

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

1  
2 IN RE: Proposed Revisions to )  
Rules 25-30.020, 25-30.025, )  
3 25-30.030, 25-30.032, 25-30.033, )  
25-30.034, 25-30.035, 25-30.036, )  
4 25-30.037, 25-30.060, 25-30.110, )  
25-30.111, 25-30.135, 25-30.255, )  
5 25-30.320, 25-30.335, 25-30.360, )  
25-30.430, 25-30.436, 25-30.437, )  
6 25-30.443, 25-30.455, 25-30.515, )  
25-30.565, NEW RULES 25-22.0407, )  
7 25-30.0408, 25-30.0371,  
25-30.038, 25-30.039, 25-30.090, )  
8 25-30.117, 25-30.432 to  
25-30.435, 25-30.4385, 25-30.4415,)  
9 25-30.456, 25-30.460, 25-30.465, )  
25-30.470, AND 25-30.475; AND )  
10 REPEAL OF RULE 25-30.441, F.A.C. )  
PERTAINING TO WATER AND )  
11 WASTEWATER REGULATION. )  
12

DOCKET NO. 911082-WS

VOLUME I

Pages 1 through 92

13 PROCEEDINGS:

HEARING

14 BEFORE:

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

17 DATE:

Monday, May 24, 1993

18 TIME:

Commenced at 9:30 a.m.  
Concluded at 5:25 p.m.

20 PLACE:

101 East Gaines Street  
Tallahassee, Florida

21 REPORTED BY:

JANE FAUROT  
Notary Public in and for the  
State of Florida at Large

24 ACCURATE STENOTYPE REPORTERS, INC.  
100 SALEM COURT  
TALLAHASSEE, FLORIDA 32301  
25 (904) 878-2221

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

**APPEARANCES:****REPRESENTING FLORIDA WATERWORKS ASSOCIATION AND  
FLORIDA CITIES WATER COMPANY:**

WAYNE SCHIEFELBEIN, ESQUIRE  
Gatlin, Woods, Carlson and Cowdery  
1709-B Mahan Drive, Tallahassee, 32308,

**REPRESENTING SOUTHERN STATES UTILITIES:**

BRIAN ARMSTRONG, ESQUIRE  
Senior Attorney  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, Florida 32703

- and -

KENNETH A. HOFFMAN, ESQUIRE  
Messer, Vickers, Caparello, Madsen, Lewis,  
Goldman & Metz, P.A.  
215 South Monroe Street  
P. O. Box 1876  
Tallahassee, Florida 32302

**REPRESENTING THE FLORIDA FIRE SPRINKLER  
ASSOCIATION AND FLORIDA STATE FIREMEN'S  
ASSOCIATION:**

BUDDY DEWAR  
200 West College Avenue  
Tallahassee, Florida

**REPRESENTING THE CITIZENS OF THE STATE OF FLORIDA:**

JACK SHREVE, ESQUIRE and  
RICK MANN, ESQUIRE  
Office of Public Counsel  
c/o The House of Representatives  
801 Madison Street  
Tallahassee, Florida 32399-

**REPRESENTING THE FPSC COMMISSION STAFF:**

CHRISTIANA MOORE, ESQUIRE  
FPSC Division of Appeals  
101 East Gaines Street  
Tallahassee, Florida 32399-0863

## ALSO PRESENT:

CHARLES H. HILL, Director, Division of Water and Wastewater.

BILL LOWE, FPSC Division of Water and Wastewater.

BILLIE B. MESSER, FPSC Division of Water and Wastewater.

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

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

GREGORY L. SHAFER, FPSC Division of Water and Wastewater.

JOANN CHASE, FPSC Division of Water and Wastewater.

PATTI DANIEL, FPSC Division of Water and Wastewater.

PATRICK MAHONEY, FPSC Division of Research & Regulatory Review.

\* \* \* \* \*

I N D E X

EXHIBITS:

IDENTIFIED ADMITTED

1	Composite of Comments Filed Pursuant to Notice; Order; Proposed Rules; Notice of Rulemaking	40	40
2	List of rule Florida Waterworks Association Does Not Oppose	84	

P R O C E E D I N G S

1  
2 CHAIRMAN DEASON: Call the hearing to order.

3 Counselor, will you read the notice, please?

4 MS. MOORE: This hearing is being conducted  
5 pursuant to the rulemaking provisions of Section  
6 120.54, Florida Statutes. The rules were proposed in a  
7 notice published in the Florida Administrative Weekly  
8 on April 2nd, 1993, and the notice of rulemaking was  
9 also issued by the Commission on March 24th, 1993 in  
10 Docket No. 911082.

11 CHAIRMAN DEASON: Thank you. Take appearances,  
12 please.

13 MR. SCHIEFELBEIN: Wayne Schefelbein, Gatlin,  
14 Woods, Carlson and Cowderý, 1709-B Mahan Drive,  
15 Tallahassee, 32308, appearing on behalf of the Florida  
16 Waterworks Association and Florida Cities Water  
17 Company.

18 MR. ARMSTRONG: Brian Armstrong, Senior Attorney,  
19 Southern States Utilities, Inc., 1000 Color Place,  
20 Apopka, Florida.

21 MR. HOFFMAN: Kenneth A. Hoffman, Messer, Vickers  
22 law firm, P.O. Box 1876, Tallahassee, Florida 32302,  
23 also appearing on behalf of Southern States Utilities,  
24 Inc.

25 MR. DEWAR: I'm Buddy Dewar, I'm representing the

1 Florida Fire Sprinkler Association, 200 West College  
2 Avenue, here in Tallahassee. I'm also representing the  
3 Florida State Firemen's Association of which I am  
4 President.

5 MR. MANN: Jack Shreve and Rick Mann, representing  
6 the Citizens of the State of Florida, with the Office  
7 of Public Counsel.

8 MS. MOORE: Christiana Moore on behalf of the  
9 Public Service Commission Staff.

10 CHAIRMAN DEASON: Thank you. Ms. Moore, I  
11 understand that we have a suggested order of presenters  
12 and a suggested order of subject matter, is that  
13 correct?

14 MS. MOORE: That's correct. The suggested order  
15 is that Staff present an overview of the rules and then  
16 a summary of the economic impact statement; that each  
17 of the participants then present an overview of their  
18 position in the order of, first, members of the public,  
19 second, the Florida Fire Sprinkler Association, the  
20 Water and Wastewater Utilities and then Office of  
21 Public Counsel. I think, then, take the rules  
22 individually beginning with the private fire protection  
23 rule, the remainders of the rules in numerical order,  
24 concluding with the Rule 25-30.432, which is used and  
25 useful.

1           CHAIRMAN DEASON: Okay. Thank you. So, we can  
2 start with Staff's overview of the proposed rule, is  
3 that correct?

4           MR. SHREVE: Commissioner, would it be possible to  
5 get some information on a procedural matter before we  
6 start?

7           CHAIRMAN DEASON: Surely.

8           MR. SHREVE: And I've asked this question and  
9 tried to gather the information from some company  
10 representatives that -- I'm talking about the change in  
11 the date. Now, I know there is a difference in the way  
12 that rules are handled, but there was a change in the  
13 date from April 23rd for filing comments, of which we  
14 filed our comments and Mr. Shiefelbein filed his  
15 comments. Then a change in those rules, a change in  
16 the date, came out about a week and a half later saying  
17 that everyone would be allowed to file until May the  
18 17th. We filed ours and that put us in, what I  
19 consider, an unfair advantage, giving the other  
20 companies, the company and the Staff an unfair  
21 advantage to have the opportunity to rebut our rules,  
22 study those and do whatever preparation they need. And  
23 then the others were filed on May the 17th.

24           I've talked to Mr. Hill, and he has told me he had  
25 absolutely no knowledge of it, knew nothing about it,

1 didn't find about it until Mr. Scheifelbein called him,  
2 upset because Mr. Scheifelbein didn't know anything  
3 about it.

4 I've talked to Billy Stiles and he knew nothing  
5 about it. I talked to the Southern States attorneys  
6 and they knew nothing about it. I would just like to  
7 get some information as to if there was any motion or  
8 how this came about and how it was changed after the  
9 filing date.

10 CHAIRMAN DEASON: That's a good question.

11 MR. SHREVE: I would like to have it in the  
12 record, so -- I doubt if there is anything we can do  
13 about it, but I would like to have it there, because  
14 it's a question of fairness.

15 CHAIRMAN DEASON: Mr. Shreve, I'm not aware of a  
16 change in the filing date. All I have before me is a  
17 procedural order.

18 Commissioner Clark, do you have any information?

19 COMMISSIONER CLARK: I'm sure Chris does.

20 CHAIRMAN DEASON: Ms. Moore?

21 MS. MOORE: Yes. The purpose of the rulemaking  
22 proceeding is to fully inform the Commission of the  
23 intent. And I think it was discussed somewhat at an  
24 earlier agenda, was to get as many comments as possible  
25 and pursuant to the procedural order not all parties

1 had commented within the period. Any one of them can  
2 come at the hearing for the first time, any participant  
3 can come for the first time at a hearing and present  
4 comments. I thought that this additional period of  
5 time would give the Commission more information to work  
6 with. And that now that Public Counsel now knows what  
7 the other parties are going to respond to their  
8 position I don't see how that could harm --

9 MR. SHREVE: My question was, how did it all come  
10 about?

11 COMMISSIONER CLARK: Chris, I think the question  
12 is why it was changed, and presume it had something to  
13 do with the APA. We issued a procedural order that set  
14 a date, but then the APA says, "You have to give a  
15 certain amount of time after it's published to accept  
16 comment." And that's probably why they were told --

17 MR. SHREVE: And that was done in the APA when it  
18 was put in The Administrative Weekly, the date was  
19 named at April 23rd.

20 MS. MOORE: Comments will be filed.

21 COMMISSIONER CLARK: My only thought was it may be  
22 a requirement under the APA that you --

23 MR. SHREVE: No. The requirement was met in the  
24 initial order that was put in The Administrative Weekly  
25 my question is who came forward, how was it done? Who



1 asked for it? Who was it that received the advantage,  
2 is all I want to know. Mr. Hill didn't know anything  
3 about it and the companies didn't.

4 MS. MOORE: No one requested it. The Commission  
5 has done it before in prior rule dockets, and the  
6 decision was to do it again.

7 COMMISSIONER LAUREDO: Well, when you say the  
8 "Commission," who actually authorized it, because I,  
9 certainly, as one of five, I don't -- who authorized --

10 COMMISSIONER CLARK: It was in the prehearing  
11 hearing order, that it was -- I don't recall the  
12 specifics, or a particular discussion on changing the  
13 date.

14 MS. MOORE: There wasn't a --

15 COMMISSIONER LAUREDO: You know, there is nothing  
16 worse than diverting your energies and focus, because  
17 of a seemingly trivial thing, but it raises some very  
18 serious questions of fairness. You know, it's like  
19 you're starting to play basketball, and you're in the  
20 third quarter, you find out the rules of baseball  
21 apply. I mean, I can see where Public Counsel would be  
22 upset.

23 MS. MOORE: It was just an additional period that  
24 everybody could take advantage of. It wasn't intended  
25 to favor any one party. It's open to everyone to file

1 additional comments or to respond, if they wished, to  
2 their earlier comments filed.

3 COMMISSIONER LAUREDO: So the answer to who  
4 authorized it, is who, the Prehearing Officer?

5 MS. MOORE: Yes. I drafted the --

6 COMMISSIONER CLARK: I was unaware that there was  
7 any change at all. And I got a procedural order. It  
8 was explained to me. If it was different from  
9 something that went out, I did not know that.

10 CHAIRMAN DEASON: Let me ask a question. We set  
11 an April filing date initially, is that correct, for  
12 initial comments?

13 MS. MOORE: The standard notice provides for 21  
14 days for comments and a request for hearing to be  
15 filed.

16 CHAIRMAN DEASON: And then we issued a procedural  
17 order which had a May 17th date, is that correct?

18 MS. MOORE: That's correct.

19 CHAIRMAN DEASON: Okay.

20 MS. MOORE: "Testimony and comments should be  
21 prefiled by filing by May 17th. The comments already  
22 filed" -- I'm reading from the notice, the order --  
23 "Comments already filed and any additional comments and  
24 testimony will be incorporated in the index set forth  
25 by the Commission, but at a minimum" -- it also says,

1 "No additional comments are required if parties have  
2 already filed some."

3 COMMISSIONER CLARK: If I understand you  
4 correctly, in the notice -- when did the notice go out  
5 to the APA?

6 MS. MOORE: It was published April 2nd, and the --

7 COMMISSIONER CLARK: Okay. So, that accounts for  
8 the April 24th date. The law requires us to give 21  
9 days under the APA. And what we did was we issued a  
10 procedural order to give additional time. That's all.  
11 One is the requirement under 120, and this was an  
12 additional one because of this being a conferment to  
13 rulemaking.

14 Mr. Shreve, in answer -- my response is only this.  
15 You didn't have to file; nobody had to file. This is  
16 the public hearing under rulemaking. It's different  
17 than a 120.57, and you were given an opportunity for a  
18 review of what was filed May 17th. In addition, anyone  
19 can bring up a new matter today, and you'll have to  
20 deal with it. Everybody will have to deal with it.

21 MR. SHREVE: Commissioner, why does nobody want to  
22 say who requested or who caused this to be done? We  
23 filed our comments, and then the order came out, after  
24 they already had our comments, setting the new date.  
25 Mr. Hill said he didn't know anything at all about it

1 and none of the companies, evidently, did.

2 CHAIRMAN DEASON: Well, I guess it raises a  
3 fundamental question. Why set an initial date at all  
4 if there is no meaning behind it? If there is no  
5 requirement that that is your one opportunity to file  
6 comments, and if you don't file that comment, well,  
7 then, you've forfeited your right to file comments.  
8 Why even have an initial date at all?

9 COMMISSIONER CLARK: Because the APA requires it.

10 MS. MOORE: Chapter 120, there must be a 21-day  
11 comment period.

12 CHAIRMAN DEASON: But you just said, "But you can  
13 file comments up to the day of the hearing."

14 COMMISSIONER CLARK: That's right.

15 CHAIRMAN DEASON: So, why even say April --  
16 whatever the April date was.

17 MS. MOORE: I'm sorry. You can't -- to be in the  
18 record, they either have to be pursuant to the 21-day  
19 period or a procedural order. They can also -- anyone  
20 can file anything at the hearing.

21 COMMISSIONER CLARK: Or after the hearing.

22 COMMISSIONER LAUREDO: But the curious thing is  
23 that the only party that filed as per the date is  
24 Public Counsel, everybody else filed subsequent.

25 MS. MOORE: No, that's not correct.

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MR. SCHIEFELBEIN: That's not true.

COMMISSIONER LAUREDO: That's not true?

MR. SCHIEFELBEIN: No.

MR. SHREVE: Commissioner, what I am really bringing out here is that I want to make sure if there is an unfairness towards us or any other individual party, they are not carried through the rest of the rulemaking proceeding. And at this point, nobody has been willing to say why, anywhere on the record, changing the first date. It appears that Mr. Hill knew about the change, at least on the 21st of April. Now, I don't know why there was a change necessary at all, but Staff testimony, part of it, had already been prepared. And then part of it was to be brought back in between the April 23rd date and the time the new procedural order came out setting it. All I'm saying is that we should have known -- if the testimony was not going to be filed or was going to be filed later, we should have had the same opportunity to hold ours off that anyone else did.

MR. HILL: Mr. Chairman, if I may, it would probably help if Mr. Shreve handed out the rest of my records. This is good management. I was preparing for any contingency that came along. I never intended to file any comments. I was not aware of any requirement

1 on the 5th or 17th of whatever month at the time this  
2 memo went out. I try to do the best job I can  
3 managing. What I told my staff all along is I want to  
4 know what you're going to say when you belly up to the  
5 bench, put it in writing form so I can read it. And  
6 there were many drafts that I have seen and many  
7 responses. Again, if you'd look at the rest of my file  
8 you would see at what time, and I forget, it was  
9 subsequent to this, that I was aware and spoke with  
10 Ms. Moore that she was going to send out an order  
11 saying that parties should file comments, and we didn't  
12 really expect Staff to. In fact, I have another memo  
13 to my staff at around that date saying, "Uh-oh, I see a  
14 problem here, because if other parties file comments,  
15 and we are going to say something, if we don't prefile  
16 them, then we can be criticized for not prefiling our  
17 comments. So, this is just an early-on good  
18 management, preparing for contingencies. And, in fact,  
19 all managers should be operating like that, in my mind.  
20 Everybody should have been preparing things in case  
21 they were not going to file it, not just Staff.

22 MR. SCHIEFELBEIN: Commissioner, may I please  
23 address you on this?

24 CHAIRMAN DEASON: Please.

25 MR. SCHIEFELBEIN: All right. First of all, my

1 name has been invoked as being very upset about the  
2 order establishing procedures. And I think what upset  
3 me about that order at one time is different than what  
4 is being talked about here, so I just wanted to point  
5 that out.

6 I was under the mistaken impression when I first  
7 received the order that everything that was to be said  
8 and everything that had been said before was to be  
9 reduced to testimony format within 11 days or 10 days  
10 from the date of our receipt of the order. That was  
11 the cause of my discomfort. I was assured by Staff  
12 Counsel that that was not the case, that it was  
13 suggested that we put it in testimony format. It was  
14 not required, so I went away quietly and took it upon  
15 myself to, with this added opportunity, to submit  
16 evidence to do so.

17 Secondly, I would like to read or paraphrase to  
18 you all your own rule, which I think is perfectly  
19 consistent with -- I'm in the odd position here of  
20 defending, I guess, Commission action. But Rule  
21 25-22.016, your own procedural rules indicate that at a  
22 public hearing on rulemaking there shall be  
23 presentation of evidence, argument and oral statements.  
24 And that such written statements and evidence may be  
25 submitted within seven days after the conclusion of the

1 hearing, hearkening back to something Commissioner  
2 Clark said.

3 There is no rigidity or formality as far as the  
4 order of presentation. Certainly, I don't think I have  
5 any grounds to object if Mr. Shreve were to put on  
6 witnesses today that were to, God help us, rebut some  
7 of what we have put forward. I don't think I can claim  
8 unfair surprise at that. I think this is a  
9 quasi-legislative proceeding. You need to do whatever  
10 you can to get all the information before you, pro and  
11 con on every issue, at the same time trying to avoid  
12 unnecessary duplication. And, frankly, I don't know  
13 what all of this is about except for theatrics, and I  
14 would like to get down to rulemaking.

15 CHAIRMAN DEASON: Mr. Shreve.

16 MR. SHREVE: I think I've already stated what it  
17 is about, and I think it is about unfairness as far as  
18 the date being set and then changed after that. It has  
19 nothing to do with theatrics. It does have to do with  
20 basic fairness of the entire procedure.

21 CHAIRMAN DEASON: Let me ask a question. I'm just  
22 trying to learn what the rules are and, apparently,  
23 it's all encompassed somewhere in our rules and in the  
24 APA, and all of this other nice legal procedure under  
25 which we operate. What I'm hearing is that even though



1 an order was issued requiring a filing by an April  
2 date, it really didn't mean anything, that people could  
3 file whatever they wanted to whenever they wanted to up  
4 until the time of the hearing. And that's what I'm  
5 hearing. Now, if that is wrong, correct me.

6 MR. SHREVE: I think the rules provide for oral  
7 argument or testimony or remarks at this point. You  
8 had an order out that said April 23rd, written  
9 comments.

10 CHAIRMAN DEASON: Well, I guess we are at the  
11 point now we need -- if we -- are you making a motion  
12 that we somehow change what has been done or we  
13 continue or --

14 MR. SHREVE: Not at this point, no, sir, I'm not.  
15 I just wanted to know, and I still don't know -- I  
16 still don't know how -- as I said in the beginning, I  
17 don't know that I have anything that I can do, but I  
18 would like to have it in the record. I think it's  
19 principally permissible for me to know how that change  
20 came about, and it very clearly was a change.  
21 Commissioner Clark was not aware of it when she put the  
22 order out.

23 COMMISSIONER CLARK: Mr. Shreve, again, it harks  
24 back to the fact that in the law you put in the notice  
25 that you have 21 days. When we recognized that this

1 was a larger rulemaking, we put out an order saying,  
2 you know, we will give additional time to respond to  
3 that. You could have filed additional comments  
4 responding to what other people said. Furthermore, you  
5 can do it now, and you can do it seven days from the  
6 hearing, or whatever the APA provides. There are, at  
7 least, two more opportunities for you to respond to  
8 anything.

9 MR. SHREVE: I appreciate that. I thought you had  
10 made the comment that you were not aware there was any  
11 change in there. I guess I was mistaken.

12 COMMISSIONER CLARK: That's true. There was no  
13 change, because the one is required by the APA, and the  
14 other was a procedural order. We disagree on how it's  
15 characterized.

16 COMMISSIONER BEARD: Can I ask one quick curiosity  
17 question? Did this arise out of a public documents  
18 request?

19 MR. SHREVE: Yes.

20 COMMISSIONER BEARD: Okay. Thank you.

21 MS. MOORE: Mr. Chairman, I would like to state,  
22 again, that no one requested it. We have done it in  
23 previous dockets in rulemaking, the conservation rules,  
24 any docket where there were going to be a large number  
25 of participants or a large number of rules. And in

1 recommending that to Commissioner Clark, I merely took  
2 it from previous orders we have entered.

3 CHAIRMAN DEASON: Let me ask you a question. In  
4 your opinion, why was it that as of the April deadline  
5 we had gotten two comments from only two parties?

6 MS. MOORE: I believe we got more than that.

7 CHAIRMAN DEASON: Okay. Well, I was just going by  
8 a previous statement that I heard from someone. There  
9 were four sets of comments filed by the April date?

10 MS. MOORE: Four, that's correct.

11 CHAIRMAN DEASON: Who filed those comments?

12 MS. MOORE: Florida Fire Sprinklers Association,  
13 Florida Cities Water Company, Florida Waterworks  
14 Association and Citizens; OPC.

15 MR. SCHIEFELBEIN: I would add, Chairman Deason,  
16 that over the course of the last two years Florida  
17 Waterworks Association has been providing comments and  
18 participating at workshops, as has Public Counsel, as  
19 has Southern States. And it would be -- well, it  
20 certainly would be my hope that our hard work over the  
21 last two years won't suddenly be disregarded. It has  
22 been a long time developing these rules, and I don't  
23 think there is anything magic about any of the dates.

24 MR. HOFFMAN: Mr. Chairman, may I follow up on a  
25 related matter?

1           CHAIRMAN DEASON: Yes, Mr. Hoffman.

2           MR. HOFFMAN: Southern States would like to ask  
3 the Commission to postpone a portion of this hearing,  
4 at minimum. And the portion that we would ask the  
5 Commission to postpone relates to the used and useful  
6 rule proposals. The reason we are asking you to do  
7 this is essentially as follows: Over the last two  
8 years the Staff has laid out a number of proposals on  
9 used and useful in other rules. They have taken those  
10 proposals and they have workshopped them, as they  
11 should. Public Counsel and the industry has had the  
12 opportunity to comment and have input to formulate a  
13 proposed set of rules. The rules that the Staff  
14 recommended that the Commission adopt were adopted  
15 verbatim as part of your order setting out the proposed  
16 rules, which are the subject of this hearing. Those  
17 were the rules which, at least, Southern States'  
18 witnesses provided their comments on. And those  
19 comments were filed on the 17th of this month, a day  
20 after we received the Staff testimony. Now, what the  
21 Staff has done, apart from providing some testimony in  
22 support of the proposed rules which are part of the  
23 order, is they have recommended some additional  
24 revisions. And it is our judgment that the additional  
25 revisions that the Staff has now recommended, at least

1 with respect to the used and useful rule, are  
2 substantial. And we think it would be in the best  
3 interest of all parties concerned and the Commission to  
4 follow, essentially, the same procedure that has been  
5 followed over the last two years. And that is to  
6 workshop these Staff proposals so that all parties can  
7 have an opportunity to understand and ask questions  
8 about the underlying rationale, the basis for the  
9 changes, and come up with a good and fair set of  
10 proposed rules. And that is not what has happened in  
11 this case. We have basically abandoned the procedure  
12 that we followed over the last two years in this  
13 docket. So, we would request the Commission to, at  
14 minimum, postpone the hearing on the used and useful  
15 rules.

16 CHAIRMAN DEASON: Staff?

17 MR. HILL: Well, of course, I would not want to do  
18 that. First of all, go back to the special agenda on  
19 March the 5th, and I would point out I remember a  
20 lengthy discussion at the end -- you all have the  
21 transcripts -- where the discussion was that you wanted  
22 to get to hearing to hear all about this, and you had  
23 to propose some rules to do it. And the discussion  
24 came up that, "Fine, we will propose these to go to  
25 hearing, and we want to hear everything there is to

1           hear. We want everything." And, in fact Mr. Shreve  
2           said, "Then, am I to understand that these are not  
3           really your rules that you are proposing, that I can  
4           tell my customers that this is to go to hearing and  
5           there will be a subsequent agenda at which you will  
6           actually propose your rules." And Chairman Deason  
7           said, "Yes," and Commissioner Clark said, "Yes." And I  
8           believe the rest.

9           So, this hearing was set up for you to get  
10          comments and testimony for you to put together exactly  
11          what it is. In fact, Commissioner Clark wanted to go  
12          to hearing, as did some of you others, with options,  
13          but you had to select the particular option go to  
14          hearing; you couldn't notice at JAPC and tell them we  
15          are going to go to rulemaking and there are these four  
16          or five options.

17          I would also point out that our comments were to  
18          do exactly that, to get you more information, to make  
19          these rules better. And, quite frankly, I'm a little  
20          appalled that I am the only person I know of that  
21          thought to bash these rules against the last rate cases  
22          of the Commission. I mean, were I a utility, Southern  
23          States or not, I certainly would have taken these rules  
24          and said, "What do they do to me?" And were I Public  
25          Counsel, I would have done the same thing.

1           So, I just -- certainly, if the Commission, you  
2 know, if it is big enough and we want to explore it,  
3 then I would have no objection if you all want to  
4 postpone this to some subsequent date. And, in fact, I  
5 have some dates available, planning on contingencies,  
6 as I try to do. But I don't think we should. I think  
7 we should go ahead and listen to it.

8           I have taken the last 20 rate cases and matched  
9 these used and useful rules against them, and I have  
10 made modifications. One of the things that I have done  
11 is that some of my engineers didn't particularly like  
12 them. They couldn't tell me why; and I don't believe  
13 anybody, unless they have some evidence. So, I said,  
14 "Let's run them and look at it." And we have made  
15 modifications, I think, to make them better. And I  
16 think you can look at the evidence here at this hearing  
17 and decide that this week. And it's not necessary to  
18 postpone it.

19           COMMISSIONER BEARD: Have you got some dates  
20 available in '98?

21           MR. HILL: No, we have some dates available in  
22 July.

23           CHAIRMAN DEASON: Comments from other parties?  
24 Mr. Schiefelbein?

25           MR. SCHIEFELBEIN: Commissioners, we are prepared

1 to proceed today. We would have no objection to any of  
2 the other parties requests for continuances, whatever  
3 your pleasure.

4 CHAIRMAN DEASON: Mr. Dewar, do you have any  
5 comments? You're not really concerned with used and  
6 useful, are you?

7 MR. DEWAR: I'm prepared on my issue, Mr.  
8 Chairman, and I'm ready to go.

9 CHAIRMAN DEASON: I'm sure you want to get your  
10 issue dealt with, and you probably want to get out of  
11 here, and I don't blame you.

12 MR. Shreve?

13 MR. SHREVE: Commissioner, it makes me very  
14 nervous to be arguing on the same side of Southern  
15 States, at least on the issue.

16 I think there are some real problems here that I  
17 think you're going to have to take a look at. It is  
18 like, in this one particular situation, you're talking  
19 about aiming at a moving target as you're coming  
20 through here. And these comments were not filed until,  
21 I guess last Tuesday was when they were delivered to  
22 our office, maybe it was Monday. That's when we  
23 started making some public records demands to try and  
24 get ahold of all the runs and try and develop what was  
25 really happening in there. And when it comes to your



1 Staff, I think you need a free and extensive knowledge  
2 given to you freely by them. Now, I know that we had  
3 the discussion earlier about it not being the  
4 Commission's proposed rules as such, although you did  
5 vote them out as proposals, and would we have that  
6 understanding, and I am thankful for it. Because these  
7 rules -- and I have, Mr. Hill, taken a look at them and  
8 they almost completely in almost every instance cut  
9 against the ratepayer. So, yes, we looked at them from  
10 that standpoint. As far as I am concerned the way  
11 these rules are voted out. And I would hope when they  
12 finally come out, if they come out, your votes are not  
13 this way. These rules are not codification, in all  
14 instances, of Commission policy. It is not the case.  
15 Even the ones where it's a codification of so-called  
16 Commission policy, there are three Commissioners that  
17 really haven't had an opportunity to vote on them. And  
18 I would hope we would have an opportunity to change  
19 that policy before we ever put it in a rulemaking  
20 context, where it's locked in and you will no longer  
21 have these issues in the rate cases. I don't think you  
22 have, really, all of the information from your Staff  
23 freely given from their expertise. These really -- I  
24 think it comes across as being the Staff's rules and  
25 Mr. Hill's rules, and certainly at this point, not

1           yours. I don't have any problem at all with postponing  
2           it, and the Commission really having a much better idea  
3           of what they are doing, the Commissioners on these,  
4           since it's going to be your final decision on all of  
5           it. You might want to get the fire flow out of the  
6           way.

7           CHAIRMAN DEASON: The request was just for the  
8           used and useful section, is that correct?

9           MR. SHREVE: I would expand it to the entire  
10          rulemaking scenario, because --

11          MR. HOFFMAN: Mr. Chairman, we would stipulate to  
12          the Public Counsel's expansion of our motion, which was  
13          limited to the used and useful, but we would stipulate  
14          to the Public Counsel's expansion of the motion.

15          COMMISSIONER CLARK: Mr. Chairman.

16          CHAIRMAN DEASON: Go ahead.

17          COMMISSIONER CLARK: I would encourage all the  
18          parties to go back and read 120 and the way rulemaking  
19          develops. It's my view that this is the place for you  
20          to raise your comments about the various proposals that  
21          have been made. We're developing our policy in  
22          rulemaking instead of case-by-case in some cases. I  
23          see no reason to postpone any part of these hearings.  
24          We have been going through them. As I recall at the  
25          agenda, we encouraged Staff to come up with some

1 alternatives. I was well aware of the fact there were  
2 going to be some suggestions of alternatives. This is  
3 rulemaking. You will have a chance to comment today,  
4 tomorrow and the next day on the Staff proposal.  
5 Furthermore, you will have a chance to comment later on  
6 after these hearings are closed. I mean, I see  
7 absolutely no reason to postpone it. We have been  
8 going on long enough with this rule revision. And it  
9 is time to get to it.

10 COMMISSIONER BEARD: Well, one thing, I don't want  
11 to weigh into this too heavily, whether you postpone or  
12 not postpone. What we are not here to do is to write  
13 the rules and review the management practices of one of  
14 our divisions and how it is run. That is another  
15 place, another time, if there's a problem. I'm not  
16 going to tell Southern States who makes the final  
17 decision. I wouldn't pretend to tell Jack Shreve and  
18 Public Counsel who makes the final decision there. The  
19 buck stops with the boss, as usual. But that is a  
20 decision they have to make on how they run it. How  
21 Chuck Hill runs his agency -- his division, that is his  
22 business. If we are dissatisfied with that, then we  
23 deal with Chuck at some other time, but it is not in  
24 the rulemaking. And that is not the subject matter of  
25 today, tomorrow or the next day.

1           COMMISSIONER LAUREDO: Mr. Chairman, am I hearing,  
2 to cut through all of this, that on the one hand the  
3 people's representatives is not happy with this  
4 revision of the rules? And on other hand, the  
5 companies are not happy with the revision of this  
6 rules, and they're, through procedural maneuverings,  
7 trying to postpone it; and, therefore, moot it? Maybe  
8 there is an underlying thing we ought to address in the  
9 first half an hour here. Why are we doing this if  
10 there is these two groups that normally are at odds  
11 with each other are saying -- I think I'm reading  
12 between the lines -- they don't want these rules.

13           MR. HOFFMAN: Commissioner Lauredo, that is not  
14 our position. We are not saying that we want to or  
15 that the Commission should abandon this rulemaking  
16 proceeding. Our position simply was that the  
17 Commission has followed a procedure over the last two  
18 years in this docket that's, essentially, been  
19 abandoned over the last week. And we think that it  
20 would really be helpful for ourselves and all the  
21 parties and the Commission to continue the procedure of  
22 workshopping Staff proposals. And there are new  
23 substantive Staff proposals in the testimony that was  
24 filed on May 18th. And we think it would be very  
25 helpful to have an opportunity to workshop those

1 proposals to find out the basis for the changes.  
2 Because, clearly, the comments and testimony that  
3 Southern States filed would have been more  
4 comprehensive and different than what we filed on May  
5 17th had we had that testimony and had an opportunity  
6 to analyze it before we filed our comments.

7 CHAIRMAN DEASON: Let me ask you a question,  
8 Mr. Hoffman. Is the basis for your motion the fact  
9 that it was Staff who filed these comments at the time  
10 they filed them or is it the fact that -- would you  
11 have made the same motion if some other party had filed  
12 similar comments? Are you making particular reference  
13 to the fact that it was Staff?

14 MR. HOFFMAN: Yes. Because it was, Mr. Chairman,  
15 it was Staff's recommended rules that were adopted  
16 verbatim, in total, into the order containing the  
17 proposals rules for this docket.

18 CHAIRMAN DEASON: But wasn't the record clear that  
19 those were being proposed as a basis to start the  
20 process, and that there was to be no presumption that  
21 somehow the Commission was endorsing or somehow putting  
22 a seal of approval somehow on those particular rules;  
23 that basically, it was wide open and we were here to  
24 hear everyone's comments, and that the final form of  
25 the rule, which is the case in any rulemaking, could be

1 materially different than that that was originally  
2 proposed?

3 MR. HOFFMAN: I think that is crystal clear. I  
4 just think that the way that this docket has proceeded  
5 has worked well from the standpoint of allowing all  
6 parties, Public Counsel, the utilities and Staff, the  
7 opportunity to take Staff's proposals, evaluate them,  
8 formulate what all parties can agree is a better  
9 proposal, and send those to rulemaking. That is the  
10 procedure that we've followed thus far. And what  
11 happened when Staff filed their testimony on the 18th  
12 of May, was Staff basically injected a new set of  
13 proposals, substantive in nature, made some fairly  
14 significant changes in our opinion, and now there is no  
15 opportunity to workshop those before we take them to  
16 hearing.

17 CHAIRMAN DEASON: Well, are you saying that Staff  
18 should be held to a different standard? What I'm  
19 hearing is that other parties -- I know there has been  
20 some debate this morning on it, but what I'm hearing is  
21 that other parties can participate in these rulemaking  
22 hearings, and they can change their position. They can  
23 come in and say, "We changed what we filed on the 17th  
24 or 28th, or whatever, and we are here to argue a  
25 different version. And this the new version that we

1 want to argue here in front of the Commissioners at  
2 this hearing today." And according to our procedure,  
3 that would be allowed. You're not bound by what, any  
4 such filing date or anything that you have done in the  
5 prior proceedings. Is that correct?

6 MR. HOFFMAN: Right.

7 CHAIRMAN DEASON: But just the fact that Staff has  
8 chosen at this late date to file some comments which  
9 propose changes to the original proposed rules, that  
10 you feel it is necessary to go back, re-assess where we  
11 are, and go to a workshop?

12 MR. HOFFMAN: Yes, Mr. Chairman, because I don't  
13 believe that Staff plays the same role in this  
14 proceeding as the Public Counsel, or Southern States,  
15 or the Florida Waterworks Association, the Fire  
16 Sprinkler Association, or any other affected party.  
17 From the beginning of this docket, it is Staff who has  
18 laid out proposed rules and the parties have commented  
19 on them. We've workshopped them, and we come up with a  
20 revised set of proposals, and on we go. So, I do think  
21 that Staff has played a different role in this  
22 proceeding than any other party.

23 MR. SHREVE: Commissioner, if I may, I agree with  
24 that completely. The Staff is here to advise you. The  
25 Staff came out with a set of proposed rules, and it was

1 crystal clear that you were not locked into those  
2 rules, and that we were going to argue before you to  
3 try and get you to take a look at the different  
4 positions. I think the Staff has a duty to provide you  
5 with all of the information, and let you make the  
6 decisions and not for the Staff to decide what you're  
7 going to see and what you were not going to see. From  
8 there, from your staff of experts, you have a large  
9 staff with great expertise, and they are considered  
10 that by you and everyone else. And there is a duty  
11 there for them to provide that expertise to you through  
12 comments or advice. And they are in a different  
13 situation. They are advisory; we are adversary.

14 CHAIRMAN DEASON: Well, Mr. Shreve, isn't that  
15 exactly what Staff did in this case?

16 MR. SHREVE: No, sir, I don't think so.

17 CHAIRMAN DEASON: Okay. Make the distinction for  
18 me, because I --

19 MR. SHREVE: Well, for one, I think there are  
20 Staff members that would have filed testimony that is  
21 different than had been filed if they had been freely  
22 allowed to do that. Now, I wasn't going to get into  
23 all of this, because it's a little different ballgame  
24 than Mr. Hoffman is talking about. But I do not think  
25 you have been given all of the Staff information



1 without -- that they would like to give to you. I  
2 think there has been information that has not been  
3 filed that you could have -- that could have come from  
4 your Staff.

5 MR. HILL: Mr. Chairman, I'm sorry. That is not  
6 true. Our Staff is here and you're welcome to speak  
7 with them. And if you take more than a superficial  
8 look at some memos, what you see is the evolution of  
9 the process. I had some Staff members that said they  
10 didn't like the used and useful formula. I told them  
11 they were proposed, they needed to support them first,  
12 and tell me why it is you don't like them. Only they  
13 couldn't, because they had not done the background  
14 work. They have now done the background work. I have  
15 looked at it. That is why I have submitted some  
16 recommended changes. And I believe every one of my  
17 Staff engineers would come up and say they support the  
18 recommended changes in the rule, as they are  
19 recommended to be changed. So, if you would look more  
20 than a superficial look, as some people are want to do,  
21 then you would see that you are getting the expertise  
22 opinion from the Staff, all of the Staff.

23 MR. SCHIEFELBEIN: Commissioners --

24 CHAIRMAN DEASON: Commissioners, any comments?  
25 I'm sorry.

1 MR. SCHIEFELBEIN: May I?

2 CHAIRMAN DEASON. Mr. Schiefelbein. We need to  
3 wrap this up.

4 MR. SCHIEFELBEIN: Yes, sir, I'll be very brief.

5 CHAIRMAN DEASON: We're in idle right now.

6 MR. SCHIEFELBEIN: I understand. First of all, I  
7 want you to understand from the viewpoint of the  
8 Florida Waterworks Association and Florida Cities, we  
9 appreciate Staff filing testimony a week before the  
10 hearing. We don't like the testimony, a great deal of  
11 it. We don't like the changes from the rules, but we  
12 prefer knowing about that going into the hearing than  
13 finding out at the first time about it at the hearing.  
14 And so if there were new thoughts on this by Staff, I  
15 personally, and my clients personally like knowing  
16 about it before the hearing.

17 Secondly, I have been asked to comment that we  
18 have worked very hard for two years in participating in  
19 this rulemaking. We will not oppose any request for  
20 continuances, but we are ready to go today. We have  
21 our witnesses here. We are ready to roll on all the  
22 rules.

23 COMMISSIONER JOHNSON: Mr. Chairman, I believe  
24 that Staff has provided us with what we have requested.  
25 And I also feel that you have to watch what you ask

1 for, you might just get it. There is a lot of  
2 information here, some of which has been characterized  
3 as codification of existing policy; some of it has been  
4 changes from the last set -- draft that we had that  
5 was, for me as a new Commissioner, that was difficult  
6 in itself trying to learn what we first proposed. And  
7 I agree with the gentleman that stated it's like -- it  
8 is a moving target, but we asked for a moving target.  
9 We asked for choices. We asked for alternatives. I  
10 would be inclined -- because there's a lot of stuff  
11 here. I had a real long weekend reading all of these  
12 different issues. And, at least for a new  
13 Commissioner, if we could separate out some of the more  
14 important issues of, used and useful being one of them,  
15 and if there is a date available that we could extract  
16 that and analyze that separately, I think that would be  
17 good and useful for me as a new Commissioner and for  
18 the Commission as a whole. There are some important  
19 issues in this package, that if we could separate them  
20 out, if the parties don't object, if there is a date  
21 available, then I would move that we do that. And that  
22 we give each issue its due consideration and that we  
23 consider the alternatives that Staff has raised and  
24 that the parties have raised.

25 CHAIRMAN DEASON: Any other comments,

1 Commissioners?

2 COMMISSIONER BEARD: Let me ask a question,  
3 because I heard two different things, and I am just  
4 trying to clarify it, so I know what we are talking  
5 about. The proposal was to not only delay it, but  
6 workshop it. What I was hearing you saying is let's  
7 just kind of break it up into manageable parts, which  
8 is different than -- because the workshopping of this  
9 is going to drag it out much further than just taking  
10 it and saying, "Well, we are going to work with Part A  
11 today and Part B next week and part C next month." I'm  
12 trying to get to where you're coming from.

13 COMMISSIONER JOHNSON: I am more inclined to say  
14 break this up, and having the used and useful session  
15 conducted in July. And the parties -- Southern States  
16 may be saying something else. They may need -- they  
17 may be suggesting more than just two or three months.  
18 I'm more inclined to go with the two or three months,  
19 so that we can evaluate and still receive comments on  
20 these issues --

21 COMMISSIONER BEARD: Well, I guess --

22 COMMISSIONER JOHNSON: -- without a formal  
23 workshop.

24 COMMISSIONER BEARD: That I can agree with,  
25 because I can still remember the first time I had -- it

1 was a telephone issue, LEC toll bill and keep. And it  
2 was all a person could swallow to try to put together.  
3 And you are overwhelmed by it.

4 This is a moving target. Life is a moving target.  
5 And so you're going to have to hit at some point in  
6 time, and rulemaking is supposed to be more flexible to  
7 allow us to continue to move that target along as we  
8 do, because once we get used and useful, it might be  
9 like tax savings: After two years, we find out it's  
10 not such a good idea for a rule, and we do something  
11 different. But breaking it up into manageable,  
12 chewable parts I think is fine. But if we are going to  
13 keep pushing this thing back, I think we are defeating  
14 our purpose. Because, now, you can talk about this has  
15 been going on for two years. It has really been going  
16 on longer than that, quite frankly. We are just two  
17 years getting to the process where we can try to get it  
18 on paper.

19 COMMISSIONER CLARK: Mr. Chairman, in light of  
20 that, I think what we could do is we have three days  
21 set aside to discuss this, and I would encourage that  
22 we go ahead and listen to the rules; we set used and  
23 useful for last. If we have Tuesday or Wednesday,  
24 let's hear it. Let's hear what they have to say  
25 currently. If, at the end of that, we still feel we

1 need time, we can set another date. We have three days  
2 and we ought to make good use of it.

3 COMMISSIONER BEARD: And if we don't get to it --

4 COMMISSIONER CLARK: We don't get to it.

5 COMMISSIONER BEARD: -- we don't get to it.

6 CHAIRMAN DEASON: Commissioner Lauredo, any  
7 comments?

8 No? Very well. I will reserve ruling on the  
9 motion. We will proceed, and we will make an  
10 evaluation where we stand on the time frame involved.  
11 And at this point, we are going to go ahead with  
12 Staff's overview.

13 MS. MOORE: That's correct. First, I would like  
14 to offer a Composite Exhibit Number 1 into the record.  
15 There are copies on the table for participants to look  
16 at. It is everything that is -- all the comments that  
17 have been filed pursuant to notice and the order, and  
18 it is also the proposed rules, copy of the notice of  
19 rulemaking.

20 CHAIRMAN DEASON: It's Composite Exhibit No. 1?

21 MS. MOORE: Yes, that's correct.

22 CHAIRMAN DEASON: Now, you are offering that as  
23 evidence in the proceeding, is that correct?

24 MS. MOORE: The record of rulemaking hearing, yes.

25 CHAIRMAN DEASON: Any objection to anything

1 contained in Composite Exhibit 1?

2 MR. SCHIEFELBEIN: Commissioners, not to be  
3 obstreperous, but I have never seen this document. If  
4 I could have 30 seconds.

5 CHAIRMAN DEASON: Well, it has been identified.  
6 We will give you an opportunity to review that.

7 MS. MOORE: I put copies on the table for  
8 everyone. It's everything that has been filed.

9 COMMISSIONER LAUREDO: There is one over there,  
10 Counselor.

11 CHAIRMAN DEASON: It's a notebook. It's about  
12 five inches thick.

13 MR. SCHIEFELBEIN: I have no objection. Thank  
14 you.

15 CHAIRMAN DEASON: Composite Exhibit No. 1 is  
16 admitted. Let's go.

17 (Composite Exhibit No. 1 marked for identification  
18 and admitted into evidence.)

19 MR. LOWE: Commissioner, this docket was opened in  
20 1991, but the process started in about 1986. The  
21 purpose --

22 Let me start again. I'm Bill Lowe. I'm assistant  
23 Director of the Division of Water and Wastewater.

24 The process started in 1986, trying to reduce the  
25 cost of regulation. We were attempting to reduce the

1 cost to the companies, to the Staff, and most  
2 importantly to the ratepayers of the State of Florida.  
3 The rules, as we see them, are broken up into four  
4 parts: Codification of Commission non-rule policy, as  
5 required by the statute; new rule changes because of  
6 legislative changes, because the statutes have changed;  
7 cleanup of existing rules; and Staff proposed changes  
8 to Commission policy. Hopefully, all of these parts  
9 will eventually save the Citizens of the State of  
10 Florida money. We believe the most controversial rules  
11 to be the fire-flow rule; the acquisition adjustment  
12 rule; quick-take option of large companies taking small  
13 companies; used and useful; the working capital  
14 allowance; the deferred debits; the imputation of CIAC  
15 on the margin reserve; the multi-system filing  
16 requirements; and the other than rate base regulation  
17 for small companies. That's the Staff's overview of  
18 the rules and where we think we are.

19 COMMISSIONER BEARD: Would it have been a shorter  
20 list to list the non-controversial items?

21 MR. LOWE: No, sir.

22 COMMISSIONER BEARD: Just kidding.

23 COMMISSIONER LAUREDO: I have a couple of very  
24 quick questions before we go on. Your number one is  
25 codification of so-called Commission policy, and then



1 you said "as required by statute."

2 MR. LOWE: Yes, sir. It is my understanding that  
3 the Commission cannot have non-rule policy.

4 COMMISSIONER LAUREDO: The Commission cannot have  
5 non-rule policy?

6 MR. LOWE: That is what my attorneys tell me.

7 COMMISSIONER LAUREDO: Could you translate that  
8 for me? Every decision I've made since I have been  
9 here can be or will have to be codified into a rule?  
10 Is that the corollary of that statement?

11 MS. MOORE: Well, when the Commission's policy is  
12 fully developed it should be in the rules, yes.

13 COMMISSIONER LAUREDO: Oh, so that is a moving  
14 target now fully developed.

15 MR. LOWE: Yes, sir. We have a moving target, but  
16 we have a lot of things that the Commission has done --  
17 a lot of base facility charges. The base facility  
18 charge was developed in the late '70s, and we have  
19 consistently used it. And I believe that that is a  
20 Commission policy that should be put into rule format.  
21 I mean, that is a simple explanation or a simple  
22 example.

23 COMMISSIONER LAUREDO: And the second one is  
24 codification of legislative mandates?

25 MR. LOWE: Yes, sir. Other than rate base

1 regulation for Staff assisted -- or small companies  
2 where the legislature in Sunset allowed us to --

3 COMMISSIONER LAUREDO: So, there we wouldn't have  
4 a lot of debate, other than just the actual wording.  
5 We would have to interpret the legislative intent and  
6 put it into words, right?

7 MR. LOWE: Yes, sir.

8 COMMISSIONER LAUREDO: One could not argue with  
9 the premise of that. One could argue with the premise  
10 of that is Commission policy, but on No. 2 you  
11 couldn't?

12 MR. LOWE: That's correct.

13 COMMISSIONER LAUREDO: And then cleanup is --  
14 arises out of what, Staff's --

15 MR. LOWE: Well, anything from like changing water  
16 and sewer to water and wastewater to making the  
17 language a little more clearer, eliminating words that  
18 weren't necessary, and that type of thing.

19 COMMISSIONER LAUREDO: And the last one is what  
20 you all as Staff feel are your recommendations?

21 MR. LOWE: Yes, sir. That would be like the  
22 changes to used and useful.

23 COMMISSIONER LAUREDO: All right. Now, if you  
24 were to do all of this reading that we have done, could  
25 you -- is there a way for us to identify these four

1 parameters in the recommendations or the discussions of  
2 the issues?

3 MR. LOWE: You mean if we went through each of the  
4 rules?

5 COMMISSIONER LAUREDO: Yes, like if I read it like  
6 I did over the weekend, how would I know -- how would I  
7 know whether it's 1, 2, or 3?

8 MR. LOWE: We could prepare you a document that  
9 did that. I believe if you look in the -- most of  
10 those --

11 COMMISSIONER LAUREDO: Okay. I'm not trying to be  
12 difficult. I'm trying to organize. It's going to be a  
13 long day and a long couple of days. I didn't get that  
14 sense from my reading that there was a distinct  
15 codification of four different actions taking place,  
16 each with its own rationale, because I'm still  
17 struggling with the question, why? You know, I always  
18 start out with why are we doing this?

19 MR. LOWE: Yes, sir, but if you would look at the  
20 order that proposed these rules. The  
21 PSC-93-0455-NORWS, at the beginning, starting on Page  
22 5, the purpose and effect, each one of those goes  
23 through and states what the purpose of the rule is.  
24 And I think you would see, if you went through each one  
25 of those things, that they say to codify current

1 Commission policy, to clean up, to whatever all the way  
2 through the entire document.

3 COMMISSIONER LAUREDO: Okay.

4 CHAIRMAN DEASON: Thank you. Are we going to have  
5 a summary of --

6 COMMISSIONER JOHNSON: Could I ask one question on  
7 the codification of existing policy for our attorney?  
8 As I review the rules, and I was looking at the  
9 summary, and Staff generally stated where they thought  
10 they were codifying existing policy. And the first  
11 thing that I wanted to do was read whatever that  
12 existing policy was. And it was policy that was  
13 created before I got here. Now, if I read something  
14 that was going to be a codification of existing policy  
15 and disagreed with that policy, would this be the  
16 appropriate time to then draft a rule with the new  
17 policy, or would that be the kind of thing that we  
18 should then, if we came up with a new idea, not codify  
19 it, but then on a case-by-case basis get to where we  
20 think that should be the established policy? Which  
21 approach do you take?

22 MS. MOORE: I think it's the appropriate time to  
23 discuss it. It would depend, of course, on the policy,  
24 I would believe, and how -- but it would be the time to  
25 discuss it.

1           COMMISSIONER BEARD: Commissioner, now is the  
2 time. You can get three votes to change it, okay?  
3 Just as Staff has made some recommendations of policy  
4 changes, if they can get three votes, it will change.  
5 If you've got something there you think is of value  
6 that you want to see changed, now is the time to hunker  
7 down. Otherwise -- I mean, once we do this, then it's  
8 kind of like starting again and time flows out. So,  
9 you know, if you've got a good grasp on it, take a rip  
10 at it, anyway.

11           COMMISSIONER LAUREDO: But, you know, this brings  
12 a very interesting point, and maybe it's because of my  
13 background. This perplexes a lot of people who don't  
14 have the common law background that are the Napoleonic  
15 or the -- whatever else you call it that is practiced  
16 in Europe and all through Latin America that I know,  
17 where you don't have this crossover between  
18 codification and precedent. You are now trying to --  
19 it's a perplexing concept of what is policy. In the  
20 legal infrastructure is what the courts rule, and it's  
21 a progression of logic mostly. But it's a constantly  
22 evolving concept. What we're doing here is taking that  
23 -- this is particularly true, because judges or  
24 commissioners change all the time, and this commission  
25 has changed. And we're going to kind of -- we are

1 going to have a freezing of the frame on May of 1993,  
2 and then codify it. It's an interesting -- it's an  
3 interesting challenge. I don't know that anybody has  
4 done it in the jurisprudence.

5 COMMISSIONER CLARK: But that is what makes us a  
6 society of law and not men.

7 COMMISSIONER LAUREDO: Well, I wouldn't say that  
8 the system that -- you see, there is an incompatibility  
9 between codifying precedent in the common law concept  
10 and the other -- the European Napoleonic code. I mean,  
11 that's the whole point. You go to the books in Latin  
12 America, and there is the -- you call it the rule, it's  
13 the law. And it says, "Thou shall not do this," and  
14 that is the end of it. The judge doesn't have any  
15 more.

16 We carry another -- we carry an interpretation of  
17 that. And we build a whole body of law on that. And  
18 this Commission does that de facto, right, through its  
19 opinions? This is why when I first got here I wanted  
20 to read all the opinions. And, of course, I have never  
21 gotten them. Because I knew when everything is said  
22 and done, that's the bottom. You know, I go right to  
23 the bottom line. It's the opinions. Sometimes the  
24 opinions are not quite what I thought I voted for. I  
25 mean, it's not for blaming. It's just that it's so

1           difficult to digest five different opinions and try to  
2           put it into an opinion. But the challenge underlying  
3           this thing, and we are not going to spend a lot of time  
4           on it. The struggle I had reading this is, first of  
5           all, I wasn't part of 90 percent of those policies, and  
6           I may have different opinion. But you want me to  
7           freeze it now and codify it. And I know, Commissioner  
8           Beard, that I can change that if we get three votes.  
9           But it's -- well, I mean, I guess we can just go at it.  
10          It's an interesting challenge.

11           CHAIRMAN DEASON: Well, I think it raises an  
12          interesting question. We are going to establish  
13          policy, and it is going to be in our rule. But I  
14          understand that rules are like laws, they can be  
15          changed or repealed or modified when there is a basis  
16          for doing so. But in the meantime, the question I have  
17          is that, and it was stated earlier, that part of the  
18          reason for these rules is to minimize cost. And I  
19          think that is a worthy goal and something we need to  
20          try to achieve. But at the same time, if these rules  
21          are going to be interpreted to prevent parties from  
22          presenting evidence or positions which are contrary to  
23          the rules, well, then, the Commissioners are never  
24          going to have an opportunity to understand that they  
25          may disagree with an existing policy and may want to

1 change our rules. How do we address that problem?  
2 COMMISSIONER LAUREDO: Well, you've hit on a  
3 really raw nerve. That is exactly -- I have the same  
4 question, because the next part of my reasoning is that  
5 you are, by doing this very difficult intellectual  
6 exercise, you're giving away two or three things. One  
7 is flexibility. I mean, if you take the two systems  
8 and you have argument like scholars do about the common  
9 law versus the other, one of the things that always  
10 stands out is the flexibility of the common law where  
11 you have men interpreting things within the content of  
12 the historical time they're in. Therefore, it gives it  
13 more flexibility than a code or a rule or a law that  
14 was put in Argentina in 1865, and it may be irrelevant.  
15 You're telling me to give that up. And you are telling  
16 me, in essence, to give up a lot of power, because  
17 there is a much more substantive and burdensome process  
18 of changing a rule than changing a policy. A policy  
19 changes within the content of the times and the  
20 philosophy of the five Commissioners. A rule, I  
21 imagine, entails a whole series of things. And I am  
22 just giving you a warning of where I'm having  
23 difficulty, because I think there is a giving away of  
24 sort of the power of this Commission when we try to do  
25 this exercise of time freezing into a rule. And it may



1 be -- like you said, if you can convince three of us  
2 that there is a compelling public policy that overrides  
3 that, then that is what we will decide. But we ought  
4 to be sure that we understand that that's what we are  
5 doing.

6 MR. HILL: I think I have the answer, if I  
7 remember the question. But I think I have the answer.  
8 There are some instances in here, I think, where we are  
9 asking you to give up whatever. Based on your  
10 decisions in the past several years, in effect, there  
11 is a law that says you can't have non-rule policy  
12 anymore. If everybody in the room knows what you are  
13 going to do on an issue, that should be in a rule. But  
14 the majority of the rules that are in front of you  
15 today, we have provisions in there so that upon good  
16 cause shown, the rule may be waived. And parties can  
17 -- and, you know, one of the things that comes to mind  
18 is used and useful. Those are optional, default  
19 formulas. They are not required, nor should they be.  
20 We need an evolution in these rules much like we had in  
21 the leverage formula. I know some of you aren't  
22 familiar with that. But that was very controversial  
23 and nobody wanted that, and it couldn't work. It can't  
24 apply across -- we don't have arguments any more on  
25 cost of capital, very few. It needs to be an

1 evolutionary thing, and the rules provide for waiver of  
2 the rule and the requirement, and allow people to come  
3 in and put on their arguments as to why that shouldn't  
4 apply to them and why it's wrong. And it would allow  
5 the panel or the Commission to make a decision on a  
6 case-by-case basis. That is what we have tried to  
7 build into these rules. We recognize that -- and it  
8 has taken seven years of my life to get these rules in  
9 front of the full Commission. So, changing a rule is  
10 difficult.

11 COMMISSIONER CLARK: You have been Director for  
12 seven years?

13 MR. HILL: Yes, ma'am. Isn't it just appalling?  
14 So, I think we tried to build that into the rules  
15 themselves. Yes, there are going to be some rules that  
16 don't and --

17 COMMISSIONER LAUREDO: Mr. Hill, I am not either,  
18 asking you a question -- I know you said you couldn't  
19 even remember what the question was -- nor asking for a  
20 response. I am expressing, as I usually do, the -- I  
21 like to step back and look at the big picture before I  
22 go into the details, which these parties will be very  
23 capable of indulging us in the next three days with the  
24 details. But we need to be conscious of the total  
25 content under which we are operating, and that is all I

1 was trying to do. And it is, perhaps, why it has taken  
2 you seven years, because it is a very difficult  
3 concept. In seven years, I imagine, I don't have it,  
4 but I imagine there must have been 20 commissioners.

5 MR. HILL: Well, not quite that many.

6 COMMISSIONER LAUREDO: Maybe not quite that many,  
7 but a good 12, right? I mean, I have been here and  
8 there have been three relatively new ones. So, it's  
9 the concept of this policy as it's reflective of five  
10 different individuals.

11 MR. HILL: Yes, sir.

12 COMMISSIONER LAUREDO: I'm looking forward to this  
13 challenge. I'm just telling you it's a heavy load to  
14 -- see, I had a lot of sympathy for the breaking up --  
15 if I had a criticism of this starting, this is a lot  
16 for us to chew on all in one sitting. You know, we are  
17 not supermen. But let's get on with it, I don't mean  
18 to hold it up.

19 MR. HILL: And I thought that the Chairman had a  
20 question along the --

21 CHAIRMAN DEASON: I did ask a question. I guess  
22 that the question, to an extent, was perhaps a  
23 rhetorical one. And I guess it was, basically, a word  
24 of caution to other Commissioners that we need to be  
25 absolutely sure that we want to adopt a rule before we

1 do, because sometimes it can be interpreted to box you  
2 in a little bit, even with the waiver provision and  
3 other things. I guess we are like writing law, in a  
4 sense, and we need to be careful and sure that what we  
5 are doing is what we want to do. And if we are not  
6 absolutely sure, perhaps we either ought not have a  
7 rule, or else we need to have the flexibility built in  
8 that gives us the comfort level which we think we need  
9 on a going-forward basis. And I guess that is part of  
10 the art of drafting and adopting rulings in an  
11 appropriate manner which we, hopefully, are going to  
12 get here before too long.

13 COMMISSIONER LAUREDO: But a final procedure  
14 point, if you would just flag when we are in  
15 discussions of codification of Commission -- the four,  
16 the Number 1 -- try to flag it for us, if you can, so  
17 that we -- because it puts it in a different  
18 perspective. One is because of the legislative  
19 mandate. I can deal with that. And the others are --  
20 as much as you can during the proceeding. It will help  
21 me. Thank you.

22 CHAIRMAN DEASON: Next order of business is a  
23 summary of the economic impact statement, is that  
24 correct?

25 MS. MOORE: That's correct, Mr. Mahoney --

1           CHAIRMAN DEASON: Let me ask a question. How long  
2 is the summary of the economic impact statement going  
3 to take?

4           MR. MAHONEY: If I take my time, I should be  
5 through in about 45 seconds.

6           CHAIRMAN DEASON: Have at it.

7           MR. MAHONEY: My name is Patrick Mahoney. I'm an  
8 analyst in Research and Regulatory Review. We prepared  
9 an EIS to meet the requirements of Section  
10 120.54(2)(c), Florida Statutes, and we did attempt to  
11 make it as explicit and detailed as possible with the  
12 information that we were provided. In an attempt to  
13 identify cost and benefits to those parties directly  
14 affected which are the water and wastewater companies,  
15 we sent out a data request. This data request was sent  
16 to 79 affected parties, which included water and  
17 wastewater utilities, professional organizations, the  
18 participants in the Commission sponsored information  
19 workshops held around the state. Of these 79 parties,  
20 nine responded and five provided some quantifiable cost  
21 or savings as the direct results of rule action. These  
22 five companies estimate increased cost which would be  
23 attributable to seven of the rules, and savings which  
24 would be attributable to two of the rule changes. Some  
25 difference of opinion was expressed between Staff and

1 one of the utilities as to whether or not the rule  
2 addressing rate increase filings by multi-system  
3 companies would result in increased costs or in cost  
4 savings. The industry division Staff determined that  
5 due to the encompassing nature of this rule proceeding  
6 no reasonable alternative to the overall rule action  
7 was available. However, they did identify alternatives  
8 to some individual rule changes. No impact on small  
9 business was identified as none of the utilities  
10 responding were a small business as defined in Section  
11 288.703(1), Florida Statutes. Based upon the  
12 information available the EIS indicates little or no  
13 impact on competition or employment. To acquire and  
14 evaluate data and formulate the EIS, miniworkshops were  
15 held with Commission Staff, the utilities, consultants,  
16 representatives of the Office of Public Counsel, and  
17 other interested parties. A data request was sent to  
18 all participating parties, as well as to others,  
19 solicitating information on the impact of the rule  
20 action. We reviewed the Florida Statutes and the  
21 Commission rules for consistency.

22 COMMISSIONER LAUREDO: Can I ask a question, a  
23 very brief question? Did you say -- did you say that  
24 seven of the companies -- I'm sorry. The companies  
25 said seven of the rules would be an increase in cost?

1 MR. MAHONEY: Yes, sir.

2 COMMISSIONER LAUREDO: And only two said -- two of  
3 the rules will be a decrease in cost?

4 MR. MAHONEY: Right. To help clear this up and  
5 show you that a lot of times the disagreement is coming  
6 from the point of view, one of the rules that was  
7 identified as a decrease in cost was also identified as  
8 an increase in cost by other companies. So, the  
9 numbers, if you try and, you know, say, "Well, this  
10 many companies did this, and some of them said it was a  
11 decrease and some of them said it was an increase --"

12 COMMISSIONER LAUREDO: What you did is you took  
13 the aggregate of all the opinions, and you summarized  
14 it that of the nine rules, seven -- there was a  
15 consensus, I guess a majority, that said there would be  
16 an increase in cost and only two a decrease in cost?

17 MR. MAHONEY: Right.

18 COMMISSIONER LAUREDO: I'm just trying to put it,  
19 you know, the big picture. Now we are starting off,  
20 beside all the other stuff we talked about, seven have  
21 a negative cost impact, and Public Counsel has already  
22 said he ain't got one that had a positive. So, we're  
23 now -- we're heading into --

24 CHAIRMAN DEASON: Let me ask a -- of those that  
25 have a negative cost impact, how much of those relate

1 to fees that are to be paid to the Commission? Is that  
2 considered --

3 MR. MAHONEY: The fees that will be paid to the  
4 Commission on -- there were four of them. Four of  
5 those rules relate to fees that would be paid to the  
6 Commission.

7 CHAIRMAN DEASON: So four out of the --

8 MR. MAHONEY: Of the seven. And these are --

9 CHAIRMAN DEASON: Three are substantive rules,  
10 which have been classified as an increase in cost?

11 MR. MAHONEY: Yes, sir.

12 COMMISSIONER LAUREDO: Okay. And Public Counsel's  
13 position, which wouldn't be in that, but if you could  
14 take his statement earlier is that all of them, in his  
15 opinion, have an increase to the ratepayer. I mean,  
16 that's what I -- he didn't testify, but that is what he  
17 said. So, that is an interesting framework on which to  
18 embark.

19 MR. MAHONEY: Well, everything that I've --  
20 everything that we have is estimates.

21 COMMISSIONER LAUREDO: It's a great job. I'm just  
22 trying to outline it. Thank you.

23 MR. SHREVE: Commissioner, I hate to interfere,  
24 but I think we are talking about two different things.  
25 I don't believe they are talking about impacts on rates



1 at all.

2 COMMISSIONER LAUREDO: No. It's just cost  
3 overall, cost of doing business.

4 MR. SHREVE: Right. Well --

5 COMMISSIONER LAUREDO: Who pays the cost of the  
6 company eventually, most of the time? The ratepayer, I  
7 think. I am just surprised that there was such an  
8 anonymity of the cost between the companies view of it,  
9 and your view of it. But you made a good distinction.  
10 Three are substantive and the other ones are fee.

11 CHAIRMAN DEASON: That's our understanding.

12 MS. MOORE: Mr. Chairman, I would like to point  
13 out that Florida Cities Water Company has filed a  
14 petition with the Division of Administrative Hearings  
15 challenging a couple, at least two of the rules, based  
16 on the economic impact statement. And so, I think the  
17 appropriate time to discuss the issues relating to the  
18 economic impact statement on those rules is when we  
19 take up the individual rule. Mr. Mahoney will be  
20 discussing --

21 CHAIRMAN DEASON: So, when we get to those  
22 individual rules, those that have been challenged for  
23 inadequacy in the economic impact statement, you  
24 propose that we address those at that time?

25 MS. MOORE: I would presume Mr. Scheifelbein will

1 be presenting his complaints with regard to the  
2 economic impact statement on each of the rules, and Mr.  
3 Mahoney would like to address it then.

4 CHAIRMAN DEASON: Any objection to following that  
5 procedure?

6 MR. SCHIEFELBEIN: Commissioners, I have a unique  
7 problem related to that. Just to make you aware of it,  
8 I had left word with the Chairman's office and the  
9 Prehearing Officer's office regarding this. Our  
10 witness, our designated witness on the multi-system  
11 rate case filing is Mr. Larry Cole (phonetic) for  
12 Florida Cities Water Company. In the last few days,  
13 they have -- his wife has been in labor. We have had  
14 to have a last minute substitute for Mr. Cole, Mr.  
15 Keith Cardey, no stranger to this Commission.  
16 Mr. Cardey has had all of about 72 hours to familiarize  
17 himself with the case. He is our designated witness  
18 regarding that rule that's being challenged. I don't  
19 know whether or not we need to get into litigating the  
20 DOAH proceedings over here. Hopefully, this proceeding  
21 will make the DOAH proceeding moot.

22 But my unique problem is that Mr. Cardey is only  
23 available to testify today. He is only testifying on  
24 one rule. His comments, I think, will be succinct.  
25 It's not an extended presentation. We don't have a

1 preference as to when during the day, whenever is most  
2 convenient for you all. But we would ask before the  
3 gavel falls today that he be given his chance to make  
4 his presentation.

5 CHAIRMAN DEASON: I appreciate you bringing that  
6 to my attention again. And as I indicated earlier, I  
7 think that we will make every effort to accommodate  
8 him. And I don't anticipate a problem. Just remind me  
9 so I don't forget, but unless there is something beyond  
10 what I foresee at this point, we should be able to take  
11 him today. And we will make every effort to do so.

12 Now, are we finished with all of Staff's  
13 presentation at this point?

14 MS. MOORE: Yes, the overview.

15 CHAIRMAN DEASON: Okay. Before we begin with the  
16 parties' overview, we are going to take ten. Thank  
17 you.

18 (Brief recess)

19 CHAIRMAN DEASON: Call the hearing back to order,  
20 please.

21 Ms. Moore, the procedural order indicates that we  
22 are going to address the rule by general subject  
23 matter, with the first subject matter being the private  
24 fire protection rules. Is that correct?

25 MS. MOORE: That's correct.

1           CHAIRMAN DEASON: Mr. Scheifelbein, do you have a  
2 comment?

3           MR. SCHIEFELBEIN: Yes, I do. Commissioners,  
4 during the break, it came to my attention for the first  
5 time that on April 23rd the Florida Fire Sprinkler  
6 Association filed extensive comments regarding its own  
7 proposals, regarding Rule 25-30.465, private fire  
8 protection rates. This proceeding has been, other than  
9 that, unusually smooth-running, I think, in that all  
10 parties, Southern States, Public Counsel, Staff,  
11 Florida Cities, Florida Waterworks Association, have  
12 voluntarily gone to a great deal of trouble to make  
13 sure that simultaneously with filing their various  
14 filings with the Commission that all other participants  
15 receive a copy of what was provided, really, as a  
16 matter of courtesy. And, in fact, in one round of the  
17 comments, the Fire Sprinkler Association actually sent  
18 us -- sent me their original of their comments in  
19 response to one round of our comments, and asked that  
20 we file them with the Commission and serve them on the  
21 various people, including Mr. Hill, which after a  
22 momentary temptation, we, of course, did.

23           There has been a lot of that courtesy, and perhaps  
24 it's just an oversight, but the April 23rd filing is  
25 something that, until ten minutes ago, we were not

1 aware existed. It is filled with formulas and may  
2 present fertile ground for questions of disputed fact  
3 between the parties. I don't know how well we can roll  
4 with the flow, whether this might be something that we  
5 might tentatively, preliminary examine today, and  
6 perhaps take up at a later date, if there is a Chapter  
7 Two of these proceedings. But I do want to say that if  
8 our only shot at responding to the Sprinkler  
9 Association's comments as filed on April 23rd is at  
10 this hearing, I don't think we will have an adequate  
11 opportunity to respond.

12 This is tabbed under Number 5 of your book of  
13 Composite Exhibit Number 1. My witness is fast and  
14 furiously wading through it.

15 I did want to make you aware of that. I have no  
16 objection if it is your pleasure to have Mr. Dewar take  
17 the stand and give his presentation. But I would  
18 expect that I will be asking for an opportunity at a  
19 later time to present counter-proposals, and perhaps  
20 get another shot at asking Mr. Dewar questions about  
21 this April 23rd filing, because we were never provided  
22 a copy. Thank you for hearing us.

23 CHAIRMAN DEASON: All right. You have made your  
24 comments for the record on that subject matter. We are  
25 going to go forward. If and when you feel that it's

1 necessary to make a formal motion to have some type of  
2 extra consideration or extra time, make it, and we will  
3 consider it at that time.

4 Mr. Dewar.

5 MR. DEWAR: Just in response, Mr. Chairman,  
6 members of the Commission, I may have been remiss in  
7 not ensuring that everybody got a copy, but I do  
8 remember making about 15 or 18 copies of everything  
9 that I did put together.

10 What is in this April 22nd report is basic, basic  
11 issues. It took me all of about five minutes to put it  
12 together. And the Florida Cities Water Company has  
13 clearly indicated their extensive knowledge in fire  
14 sprinklers, fire water, hydraulics. This is the basic  
15 ISO formula that they use, or should be using on a  
16 number of situations. And this language is in response  
17 to your request during our last presentation where we  
18 clearly stated that there was a significant reduction  
19 in the demand for fire flow as a result of a fire  
20 sprinkler system over the non-sprinkler building. We  
21 were asked to present some -- a little more detailed  
22 information, which we did. They knew it was  
23 forthcoming. I apologize for not giving them a copy.  
24 It was not an intentional oversight. And, again, this  
25 is basic stuff. It took me five minutes to put it

1 together.

2 CHAIRMAN DEASON: Go ahead with your presentation,  
3 and then we will give the parties a chance to respond.

4 MR. DEWAR: Thank you, Mr. Chairman.

5 MS. MOORE: Excuse me. I'm sorry. We had said  
6 that we would go forward with the Staff making --  
7 beginning the presentations. And if everyone has read  
8 Staff's comments on the rule and there are no questions  
9 then --

10 CHAIRMAN DEASON: Well, I don't have a problem  
11 with that. It's just that that is not in my procedural  
12 order. It's the first would be members of the public.  
13 We have no members of the public. And then would be --  
14 the Florida Fire Sprinkler Association is the next one.  
15 But you're saying --

16 MS. MOORE: I think it's the paragraph before  
17 that, the Staff. If you don't feel that --

18 CHAIRMAN DEASON: I have no objection to that. I  
19 just didn't understand that to be the case.

20 MR. MOORE: Does Staff have any changes that they --

21 MR. SHREVE: Mr. Chairman, are we on the  
22 individual rule now, or are we on the overview?

23 CHAIRMAN DEASON: We are on the general subject  
24 matter of private fire protection, and I understand  
25 there is really --

1           MR. SHREVE: I thought there was going to be an  
2 opportunity for each party to make a very general  
3 statement as to the overall rules.

4           CHAIRMAN DEASON: Well, I don't have an objection  
5 to that, but the practical matter of it is that right  
6 now we still have a motion pending that may result in  
7 used and useful being put out altogether. The only  
8 other two general subject matters are the private fire  
9 protection, and the other general subject matter is  
10 everything else. I don't see where it's going to be  
11 worthwhile at this point to give an overview of all of  
12 that subject matter before we get into the detailed  
13 review.

14           MR. SHREVE: Well, I guess I wasn't thinking in  
15 terms of an overview of the individual rules, but  
16 comments on some of the statements that have already  
17 been made as to, for one thing, the economic impact  
18 statement and some things along those lines. But I  
19 just thought --

20           CHAIRMAN DEASON: Okay.

21           MR. SHREVE: -- there was supposed to be general  
22 opening remarks.

23           CHAIRMAN DEASON: I don't have an objection to  
24 that. If we are going to have general opening remarks,  
25 I'd just request that they be kept brief, because we



1 are going to get into the detail when we look at each  
2 individual rule. Who is the first on the list to give  
3 general comments at this point?

4 MS. MOORE: I'm sorry. Now I'm confused. The  
5 general comments were presented by Mr. Lowe. If the  
6 general comments are the comments on 465, the private  
7 fire protection, Ms. Messer will --

8 CHAIRMAN DEASON: Go right ahead.

9 MS. MESSER: Commissioners, Rule 25-30.465  
10 codifies the existing Commission policy --

11 CHAIRMAN DEASON: I'm sorry. I'm sorry. Let's  
12 stop for just a moment.

13 It's kind of an unusual situation in that we are  
14 going to give general comments about everything. The  
15 subject matter that we were going to start was the  
16 private fire protection, which is a very small issue,  
17 and that is the only thing that Mr. Dewar has to give  
18 any general comments on. But we are going to follow  
19 that format. Right now we are going to give general --  
20 we are not on any subject matter whatsoever, other than  
21 the overall rule. Okay?

22 (Inaudible. Microphone off.)

23 CHAIRMAN DEASON: No, the whole shooting match.  
24 Apparently, the parties want an opportunity to give  
25 general comments. Staff has already given their

1 general comments. Mr. Lowe did that. Now we are going  
2 to give the parties an opportunity to give comments on  
3 a general nature about everything contained in the  
4 proposed rule.

5 COMMISSIONER LAUREDO: As long as they are brief,  
6 right?

7 CHAIRMAN DEASON: As long as they are brief.

8 Now, Mr. Dewar, I don't know how you're going to  
9 distinguish this from what you were going to do just a  
10 moment ago, because you only have an interest in one  
11 matter, and that is the private fire protection. But  
12 this is your opportunity to comment on everything in  
13 this rule. Go for it.

14 MR. DEWAR: Thank you, Mr. Chairman, members of  
15 the Commission.

16 First of all, I would like to commend Staff. I  
17 worked a lot of different state agencies and Staff has  
18 kept me well-informed, and I appreciate the  
19 thoroughness of what they've done, even to the extent  
20 of a telephone call from Staff making sure that I was  
21 up to speed. And I do appreciate their support.

22 The major issue concerning the Florida Fire  
23 Sprinkler Association and the Florida fire service  
24 community is that of what we consider a discriminatory  
25 standby water fee. I'm not really sure of the

1 procedures that we should follow here. There are two  
2 separate and distinct issues that we and the opposition  
3 would like to discuss today. One of them deals with  
4 the standby water fee, and the other issue deals with  
5 backflow prevention. And I feel that they should be  
6 discussed separately, because they are very clearly  
7 distinct and separate issues.

8 The first issue deals with standby water fees.  
9 And to get right to the meat of it, we feel that it's  
10 discriminatory, and that it impacts the ratepayer in an  
11 excessive amount versus the ratepayer who is not  
12 contributing, who is not purchasing a fire sprinkler  
13 system.

14 Let me give you a description. If we have two  
15 identical buildings, and for discussion purposes, let's  
16 say these three buildings -- these buildings are  
17 three-story, wood frame garden apartments, 4,000 square  
18 foot per floor, eight foot ceilings, two identical  
19 buildings. When we compute the fire flow, which is  
20 part of your used and useful, which you will be  
21 discussing later, the figures that will be used for  
22 that building computed using the ISO formula, will be  
23 2,415 gallons a minute. That is the demand created --  
24 in your need of fire flow, that is the demand created  
25 on each one of those three-story, wood frame apartment

1 buildings. If one of them -- and both of these  
2 buildings, by the way, according to the Staff analysis  
3 and this is actual practice, the cost of that fire flow  
4 portion of the used and useful, I guess is what you  
5 call it, but the fire flow portion is distributed  
6 across the general body of the ratepayers, and it is in  
7 their monthly bill. And it averages to, you know, a  
8 dollar and pennies, spread out across the entire member  
9 of the general ratepayer body. If one of those  
10 buildings would sprinkler its property, the needed fire  
11 flow is that needed to supply the fire sprinkler  
12 system, plus what we call a hose allowance. That is  
13 for the fire fighters to connect to the piping and run  
14 the hose in the building instead of using their big  
15 fire engines. In this specific example, a three-story,  
16 wood frame building, we have computed the actual cost  
17 or the actual fire flow to be 162 gallons per minute.  
18 And so we have got one building that's generating a  
19 demand for fire flow of 2,415 gallons a minute and  
20 right across the street, an identical building, except  
21 it has a fire sprinkler system, is now creating a  
22 demand of only 162 gallons a minute. Under the  
23 proposed rule, the building that has taken action to  
24 reduce the demand for fire flow by 93-plus percent, is  
25 now zinged another \$83 a month above and beyond the

1 base rate because he has a fire protection. This is  
2 what we call the standby fee. We feel it's not fair.  
3 We feel in fairness that the property owner who is  
4 generating the demand for fire flow, that being the  
5 non-sprinkler building, should be the one that pays  
6 their percentage of the rate. In this case, they  
7 should have a rate for -- at 93 percent greater than  
8 the other property that's sprinkler. We feel that it  
9 is not a proper -- it's not a proper rate. It's not a  
10 proper fee.

11 We have discussed this issue before the Florida  
12 Legislature at their last session, and the Senate  
13 agreed. Unfortunately, the House didn't get a chance  
14 to address the bill. But there is intent to bring the  
15 legislation again to prohibit these standby water fees  
16 as a legislative act, which would impact public  
17 providers as well as the private providers that you  
18 regulate.

19 The Florida fire service community feels very  
20 strongly that the standby water fees is a deterrent to  
21 fire sprinkler installation. There are a number of  
22 laws that mandate fire sprinklers, but those property  
23 owners who do not have an option are the ones that are  
24 impacted greatly.

25 To give you an example of some of the deterrents,

1 the Staff did an excellent job of analyzing this issue.  
2 And in there, they pointed out the ISO insurance  
3 savings, and they showed where a sprinkler building  
4 would have a lesser monthly premium, provided they  
5 could get insurance in today's times, if it were to be  
6 sprinklered. So, there is some savings there.

7 Well, that is basically what a property owner does  
8 when he builds a building. He has an option of putting  
9 in a fire sprinkler system. He is going to analyze all  
10 the pluses and minuses; he is going to look at his  
11 insurance savings; he's going to look at his  
12 depreciation costs, he's going to look at all the  
13 things related. And he gets down to that one issue,  
14 you know, \$83 a month for water standing in the pipes  
15 is a deterrent.

16 But more so, and what is really a great concern of  
17 the fire service community is the impact of standby  
18 fees on those small, elderly housing, developmental  
19 disabilities or retardation group homes that are  
20 mandated, they have no choice. The state law says that  
21 they shall have a fire sprinkler system. And many of  
22 these properties have six, eight, ten clients. They  
23 are non-profit, and all of a sudden they are zinged for  
24 rates that are excessive.

25 Very clearly, we would like to pay our fair share.

1           When a sprinkler building shows a reduction of 93  
2           percent, we feel that we should receive a reduction in  
3           our rates, not an increase of quite a few hundred  
4           percent. Basically, again, the general rate that we  
5           are contributing to across-the-board is a dollar and  
6           pennies. If you compute the fire flow cost within the  
7           general body of ratepayers, when you add that one  
8           connection, that one device, it's just too excessive.

9           On the issue of backflow prevention, if I may,  
10          Mr. Chairman, maybe we could dispense with the standby  
11          fee first, so we are not confused, because the backflow  
12          prevention is, again, a very separate and distinct  
13          issue.

14          CHAIRMAN DEASON: These are general comments on --

15          MR. DEWAR: These are general. I'm giving -- I'm  
16          laying it out.

17          CHAIRMAN DEASON: -- everything in the rules?  
18          This is your opportunity, go right ahead.

19          MR. DEWAR: The second issue dealing with the  
20          backflow prevention, the American Waterworks  
21          Association has a backflow prevention committee, and  
22          they publish a document called M-14. This provides a  
23          minimum backflow prevention for cross-connection  
24          protection for fire sprinkler connections. The problem  
25          faced by the fire sprinkler industry is that there's

1 absolutely -- and the consumers, the ratepayers, is  
2 there is no consistency in the application of backflow  
3 prevention throughout the state. We have one situation  
4 where one water provider will follow the AWWA  
5 standards. And then we have another water purveyor who  
6 will not follow those standards, who will require  
7 backflow prevention above and beyond what is required  
8 and what, in essence, should be required.

9 The decreased level of water safety and water  
10 quality is not changed at all by these more elaborate  
11 backflow preventers than some of less elaborate  
12 backflow preventers.

13 We have a number of problems with some of the  
14 interpretations. The backflow prevention criteria of  
15 some companies, they simply limit you to one type,  
16 although they may say they offer more than one type of  
17 backflow prevention. They interpret fire engines, for  
18 example, as a source of contamination when they just  
19 simply pump from the water distribution, the water main  
20 system, into the building that they are using the  
21 water, that is, they are trying not to contaminate, to  
22 feed the system.

23 There are five levels of backflow prevention in  
24 AWWA M-14. And, again, we are forcing them into  
25 communities with only one level. The problem with the



1 one level is it is much more expensive. It's driving  
2 the cost of fire sprinkler systems up to where they are  
3 not affordable. Even the greater problem is that there  
4 is a greater degree of friction loss in these more  
5 elaborate backflow preventers, which will create the  
6 need in some cases for a fire pump that's \$25,000.  
7 And, obviously, the cost of a system will skyrocket.

8 It's not uncommon to find the majority of the  
9 costs of a fire sprinkler system to be related to the  
10 cost of doing business, with government permit fees,  
11 plans review fees and the cost for the underground  
12 connections and connection valves. We have seen cases  
13 where the cost of the sprinkler system, 70 percent of  
14 it was underground and related to the underground  
15 valves and plumbing. And so it is a major concern to  
16 our industry. Some of these valves, although they may  
17 be listed for use in fire lines, they simply don't  
18 work. We have a number of contractors who, against a  
19 reduced pressure zone valve, they will meet the fire  
20 officials demand of 200 pounds per square inch pressure  
21 for two hours. And that much back pressure on these  
22 valves will damage the seat. They are not certifiable.  
23 That whole seat has to be replaced. Something is wrong  
24 when we have got one entity saying test it at this  
25 pressure and we have got an underground valve required

1 by somebody that won't accept this without being  
2 damaged. And the consumer and the ratepayers are  
3 paying for it. They are paying for a valve that is  
4 above and beyond, that's not providing a greater degree  
5 of safety. And to water -- the quality of water is not  
6 going to change as a result of this valve versus  
7 another valve. And the valve is damaged when you test  
8 it according to the standards, and we are paying to  
9 correct, to repair the valve once it is used. It just  
10 isn't right. We feel that the water purveyors should  
11 not have unbridled authority to demand valves above and  
12 beyond what is nationally accepted as the minimum  
13 standard. If they -- we would not argue if they would  
14 like the right in a case-by-case basis to allow a more  
15 stringent standard than what is listed as a minimum of  
16 AWWA. We would oppose statements that say, "If you're  
17 using fire engine, that that automatically classifies  
18 you as a potential source of contamination." That is a  
19 very narrow interpretation of the standards, and very  
20 rarely is that interpretation there, but it is there,  
21 and it causes an impact.

22 So, in summary, basically, the first issue,  
23 standby water fees, we feel that the ratepayer is being  
24 discriminated against. Everybody is paying for the  
25 fire flow demands, the entity or the person, the

1 building owner who takes action to sprinkle his  
2 building is paying a rate that is hundreds of percent  
3 more than the person across the street who hasn't done  
4 anything to reduce the water supply, who's creating  
5 that demand for fire flow, whose figures are used in  
6 the used and useful formula to determine what all other  
7 ratepayers are going to pay. This is all backwards.  
8 If anything, we should be charging a higher rate for  
9 the non-sprinkler building than we are for the  
10 sprinkler building.

11 And secondly, the second issue, we recognize the  
12 need for backflow prevention. The AWWA M-14 manual has  
13 five levels of backflow prevention. This is a national  
14 standard. We feel that anything above and beyond that,  
15 that it should be the burden of the water company to  
16 provide us with some documentation or justification why  
17 we should go one step beyond that.

18 It's awful difficult in the construction process  
19 when you have got a hole dug, you've got a crew  
20 standing by that you're paying, renting a crane and a  
21 backhoe, and when somebody says, "Put in this \$10,000  
22 valve," when you know a \$5,000 valve would meet all the  
23 criteria, it's awful difficult to fight the war in the  
24 trenches right there.

25 We feel that this needs to an issue that needs to

1 be addressed before the fact and plan is reviewed. And  
2 we feel that, again, that the water purveyor should not  
3 have this unbridled authority to demand whatever they  
4 want on the job site.

5 CHAIRMAN DEASON: Thank you.

6 Mr. Schiefelbein, general comments.

7 MR. SCHIEFELBEIN: Thank you. Mr. Chairman,  
8 again, I'm speaking on behalf of the Florida Waterworks  
9 Association and on a couple, two or three rules in  
10 particular, specifically on behalf of Florida Cities  
11 Water Company. And I will make that distinction clear  
12 as we go along.

13 From the looks of things this morning, I would  
14 like to paraphrase a general that said, "War is hell,"  
15 and maybe suggest that rulemaking is hell. I would  
16 like to start my comments with the definition of what a  
17 rule is. I think that that would be appropriate.

18 And under Section 120.54, excuse me, 52 of the  
19 Florida Statutes, a rule is defined to paraphrase as  
20 any agency's statement of general applicability that  
21 implements, interprets or prescribes law or policy.  
22 So, I think that is a good place to start. If there is  
23 something that is brought to your attention here, where  
24 there is more opinions than people expressing it, more  
25 views on policy than perhaps Commissioners, and no

1 subtle approach to anything, perhaps it may not be  
2 appropriate for rulemaking.

3 I dare say, from talking to Mr. Cardey and Mr.  
4 Gatlin and some other folks that have been involved in  
5 utility regulations on the investor-owned and, also to  
6 some extent on the regulator side of the fence, this is  
7 the most ambitious rulemaking of any industry that the  
8 Florida Public Service Commission has ever engaged in.  
9 This, basically, is virtually every aspect of the water  
10 and sewer business up for grabs here. And I, in  
11 talking to members of the press, told them when they  
12 asked what I thought of you all, I said I don't envy  
13 you.

14 Now, Mr. Lauredo, Commissioner Lauredo  
15 had indicated, "Well, why do we have to bother with any  
16 of this?" And I think it's worthwhile to understand  
17 that in the last couple of years the Legislature, for  
18 better or for worse -- and I am certainly not  
19 indicating I agree with them -- passed 120.535 of the  
20 Florida Statutes, which indicates sort of being the  
21 culmination of the debate that has been going on in  
22 Florida government for almost the last 20 years, that  
23 rulemaking is not a matter of agency discretion. And  
24 that rulemaking shall be done as soon as feasible and  
25 practicable. Now, the Legislature did give some outs

1 to that rather harsh language.

2 They indicated that, for example, "Rulemaking  
3 shall be presumed feasible unless the agency, among  
4 other things, has not had sufficient time to acquire  
5 the knowledge and experience reasonably necessary to  
6 address a statement in rulemaking or that related  
7 matters are not sufficiently resolved to enable the  
8 agency to address a statement by rulemaking." Further,  
9 "A rule is presumed practicable unless the agency  
10 established the detail or precision in the  
11 establishment of principles, criteria or standards for  
12 agency decisions is not reasonable under the  
13 circumstances." Or, "That particular questions or  
14 issues are of such a narrow scope that the best way to  
15 approach it is case-by-case."

16 I think that there will be -- I would hazard a  
17 guess that when we are all done, after the next few  
18 days, or July, or whenever, that a great many of the  
19 rules being advanced by everyone might fall into some  
20 of these categories and not be appropriate for  
21 rulemaking. So, your hands are not tied.

22 So much for general comments. I would like to  
23 give you an idea of what we intend to accomplish if  
24 given the opportunity today as far as our presentation.

25 First of all, on behalf of Florida Cities Water

1 Company, we take issue, essentially, with two rules --  
2 excuse me -- with one rule that you have proposed. We  
3 also take issue with another participant's position on  
4 one of the rules. We oppose the rule that you have  
5 proposed, which is 25-30.435, which would require that  
6 a utility that owns more than one system, when asking  
7 for rate relief for that one system, file complete MFRs  
8 for all its systems. Florida Cities has a number of  
9 systems around the state. We have oppose that. We  
10 have filed comments with you all explaining our  
11 position. We have Mr. Cardey here available today to  
12 explain those a little bit. And we also have filed a  
13 petition with the Division of Administrative Hearings  
14 challenging that Commission action on various grounds,  
15 which we need not regurgitate right now. We also,  
16 incidentally, oppose a related rule to that rule that  
17 would establish the filing fee for that kind of rate  
18 case. And, certainly, those two go hand-in-hand.

19 Our other presenter will be Mr. Mike Acosta.  
20 Mr. Mike Acosta would like an opportunity, first, to  
21 respond at an appropriate time, whenever you all would  
22 like to hear him, to the comments of Mr. Dewar on  
23 behalf of the Florida Fire Sprinkler Association. And  
24 we'd also like an opportunity to respond to Ms. Billie  
25 Messer, who filed some testimony this past Monday,

1 which changes the Staff's position on the private fire  
2 protection issue that is in 25-30.465.

3 That is the extent of Florida Cities intended  
4 presentation at this hearing.

5 Now, the Florida Waterworks Association, over the  
6 last two years has participated in nearly every  
7 workshop, has submitted, I would hazard a guess, about  
8 12 rounds of comments, has spent an awful lot of money  
9 in looking to be heard on what it believes are very  
10 fundamental principles. On April 23rd we filed  
11 comments specifically regarding deferred debits. We  
12 oppose the Commission proposed rule on deferred debits,  
13 which does, in fact, codify, as I understand it,  
14 longstanding Commission policy on that subject. We  
15 have Ms. Debbie Swain here as our primary witness on  
16 that. And, incidentally, the Waterworks Association  
17 did, on April 23rd, file a DOAH rule challenge against  
18 that rule as well, essentially arguing that it's  
19 confiscatory.

20 We also have with us Mr. Frank Seidman and Mr. Bob  
21 Todd, Mr. Jim Perry. Mr. Seidman will carry the bulk  
22 of the weight on -- he is the primary author of our  
23 comments that we filed on May 17th in response to  
24 Public Counsel's proposals. And I don't think too much  
25 would be served by getting into the details now, but I



1 think that we have taken positions on probably about  
2 two-thirds of the rules that have been proposed.

3 Now, finally, in our response to the Prehearing  
4 Officer's order, we did also file a list of the rules  
5 that we will not oppose as presently written and which  
6 do not seem to have generated any heat. We did  
7 indicate that subsequent filings that may come up may  
8 require us to ask for an opportunity to be heard. I  
9 don't know if you have that handy. Our response to the  
10 procedural order is not in the bound book, and I don't  
11 know if you would care to hear our amendments to the  
12 lengthy list of rules that we do not wish to comment  
13 on. If that is your pleasure, I'm prepared to do so.

14 CHAIRMAN DEASON: Let's identify that as an  
15 exhibit, and just -- if you could just provide copies  
16 to the Commission Staff and parties, I think that will  
17 suffice.

18 MR. SCHIEFELBEIN: Well, sir, we did that on May  
19 17th, and I certainly --

20 CHAIRMAN DEASON: Everyone has copies already?  
21 Let's just identify --

22 MR. SCHIEFELBEIN: I don't know if you do. It's  
23 not in the book that I could see.

24 CHAIRMAN DEASON: Staff, do we have that?

25 I don't necessarily have to have it in front of me

1 right now. I'm just trying to make sure -- to prevent  
2 him from having to read that, as long as everyone knows  
3 what is contained in that list, and we identify it for  
4 the purposes of this proceeding, that is all I'm  
5 interested in.

6 MS. MOORE: I think you do. Mr. Schiefelbein is  
7 the only one that filed a similar list.

8 CHAIRMAN DEASON: We will identify that list --

9 MS. MOORE: It's in the docket.

10 CHAIRMAN DEASON: We will identify that list as  
11 Exhibit 2. And it is a list of those rules which the  
12 Florida Waterworks Association does not oppose.

13 MR. SCHIEFELBEIN: And just so the record is  
14 clear, that's Paragraph 7 of our response to the -- of  
15 the response filed on May 17 by Florida Waterworks  
16 Association.

17 CHAIRMAN DEASON: Well, now, it is already in your  
18 response that is contained in Composite Exhibit 1, is  
19 it not?

20 MR. SCHIEFELBEIN: (Indicating no.)

21 CHAIRMAN DEASON: It's not?

22 MR. SCHIEFELBEIN: No.

23 CHAIRMAN DEASON: Okay. This will be identified  
24 as Exhibit 2.

25 (Exhibit Number 2 marked for identification.)

1           MR. SCHIEFELBEIN: Commissioner, maybe there would  
2 be benefit to Staff, and I would promise to be very  
3 quick about this. I can tell you what my amendments  
4 are to that list, given the events that have happened  
5 since we filed this. It would take less than a minute.

6           We indicated that we would not -- we would now  
7 like to comment in response to Staff comments on the  
8 following: 25-30.020, which is filing fees; 25-30.030,  
9 which is notices of application, I believe -- it might  
10 be simply -- entitled applications; 25-30.039, which is  
11 name changes; 25-30.434, which is AFPI; and 25-30.465.  
12 And this is on behalf of the Association in that regard  
13 to the private fire protection issues. Otherwise, my  
14 list can be relied on. And I appreciate the  
15 opportunity to address you.

16           CHAIRMAN DEASON: Thank you.

17           Mr. Hoffman. Mr. Armstrong, is it? Are you going  
18 to be -- are you and Mr. Hoffman going to be working as  
19 a team, are each of you going to be making --

20           MR. ARMSTRONG: Generally, we usually share the  
21 duties, and that is what we intend to do.

22           CHAIRMAN DEASON: Okay. Well --

23           COMMISSIONER LAUREDO: Let me ask very quickly  
24 before you start, the two rules that you oppose as  
25 Florida Cities are also opposed by Florida Waterworks?

1 MR. SCHIEFELBEIN: No, sir. The two rules of the  
2 multi-system rate case filings, that is the only rule  
3 that Florida Cities, that you have proposed, that  
4 Florida Cities has opposed.

5 Florida Waterworks has not taken a position. I  
6 think that we may ask for an opportunity to provide  
7 some general information, mainly in response to what  
8 Ms. Messer and what Mr. Dewar has said in the last few  
9 days. But I don't expect that the Association will  
10 take a position on that rule. The Association has  
11 directly opposed your Rule 25-34.33(3), deferred  
12 debits. And Florida Cities supports the Association on  
13 that, but does not have a burning need to add anything,  
14 other than perhaps a sentence to that debate. And I  
15 mentioned that the filing fees related to multi-system  
16 filing are also, incidentally, being opposed by Florida  
17 Cities. We don't want there to be multi-system filings  
18 like you all proposed, and we don't want to pay the  
19 filing fees like have been proposed.

20 COMMISSIONER LAUREDO: Well, maybe the other way  
21 of saying it, Florida Cities agrees with everything  
22 that Florida Waterworks is opposed to and just one  
23 more, which is the multi.-- I'm very confused about  
24 your role with two hats, and I want to get it all.

25 MR. SCHIEFELBEIN: Well, it would be -- it would

1 be an impossible role if they disagreed. They don't.  
2 Basically, on some issues that --

3 COMMISSIONER LAUREDO: Basically, they have the  
4 same position, other than Florida Cities has an  
5 additional concern over and above those you elaborated  
6 on?

7 MR. SCHIEFELBEIN: Yes, sir.

8 COMMISSIONER LAUREDO: Thanks.

9 CHAIRMAN DEASON: Mr. Hoffman.

10 MR. HOFFMAN: Thank you, Mr. Chairman. And I will  
11 be brief.

12 First, Mr. Chairman, Southern States would like to  
13 commend the Staff for their efforts in this proceeding.  
14 We feel like we have come a long way over the last two  
15 years and look forward to working these rules even  
16 further in coming up with what we hope are some good,  
17 fair and impartial rules that will benefit the industry  
18 and the ratepayers. We really believe that a great  
19 deal of progress has been made in this docket starting  
20 from the beginning point to where we are now. We  
21 believe that with fair and impartial rules that permit  
22 appropriate recovery of costs and a realistic  
23 opportunity to earn an authorized rate of return that,  
24 indeed, it is the ratepayers who will benefit most in  
25 terms of lower cost of capital and a continually

1 improving quality of service. And we think that should  
2 be kept in mind throughout this proceeding.

3 With respect to Mr. Dewar's comments, we would say  
4 briefly that he did refer to ratepayers. And his  
5 proposals identified a three-story apartment, but his  
6 rate proposal would impact single residences only. We  
7 think that the Commission needs to keep that in mind.

8 In terms of cross-connection control programs, we  
9 disagree with his statement, with respect to what the  
10 utility's discretion is or is not. Southern States,  
11 for one, must follow the mandates with respect to  
12 cross-control connection programs of the DER, and  
13 applicable requirements of the county and  
14 municipalities. So, we simply serve as the conduit and  
15 follow the requirements that are imposed on us, and  
16 impose those on our ratepayers.

17 With respect to the specific presentations that we  
18 will make, we will present the comments of Mr. Joseph  
19 Cresse and Mr. John Guastella. I am not at this point  
20 going to try and get into the substantive comments that  
21 they will make. I will let them do that on their own.  
22 Let me just say briefly that the subject matter of the  
23 comments that we filed pertain primarily to the  
24 acquisition adjustment rules, and the used and useful  
25 rules which, as you know by now, we believe in light of

1 the recent Staff testimony, ought to be deferred to a  
2 separate proceeding. Generally speaking, the tenor of  
3 our comments are supportive of the Commission's  
4 proposed rules as they are reflected in the order,  
5 which is the subject matter of this proceeding. On  
6 used and useful, we have made some suggested revisions  
7 that Mr. Cresse and Mr. Guastella will discuss.

8 With respect to the acquisition adjustment rules,  
9 we believe that the Commission, in its proposed rules,  
10 is appropriately following through on a policy which  
11 was confirmed in, I believe, early 1991 and 1992; I'm  
12 not recalling offhand. But the Commission did  
13 previously conduct a very thorough investigation of  
14 this subject matter and concluded that its current  
15 policy of not permitting any acquisition adjustment,  
16 absent extraordinary circumstances, is the appropriate  
17 policy. And in that order it outlined all the reasons  
18 why this is the appropriate policy, including and not  
19 limited to encouraging the purchase of small distressed  
20 utilities. And those policies are reflected in your  
21 proposed rules.

22 The one portion of the proposed rule that we would  
23 disagree with is the portion of .037(1), which states  
24 that the Commission shall also consider the condition  
25 of the utility assets purchased in deciding if a

1 purchased assets should be removed from the rate base  
2 calculation. We will try and give you some comments on  
3 that, but we believe that that proposal, if  
4 incorporated in a rule, would serve to do exactly the  
5 opposite of what it is you're trying to encourage,  
6 i.e., we think that that suggestion incorporated in a  
7 rule would serve to discourage the acquisition of small  
8 distressed utilities.

9 And with that, I think that is all we have at this  
10 time. Thank you.

11 CHAIRMAN DEASON: Thank you.

12 Mr. Shreve?

13 MR. SHREVE: Thank you, Mr. Chairman,  
14 Commissioners. I will be brief.

15 It seems as though the entire driving force of  
16 these rules is to save rate case expense. We probably  
17 have been harmed by rate case expense more than anyone  
18 else and really feel that there should be something  
19 done about it. But in this case, the rules that would  
20 accomplish that in some situations always in almost  
21 every instance cut the utilities way.

22 If you take the acquisition adjustment. You could  
23 change, go 180 degrees in an opposite direction and say  
24 that rather than giving that net book value, you give  
25 either purchase price or net book value, whichever is



1 least, eliminate the issue and save rate case expense.

2 You could do that with margin of reserve where  
3 they now want to give 20 percent rather than the 1.5  
4 years in growth. If you went and said no margin of  
5 reserve, allow everything to be collected as AFPI,  
6 eliminate the issue and save rate case expense.

7 So, as far as the rate case expense savings, that  
8 can be done anywhere in another way on every one of  
9 these rules.

10 These rules do not codify, in all cases, existing  
11 policy. In some of the situations you have a  
12 codification of some of the past votes, not necessarily  
13 votes of the entire majority of this Commission. You  
14 have in some of these rules a change in policy, and in  
15 some of them a reversal in policy.

16 I think one of the things I really -- and I don't  
17 understand exactly why it was left out, but as far as  
18 the economic impact statement -- and this is something  
19 Commissioner Lauredo was asking about -- there are  
20 costs to the companies, and, evidently, the companies  
21 and the Staff feel there is not a great deal of change  
22 there. But in general, the cost of doing business are  
23 going to be flowing and will flow on to the ratepayers.

24 Anyway, the big change here is going to be the  
25 additional revenue or profit that will flow to the

1 companies because of these rules. There has been no  
2 estimates at all as to the cost or economic benefit to  
3 the people who are really affected by these rules. It  
4 would be a very hard thing -- a lot of these rules have  
5 never been tried. There is no history on them, so  
6 maybe there is not anything known. But there are many  
7 of them that you can go to specific rate cases and see  
8 what the alternatives would provide as far as economic  
9 benefit or detriment to the ratepayers. But there has  
10 been no mention whatsoever of the customers here and  
11 what the effect will be on them. And in these  
12 situations -- and also another benefit that goes to the  
13 companies, there will be a marked increase in revenue  
14 and profit to the Company because of these rules. If  
15 there is any savings in rate case expense, it shouldn't  
16 benefit the company one way or the other, that should  
17 flow back to the ratepayers. So, they do have a marked  
18 benefit, an increase in revenues and profits. I have  
19 no idea why that wasn't addressed in the economic  
20 impact statement.

21 Thank you very much.

22 CHAIRMAN DEASON: Thank you. Any other general  
23 comments?

24 I think this is an appropriate time to break for  
25 lunch. We are going to take a lunch break and come

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back at 1:00. Thank you.

(Lunch recess.)

(Transcript continues in Volume II.)

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## CERTIFICATE OF REPORTER


STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 91 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 10th day of June, 1993.

  
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JANE FAUROT  
100 Salem Court  
Tallahassee, Florida 32301  
(904) 878-2221

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SWORN TO AND SUBSCRIBED TO before me, this 10<sup>th</sup>  
day of June, 1993, in the CITY OF TALLAHASSEE, COUNTY  
OF LEON, STATE OF FLORIDA, by the above person who is  
personally known by me.



*Melanie Y. Bradford*

NOTARY PUBLIC  
STATE OF FLORIDA

(SEAL)