number of years
10 at one time might be a limited proceeding.

11 I think the Commission has done that in the past
12 with these types of items, so --

13 COMMISSIONER DEASON: Are we at a stage where we
14 could entertain or get language that would kind of
15 accomplish what we have discussed here on a
16 philosophical basis? What stage are we at here?

17 MS. MOORE: Just the hearing part, there would
18 still be posthearing filings, and there would still
19 be a staff recommendation and agenda.

20 COMMISSIONER DEASON: The parties have been free
21 in a posthearing filing to propose language?

22 MS. MOORE: Correct.

23 CHAIRMAN JOHNSON: Then I understand that Mr.
24 Armstrong will probably be doing something, and then
25 staff could review it, and then you would make a

1 filing to us for the rule that should be adopted?

2 MS. MOORE: Yes.

3 MR. ARMSTRONG: Yes.

4 MR. SHAFER: Yes. We will be happy to work with
5 Mr. Armstrong to get some language that's agreeable.

6 CHAIRMAN JOHNSON: Okay. And Public Counsel
7 would have the opportunity to participate and respond?

8 MR. SHAFER: Yes.

9 CHAIRMAN JOHNSON: Very good.

10 Is there anything else, then?

11 What do we need -- we don't vote anything out?
12 We just conclude the hearing, and then y'all come
13 back with recommendations?

14 MS. MOORE: That's correct. Posthearing filings
15 will be due January 13th, and I understand the
16 transcript will be ready next Friday. So, that's it.

17 CHAIRMAN JOHNSON: Anything else to come before
18 the Commission this afternoon?

19 Seeing none, thank you. This hearing is
20 adjourned.

21 MR. BURGESS: Thank you, Commissioners.

22 MR. ARMSTRONG: Thank you, commissioners.

23 (Whereupon, the proceedings were concluded at
24 2:20 p.m.)

25

TRANSCRIPT CERTIFICATE1
2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, DEBRA R. KRICK, Court Reporter, hereby
5 certify that the foregoing transcript was taken down as
6 stated in the caption, and the questions and answers
7 thereto were reduced to typewriting under my direction;8 That the foregoing pages 3 through 35 represent
9 a true, correct, and complete transcript of the evidence
10 given upon said hearing;11 And I further certify that I am not of kin or
12 counsel to the parties in the case; am not in the regular
13 employ of counsel for any of said parties; nor am I in
14 anyway interested in the result of said case.15 Dated this 17th day of December, 1998.
16
1718 

19 DEBRA R. KRICK

20 Court Reporter and Notary Public

21 State of Florida at Large
22
23
24
25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rules 25-30.420, F.A.C., (Established of Price Index, Adjustment of Rates; Requirement of Bond; Filings after Adjustment; Notice to Customers;) and 25-30.425, F.A.C., Pass Through Rate Adjustment

DOCKET NO. 880821-W5
 ORDER NO. PSC-98-1288-PSC-W5
 ISSUED: October 6, 1998

PROCEEDINGS: RULE HEARING
 BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER TERRY DRAGON
 COMMISSIONER STEPHEN P. CLARK
 COMMISSIONER JAMES W. GARCIA
 COMMISSIONER E. LEON JACOBS, JR.
 DATE: Friday, December 11, 1998
 TIME: Commenced: 1:35 p.m.
 Concluded: 2:30 p.m.
 PLACE: Betty Esley Conference Center
 Room 140
 7778 Esplanade Way
 Tallahassee, Florida
 REPORTED BY: Debra K. Krick
 Court Reporter and Notary
 Public in and for State
 of Florida at Large

PREMIER REPORTING
 8751 THOMASVILLE ROAD
 TALLAHASSEE, FL 32312
 (850) 894-0828

APPEARANCES:
 CHRISTIANA MOORE, Florida Public Service Commission, Division of Legal Services, 2540 Shiloh and Oak Boulevard, Tallahassee, Florida 32309-0878, appearing on behalf of the Commission Staff.
 BRIAN P. ARMSTRONG and MATT FEIL, Florida Water Services Corporation, P.O. Box 609620, Orlando, Florida, 32860-8620, on behalf of Florida Water Services Corporation.
 STEPHEN BURGESS, Public Counsel's Office, 111 Madison Street, Room 612, Tallahassee, Florida 32309-1400, appearing on behalf of the citizens of Florida.

PROCEEDINGS

CHAIRMAN JOHNSON: We are going to go ahead and begin the proceedings.
 MS. MOORE: Counsel.
 CHAIRMAN JOHNSON: Counsel.
 Chris, I don't believe your mike is on.
 MS. MOORE: Excuse me. Would you like me to read the minutes?
 CHAIRMAN JOHNSON: Yes.
 MS. MOORE: This hearing is being held pursuant to a notice of rule-making that was issued on June 8th, 1998, and published in the Florida Administrative Weekly on June 12th, the Florida Water Service Corporation's request for hearing.
 There were several other notices changing the hearing date, and all are contained within Composite Exhibit No. 1.
 CHAIRMAN JOHNSON: Okay.
 MS. MOORE: And I am Christiana Moore, appearing on behalf of Commission staff.
 CHAIRMAN JOHNSON: Okay. We will take appearances.
 MR. ARMSTRONG: Brian Armstrong, Florida Water Services Corporation.
 CHAIRMAN JOHNSON: Yes.

MR. FEIL: Matthew Feil, Florida Water Services Corporation. The other person here sitting at the table with us is Jeffery Wilson with Florida Water Rate Fund.
 MR. BURGESS: Steve Burgess with the Public Counsel's office.
 CHAIRMAN JOHNSON: Any other preliminary matters?
 MS. MOORE: Commission staff that are here and will be speaking are Robert Casey and Greg Shafer.
 CHAIRMAN JOHNSON: Okay. Anything else?
 MS. MOORE: Just like to have Composite Exhibit 1 entered into the record, and everybody has a copy. It contains all the notices in the rule and the parties' comments that staff, Florida Water Service and Public Counsel.
 CHAIRMAN JOHNSON: Okay. We will identify it as Staff Composite Exhibit 1.
 CHAIRMAN JOHNSON: Consisting of 13 tabbed items. And we will admit it at this time without objection.
 MS. MOORE: Thank you.
 (Whereupon, Staff Composite Exhibit No. 1 was marked for identification and received into evidence.)
 CHAIRMAN JOHNSON: Anything else?

1 MS. MOORE: No. We believe we can start with
 2 the staff presenting a very short summary of the
 3 rule, and then perhaps the participants can do their
 4 presentations.
 5 CHAIRMAN JOHNSON: Okay. I understand, because
 6 it's in the context of a rule hearing, that there is
 7 no need to swear anyone in. There will just be
 8 discussion and dialogue on the issues being raised.
 9 MS. MOORE: We believe that's sufficient.
 10 CHAIRMAN JOHNSON: Okay. We will begin with the
 11 staff overview.
 12 MR. CASHY: The amendments to Rule 25-30.420,
 13 the price index rule, codify requirements for the
 14 Agency to mail copies of the order establishing the
 15 annual price index to each utility; specifies what
 16 the index will be applied to, and what the Agency
 17 will consider in establishing the index; requires the
 18 utility to furnish identification and permit numbers;
 19 and requires the utility to have a certain annual
 20 report on file before notifying the Agency of a price
 21 index increase.
 22 Some changes were also made to respond to
 23 comments made by the JAPC. The amendments to Rule
 24 25-30.425, which is the pass-through rule, require
 25 additional information from an utility, update the

1 increases. Thereby, mitigating rate case expense,
 2 thereby mitigating quite a few things that
 3 justifiably should be mitigated at all cost. Staff
 4 effort, company effort, cost, et cetera, et cetera.
 5 In the presentation from staff today, you have
 6 one demonstration, one hypothetical presented, which
 7 results in what could be perceived as a benefit to a
 8 utility under the current situation, as regards to
 9 pass-throughs. But I think it's necessary to point
 10 out that there are many, many hypotheticals that
 11 would be -- exactly conflict with the hypothetical
 12 presented to you and the staff presentation.
 13 One of those hypotheticals that I can present
 14 without using numbers, and that's what I would like
 15 to do, or two without using numbers; and then give
 16 you a demonstration of a hypothetical that uses
 17 numbers.
 18 The first example would be a situation where,
 19 three years ago, there was an increase in purchase
 20 water cost. Two years ago, there was a decrease in
 21 purchase water cost. The year -- a year ago, there
 22 was no increase or no increase. And then in the
 23 present year, the utility experiences another
 24 increase in purchase water cost.
 25 Under the staff example, the staff scenario has

1 rule to reflect changes to the law implemented, and
 2 clarify existing language.
 3 In addition, staff believes the proposed
 4 official date of filing change can be stricken, since
 5 the existing language has not been the subject of a
 6 dispute.
 7 CHAIRMAN JOHNSON: Okay.
 8 MS. MOORE: There was not a statement of
 9 estimated regulatory cost prepared, so there is no
 10 need to give a summary of it. The reason it was not
 11 prepared is there is no anticipated significant
 12 increase or impact; and, therefore, a statement is
 13 not required.
 14 CHAIRMAN JOHNSON: Thank you. That will be
 15 noted for the record.
 16 Then are we prepared to go to the parties?
 17 MS. MOORE: Yes.
 18 CHAIRMAN JOHNSON: Mr. Armstrong.
 19 MR. ARMSTRONG: Thank you, Madame Chair.
 20 Florida Water has several comments regarding the
 21 proposal as it relates to the pass-through provision.
 22 CHAIRMAN JOHNSON: Okay.
 23 MR. ARMSTRONG: I think -- I don't think anybody
 24 would dispute that the purpose of the pass-through
 25 provision is to mitigate the need for full blown rate

1 proposed in a rule what we would see is that you look
 2 at the increase in the present, you acknowledge the
 3 decreases in the past -- that would be a decrease
 4 that occurred two years ago -- and you ignore the
 5 increase that occurred three years ago, absolutely
 6 ignore it.
 7 Another situation might be where, three years
 8 ago, there was a decrease in a purchase water cost.
 9 Follow a year later, which would be two years ago, by
 10 an increase. A year ago, nothing happens. So you
 11 have a decrease, then an increase, then nothing. And
 12 then you have an increase this year in a purchase
 13 water cost. So the company files a pass-through.
 14 Under the proposed method to be used by staff,
 15 you would ignore the increase that happened two years
 16 ago, but you would jump back and go to the decrease
 17 that occurred three years ago, and use that as an
 18 offset to the current change in rates that's proposed
 19 in the way of a pass-through.
 20 Now, using some numbers to give some numbers
 21 that we can work with, and staff had provided one
 22 example in their presentation. But if we have a rate
 23 case that occurs three years ago -- and a rate has
 24 established a purchase water of \$1.50 per thousand
 25 gallons, say. And then the next year, we have an

1 increase in purchase water cost up to \$1.20 per
 2 thousand gallons. The next year, there is a decrease
 3 that knocks the purchase water cost down from \$1.20
 4 to \$1.15. The next year, there is an increase, and
 5 we go back up to \$1.25.

6 If under the utilities methodology, as used and
 7 as required by the statutes, at least under current
 8 thinking, is the utility would go in and file a
 9 pass-through for purchase water cost that is equal to
 10 the delta between the \$1.25 current cost and the cost
 11 of a year ago, which, under my example, would have
 12 been \$1.15. So there is a delta there of 10 cents.
 13 And that's what we look to recover. Current cost
 14 authorized in that rate case was \$1.00. We would add
 15 10 cents to it, and end up with \$1.10 per thousand
 16 gallons.

17 What staff is proposing here -- what is reported
 18 by the Office of Public Counsel -- is that we look at
 19 the delta from the present rate of \$1.25, we look at
 20 what the rate was when it was a decrease down to
 21 \$1.15, and we have a 10 cent delta. However, they
 22 also would take another step and go back another year
 23 when there was a decrease from \$1.20 down to \$1.15
 24 and say we have got to take away another 25 cents.
 25 So instead of a 10 cent delta, we only have a five

1 benefits. The one I would also show you, the
 2 examples, we had utilities suffering under the
 3 current situation.

4 We believe --

5 CHAIRMAN JOHNSON: Mr. Armstrong.

6 MR. ARMSTRONG: Yes.

7 CHAIRMAN JOHNSON: The example that you just
 8 provided, is that in here anywhere?

9 MR. ARMSTRONG: No, it's not. It's not in the
 10 pre-filed comments.

11 CHAIRMAN JOHNSON: Okay. I didn't -- okay.

12 Are we going to have --

13 MR. ARMSTRONG: I wish it had been. We can get
 14 that to you.

15 CHAIRMAN JOHNSON: It's a good example.

16 MR. ARMSTRONG: Sure, we can present that.

17 But, again -- and, you know, I guess we just
 18 want to reiterate every point we can regarding, you
 19 know, the statute, the Constitution of the United
 20 States, the Constitution of Florida require a fair
 21 and equitable treatment to the customers and the
 22 company. And what we perceive as a -- is a
 23 contiguous retrenching to the point of what can occur
 24 that keeps rates as low as possible and can benefit
 25 customers through those lower rates.

1 cent delta.

2 Now, as a practical matter, you apply that five
 3 cents to the existing rate case authorized charge of
 4 \$1.00, and you come out with \$1.05. Under the
 5 hypothetical, the current cost per thousand gallons
 6 is \$1.25. The utility is asking for \$1.10. So they
 7 are not even asking for full recovery of the current
 8 cost. But what the staff is proposing, and what OPC
 9 would propose, is that the company only be permitted
 10 to recover \$1.05.

11 Now, I suggest that is just as real a
 12 demonstration -- and I would think even more likely
 13 to occur than the presentation and the hypothetical
 14 presented by staff.

15 And one thing I did discuss just briefly and
 16 just before the hearing started today, and that is
 17 just a concept of, we would hope that when as these
 18 rule-makings -- that obviously there are advocates
 19 here, and I am one of them, the company is one of
 20 them -- obviously, Public Counsel has their role of
 21 advocates -- but what we would hope to see is more of
 22 what a staff presents right up front to a Commission
 23 and everybody two examples, two hypotheticals that
 24 are very easily described as what I did here, where
 25 not only do you see the one example where the utility

1 And although I can see that coming from
 2 advocates, I would hope that we would start to see
 3 the point where it's not coming from your staff, and
 4 it is certainly not coming from the Commission. But
 5 rather, let's look at all the facets here and not
 6 pick the one side and address one side where it
 7 slowly reduces rates.

8 Now, that brings us to a comment regarding the
 9 OPC's comments, where they do focus on the word
 10 change. And I think it's -- it's a good comment.
 11 The statute says, a change in rates. And that's what
 12 you should focus on. And, again, briefly, we talked
 13 about this a little while ago with your staff, if
 14 it's the change in rates that you're supposed to be
 15 looking at, under my hypothetical, the change is from
 16 \$1.00 per thousand to \$1.25 per thousand gallons.
 17 That's the change.

18 The way we have been working it is the way I
 19 described, where we go in after the three years, and
 20 we ask for the difference between \$1.00 and \$1.10.

21 Now, I think it's -- I think it's a distinct
 22 possibility that what we should be looking at is the
 23 difference between \$1.00 and \$1.25. And that could
 24 be explored and should be explored, because I think
 25 that really gives credence to the word change as used

1 in the statute.

2 This relates to Florida Water, I am not sure how
3 many other utilities. But, you know, we do have a
4 banding going on with Florida Water, banding in the
5 rate structure. And that magnifies the problem that
6 we see if there is to be this netting of decreases
7 only, because under that banding -- and we actually
8 experienced this several years ago when we had
9 uniform rates -- the company nets out the increases
10 and decreases and won't file for any pass-throughs,
11 unless there is an incremental increase.

12 Well, if -- not only is there a complication
13 with the bands, because as the Commission said, we
14 are going to stay within the bands of the
15 pass-throughs -- not only is there a complication
16 when you are having to look at six, seven, however
17 many systems are in that band; but there is a further
18 complication and a further detriment to utilities
19 such as ours, which would do that netting over a
20 period of a couple of years, find that there are
21 decreases, but there are also increases. But they
22 basically offset, are not enough to go in for another
23 rate increase.

24 And then when we do realize -- hit that year
25 where there is a significant increase, net increase

1 many of whom were represented in that room, because
2 there are several lawyers that represented multiple
3 clients, there was only that one instance.

4 So it seems like this rule unnecessarily
5 complicates a situation. And I have reiterated over
6 and over again that the method proposed in the rule
7 constitutes a netting. And I know it can very easily
8 be said, if that's not proposed in the rule, what's
9 proposed in the rule is filing the information only.

10 But I guess that's one thing where we'd like to
11 hear -- I mean, we know what staff's proposal is,
12 what they would do with this information, and that
13 would be to net. And that's really what we are
14 addressing, and that's what we are most concerned
15 about; you know, particularly, because I just want to
16 reiterate, you know, the statute certainly seems to
17 have the purpose of mitigating the need for rate
18 increases. And that's certainly the way we use the
19 statute. And we have looked at a total company and
20 not come in piecemeal with only the increases. And
21 we think that if the methodology, which might not be
22 set forth in rule, but which is being proposed is
23 adopted, that all that can happen is we would see
24 additional needs for rate filings in the future.

25 COMMISSIONER CLARK: Mr. Armstrong, where are

1 in the rates, all of a sudden what we are going to do
2 is go back and find those places where, prior to that
3 time, we had netted, and it was insignificant to
4 difference. But we are going to go back and pick out
5 the decreases. And we are going to pick out those
6 decreases under what's being proposed at this point,
7 and end up being hurt.

8 Now, I think the key, and what we tried to say
9 -- and I think the Commission acknowledged back in
10 the Pasco County situation, at least as to the
11 Florida Water and several other utilities -- is that
12 the key is overearning. Is the utility overearning?
13 Just -- I guess it was Wednesday of this week, you
14 know, I was at a Florida Waterworks meeting. There
15 were 20 or so individuals there that represented more
16 than 20 utilities; and I asked a question, knowing
17 that I was coming today, how many of you all
18 represent utilities or work for utilities where you
19 have had overearnings situation in the last 10 years?

20 And out of those 20 people there, there was one
21 person who had represented multiple utility systems.
22 And one of those systems in the past 10 years had had
23 a PSC finding of overearning. Out of all the
24 hundreds, if not thousands, whatever number it is of
25 utilities you have out there that you regulate -- and

1 you in the rule?

2 MR. ARMSTRONG: Excuse me?

3 COMMISSIONER CLARK: Where is this requirement
4 in the rule that you're concerned about?

5 MR. ARMSTRONG: Just the filing of the three
6 historic years?

7 COMMISSIONER CLARK: Right. Where is that?

8 MR. ARMSTRONG: Okay.

9 COMMISSIONER CLARK: I see it. It's (1)(a) --
10 30.425.

11 MR. ARMSTRONG: Yes. (1)(a) -- 25-30.425(1)(a).

12 COMMISSIONER CLARK: And because it's your view
13 that there is no doubt what we intend to do with it,
14 this rule is in error -- you have no doubt that there
15 is going to be a netting; therefore, we have no
16 authority to do it?

17 MR. ARMSTRONG: Well, I can't say there is no
18 doubt; but I don't want to -- Commissioners, we want
19 to get on the record what our concerns were, because,
20 obviously, we don't want it to be said later on, you
21 didn't prepare, you didn't have any comments about
22 the rule.

23 COMMISSIONER CLARK: Okay.

24 COMMISSIONER DEABON: Let me ask Mr. Armstrong a
25 question.

1 The example that you gave, I take it that those
2 changes in purchase water cost that the utility chose
3 not to implement any of those pass-throughs until the
4 last year; and then it would be limited to the
5 difference between the 1.25 and the 1.15, and that
6 would be added to the original 1.00 that was -- I
7 guess when rates were set?

8 MR. ARMSTRONG: Right.

9 COMMISSIONER DEASON: Okay. But, obviously, you
10 would have the ability to do it year-by-year if you
11 so chose; is that correct?

12 MR. ARMSTRONG: Yes, Commissioner.

13 COMMISSIONER DEASON: Okay. Let me ask you
14 this, if you had done it the first year, you would
15 have been entitled to a 20 cent increase, correct?

16 MR. ARMSTRONG: Yes. Under my hypothetical,
17 sure.

18 COMMISSIONER DEASON: All right. And then the
19 next year, there was a decrease, but there would have
20 been no requirement to pass that through, unless
21 there were overearnings; is that right?

22 MR. ARMSTRONG: Right.

23 COMMISSIONER DEASON: Okay. And then in the
24 last year, when it goes to 1.25, what are you
25 entitled to there, the difference between 1.25 and

1 look at total company before you even make that
2 filing.

3 Our concern is, if we do say that the company is
4 subject to a detriment, if you don't file each time
5 you have a pass-through, then it -- what does it do.
6 It causes you to file more of those pass-throughs, or
7 it causes you -- if you do delay, because you don't
8 want to see rates fluctuating year-to-year-to-year,
9 and you do delay, then when you come in later on,
10 you're facing -- you won't come in with the
11 pass-throughs, you want the full blown rate case,
12 because you would be facing this nothing without any
13 recognition of an increase.

14 By that, I mean, our existing rate under my hypo
15 would be \$1.25. If we followed the pass-through way,
16 it's -- we are contemplating what your Public Counsel
17 is indicating in their concept they would like to see
18 it. We would only recover \$1.05, so that mitigates
19 towards filing a full blown rate case.

20 COMMISSIONER DEASON: Let me ask staff, I know
21 that the rule right now is just to get information;
22 but what are we going to do with that information and
23 what's the problem we are going to cure with that
24 information?

25 MR. SHAFER: Commissioners, the cure that we

1 1.15, or the difference between 1.25 and 1.20?

2 MR. ARMSTRONG: If the company were filing in
3 year three?

4 COMMISSIONER DEASON: Yes.

5 MR. ARMSTRONG: Well, I know what we would do,
6 which is we would take the 1.20 and the 1.25.

7 COMMISSIONER DEASON: So that you would add
8 that, being a delta of five, and you would add it to
9 your 1.20 to come up to 1.25?

10 MR. ARMSTRONG: Right.

11 COMMISSIONER DEASON: But is it possible that
12 someone could request the difference between 1.25 and
13 1.15 for a delta of 10, and then add that to 1.20 to
14 get a rate of 1.30?

15 MR. ARMSTRONG: I -- I know it's possible. I
16 know it's possible.

17 COMMISSIONER DEASON: But you would agree that
18 that really is -- you would agree that that's really
19 not necessary, that's not -- you just want to be made
20 whole, correct?

21 MR. ARMSTRONG: Yeah. That's what this company
22 wants, is to be made whole.

23 We are picking out one category -- and that's
24 the point, too, I guess. We are picking out one
25 category of expense. And what we do is, we do try to

1 were looking for is the example that you stated just
2 a moment ago, where the utility could possibly wind
3 up with the \$1.30 in their rates rather than \$1.25.

4 All we are trying to do is make sure that there
5 is not a double recovery going on, because of a
6 decrease that was not passed through, followed by a
7 subsequent increase that did not take that decrease
8 into account. Mr. Armstrong's indicated that his
9 company wouldn't do that. I'm happy to hear that. I
10 am not comforted that the remainder of the industry
11 would not be in that position.

12 And in addition, you know, I certainly can
13 appreciate the total company picture approach.
14 However, the statute limits us on these pass-through
15 items to two or three specific categories of
16 expenses. That's what we are directed by the statute
17 to look at, and that was the focus of our concern.

18 Again, the Commission made a decision in the
19 series of Pasco County cases indicating that we would
20 look at earnings before implementing a pass-through
21 decrease. While that seemed like a very
22 straightforward concept, when it came to application
23 for the particular utilities involved in those cases,
24 what it resulted in was, rather than simplification,
25 it added a layer of complexity.

1 We have always based these index and
 2 pass-through calculations on the most current annual
 3 report on file by the utilities. When it became
 4 clear that the earnings issue was going to be
 5 considered, suddenly the utilities involved in that
 6 case -- or at least several of them -- claimed that
 7 the annual report was not reflective of their
 8 earnings picture, and that we shouldn't be using that
 9 as a basis, and we were provided with additional
 10 information that required additional staff time to
 11 evaluate.

12 The rule, at least this portion of the rule, was
 13 formulated as a way to try to avoid that particular
 14 circumstance in the future. And --

15 COMMISSIONER DEASON: Well, is this an attempt
 16 to bypass the requirement that there be an earnings
 17 test?

18 MR. SHAFER: I suppose you could look at it in
 19 that way. It wasn't our intent to bypass the
 20 Commission's judgment in that situation, but simply
 21 to try to make the effective of that decision more
 22 simple to deal with.

23 COMMISSIONER DEASON: And is it your -- I am
 24 sorry, go ahead.

25 MR. SHAFER: So it wouldn't be our intent to

1 MR. SHAFER: Let me clarify that to a certain
 2 extent, and that is that staff has always operated
 3 from the presumption that the utility will file for
 4 the increases. That's not something that we have to
 5 go and drum up business for them to do. And I have
 6 to wonder if we aren't overstepping our statutory
 7 confines if we were to try to go back and make up for
 8 a series of increases that the utility had not
 9 previously requested.

10 COMMISSIONER DEASON: So that you are saying
 11 that maybe you would limit to that \$1.05, then?

12 MR. SHAFER: It's possible, I mean --

13 COMMISSIONER DEASON: Okay. Well --

14 MR. SHAFER: -- I haven't considered the
 15 legality of that. I believe that the statute, in
 16 some ways, limits us to the changes that occur within
 17 a 12-month period.

18 COMMISSIONER DEASON: But then -- but that's --
 19 but when you go back and consider the reduction that
 20 took place the year before, that's outside the
 21 12-month period.

22 MR. SHAFER: Yes, it is.

23 COMMISSIONER DEASON: So - okay. So their
 24 argument could be that you are not being symmetrical
 25 in the sense that, if you want to go back to a prior

1 ever actually reduce the utilities' rates without
 2 that being the desired end on their part. In other
 3 words, if we looked at the situation and because
 4 there had been a decrease in one of the prior years
 5 that offset the increase, and created a situation
 6 where the rate would be reduced, we have always
 7 provided the opportunity to the utility to withdraw
 8 their application under those circumstances, so that,
 9 at least, they did not have to experience a rate
 10 decrease.

11 COMMISSIONER DEASON: Well, I mean, is it --
 12 with the utilization of this additional information,
 13 would it be your intent or staff's intent in the
 14 example that Mr. Armstrong gave to limit the company
 15 to \$1.05 or to make sure that they don't get more
 16 than \$1.25?

17 MR. SHAFER: The intent would be to make sure
 18 that they didn't get more than \$1.25.

19 COMMISSIONER DEASON: Mr. Armstrong, you would
 20 not have a problem with that, is that correct, if
 21 that's the intent?

22 MR. ARMSTRONG: No. If that's the intent, no.
 23 Obviously, that's what we see as what should happen
 24 to that statute is to try to get to the 1.25 without
 25 a full blown rate case.

1 period, it's only decreases, you don't look at
 2 increases in prior periods.

3 MR. SHAFER: I think that argument could be
 4 made. And what I would suggest to you is that the
 5 utilities' control the application for these events.
 6 And generally speaking, we don't initiate rate
 7 increases when the utility hasn't requested them.

8 And, you know, I would be reluctant, I guess
 9 would be the best description, to incorporate
 10 increases in this mechanism that hadn't been
 11 previously requested.

12 COMMISSIONER DEASON: Well, by this, are we
 13 basically, then, encouraging utilities to file every
 14 year, even though they may not find it necessary, but
 15 just to avoid the penalty of having a decrease offset
 16 against increases that weren't asked for? Every time
 17 there is an increase, they are going to ask every
 18 year. That's just guaranteed.

19 MR. SHAFER: It wouldn't -- it is not staff's
 20 intent to put the utilities in a position of getting
 21 a decrease below what the actual cost is in the rate.
 22 And should that situation arise, I believe that we
 23 would most certainly bring it to the Commission's
 24 attention and to the utility's attention in an effort
 25 to determine what would be the best way to resolve

1 IL
 2 Now, we have used this like provision since, I
 3 believe, 1986, in relation to the ad valorem tax
 4 pass-through. And, to my knowledge, there hasn't
 5 been any great concern about its application as it
 6 relates to that particular expense.
 7 CHAIRMAN JOHNSON: Any other questions,
 8 Commissioners?
 9 Mr. Armstrong, do you have additional
 10 information?
 11 MR. ARMSTRONG: No. Just the regular -- the
 12 company wouldn't -- I wasn't aware of that, and the
 13 company representative I spoke with wasn't aware of
 14 that, this kind of thing, this offsetting going on
 15 with the taxes. And we would have the same concerns.
 16 I think it's the same situation.
 17 CHAIRMAN JOHNSON: Okay. Anything else from
 18 Mr. -- is that it for the company then?
 19 MR. FEIL: Yes, ma'am.
 20 MR. ARMSTRONG: Yes, thank you.
 21 CHAIRMAN JOHNSON: Okay.
 22 MR. BURGESS: Commissioners --
 23 CHAIRMAN JOHNSON: Public Counsel.
 24 MR. BURGESS: The language in the statute, of
 25 course, is just talking about additional information

1 the whipaw that works only one way.
 2 I am not sure -- I didn't follow all the
 3 specifics of Mr. Armstrong's various examples, but I
 4 do think, though, that you would not -- you are
 5 limited by the amount of increase in any one -- in
 6 any one year. In other words, if the first year that
 7 a utility comes in and is, for a pass-through, is the
 8 third year and that increase for that year is a five,
 9 for example, that's the most the utility will be able
 10 to get as increased, simply because the statute says
 11 that it shall not -- the utility may not use this
 12 procedure to increase its rates as a result of -- et
 13 cetera, et cetera -- more than once which increase
 14 was initiated more than 12 months before the filing
 15 by the utility.
 16 So it's limited by what happens as far as an
 17 increase by what happens in the last year. But I
 18 think for the most part, from what I am hearing staff
 19 saying and from what Mr. Armstrong says and from what
 20 my position is, it's pretty much the same thing as an
 21 issue of fairness with some limitations being as a
 22 result of you cannot implement a -- it says
 23 specifically an increase based on something that's
 24 occurred more than 12 months prior.
 25 And so I don't -- I don't know that this

1 that's going to be required. And the rest is
 2 inferential in anticipation of what the Commission is
 3 going to do with it, which the Commission would do as
 4 it applies the rule that's implemented.
 5 I will tell you our concern with the way the
 6 rule is right now, and it basically tracks the
 7 concerns staff has, which is, let's say, in year one,
 8 you have a reduction of 20; and in year two, you have
 9 an increase of 20 from the previous reduced level.
 10 So that the expense level is back where you started,
 11 net gain of zero.
 12 My understanding is that a utility could choose
 13 not to come in in year one, has total autonomy over
 14 that decision, and then come in in year two and get
 15 an increase of 20 in the second year; thus paying --
 16 requiring customers to pay 120 in the second year for
 17 an expense that's 100. That's our concern.
 18 Those areas that Mr. Armstrong raised, I agree
 19 with them. I don't think that it should be a
 20 situation where a utility has a jeopardy based on
 21 adding one or subtracting one decrease and failing to
 22 recognize that that's been offset. And I don't want
 23 to get into the situation where we encourage
 24 companies to come in for a pass-through when they
 25 otherwise wouldn't, simply to protect themselves from

1 language causes the problem that Mr. Armstrong
 2 expresses. It's a problem that -- I think he raises
 3 an equity issue. I think we raise a legitimate
 4 equity issue. And that is, we don't want companies
 5 -- perhaps Mr. Armstrong's companies would not, but
 6 we are concerned if the law allows a company to come
 7 in in year two for an increase after ignoring a
 8 decrease in year one, we think the decrease should be
 9 offset, should offset the increase. And we think the
 10 statute allows for that, because in a previous
 11 position in the same -- in the same subsection it
 12 says, the new rates authorized shall reflect the
 13 amount of change in the ad valorem taxes, et cetera.
 14 So I think -- I guess it depends on what the
 15 Commission does when it gets this information. But
 16 the rule, itself, is simply a matter of garnering
 17 information that's necessary to make an equitable
 18 decision.
 19 CHAIRMAN JOHNSON: Any other questions,
 20 Commissioners?
 21 COMMISSIONER JACOBS: This information -- I
 22 guess I would have a question for Public Counsel.
 23 MR. BURGESS: Uh-huh.
 24 COMMISSIONER JACOBS: Would -- would the three
 25 years, then, it would identify that conduct where you

1 would have the reduction in one year and the increase
 2 in the next year, the offset, but yet we only have a
 3 filing for the one year. If we saw that, what would
 4 happen if the -- if the reduction was higher than the
 5 increase.

6 MR. BURGESS: If the reduction were higher than
 7 the increase, I would suggest, if a company files
 8 that, and as staff indicated, the company has been
 9 liberally given the opportunity to withdraw filings
 10 as they so choose. But it would seem to me that the
 11 proper approach for that particular potential
 12 pass-through expense item would be if a previous
 13 year's decrease is greater than current year's
 14 increase, that that decrease -- that the net decrease
 15 would be implemented, but for, I guess, there is an
 16 earnings test associated that would limit it. But I
 17 would suggest if a company chooses to come in, that,
 18 yeah, that would be imposed. It's the company's
 19 choice.

20 Now, let me go back to one of what -- like for
 21 instance, if there were a first year's decrease and
 22 the company ignored that, and then there is a second
 23 year's increase that were greater than the first
 24 year's decrease and the company ignored that, and
 25 then came in for a third year's increase and were

1 MR. ARMSTRONG: Yes. Commissioners, I guess --
 2 I guess -- and it sounds like we'd all be of the
 3 opinion that the statute is there -- in a perfect
 4 world, the statute is there with the intent of
 5 getting you to the current purchase water cost. And
 6 that seems to be what everybody would agree to.
 7 That's what the purpose of this statute is.

8 The question is, if you -- if you pass this rule
 9 and the companies don't know what you intend to do
 10 with the information, then you put a company at its
 11 peril to go through the whole cost and effort of
 12 putting together a pass-through filing, and then
 13 coming in and finding out subsequently and possibly
 14 to its detriment. And I believe if it was
 15 detrimental, you would end up in appeals and
 16 everything else that none of us want to see.

17 So I mean, if we are going to have this kind of
 18 a rule, I think it would be best for everybody if we
 19 said what the purpose and what the procedure would be
 20 for the Commission upon this information being -- and,
 21 particularly because I think we are along the same
 22 lines that the intent is really to get us to the
 23 current cost; not exceed it, but to get there.

24 So, you know, we certainly, as a company, prefer
 25 to see a rule that lays it out. File this

1 seeking only that. I don't -- I am not looking to go
 2 back before the intervening year, ignore the
 3 intervening year and capture the entirety of the
 4 offset that would take place from either one.

5 COMMISSIONER JACOBS: Okay.

6 MR. BURGESS: I realize that's none -- none of
 7 that's in the rule, though. The rule just
 8 contemplates the gathering of information.

9 MS. MOORE: Commissioners, I would suggest
 10 that -- at least, with the rule that would give us
 11 the information to determine the extent of the
 12 problem and whether -- I don't even know if we know
 13 how often there are decreases. And I believe the
 14 rule would at least give us the information to
 15 determine what is happening, and it would be the
 16 Commission that would make the decision on whether
 17 there is actually an offset if the company disagreed
 18 with staff that there ought to be.

19 MR. CASEY: In practicality, when a utility
 20 files for an index in pass-through, if we see that
 21 there should be a netting, we go back to the company
 22 and say, this is what we have calculated, in which is
 23 the netting. If they don't agree with that, we would
 24 come to the Commission. That's in our SOPs.

25 CHAIRMAN JOHNSON: Mr. Armstrong,

1 information. You are not being permitted to exceed
 2 your current cost and have a rate that exceeds your
 3 current cost, but the intent is to get you there.

4 COMMISSIONER DEASON: What we want to ensure is
 5 that the rate of recovery does not exceed the actual
 6 cost.

7 MR. ARMSTRONG: Right. Right.

8 COMMISSIONER DEASON: You think that that stated
 9 purpose should be stated in the rule, so the
 10 companies would know what -- the purpose of the
 11 information and how it's to be used?

12 MR. ARMSTRONG: You know, it would be helpful
 13 not only if it's stated, because I think that's the
 14 correct assumption is that, you know, we should get
 15 you to the cost; but I guess the process of how we
 16 get to that point.

17 COMMISSIONER DEASON: Do you have any proposed
 18 language that would accomplish that?

19 MR. ARMSTRONG: I wish I did, Commissioner. I
 20 don't. I am sure we could --

21 MR. SHAFER: Commissioners, I would only respond
 22 to that to the extent that as Mr. Burgess pointed
 23 out, we are limited to the incremental change that
 24 occurs within a 12-month period. So --

25 COMMISSIONER DEASON: Yeah. I think the idea is

1 not to guarantee that you would get full recovery.
 2 but the guarantee is that you would not be -- that
 3 they would not get more than their recovery.
 4 MR. SHAFER: Correct.
 5 COMMISSIONER DEASON: That they wouldn't be able
 6 to go back and make up for prior years for whatever
 7 reason they decided to forgo.
 8 MR. SHAFER: Right. And certainly, staff would
 9 not have a problem with that intent being in the
 10 rule. And one of the ways that we would be able to
 11 evaluate that would be to have the information on
 12 hand.
 13 You know, certainly, it's not our intent to
 14 reduce rates willy-nilly, but simply to make sure
 15 that no more cost is in the rate than the cost being
 16 incurred.
 17 MR. ARMSTRONG: And just to be very clear, my
 18 hypothetical, that's why it's there obviously. It's
 19 just to say what we would hope is that you end up
 20 with, under my hypothetical, \$1.18. You start out at
 21 \$1.00, you end up at \$1.18, as opposed to then being
 22 netted out solely with the decrease where you end up
 23 at \$1.26.
 24 I think that's a bit of a demonstration. That's
 25 what we dealt with. It probably would take a

1 filing to us for the rule that should be adopted?
 2 MS. MOORE: Yes.
 3 MR. ARMSTRONG: Yes.
 4 MR. SHAFER: Yes. We will be happy to work with
 5 Mr. Armstrong to get some language that's agreeable.
 6 CHAIRMAN JOHNSON: Okay. And Public Counsel
 7 would have the opportunity to participate and respond?
 8 MR. SHAFER: Yes.
 9 CHAIRMAN JOHNSON: Very good.
 10 Is there anything else, then?
 11 What do we need -- we don't vote anything out?
 12 We just conclude the hearing, and then y'all come
 13 back with recommendations?
 14 MS. MOORE: That's correct. Posthearing filings
 15 will be due January 13th, and I understand the
 16 transcript will be ready next Friday. So, that's it.
 17 CHAIRMAN JOHNSON: Anything else to come before
 18 the Commission this afternoon?
 19 Seeing none, thank you. This hearing is
 20 adjourned.
 21 MR. BURGESS: Thank you, Commissioners.
 22 MR. ARMSTRONG: Thank you, commissioners.
 23 (Whereupon, the proceedings were concluded at
 24 2:28 p.m.)
 25

1 statutory change to get up to \$1.26. Although, I
 2 think we all would agree that that's probably the
 3 best place to be to avoid full blown rate cases.
 4 COMMISSIONER DEASON: But that's a limitation
 5 within the statute.
 6 MR. ARMSTRONG: Right. So we shouldn't change that,
 7 right?
 8 MR. SHAFER: And I would argue, Commissioners,
 9 that the vehicle for accommodating a number of years
 10 at one time might be a limited proceeding.
 11 I think the Commission has done that in the past
 12 with these types of items, so --
 13 COMMISSIONER DEASON: Are we at a stage where we
 14 could entertain or get language that would kind of
 15 accomplish what we have discussed here on a
 16 philosophical basis? What stage are we at here?
 17 MS. MOORE: Just the hearing part, there would
 18 still be posthearing filings, and there would still
 19 be a staff recommendation and agenda.
 20 COMMISSIONER DEASON: The parties have been free
 21 in a posthearing filing to propose language?
 22 MS. MOORE: Correct.
 23 CHAIRMAN JOHNSON: Then I understand that Mr.
 24 Armstrong will probably be doing something, and then
 25 staff could review it, and then you would make a

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 25

<p>S</p> <p>\$1.00 (7) 8:24 9:14 10:4 12:16, 20,23 33:21 \$1.05 (8) 10:4,10 19:18 22:15 23:11 33:23 \$1.10 (5) 9:15 10:6 12:20 33:20, 21 \$1.15 (4) 9:4,12,21,23 \$1.20 (3) 9:1,3,23 \$1.25 (11) 9:5,10,19 10:6 12:16, 23 19:15 20:3 22:16,18 34:1 \$1.30 (1) 20:3</p> <p>1</p> <p>1 (4) 3:17 4:13,18,23 1)(a) (2) 16:9,11 1.00 (1) 17:6 1.15 (3) 17:5 18:1,13 1.20 (4) 18:1,6,9,13 1.25 (8) 17:5,24,25 18:1,6,9,12 22:24 1.30 (1) 18:14 10 (7) 9:12,15,21,25 14:19,22 10:13 100 (1) 26:17 11 (1) 1:15 12 (2) 27:14,24 12-month (3) 23:17,21 32:24 120 (1) 26:16 1289-pco-ws (1) 1:6 13 (1) 4:19 13th (2) 3:13 35:15 148 (1) 1:18 17th (1) 36:15 1986 (1) 25:3 1E 38 (3) 1:15 3:12 36:15 1:35 (1) 1:16</p> <p>2</p> <p>20 (7) 14:15,16,20 17:15 26:8,9, 15 25 (1) 9:24 25-30.420 (1) 5:12 25-30.425 (2) 1:8 5:24 25-30.425(1)(a) (1) 16:11 2540 (1) 2:3 2:20 (1) 35:24</p> <p>3</p> <p>3 (1) 36:8 30.425 (1) 16:10 32880-9520 (1) 2:6 35 (1) 36:8</p> <p>5</p> <p>5th (1) 3:12</p> <p>6</p> <p>6753 (1) 1:23</p> <p>8</p> <p>812 (1) 2:8 850 (1) 1:24 894-0828 (1) 1:24</p> <p>9</p> <p>980561-ws (1) 1:5</p> <p>A</p> <p>ability (1) 17:10 able (3) 27:9 33:5,10 absolutely (1) 8:5 accommodating (1) 34:9 accomplish (2) 32:18 34:15 account (1) 20:8 acknowledge (1) 8:2 acknowledged (1) 14:9 actual (2) 24:21 32:5 actually (3) 13:7 22:1 30:17 ad (2) 25:3 28:13</p>	<p>add (4) 9:14 18:7,8,13 added (2) 17:6 20:25 adding (1) 26:21 addition (2) 6:3 20:12 additional (7) 5:25 15:24 21:9, 10 22:12 25:9,25 address (1) 12:6 addressing (1) 15:14 adjourned (1) 35:20 administrative (1) 3:13 admit (1) 4:20 adopted (2) 15:23 35:1 advocates (2) 10:18,21 12:2 afternoon (1) 35:18 agency (3) 5:14,16,20 agenda (1) 34:19 ago (5) 7:19,20,21 8:4,5,8,9,10 16,17,23 9:11 12:13 13:8 20:2 agree (8) 18:17,18 26:18 30:23 31:6 34:2 agreeable (1) 35:5 ahead (2) 3:2 21:24 allows (2) 28:6,10 although (2) 12:1 34:1 amendment (1) 1:5 amendments (2) 5:12,23 amount (2) 27:5 28:13 annual (4) 5:15,19 21:2,7 another (3) 7:23 8:7 9:22,22,24 13:22 answers (1) 36:6 anticipated (1) 6:11 anticipation (1) 26:2 anybody (1) 6:23 anyway (1) 36:14 appeals (1) 31:15 appearances (1) 3:22 appearing (1) 3:19 application (4) 20:22 22:8 24:5 25:5 applied (1) 5:16 applies (1) 26:4 apply (1) 10:2 appreciate (1) 20:13 approach (2) 20:13 29:11 areas (1) 26:16 aren't (1) 23:6 argue (1) 34:8 argument (2) 23:24 24:3 arise (1) 24:22 armstrong (4) 7) 2:5 3:23,23 6: 18,19,23 11:5,6,9,13,16 15:25 16:2,5,8,11,17,24 17:8,12,16, 22 18:2,5,10,15,21 22:14,19,22 25:9,11,20 26:18 27:19 28:1 30:25 31:1 32:7,12,19 33:17 34:8,24 35:3,5,22 armstrong's (2) 20:8 27:3 28:5 associated (1) 29:16 assumption (1) 32:14 attempt (1) 21:15 attention (2) 24:24,24 authority (1) 16:16 authorized (2) 9:14 10:3 28:12 autonomy (1) 26:13 avoid (2) 21:13 24:15 34:3 aware (2) 25:12,13 away (1) 9:24</p> <p>B</p> <p>back (5) 8:16 9:5,22 14:2,4,9 23:7,19,25 26:10 29:20 30:2,21 33:6 35:13 band (1) 13:17 banding (3) 13:4,4,7 bands (2) 13:13,14 based (3) 21:1 26:20 27:23 basically (3) 13:22 24:13 26:6 basis (2) 21:9 34:16 became (1) 21:3 begin (2) 3:3 5:10 behalf (2) 2:4,6 3:20</p>	<p>believe (5) 3:6 5:1,9 11:4 23:15 24:22 25:3 30:13 31:14 believes (1) 6:3 below (1) 24:21 benefit (2) 7:7 11:24 benefits (1) 11:1 best (4) 24:9,25 31:18 34:3 between (7) 9:10 12:20,23 17:5, 25 18:1,12 bit (1) 33:24 blown (5) 6:25 19:11,19 22:25 34:3 bond (1) 1:7 bribe (2) 2:5 3:23 briefly (2) 10:15 12:12 bring (1) 24:23 brings (1) 12:8 burress (5) 4:5,5 25:22,24 28: 23 29:6 30:6 32:22 35:21 business (1) 23:5 bypass (2) 21:16,19</p> <p>C</p> <p>calculated (1) 30:22 calculations (1) 21:2 came (2) 20:22 29:25 cannot (1) 27:22 caption (1) 36:6 capture (1) 30:3 case (5) 7:1 8:23 9:14 10:3 19: 11,19 21:6 22:25 36:12,14 cases (2) 20:19,23 34:3 casey (3) 4:10 5:12 30:19 categories (1) 20:15 category (2) 18:23,25 causes (2) 19:6,7 28:1 cent (4) 9:21,25 10:1 17:15 cents (4) 9:12,15,24 10:3 certain (2) 5:19 23:1 certainly (3) 12:4 15:16,18 20: 12 24:23 31:24 33:8,13 certificate (1) 36:1 certify (2) 36:5,11 cetera (3) 7:4,4 27:13,13 28:13 chair (1) 6:19 chairman (2) 1:12 3:2,5,9,18, 21,25 4:7,11,17,19,25 5:5,10 6: 7,14,18,22 11:5,7,11,15 25:7, 17,21,23 28:19 30:25 34:23 35: 6,9,17 change (11) 6:4 8:18 12:10,11, 14,15,17,25 28:13 32:23 34:1 changes (4) 5:22 6:1 17:2 23:16 changing (1) 3:15 charge (1) 10:3 choice (1) 29:19 choose (2) 26:12 29:10 chooses (1) 29:17 chose (2) 17:2,11 chris (1) 3:6 christiana (1) 3:19 circumstance (1) 21:14 circumstances (1) 22:8 claimed (1) 21:6 clarify (2) 6:2 23:1 clerk (7) 1:13 15:25 16:3,7,9,12, 23 clear (2) 21:4 33:17 clients (1) 15:3 codify (1) 5:13 come (13) 10:4 15:20 18:9 19:9, 10 26:13,14,24 28:6 29:17 30: 24 35:12,17 comes (1) 27:7 comforted (1) 20:10 coming (3) 12:1,3,4 14:17 31:13 commenced (1) 1:16 comment (2) 12:8,10 comments (4) 4:15 5:23 6:20 11:10 12:9 16:21 commission (5) 1:2 2:3,4 3 20: 4 9 10:22 12:4 13:13 14:9 20:</p>	<p>18 26:2,3 28:15 30:16,24 31 20 34:11 35:18 commission's (2) 21:20 24:23 commissioner (4) 1:13,14 15: 25 16:3,7,9,12,23,24 17:9,12, 13,18,23 18:4,7,11,17 19:20 21:15,23 22:11,19 23:10,13,18, 23 24:12 28:21,24 30:5 32:4,8, 17,19,25 33:5 34:4,13,20 commissioners (1) 16:18 19: 25 25:8,22 28:20 30:9 31:1 32: 21 34:8 35:21,22 companies (5) 26:24 28:4,5 31: 9 32:10 company (27) 7:4 8:13 10:9,19 11:22 13:9 15:19 18:2,21 19:1, 3 20:9 13 22:14 25:12,13 18, 28:6 29:7,8,17,22,24 30:17,21 31:10,24 company's (1) 29:18 complete (1) 36:9 complexity (1) 20:25 complicates (1) 15:5 complication (3) 13:12,15,18 composite (4) 3:16 4:12,18,23 concept (3) 10:17 19:17 20:22 concern (5) 19:3 20:17 25 5 26: 5,17 concerned (2) 15:14 16:4 28:6 concerns (2) 16:19 25:15 26:7 conclude (1) 35:12 concluded (1) 35:23 conduct (1) 28:25 confines (2) 23:7 conflict (1) 7:11 consider (2) 5:17 23:19 considered (2) 21:5 23:14 consisting (1) 4:19 constitutes (1) 15:7 constitution (2) 11:19,20 contained (1) 3:16 contains (1) 4:14 contemplates (1) 30:8 contemplating (1) 19:16 context (1) 5:6 contiguous (1) 11:23 control (1) 24:5 copies (1) 5:14 copy (1) 4:13 corporation (2) 3:24 4:2 corporation's (1) 3:14 correct (8) 17:11,15 18:20 22: 20 32:14 33:4 34:22 35:14 36:9 cost (27) 6:9 7:3,4,20,21,24 8:8, 13 9:1,3,9,10,10,13 10:5,8 17:2 24:21 31:5,11,23 32:2,3,6,15 33:15,15 counsel (11) 3:4,5 4:16 9 18 10: 20 19:16 25:23 28:22 35:6 36: 12,13 counsel's (1) 4:6 county (3) 14:10 20:19 36:3 couple (1) 13:20 course (1) 25:25 court (2) 36:4,20 created (1) 22:5 credence (1) 12:25 cure (2) 19:23,25 current (14) 7:8 8:18 9:7,10,13 10:5,7 11:3 21:2 29:13 31:5,23 32:2,3 customers (3) 11:21,25 26:16</p> <p>D</p> <p>date (3) 1:15 3:16 6:4 dated (1) 36:15 day (1) 36:15 deal (1) 21:22 dealt (1) 33:25 deason (7) 16:24 17:9,13,18, 23 18:4,7,11,17 19:20 21 15,23 22:11,19 23:10,13,18,23 24 12</p>
--	--	---	--

32:4,8,17,25 33:5 34:4,13,20
 debra (2) 1:20 36:4,19
 december (2) 1:15 36:15
 decided (2) 33:7
 decision (2) 20:18 21:21 26:14
 26:18 30:16
 decrease (2) 7:20,22 8:3,8,11,
 16 9:2,20,23 17:19 20:6,7,21
 22:4,10 24:15,21 26:21 28:8,8
 29:13,14,14,21,24 33:22
 decreases (2) 8:3 13:6,10,21
 14:5,6 24:1 30:13
 delay (2) 19:7,9
 delta (2) 9:10,12,19,21,25 10:1
 18:8,13
 demonstration (2) 7:6,16 10:12
 33:24
 depends (2) 28:14
 described (2) 10:24 12:19
 description (2) 24:9
 desired (2) 22:2
 determine (2) 24:25 30:11,15
 detriment (2) 13:18 19:4 31:14
 detrimental (2) 31:15
 dialogue (2) 5:8
 difference (2) 12:20,23 14:4 17:
 5,25 18:1,12
 directed (2) 20:16
 direction (2) 36:7
 disagreed (2) 30:17
 discuss (2) 10:15
 discussed (2) 34:15
 discussion (2) 5:8
 dispute (2) 6:6,24
 distinct (2) 12:21
 division (2) 2:3
 docket (2) 1:5
 doing (2) 34:24
 done (2) 17:14 34:11
 double (2) 20:5
 doubt (2) 16:13,14,18
 down (2) 9:3,20,23 36:5
 drum (2) 23:5
 due (2) 35:15

E

each (2) 5:15 19:4
 earnings (2) 20:20 21:4,8,16
 29:16
 easily (2) 10:24 15:7
 effective (2) 21:21
 effort (2) 7:4,4 24:24 31:11
 either (2) 30:4
 employ (2) 36:13
 encourage (2) 26:23
 encouraging (2) 24:13
 end (2) 9:15 14:7 22:2 31:15 33:
 19,21,22
 enough (2) 13:22
 ensure (2) 32:4
 entered (2) 4:13
 entertain (2) 34:14
 entirety (2) 30:3
 entitled (2) 17:15,25
 equal (2) 9:9
 equitable (2) 11:21 28:17
 equity (2) 28:3,4
 error (2) 16:14
 established (2) 1:6 8:24
 establishing (2) 5:14,17
 estimated (2) 6:9
 et (2) 7:4,4 27:12,13 28:13
 evaluate (2) 21:11 33:11
 even (2) 10:7,12 19:1 24:14 30:
 12
 events (2) 24:5
 everybody (2) 4:13 10:23 31:6,
 18
 everything (2) 31:16
 evidence (2) 4:24 36:9
 exactly (2) 7:11
 example (2) 7:18,25 8:22 9:11

10:25 11:7,15 17:1 20:1 22:14
 27:9
 examples (2) 10:23 11:2 27:3
 exceed (2) 31:23 32:1,5
 exceeds (2) 32:2
 excuse (2) 3:7 16:2
 exhibit (2) 3:17 4:12,18,23
 existing (2) 6:2,5 10:3 19:14
 expense (2) 7:1
 expense (2) 18:25 25:6 26:10,
 17 29:12
 expenses (2) 20:16
 experience (2) 22:9
 experienced (2) 13:8
 experiences (2) 7:23
 explored (2) 12:24,24
 expresses (2) 28:2
 extent (2) 23:2 30:11 32:22

F

f.a.c (2) 1:8
 facets (2) 12:5
 facing (2) 19:10,12
 failing (2) 26:21
 fair (2) 11:20
 fairness (2) 27:21
 far (2) 27:16
 fell (2) 2:5 4:1,1 25:19
 few (2) 7:2
 file (2) 5:20 9:8 13:10 19:4,6 21:
 3 23:3 24:13 31:25
 filed (2) 31:20
 files (2) 8:13 29:7 30:20
 filing (2) 6:4 15:9 16:5 18:2 19:
 2,19 27:14 29:3 31:12 34:21
 35:1
 filings (2) 1:7 15:24 29:9 34:18
 35:14
 find (2) 13:20 14:2 24:14
 finding (2) 14:23 31:13
 first (2) 7:18 17:14 27:6 29:21,
 23
 five (2) 9:25 10:2 18:8 27:8
 florida (2) 1:2,19 2:5,6,8,9 3:
 12,13,23 4:1,3,15 6:20 11:20
 13:2,4 14:11,14 36:2,21
 fluctuating (2) 19:8
 focus (2) 12:9,12 20:17
 follow (2) 8:9 27:2
 followed (2) 19:15 20:6
 foregoing (2) 36:5,3
 forgo (2) 33:7
 formulated (2) 21:13
 forth (2) 15:22
 free (2) 34:20
 friday (2) 1:15 35:16
 front (2) 10:22
 full (2) 6:25 10:7 19:11,19 22:25
 33:1 34:3
 fund (2) 4:4
 furnish (2) 5:18
 further (2) 13:17,18 36:11
 future (2) 15:24 21:14

G

gain (2) 26:11
 gallons (2) 8:25 9:2,16 10:5 12:
 16
 garnering (2) 28:16
 gathering (2) 30:8
 gave (2) 17:1 22:14
 generally (2) 24:6
 gets (2) 28:15
 getting (2) 24:20 31:5
 give (2) 6:10 7:15 8:20 30:10,14
 given (2) 29:9 36:10
 gives (2) 12:25
 got (2) 9:24
 great (2) 25:5
 greater (2) 29:13,23
 greg (2) 4:10
 guarantee (2) 33:1,2

guaranteed (2) 24:18
 guess (2) 11:17 14:13 15:10
 17:7 18:24 24:8 28:14,22 29:15
 31:1,2 32:15

H

hand (2) 33:12
 happen (2) 15:23 22:23 29:1
 happened (2) 8:15
 happening (2) 30:15
 happens (2) 8:10 27:16,17
 happy (2) 20:9 35:4
 hear (2) 15:11 20:9
 hearing (2) 1:11 3:10,14,16 5:6
 10:16 27:18 34:17 35:12,19 36:
 10
 held (2) 3:10
 helpful (2) 32:12
 hereby (2) 36:4
 higher (2) 29:4,6
 historic (2) 16:6
 hit (2) 13:24
 hope (2) 10:17,21 12:2 33:19
 however (2) 9:21 13:16 20:14
 hundreds (2) 14:24
 hurt (2) 14:7
 hypo (2) 19:14
 hypothetical (2) 7:6,11,16 10:5,
 15 12:15 17:16 33:18,20
 hypotheticals (2) 7:10,13 10:23

I

idea (2) 32:25
 identification (2) 4:24 5:18
 identify (2) 4:17 26:25
 ignore (2) 8:4,6,15 30:2
 ignored (2) 29:22,24
 ignoring (2) 28:7
 impact (2) 6:12
 implement (2) 17:3 27:22
 implemented (2) 6:1 26:4 29:15
 implementing (2) 20:20
 imposed (2) 29:18
 incorporate (2) 24:9
 increase (2) 5:21 6:12 7:19,22,
 24 8:2,5,10,11,12,15 9:1,4 13:
 11,23,25,25 17:15 19:13 20:7
 22:5 24:17 26:9,15 27:5,8,12,
 13,17,23 28:7,9 29:1,5,7,14,23,
 25
 increased (2) 27:10
 increases (2) 7:1 13:9,21 15:
 18,20 23:4,8 24:2,7,10,16
 incremental (2) 13:11 32:23
 incurred (2) 33:16
 index (2) 1:6 5:13,15,16,17,21
 21:1 30:20
 indicated (2) 20:8 29:8
 indicating (2) 19:17 20:19
 individuals (2) 14:15
 industry (2) 20:10
 inferential (2) 26:2
 information (2) 5:25 15:9,12
 19:21,22,24 21:10 22:12 25:10,
 25 28:15,17,21 30:8,11,14 31:
 10,20 32:1,11 33:11
 initiate (2) 24:6
 initiated (2) 27:14
 insignificant (2) 14:3
 instance (2) 15:3 29:21
 instead (2) 9:25
 intend (2) 16:13 31:9
 intent (2) 21:19,25 22:13,13,17,
 21,22 24:20 31:4,22 32:3 33:9,
 13
 interested (2) 36:14
 intervening (2) 30:2,3
 involved (2) 20:23 21:5
 issue (2) 21:4 27:21 28:3,4
 issued (2) 3:11
 issues (2) 5:8
 item (2) 29:12

items (2) 4:20 20:15 34:12
 itself (2) 28:15

J

jacobs (2) 1:14 28:21,24 30:5
 january (2) 35:15
 jpc (2) 5:23
 jerry (2) 4:3
 jeopardy (2) 26:20
 johnson (2) 1:12 3:2,5,9,18,21,
 25 4:7,11,17,19,25 5:5,10 6:7,
 14,18,22 11:5,7,11,15 25:7,17,
 21,23 28:19 30:25 34:23 35:6,
 9,17
 j (2) 1:14
 judgment (2) 21:20
 julia (2) 1:12
 jump (2) 8:16
 june (2) 3:11,13
 justifiably (2) 7:3

K

keeps (2) 11:24
 key (2) 14:8,12
 kin (2) 36:11
 kind (2) 25:14 31:17 34:14
 knocks (2) 9:3
 knowing (2) 14:16
 knowledge (2) 25:4
 krick (2) 1:20 36:4,19

L

language (2) 6:2,5 25:24 28:1
 32:18 34:14,21 35:5
 large (2) 36:21
 last (2) 14:19 17:4,24 27:17
 later (2) 8:9 16:20 19:9
 law (2) 6:1 28:6
 lawyers (2) 15:2
 layer (2) 20:25
 lays (2) 31:25
 least (2) 9:7 14:10 21:6,12 22:9
 30:10,14
 legal (2) 2:3
 legality (2) 23:15
 legitimate (2) 26:3
 leon (2) 1:14 36:3
 level (2) 26:9,10
 liberality (2) 29:9
 likely (2) 10:12
 limit (2) 22:14 23:11 29:16
 limitation (2) 34:4
 limitations (2) 27:21
 limited (2) 17:4 27:5,16 32:23
 34:10
 limits (2) 20:14 23:16
 lines (2) 31:22
 little (2) 12:13
 look (2) 8:1 9:13,18,19 12:5 13:
 16 19:1 20:17,20 21:18 24:1
 looked (2) 15:19 22:3
 looking (2) 12:15,22 20:1 30:1
 low (2) 11:24
 lower (2) 11:25

M

ma'am (2) 25:19
 madame (2) 6:19
 made (2) 5:22,23 18:19,22 20:
 18 24:4
 madison (2) 2:8
 magnifies (2) 13:5
 mail (2) 5:14
 many (2) 7:10,10 13:3,17 14:17
 15:1
 marked (2) 4:24
 matt (2) 2:5
 matter (2) 10:2 28:16
 matters (2) 4:8
 matthew (2) 4:1
 mean (2) 15:11 19:14 22:11 23:
 12 31:17

32:4,6,17,25 33:5 34:4,13,20
 debra (a) 1:20 36:4,19
 december (a) 1:15 36:15
 decided (a) 33:7
 decision (a) 20:18 21:21 26:14
 26:18 30:16
 decrease (a) 7:20,22 8:3,8,11,
 16 9:2,20,23 17:19 20:6,7,21
 22:4,10 24:15,21 26:21 28:8,8
 29:13,14,14,21,24 33:22
 decreases (a) 8:3 13:6,10,21
 14:5,6 24:1 30:13
 delay (a) 19:7,9
 delta (a) 9:10,12,19,21,25 10:1
 18:8,13
 demonstration (a) 7:6,16 10:12
 33:24
 depends (a) 26:14
 described (a) 10:24 12:19
 description (a) 24:9
 desired (a) 22:2
 determine (a) 24:25 30:11,15
 detriment (a) 13:18 19:4 31:14
 detrimental (a) 31:15
 dialogue (a) 5:8
 difference (a) 12:20,23 14:4 17:
 5,25 18:1,12
 directed (a) 20:16
 direction (a) 36:7
 disagreed (a) 30:17
 discuss (a) 10:15
 discussed (a) 34:15
 discussion (a) 5:8
 dispute (a) 6:8,24
 distinct (a) 12:21
 division (a) 2:3
 docket (a) 1:5
 doing (a) 34:24
 done (a) 17:14 34:11
 double (a) 20:5
 doubt (a) 16:13,14,18
 down (a) 9:3,20,23 36:5
 drum (a) 23:5
 due (a) 35:15

E

each (a) 5:15 19:4
 earnings (a) 20:20 21:4,8,16
 29:16
 easily (a) 10:24 15:7
 effective (a) 21:21
 effort (a) 7:4,4 24:24 31:11
 either (a) 30:4
 employ (a) 36:13
 encourage (a) 26:23
 encouraging (a) 24:13
 end (a) 9:15 14:7 22:2 31:15 33:
 19,21,22
 enough (a) 13:22
 ensure (a) 32:4
 entered (a) 4:13
 entertain (a) 34:14
 entirety (a) 30:3
 entitled (a) 17:15,25
 equal (a) 9:9
 equitable (a) 11:21 28:17
 equity (a) 26:3,4
 error (a) 16:14
 established (a) 1:6 8:24
 establishing (a) 5:14,17
 estimated (a) 6:9
 et (a) 7:4,4 27:12,13 28:13
 evaluate (a) 21:11 33:11
 even (a) 10:7,12 19:1 24:14 30:
 12
 events (a) 24:5
 everybody (a) 4:13 10:23 31:6,
 18
 everything (a) 31:16
 evidence (a) 4:24 36:9
 exactly (a) 7:11
 example (a) 7:18,25 8:22 9:11

10:25 11:7,15 17:1 20:1 22:14
 27:9
 examples (a) 10:23 11:2 27:3
 exceed (a) 31:23 32:1,5
 exceeds (a) 32:2
 excuse (a) 3:7 16:2
 exhibit (a) 3:17 4:12,18,23
 existing (a) 6:2,5 10:3 19:14
 expanse (a) 7:1
 expense (a) 18:25 25:6 26:10,
 17 29:12
 expenses (a) 20:16
 experience (a) 22:9
 experienced (a) 13:8
 experiences (a) 7:23
 explored (a) 12:24,24
 expresses (a) 28:2
 extent (a) 23:2 30:11 32:22

F

f.a.c (a) 1:8
 facets (a) 12:5
 facing (a) 19:10,12
 falling (a) 26:21
 fair (a) 11:20
 fairness (a) 27:21
 far (a) 27:16
 fell (a) 2:5 4:1,1 25:19
 few (a) 7:2
 file (a) 5:20 9:8 13:10 19:4,6 21:
 3 23:3 24:13 31:25
 filed (a) 31:20
 files (a) 8:13 29:7 30:20
 filing (a) 6:4 15:9 16:5 18:2 19:
 2,19 27:14 29:3 31:12 34:21
 35:1
 filings (a) 1:7 15:24 29:9 34:18
 35:14
 find (a) 13:20 14:2 24:14
 finding (a) 14:23 31:13
 first (a) 7:18 17:14 27:6 29:21,
 23
 five (a) 9:25 10:2 18:8 27:8
 florida (a) 1:2,19 2:5,6,8,9 3:
 12,13,23 4:1,3,15 6:20 11:20
 13:2,4 14:11,14 36:2,21
 fluctuating (a) 19:8
 focus (a) 12:9,12 20:17
 follow (a) 8:9 27:2
 followed (a) 19:15 20:6
 foregoing (a) 36:5,8
 forgo (a) 33:7
 formulated (a) 21:13
 forth (a) 15:22
 free (a) 34:20
 friday (a) 1:15 35:16
 front (a) 10:22
 full (a) 6:25 10:7 19:11,19 22:25
 33:1 34:3
 fund (a) 4:4
 furnish (a) 5:18
 further (a) 13:17,18 36:11
 future (a) 15:24 21:14

G

gain (a) 26:11
 gallons (a) 8:25 9:2,16 10:5 12:
 16
 garnering (a) 28:16
 gathering (a) 30:8
 gave (a) 17:1 22:14
 generally (a) 24:6
 gets (a) 28:15
 getting (a) 24:20 31:5
 give (a) 6:10 7:15 8:20 30:10,14
 given (a) 29:9 36:10
 gives (a) 12:25
 got (a) 9:24
 great (a) 25:5
 greater (a) 29:13,23
 greg (a) 4:10
 guarantee (a) 33:1,2

guaranteed (a) 24:18
 guess (a) 11:17 14:13 15:10
 17:7 18:24 24:8 28:14,22 29:15
 31:1,2 32:15

H

hand (a) 33:12
 happen (a) 15:23 22:23 29:4
 happened (a) 8:15
 happening (a) 30:15
 happens (a) 8:10 27:16,17
 happy (a) 20:9 35:4
 hear (a) 15:11 20:9
 hearing (a) 1:11 3:10,14,16 5:6
 10:16 27:18 34:17 35:12,19 36:
 10
 held (a) 3:10
 helpful (a) 32:12
 hereby (a) 36:4
 higher (a) 29:4,6
 historic (a) 16:6
 hit (a) 13:24
 hope (a) 10:17,21 12:2 33:19
 however (a) 9:21 13:16 20:14
 hundreds (a) 14:24
 hurt (a) 14:7
 hypo (a) 19:14
 hypothetical (a) 7:6,11,16 10:5,
 15 12:15 17:16 33:18,20
 hypotheticals (a) 7:10,13 10:23

I

idea (a) 32:25
 identification (a) 4:24 5:18
 identify (a) 4:17 26:25
 ignore (a) 8:4,6,15 30:2
 ignored (a) 29:22,24
 ignoring (a) 28:7
 impact (a) 6:12
 implement (a) 17:3 27:22
 implemented (a) 6:1 26:4 29:15
 implementing (a) 20:20
 imposed (a) 29:18
 incorporate (a) 24:9
 increase (a) 5:21 6:12 7:19,22,
 24 8:2,5,10,11,12,15 9:1,4 13:
 11,23,25,26 17:15 19:13 20:7
 22:5 24:17 26:9,15 27:5,8,12,
 13,17,23 28:7,9 29:1,5,7,14,23,
 25
 increased (a) 27:10
 increases (a) 7:1 13:9,21 15:
 18,20 23:4,8 24:2,7,10,16
 incremental (a) 13:11 32:23
 incurred (a) 33:16
 index (a) 1:6 5:13,15,16,17,21
 21:1 30:20
 indicated (a) 20:8 29:8
 indicating (a) 19:17 20:19
 individuals (a) 14:15
 industry (a) 20:10
 inferential (a) 26:2
 information (a) 5:25 15:9,12
 19:21,22,24 21:10 22:12 25:10,
 25 28:15,17,21 30:8,11,14 31:
 10,20 32:1,11 33:11
 initiate (a) 24:6
 initiated (a) 27:14
 insignificant (a) 14:3
 instance (a) 15:3 29:21
 instead (a) 9:25
 intend (a) 16:13 31:9
 intent (a) 21:19,25 22:13,13,17,
 21,22 24:20 31:4,22 32:3 33:9,
 13
 interested (a) 36:14
 intervening (a) 30:2,3
 involved (a) 20:23 21:5
 issue (a) 7:4 27:21 28:3,4
 issued (a) 3:11
 issues (a) 5:8
 item (a) 29:12

items (a) 4:20 20:15 34:12
 itself (a) 28:16

J

jacobs (a) 1:14 28:21,24 30:5
 january (a) 35:15
 jpc (a) 5:23
 jerry (a) 4:3
 jeopardy (a) 26:20
 johnson (a) 1:12 3:2,5,9,18,21,
 25 4:7,11,17,19,25 5:5,10 6:7,
 14,18,22 11:5,7,11,15 25:7,17,
 21,23 28:19 30:25 34:23 35:6,
 9,17
 jr (a) 1:14
 judgment (a) 21:20
 julia (a) 1:12
 jump (a) 8:16
 june (a) 3:11,13
 justifiably (a) 7:3

K

keeps (a) 11:24
 key (a) 14:9 12
 kin (a) 36:11
 kind (a) 25:14 31:17 34:14
 knocks (a) 9:3
 knowing (a) 14:16
 knowledge (a) 25:4
 krick (a) 1:20 36:4,19

L

language (a) 6:2,5 25:24 28:1
 32:18 34:14,21 35:5
 large (a) 36:21
 last (a) 14:19 17:4,24 27:17
 later (a) 8:9 16:20 19:9
 law (a) 6:1 26:6
 lawyers (a) 15:2
 layer (a) 20:25
 lays (a) 31:25
 least (a) 9:7 14:10 21:6,12 22:9
 30:10,14
 legal (a) 2:3
 legality (a) 23:15
 legitimate (a) 28:3
 leon (a) 1:14 36:3
 level (a) 26:9,10
 liberally (a) 29:9
 likely (a) 10:12
 limit (a) 22:14 23:11 29:16
 limitation (a) 34:4
 limitations (a) 27:21
 limited (a) 17:4 27:5,16 32:23
 34:10
 limits (a) 20:14 23:16
 lines (a) 31:22
 little (a) 12:13
 look (a) 8:1 9:13,18,19 12:5 13:
 16 19:1 20:17,20 21:18 24:1
 looked (a) 15:19 22:3
 looking (a) 12:15,22 20:1 30:1
 low (a) 11:24
 lower (a) 11:25

M

ma'am (a) 25:19
 madame (a) 6:19
 made (a) 5:22,23 18:19,22 20:
 18 24:4
 madison (a) 2:8
 magnifies (a) 13:5
 mail (a) 5:14
 many (a) 7:10,10 13:3,17 14:17
 15:1
 marked (a) 4:24
 matt (a) 2:5
 matter (a) 10:2 28:16
 matters (a) 4:8
 matthew (a) 4:1
 mean (a) 15:11 19:14 22:11 23:
 12 31:17

mechanism (1) 24:10
 meeting (1) 14:14
 method (2) 8:14 15:6
 methodology (2) 9:8 15:21
 might (3) 8:7 15:21 34:10
 mike (1) 3:6
 minutes (1) 3:8
 mitigate (1) 6:25
 mitigated (1) 7:3
 mitigates (1) 19:17
 mitigating (3) 7:1,2 15:17
 moment (1) 20:2
 months (2) 27:14,24
 moore (1) 3:4,7,10,19,19 4:9,
 12,22 5:1,9 6:8,17 30:9 34:17,
 22 35:2,14
 most (5) 15:14 21:2 24:23 27:9,
 18
 ms (1) 3:4,7,10,19 4:9,12,22 5:
 1,9 6:8,17 30:9 34:17,22 35:2,
 14
 much (1) 27:20
 multiple (2) 14:21 15:2

N

necessary (4) 7:9 18:19 24:14
 28:17
 need (5) 5:7 6:10,25 15:17 35:
 11
 needs (1) 15:24
 net (4) 13:25 15:13 26:11 29:14
 nets (1) 13:9
 netted (2) 14:3 33:22
 netting (1) 13:3,19 15:7 16:15
 19:12 30:21,23
 new (1) 28:12
 next (6) 8:25 9:2,4 17:19 29:2
 35:16
 none (4) 30:6,6 31:16 35:19
 nor (1) 36:13
 notary (1) 36:20
 noted (1) 6:15
 nothing (2) 8:10,11
 notice (1) 3:11
 notices (2) 3:15 4:14
 notifying (1) 5:20
 number (2) 14:24 34:9
 numbers (6) 5:18 7:14,15,17 8:
 20,20

O

oak (1) 2:3
 objection (1) 4:21
 obviously (6) 10:18,20 16:20
 17:9 22:23 33:18
 occur (3) 10:13 11:23 23:16
 occurred (4) 8:4,5,17 27:24
 occurs (2) 8:23 32:24
 office (2) 4:6 9:18
 official (1) 6:4
 offset (1) 8:18 13:22 22:5 24:15
 26:22 28:9,9 29:2 30:4,17
 offsetting (1) 25:14
 often (1) 30:13
 okay (2) 3:18,21 4:11,17 5:5,10
 6:7,22 11:11,11 16:8,23 17:9,
 13,23 23:13,23 25:17,21 30:5
 35:6
 once (1) 27:13
 one (22) 7:6,6,13 8:21 10:15,19,
 19,25 11:1 12:6,6 14:20,22 15:
 3,10 18:23,24 22:4 26:7,13,21,
 21 27:1,5,6 28:8 29:1,3,20 30:4
 33:10 34:10
 only (1) 9:25 10:9,25 13:7,12,
 15 15:3,9,20 19:18 24:1 27:1
 29:2 30:1 32:13,21
 opc (1) 10:8
 opc's (1) 12:9
 operated (1) 23:2
 opinion (1) 31:3
 opportunity (2) 22:7 29:9 35:7

opposed (1) 33:21
 order (1) 5:14
 original (1) 17:8
 other (3) 3:15 4:2,7 13:3 14:11
 22:2 25:7 27:8 28:19
 otherwise (1) 26:25
 ought (1) 30:18
 out (5) 7:10 10:4 13:9 14:4,5,
 20,23,25 18:23,24 31:13,25 32:
 23 33:20,22 35:11
 outside (1) 23:20
 over (4) 13:19 15:5,6 26:13
 overbearing (2) 14:12,12,23
 overbearing (2) 14:19 17:21
 overstepping (1) 23:6
 overview (1) 5:11

P

p.m (2) 1:16 35:24
 pages (1) 36:8
 part (2) 22:2 27:18 34:17
 participants (1) 5:3
 participate (1) 35:7
 particular (4) 20:23 21:13 25:8
 29:11
 particularly (2) 15:15 31:21
 parties (4) 6:16 34:20 36:12,15
 parties' (1) 4:15
 pasco (2) 14:10 20:19
 pass (2) 1:8 17:20 31:8
 pass-through (1) 5:24 6:21,24
 8:13,19 9:9 19:5,15 20:14,20
 21:2 25:4 26:24 27:7 29:12 30:
 20 31:12
 pass-throughs (1) 7:9 13:10,15
 17:3 19:6,11
 passed (1) 20:6
 past (2) 8:3 14:22 34:11
 pay (1) 26:16
 paying (1) 26:15
 penalty (1) 24:15
 people (1) 14:20
 per (6) 8:24 9:1,15 10:5 12:16,
 16
 perceive (1) 11:22
 perceived (1) 7:7
 perfect (1) 31:3
 perhaps (2) 5:3 28:5
 peril (1) 31:11
 period (5) 13:20 23:17,21 24:1
 32:24
 periods (1) 24:2
 permit (1) 5:18
 permitted (2) 10:9 32:1
 person (2) 4:2 14:21
 philosophical (1) 34:16
 pick (1) 12:6 14:4,5
 picking (2) 18:23,24
 picture (2) 20:13 21:8
 piecemeal (1) 15:20
 place (2) 23:20 30:4 34:3
 places (1) 14:2
 point (7) 7:9 11:18,23 12:3 14:6
 18:24 32:16
 pointed (1) 32:22
 portion (1) 21:12
 position (4) 20:11 24:20 27:20
 28:11
 possibility (1) 12:22
 possible (5) 11:24 18:11,15,16
 23:12
 possibly (2) 20:2 31:13
 posthearing (2) 34:18,21 35:14
 potential (1) 29:11
 practical (1) 10:2
 practicality (1) 30:19
 pre-filed (1) 11:10
 prefer (1) 31:24
 preliminary (1) 4:7
 prepare (1) 16:21
 prepared (2) 6:9,11,16
 present (5) 7:13,23 8:2 9:19 11:

16
 presentation (4) 7:5,12 8:22 10:
 13
 presentations (1) 5:4
 presented (2) 7:6,12 10:14
 presenting (1) 5:2
 presents (1) 10:22
 presumption (1) 23:3
 pretty (1) 27:20
 previously (2) 26:9 28:10 29:12
 previously (2) 23:9 24:11
 price (4) 1:6 5:13,15,20
 prior (5) 14:2 22:4 23:25 24:2
 27:24 33:6
 probably (3) 33:25 34:2,24
 problem (7) 13:5 19:23 22:20
 28:1 2 30:12 33:9
 procedure (2) 27:12 31:19
 proceeding (1) 34:10
 proceedings (3) 1:11 3:3 35:23
 process (1) 32:15
 proper (1) 29:11
 proposal (2) 6:21 15:11
 propose (2) 10:9 34:21
 proposed (1) 1:5 6:3 8:1,14,18
 14:6 15:8,8,9,22 32:17
 proposing (2) 9:17 10:8
 protect (1) 26:25
 provided (4) 8:21 11:8 21:9 22:
 7
 provision (3) 6:21,25 25:2
 psc (1) 14:23
 public (1) 1:2,21 4:5,16 9:18
 10:20 19:16 25:23 28:22 35:6
 36:20
 published (1) 3:12
 purchase (1) 7:19,21,24 8:8,12,
 24 9:1,3,9 17:2 31:5
 purpose (5) 6:24 15:17 31:7,19
 32:9,10
 pursuant (1) 3:10
 put (2) 24:20 31:10
 putting (1) 31:12

Q

question (4) 14:16 16:25 28 22
 31:8
 questions (2) 25:7 28:19 36:6
 quits (1) 7:2

R

raise (1) 28:3
 raised (2) 5:8 26:18
 raises (1) 28:2
 rate (2) 4:4 6:25 7:1 8:22,23 9:
 14,19,20 10:3 13:5,23 15:17,24
 18:14 19:11,14,19 22:6,9,25
 24:6,21 32:2,5 33:15 34:3
 rates (5) 6:18 11:24,25 12:7,11
 14 13:9 14:1 17:7 19:8 20:3 22:
 1 27:12 28:12 33:14
 rather (2) 12:5 20:3,24
 re (1) 1:5
 read (1) 3:8
 ready (1) 35:16
 real (1) 10:11
 realize (2) 13:24 30:8
 really (5) 12:25 15:13 18:18,18
 31:22
 reason (2) 6:10 33:7
 received (1) 4:24
 recognition (1) 19:13
 recognize (1) 26:22
 recommendation (1) 34:19
 recommendations (1) 35:13
 record (2) 4:13 6:15 16:19
 recover (3) 9:13 10:10 19:18
 recovery (5) 10:7 20:5 32:5 33:
 1,3
 reduce (2) 22:1 33:14
 reduced (2) 22:6 26:9 36:7
 reducer (1) 12:7

reduction (5) 23:19 26:8 29:1,4,
 6
 reflect (2) 6:1 28:12
 reflective (1) 21:7
 regarding (3) 6:20 11:18 12:8
 regards (1) 7:8
 regular (2) 25:11 36:12
 regulate (1) 14:25
 regulatory (1) 6:9
 reiterates (2) 11:18 15:16
 reiterated (1) 15:5
 relates (2) 6:21 13:2 25:6
 relation (1) 25:3
 reluctant (1) 24:8
 remainder (1) 20:10
 report (3) 5:20 21:3,7
 reported (2) 1:20 9:17
 reporter (2) 36:4,20
 represent (2) 14:18 36:8
 representatives (1) 25:13
 represented (4) 14:15,21 15:1,2
 request (2) 3:14 18:12
 requested (2) 23:9 24:7,11
 require (2) 5:24 11:20
 required (4) 6:13 9:7 21:10 26:1
 requirement (2) 16:3 17:20 21:
 16
 requirements (1) 5:13
 requires (2) 5:17,19
 requiring (1) 26:16
 resolve (1) 24:25
 respond (3) 5:22 32:21 35:7
 rest (1) 26:1
 result (2) 27:12,22 36:14
 resulted (1) 20:24
 results (1) 7:7
 retrenching (1) 11:23
 review (1) 34:25
 road (1) 1:23
 robert (1) 4:10
 role (1) 10:20
 room (2) 1:16 2:8 15:1
 rule (25) 1:11 4:14 5:3,6,12,13,
 23,24 6:1 8:1 15:4,6,8,9,22 16:
 1,4,14,22 19:21 21:12,12 26:4,
 6 28:16 30:7,7,10,14 31:8,18,
 25 32:9 33:10 35:1
 rule-making (1) 3:11
 rule-makings (1) 10:18

S

same (5) 25:15,16 27:20 28:11,
 11 31:21
 saw (1) 29:3
 saying (2) 23:10 27:19
 says (5) 12:11 27:10,19,22 28:
 12
 scenario (1) 7:25
 second (1) 26:15,16 29:22
 see (14) 8:1 10:21,25 12:1,2 13:
 6 15:23 16:9 19:8,17 22:23 30:
 20 31:16,25
 seeing (1) 35:19
 seeking (1) 30:1
 seem (1) 29:10
 seemed (1) 20:21
 seems (3) 15:4,16 31:6
 sense (1) 23:25
 series (2) 20:19 23:8
 service (1) 1:2 3 14 4 15
 services (4) 2:3 6 3 24 4 1
 set (2) 15:22 17:7
 seven (1) 13:16
 several (5) 3:15 6:20 13:8 14:11
 15:2 21:8
 shafer (7) 4:10 19:25 21:18,25
 22:17 23:1,12,14,22 24:3,19
 32:21 33:4,8 34:8 35:4,8
 shall (2) 27:11 28:12
 short (1) 5:2
 short-change (1) 34:6
 shouldn't (1) 21:8

show (1) 11:1
 shunard (1) 2:3
 side (1) 12:6,6
 significant (2) 6:11 13:25
 simple (1) 21:22
 simplification (1) 20:24
 simply (3) 21:20 26:25 27:10
 28:16 33:14
 since (2) 6:4 25:2
 sitting (1) 4:2
 situation (14) 7:8,18 8:7 11:3
 14:10,19 15:5 21:20 22:3,5 24:
 22 25:16 26:20,23
 six (1) 13:16
 slowly (1) 12:7
 solely (1) 33:22
 someone (1) 18:12
 sops (1) 30:24
 sorry (1) 21:24
 sounds (1) 31:2
 speaking (2) 4:10 24:6
 specific (1) 20:15
 specifically (1) 27:23
 specifics (1) 27:3
 specifies (1) 5:15
 spoils (1) 25:13
 staff (32) 2:4 3:20 4:9,15,18,23
 5:2,11 6:3 7:3,5,12,25,28 8:14,
 21 9:17 10:8,14,22 12:3,13 19:
 20 21:10 23:2 26:7 27:18 29:8
 30:18 33:8 34:19,25
 staff's (3) 15:11 22:13 24:19
 stage (2) 34:13,16
 start (2) 5:1 12:2 33:20
 started (2) 10:16 26:10
 state (3) 1:21 36:2,21
 stated (3) 20:1 32:8,9,13 36:6
 statement (2) 6:8,12
 states (1) 11:20
 statute (16) 11:19 12:11 13:1 15:
 16,19 20:14,16 22:24 23:15 25:
 24 27:10 28:10 31:3,4,7 34:5
 statutes (1) 9:7
 statutory (2) 23:6 34:1
 stay (1) 13:14
 step (1) 9:22
 stove (1) 4:5
 still (2) 34:18,18
 straightforward (1) 20:22
 street (1) 2:8
 stricken (1) 6:4
 structure (1) 13:5
 subject (2) 6:5 19:4
 subsection (1) 28:11
 subsequent (1) 20:7
 subsequently (1) 31:13
 subtracting (1) 26:21
 sudden (1) 14:1
 suddenly (1) 21:5
 suffering (1) 11:2
 sufficient (1) 5:9
 suggest (3) 10:11 24:4 29:7,17
 30:9
 summary (2) 5:2 6:10
 suppose (1) 21:18
 supposed (1) 12:14
 susan (1) 1:13
 swear (1) 5:7
 symmetrical (1) 23:24
 systems (2) 13:17 14:21,22

T

tabbed (1) 4:19
 table (1) 4:3
 talked (1) 12:12
 tallahassee (2) 1:19 2:8
 tax (1) 25:3
 taxes (2) 25:15 28:13
 test (2) 21:17 29:16
 themselves (1) 26:25
 thereby (2) 7:1,2
 therefore (2) 6:12 16:15

thereto (1) 36:7
 thinking (1) 9:8
 third (2) 27:8 29:25
 thomasville (1) 1:23
 though (3) 24:14 27:4 30:7
 thousand (3) 8:24 9:2,15 10:5
 12:16,16
 thousands (1) 14:24
 three (10) 7:19 8:5,7,17,23 12:19
 16:5 18:3 20:15 28:24
 today (3) 7:5 10:16 14:17
 together (1) 31:12
 took (1) 23:20
 total (4) 15:19 19:1 20:13 26:13
 towards (1) 19:19
 tracks (1) 28:8
 transcript (4) 55:16 36:1,5,9
 treatment (1) 11:21
 tried (1) 14:8
 true (1) 36:9
 try (3) 18:25 21:13,21 22:24 23:
 7
 trying (1) 20:4
 two (11) 7:15,20 8:4,9,15 10:23,
 23 20:15 26:8,14 28:7
 types (1) 34:12
 typewriting (1) 36:7

U

under (16) 7:8,25 8:14 9:6,7,11
 10:4 11:2 12:15 13:7 14:6 17:
 16 19:14 22:8 33:20 36:7
 understand (3) 5:5 34:23 35:15
 understanding (1) 26:12
 uniform (1) 13:9
 united (1) 11:19
 unless (2) 13:11 17:20
 unnecessarily (1) 15:4
 until (1) 17:3
 up (15) 9:1 5,15 10:22 14:7 18:9
 20:3 23:5,7 31:15 33:6,19,21,
 22 34:1
 update (1) 5:25
 uses (1) 7:16
 using (4) 7:14,15 8:20 21:8
 utilities (14) 9:6 11:2 13:3,18 14:
 11,16,18,18,25 20:23 21:3,5
 24:13,20
 utilities' (2) 22:1 24:5
 utility (24) 5:15,18,19,25 7:8,23
 9:6 10:6,25 14:12,21 17:2 20:2
 22:7 23:3,8 24:7 26:12,20 27:7,
 9,11,15 30:19
 utility's (1) 24:24
 utilization (1) 22:12

V

valorem (2) 25:3 28:13
 various (1) 27:3
 vehicle (1) 34:9
 view (1) 16:12
 vote (1) 35:11

W

wants (1) 18:22
 water (22) 2:5,6 3:13,23 4:1,3,15
 6:20 7:20,21 24 8:8,13,24 9:1,
 3,9 13:2,4 14:11 17:2 31:5
 waterworks (1) 14:14
 way (10) 8:19 12:18,18 15:18 19:
 15 21:13,19 24:25 26:5 27:1
 ways (2) 23:16 33:10
 wednesday (1) 14:13
 week (1) 14:13
 weekly (1) 3:13
 whatever (2) 14:24 33:6
 whereupon (2) 4:23 35:23
 whether (2) 30:12,16
 whipsaw (1) 27:1
 whole (2) 18:20,22 31:11
 whom (1) 15:1
 will (16) 3:21 4:10,17,20 5:7,10,

16,17 6:14 23:3 26:5 27:9 34:
 24 35:4,15,16
 willy-nilly (1) 33:14
 wilson (1) 4:3
 wind (1) 20:2
 wish (2) 11:13 32:19
 withdraw (2) 22:7 29:9
 within (3) 5:16 13:14 23:16 32:
 24 34:5
 without (1) 4:20 7:14,15 19:12
 22:1,24
 wonder (1) 23:6
 word (2) 12:9,25
 words (2) 22:3 27:6
 work (3) 8:21 14:18 35:4
 working (1) 12:18
 works (1) 27:1
 world (1) 31:4

Y

y'all (1) 35:12
 year (36) 7:21 21,23 8:9,10,12,
 25 9:2,4,11,22 13:24 17:4,14,
 19,24 18:3 23:20 24:14,18 26:
 7,8,13,14,15,16 27:6,8,8,17
 28:7,8 29:1,2,3 30:2,3
 year's (1) 29:13,13,21,23,24,25
 year-by-year (1) 17:10
 year-to-year-to-year (1) 19:8
 years (16) 7:19,20 8:4,5,7,9,15,
 17,23 12:19 13:8,20 14:19,22
 16:6 22:4 28:25 33:6 34:9

Z

zero (1) 26:11