

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 911082-WS

VOLUME III

Pages 232 through 346

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Tuesday, May 25, 1993

TIME:

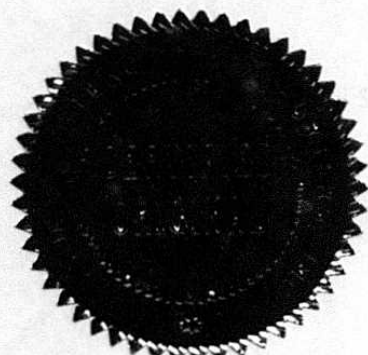
Commenced at 9:45 a.m.
Concluded at 5:15 p.m.

PLACE:

101 East Gaines Street
Tallahassee, Florida

REPORTED BY:

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



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FPSC-RECORDS/REPORTING

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I N D E X

EXHIBITS:

IDENTIFIED ADMITTED

P R O C E E D I N G S

1
2 CHAIRMAN DEASON: We will go back on the record.
3 Call the hearing to order. I want to again express my
4 thanks to everyone for your patience, we had a matter this
5 morning that we had to take care of. The time frames were
6 such that we didn't have any other alternative, and I
7 appreciate your indulgence.

8 Ms. Moore, I understand that there is one
9 particular rule which Staff addressed yesterday, which there
10 needs to be an additional comment made regarding, is that
11 Rule .030?

12 MS. MOORE: That's correct. Suzanne Summerlin
13 would like to comment on it.

14 CHAIRMAN DEASON: Okay. We will go ahead and do
15 that, and then we will pick up with Mr. Hoffman.

16 MS. SUMMERLIN: Commissioners, the change to .030
17 that I am going to say something about is in the notice of
18 proposed rulemaking on Page 33. Tab 2 is the notice of
19 proposed rulemaking. It's Subparagraph 7, where it says
20 that the notice shall be published once as opposed to each
21 week for three consecutive weeks. The Staff has proposed
22 this change to go from three weeks to one week. And all I
23 wanted to do is offer an alternative comment from the Legal
24 Staff, that the current rule is, in our view, a more
25 appropriate way to go to allow for the publication for three

1 weeks instead of one week. There is no place to go to find
2 the absolute right answer. These are two alternative ways,
3 and it's basically a judgment on what is the most
4 appropriate thing to do. But Legal Staff would acknowledge
5 that if you cut it to one week you cut out costs for the
6 second and third publication, and you cut out two weeks of
7 time. But in support of the current rule, where three weeks
8 would be required, the goal of this thing, if you are going
9 to have a notice published in the newspaper, is to get
10 people who would not receive notice in any other way. They
11 wouldn't get any specific notice to themselves, like a
12 customer in a proposed area. In many, many other statutes
13 when legal notices are required to be published, they are
14 required to be published at three weeks, and in many cases
15 four weeks. If you look at Chapter 49 of the Florida
16 Statutes to have constructive service of process for a
17 complaint or some action of that sort, you have to publish
18 the notice in the paper for four weeks. And our current
19 rules at least is less than that, it does have the three
20 weeks instead of four. We are certainly not controlled by
21 Chapter 49 or Chapter 50, which deals with requirements for
22 legal advertisements and notices, but it's just Legal's view
23 that it would be more appropriate to have the three weeks
24 because you have a better chance of getting notice to those
25 entities out there that would not in any other fashion be

1 aware of what is going on. And recognizing that the kind of
2 process we are dealing with here is a certificate of public
3 convenience and necessity, and the Commission needs input
4 from anybody that might be affected by that kind of
5 decision, or might have input that the Commission needs to
6 hear. And our view is if you are going to bother to require
7 that the notice be published in a newspaper at all, a
8 minimum of three weeks would seem to be a reasonable
9 approach to take to that, even though it does cost a little
10 bit more to do that, and it does take a little more time.
11 And, basically, that's our pitch for the way the current
12 rule is, and that we acknowledge that the proposed change is
13 certainly a valid idea, that the goal of this requirement,
14 we believe, would be met by doing the three weeks as opposed
15 to one week more appropriately.

16 CHAIRMAN DEASON: Are you saying just leave the
17 rule as is?

18 MS. SUMMERLIN: Yes, sir, that's what I'm saying.
19 It would be to have the three weeks, the consecutive three
20 weeks publication.

21 CHAIRMAN DEASON: But you're saying once each week
22 for three weeks?

23 MS. SUMMERLIN: Yes, uh-huh. That one area; I'm
24 not talking about any of the other proposed changes to that
25 rule, just that one factor.

1 CHAIRMAN DEASON: Does that conclude your
2 comments?

3 MS. SUMMERLIN: Yes.

4 CHAIRMAN DEASON: Mr. Schiefelbein, do you want to
5 comment on that?

6 MR. SCHIEFELBEIN: Yes, I do. Over the last two
7 years we have been doing workshops and talking quite a bit
8 with Staff and the other parties about the different notice
9 requirements and how costly they are, and how much delay is
10 built into the way the existing rules are, and the purpose
11 of the proposed rules has been, among other things, to
12 reduce the regulatory costs. There has been a lot of horse
13 trading back and forth. Staff wanted to abolish it's four
14 mile data base, with all of the personnel requirements on
15 that. Now if you are going to be giving notice you've got
16 to give notice under the current proposed draft to every
17 utility within the county that you're planning to serve, and
18 if you're anywhere near the border, within a mile or so of
19 the border of the county, well, then every utility of the
20 adjoining counties. And there has been lot of horse
21 trading, and I personally think it's a little untoward after
22 all the horse trading that has gone by to start withdrawing
23 the consideration for some of the other things that we have
24 agreed to. Point Number 1. .

25 Point Number 2, Ms. Summerlin refers to Chapter

1 49, civil complaints of some sort, I'd like to draw your
2 attention, and I'm caught at a little bit of a disadvantage
3 by never having heard this comment before, but if you would
4 look at, for example, DER where they grant permits which I
5 think are very comparable, a lot more comparable than civil
6 complaints to PSC certificates, and there has been a lot of
7 DER rule reorganization, but I think it's probably in 17.600
8 or thereabouts. What they do is that you get a right to
9 protest within 30 days after receiving actual notice or
10 published, published notice, whichever is earlier. So that
11 if you're sitting out there and you are Joe Customer, or
12 Mary Customer, and you get you're notice by hand-delivery or
13 mail, your clock starts ticking right then, and not the fact
14 that six weeks later the last installment of the three weeks
15 of publication appears. Of course, this Commission in its
16 existing role has taken that and turned it on its head, and
17 now says it's 30 days after whenever you receive the notice
18 or whenever the last installment of the publication is,
19 whichever is later. So, basically, you've got people out
20 there who are getting -- I think it works out to about 55 or
21 so days notice being given to file their protest. It's too
22 much.

23 Commissioners, you know, we could require that a
24 notice be stapled to every mailbox in the county, that there
25 be a display ad on the front page of every newspaper. I

1 mean, you have already got requirements of notice to every
2 person who is directly affected by these actions, that being
3 the customers, you have already got in these rules a
4 requirement that the notices go to anyone who has requested
5 service under appropriate circumstances within the last
6 year. This is overkill. And part of the horse trading that
7 has gone on to make each of our jobs easier has involved
8 trading away the three times publications. Now, if you all
9 are favorably disposed to Ms. Summerlin's last minute
10 amendment, then what I would suggest we do is come up with
11 something that's more akin to what DER does with its
12 permitting being 30 days after the earlier of the date that
13 you receive the notice or that the notice was published, and
14 that would be a middle ground on this new terrain. Thank
15 you.

16 CHAIRMAN DEASON: Mr. Hoffman, I'm going to
17 request that it may expedite things if we could address
18 Rules .025 through .036, and perhaps dispose of those. And
19 I understand that .037(1), which is an acquisition
20 adjustment matter, that that may take some time, and that
21 may be best addressed separately. So if you have comments
22 on .025 through .036, I would appreciate you making those
23 now. And we will reserve .037(1).

24 MR. HOFFMAN: Thank you, Mr. Chairman. We don't
25 have any comments apart from -- I think Mr. Cresse has a

1 comment or a question with respect to Ms. Summerlin's
2 suggestion regarding the rule that she just raised. Apart
3 from that, we will then be ready to move forward with
4 .037(1).

5 CHAIRMAN DEASON: Very well. Mr. Cresse.

6 MR. CRESSE: Mr. Chairman and Commissioners, I
7 think the issue is really where you publish one time a
8 notice or you publish three times a notice in the newspaper.
9 It seems to me that with all the direct noticing that the
10 Commission requires for these types of transactions, that
11 once should be sufficient, unless people are really
12 responding to a proposed action because of the published
13 notice. It's been my experience that the published notices,
14 that hardly anybody responds to anything because of what is
15 published in the newspaper, except for rate case increases
16 and transfers. I think if you looked at the history of the
17 interventions and so forth in these things, people did not
18 receive notice or intervene because of a published notice in
19 the newspaper. They intervened because they were advised of
20 this transfer, they were aware of it because of the direct
21 advice. And, basically, I think three newspaper notices,
22 you know, you ought to look at your own experience, but you
23 will probably find that most of that money, even for the
24 first one is wasted as far as people intervening and taking
25 some position before the Commission as a result of reading a

1 notice in a newspaper. The direct noticing seems to get the
2 most affected people.

3 CHAIRMAN DEASON: Thank you.

4 COMMISSIONER CLARK: A direct notice goes to the
5 County Commission and the Office of Public Counsel --

6 MS. DANIEL: DER, the water management districts,
7 the regional planning council, and customers, if any.

8 COMMISSIONER CLARK: And our experience is that
9 it's not customers who intervene, it is other utilities or
10 governmental agencies.

11 MS. DANIEL: Occasionally it's customers, but they
12 do it as a result of the direct notices.

13 COMMISSIONER CLARK: They get a direct notice?

14 MS. DANIEL: If there are customers in a transfer,
15 for example, they are noticed.

16 MS. SUMMERLIN: Commissioner, there are some
17 situations where we wouldn't know who might be a potential
18 customer. I mean, you know, if you don't know that somebody
19 might be one you don't have an opportunity to notice them.

20 CHAIRMAN DEASON: Mr. Shreve, Mr. Mann, on Rules
21 .025 through .036, do you have any comments on those?

22 MR. MANN: Yes, Commissioner. Kim Dismukes has
23 some comments that she will present to you. Thank you.

24 MS. DISMUKES: OPC has proposed some additions and
25 clarifications to three of these proposed rules,

1 specifically beginning with .025. Concerning the official
2 date of filing, we have added to the provision that the MFRs
3 established the official date of filing that direct
4 testimony also be included as a means of establishing the
5 official date of filing. I believe that the Florida
6 Waterworks Association --

7 COMMISSIONER CLARK: Can we do that?

8 MS. DISMUKES: Pardon me?

9 COMMISSIONER CLARK: Could we do that? Doesn't
10 the statute describe what the official date of filing is?
11 Isn't it the MFR -- that's what I thought it was in the
12 statute. I'm just wondering if we can add to that.

13 MS. DISMUKES: My understanding is that a
14 subsequent rule, I believe it is .436(2), the proposal by
15 the Staff as well as OPC is that the utility be required to
16 file its testimony with its MFRs.

17 CHAIRMAN DEASON: And those are for those cases
18 which are not being processed PAA, is that correct?

19 MS. DISMUKES: Yes, that's correct. I was just
20 going to say, the Florida Waterworks Association brought
21 that point up. We don't disagree with their modification to
22 our proposal, which basically would only be the
23 establishment of filing the testimony would only be where
24 applicable, i.e., in the PAA process that wouldn't happen.

25 Our next change is to .033, which is the

1 application for original certificate of authorization and
2 initial rates and charges. And, basically, we have got four
3 proposed changes. The first is Subsection C, which
4 basically requires that the utility identify their officers
5 and director, partners, et cetera. We have added to that a
6 provision whereby the utility would also identify and
7 provide information concerning its affiliated parties. The
8 Florida Waterworks Association has opposed that, and doesn't
9 believe that it's relevant. We do believe it's relevant, we
10 think affiliated transactions are important to the
11 Commission, to the citizens. There may be situations, for
12 example, where an affiliate of the utility might be
13 providing service to the utility, and I think that would be
14 something that the Commission would want to know about. I
15 think the financial strength of the parent company is
16 something that the Commission would want to know about.

17 In Subsection R, we have proposed -- really, I
18 think this is a clarification more than any substantial
19 change -- that the Commission require financial statements
20 from the utility, and we define financial statements to be
21 income statement balance sheet and a sources and uses of
22 funds statement. Again, Florida Waterworks Association
23 doesn't really oppose our suggestion with the exception of
24 they indicated that some utilities may not have a sources
25 and uses of funds statement, in which case you would need to

1 insert words, I believe, that if it was applicable, or if it
2 was available that that would be provided. OPC does not
3 disagree with their proposed change.

4 We have eliminated Subsection S, which just
5 basically asks for a profit and loss statement, which we
6 have included within the above Subsection R.

7 And then, finally, in Subsection U, where it's
8 asking for a cost study to justify the rates, we just
9 inserted the words cost of service study more as
10 clarification, that's what we thought the intent was behind
11 the wording. The Florida Waterworks Association said that
12 everybody knew it was a cost of service study or a revenue
13 requirements study, however you want to characterize it. We
14 just think it's clarification.

15 Our next proposal is concerning .035, which is the
16 application for grandfather certificates, Subsection 2.
17 Here, again, we are asking that the utility provide
18 additional information concerning their parent companies,
19 affiliated companies, and related parties. It's analogous
20 to our addition in Subsection 3 of .033. Those are our
21 comments on those rules.

22 CHAIRMAN DEASON: Thank you. Questions,
23 Commissioners?

24 MR. HOFFMAN: Mr. Chairman, if we could follow-up,
25 Ms. Dismukes raised an issue with respect to the filing of

1 direct testimony with the MFRs under the guise of Rule
2 25-30.025. We have addressed that same issue under a
3 different rule, which is the general information required
4 for Class A and B water and wastewater utilities, that's
5 Rule 25-30.436. And we have taken the position that it is
6 appropriate to have a revision which would allow 30 days for
7 the filing of the testimony. Mr. Cresse has some comments
8 on that, and we would like to have the Commission hear from
9 Mr. Cresse on that issue.

10 CHAIRMAN DEASON: Mr. Cresse.

11 MR. CRESSE: Commissioners, there is at least two
12 reasons why I think that you should permit testimony to be
13 filed within 30 days after the MFRs have been accepted by
14 the Commission. The first reason is primarily one of cost.
15 If you go to all the expense of putting all of your
16 testimony together and then there are some changes you have
17 to make in your MFRs, this can cause you to have to go back
18 and revise all of your testimony, because most folks like
19 for the testimony and the figures and so forth included in
20 it to actually be accurate and correct. And so the time it
21 takes to prepare testimony after MFRs are completed is
22 somewhat lengthy, you know, it may not take a full 30 days
23 for all of it, but it certainly takes sometime after you're
24 satisfied that the figures are all correct and have been
25 accepted. And so I think that would save the utilities some

1 money.

2 The second reason is that by and large no one is
3 harmed because the testimony is filed within 30 days of the
4 MFRs. It takes that much time, it seems to me, to review
5 MFRs and to develop the questions or the interrogatories
6 that are usually sent out as a result. I know no party
7 would just send out standard interrogatory questions, they
8 would only do that after they had reviewed the data that the
9 company has submitted. If they were going to send out
10 standard interrogatory questions, well, those would have to
11 be answered -- you know, should be answered in the MFRs
12 anyway. So for two reasons; saving of money, and that no
13 harm is done to the intervenors by a delay. I think you
14 ought to allow the 30 days after the MFRs have been
15 accepted. And I would add that that has, in fact, been the
16 practice of the Commission, and one that was permitted in
17 the most recent rate cases with Southern States Utilities.
18 You actually permitted that to happen. And I think you
19 generally in the past have permitted some 30-day difference
20 between acceptance of MFRs and testimony.

21 CHAIRMAN DEASON: Mr. Schiefelbein.

22 MR. SEIDMAN: On behalf of the Waterworks
23 Association, I would just like to go over a couple of
24 comments. Ms. Dismukes pretty well covered what our
25 differences were with the Office of Public Counsel on each

1 of these rules. I would just like to add a couple of things
2 to that. One is with regard to what Mr. Cresse says, we
3 would go along with his feeling on that, that there should
4 be some delay as a practical matter, and as one who is
5 responsible in many cases for preparing testimony, it is a
6 difficult chore to go ahead and prepare it not knowing
7 whether or not the MFRs are going to be accepted, and you do
8 end up doing the work twice. So if there could be some
9 delay period in there before the testimony itself is filed,
10 I think that would be a cost savings, and as a practical
11 matter it would be very helpful.

12 The other comment is with regard to the proposed
13 changes by Public Counsel on .033(1)(c), in which they had
14 asked for additional information, which included the
15 description and nature and identity of all parent companies,
16 affiliated companies, and related parties. I would just
17 like to reiterate on that that we feel this is really a
18 burdensome and costly process. For some companies
19 affiliates can amount to hundreds and thousands. What's
20 being asked for here -- this is in the case of applications
21 for certificates, and what the Commission is considering or
22 evaluating is the finances of the utility, and we believe
23 that that information is readily available through the
24 information on the ownership of the utility, and to get into
25 all of these other identifications of so many possible

1 affiliates that may have nothing at all to do with the
2 utility is really a burdensome and costly thing.

3 CHAIRMAN DEASON: Let me ask you a question along
4 those lines. Since this rule is in relation to original
5 certificates, and one of the primary issues in a
6 determination of an original certificate is the financial
7 viability of the entity requesting the certificate, would it
8 be appropriate to the extent an entity is basing its
9 financial viability upon the resources of affiliated
10 parties, that they obviously would have to identify those
11 affiliated parties?

12 MR. SEIDMAN: I don't see any problem with that.
13 Definitely if there is a reliance on a parent or a direct
14 affiliate, then I think that information should be
15 available, and I think it already is in applications. But
16 to go beyond that and to just go into a search and identity
17 of all possible affiliations is going too far.

18 CHAIRMAN DEASON: Well, let me ask you another
19 question. I think Public Counsel's interest in knowing the
20 affiliated parties may go beyond just the question of an
21 original certificate, and that it may be something of
22 interest when there is a rate review. Are there other
23 provisions in the rules or the MFRs which require
24 identification of all affiliated parties in a rate
25 proceeding?

1 MR. SEIDMAN: I believe in the MFRs when you're
2 getting into a rate case, that's a different story. Then we
3 are talking about whether there are relationships that
4 affect the rates themselves, or the costs themselves. For
5 instance, allocations of general cost or whatever. That's a
6 different circumstance. All we are looking for here is the
7 viability of the utility to own and operate.

8 MS. DANIEL: Commissioner, if I may? This is the
9 rule regarding original certificate applications, and I
10 agree with Public Counsel that we do need to have a good
11 handle on the financial viability of the utility. I also
12 agree with Mr. Seidman, that if it is a brand new utility
13 just beginning in business, its unlikely that they are going
14 to have a lot of historical financial information. I
15 haven't in the years that I have worked here at the
16 Commission seen more than one or two original certificates
17 that were much more than a developer starting out business.
18 There have been a few that would have had affiliates, so to
19 focus on that affiliate issue is probably going to be an
20 issue that you're just not going to see that much. If I
21 could draw your attention --

22 CHAIRMAN DEASON: Well, let me make one comment.
23 I hate to interrupt, but I think it's extremely important.
24 I hope we have passed the day that we just give a
25 certificate to a developer because he wants to develop. And

1 that they have got to make a commitment, and if the only
2 thing that is there is a developer, perhaps they don't need
3 to be in the utility business unless they have got some type
4 of an affiliate that has utility experience, or else there
5 is some type of a bond or something that's going to
6 guarantee that that person is there to be in the utility
7 business and fully understands the responsibilities and
8 requirements of being a public utility. I think that in the
9 past we have made that mistake, and I think that -- and I
10 know that I've had these discussions with you before, so I'm
11 not preaching to you, I know how you feel about it. That we
12 need to make sure that the people that are applying for the
13 original certificate understand the burdens, and I mean
14 burdens they are taking upon themselves, and what we expect
15 and require of them.

16 MS. DANIEL: Let me then point out to you so you
17 know exactly -- I don't want you to be under any
18 misunderstanding as to what Staff is proposing these rules.
19 The existing rule, .0331(E), has that the applicant will
20 provide a statement showing the financial and technical
21 ability of the applicant to provide service and the need for
22 service. Commissioner, at this point in time, that rule as
23 it exists, is what we are relying on, in addition to this
24 who is providing your funding and so forth, and who are your
25 parents, or what have you. This rule is what we are relying

1 on in original certificates to determine the financial and
2 technical viability of the applicant. We have not proposed
3 a change to this rule that would require a bond or a letter
4 of credit or anything like that. And I will elaborate if
5 you want me to on why, but at this point in time, here is
6 your place where we will have the applicant showing us their
7 financial and technical ability. And I agree with you, it
8 is the burden of the applicant to show that, and either they
9 pass the test or they don't, when they file that paragraph.

10 CHAIRMAN DEASON: And I agree with that and I
11 don't think the rules need to require that, it's just that
12 the entities requesting the certificates may need to realize
13 that the burden of proof may be a little bit more difficult
14 than it has been in the past. If they want a certificate
15 badly enough, they may have to take it upon themselves to
16 offer some type of assurance and maybe that would take the
17 form of some type of bond or whatever, but I'm not saying we
18 need to include that in the rule at this point.

19 MS. DANIEL: We have a speech that we give
20 applicants. When it comes in the door, we call them and we
21 say, "Do you know what you are asking for?"

22 MR. SEIDMAN: I would also like to mention that
23 the proposal for this additional information was also
24 applicable to the grandfather certificate application and
25 the transfer application. And our comments are the same on

1 that, even more so for those.

2 CHAIRMAN DEASON: Staff, any final comments in
3 regard to Public Counsel's proposals?

4 MS. DANIEL: Commissioners, in terms of the issue
5 of direct testimony, we agree with Mr. Seidman's point that
6 it's okay for it to reference the Rule 25-30.436(2) on the
7 Public Counsel's proposal for the utility to provide the
8 source and uses of funds. We agree with the testimony that
9 if it is available would be an okay addition to that.
10 Public Counsel offered to change a cost study requirement to
11 a cost of service study, and we believe that cost of service
12 study is a term of art. It entails something different than
13 what we do in original certificates. It entails looking at
14 a particular class of service and determining what revenue
15 requirement is applicable to a particular class of service.
16 In original certificates, we look at the utility as a whole
17 and generate a revenue requirement, it's a brand new
18 utility. We are just trying to get a revenue scheduled for
19 all classes of service. We have sample cost studies that we
20 give to the applicants, and they pretty much fill in the
21 blanks on those. So clarification probably isn't as
22 important as them getting a copy of the sample study that we
23 have.

24 CHAIRMAN DEASON: Okay. Thank you. Questions,
25 Commissioners? Ms. Summerlin?

1 MS. SUMMERLIN: Before we leave .033, are you
2 getting ready to leave?

3 CHAIRMAN DEASON: Well, I want to get a sense from
4 the Commissioners what they want to do with these rules, if
5 they want to offer some guidance.

6 MS. SUMMERLIN: I just had one little short --

7 COMMISSIONER JOHNSON: I have some questions on
8 .033.

9 CHAIRMAN DEASON: Commissioner Johnson has some
10 questions.

11 COMMISSIONER JOHNSON: Are you still on .033?

12 MS. SUMMERLIN: Yes. Earlier I thought we were
13 just doing .030, that's why I didn't go ahead and add it in.
14 But on the .033, on Page 3 of Tab 9, the Florida Waterworks
15 has suggested a change in the wording to 25-30.033(1)(j),
16 where they have said that instead of having the phrase that
17 the utility should have a 99-year lease, they have suggested
18 that it should be a long-term lease or a written easement.
19 And, again, I would just like to make one pitch from the
20 Legal Staff for the current version of the rule. The rule
21 currently provides, the way it reads, for flexibility, in
22 situations where somebody that comes in cannot provide a
23 warranty deed or a 99-year lease, the term is or the phrase
24 is, such as a 99-year lease.

25 CHAIRMAN DEASON: Well, I think Mr. Schiefelbein's

1 concern was not with the flexibility, I think he wants the
2 flexibility. I think his concern was that if you put in
3 there such as a 99-year lease that may be interpreted that
4 that is the only type lease which would be accepted.

5 MS. SUMMERLIN: Well, I think that that's a
6 legitimate concern, but that is not the way it has been
7 interpreted. The problem is if you say a long-term lease or
8 a written easement, then the implication is that any lease
9 that somebody believes is a long-term lease, which could be
10 substantially less than a 99-year lease, might be
11 appropriate.

12 CHAIRMAN DEASON: Why don't you put in there a
13 long-term lease in excess of 30 years, 40 years, whatever is
14 appropriate?

15 COMMISSIONER CLARK: But our practice has been to
16 look for a 99-year lease.

17 MS. SUMMERLIN: Yes. But I guess what my concern
18 stems from is that we are interested in protecting the
19 ratepayers in the situations, and we need the best evidence
20 we have that the utility owns the property or has continued
21 very, very long-term access to that utility site. And it's
22 because we are concerned with the ratepayers' security in
23 this that we are even concerned about this at all. And if
24 you have a phrase such as a 99-year lease, you indicate to
25 an applicant that this is a very serious requirement we are

1 talking about. It does not limit it to only that, and there
2 have been circumstances where somebody didn't have anything
3 but a written easement, and we have in those cases, you
4 know, dealt with that issue. But if we go ahead and just
5 say a long-term lease or a written easement, it implies that
6 a written easement can be the method of choice. And we
7 certainly -- I don't believe Legal would want to encourage
8 that kind of an interpretation. So I think that you are not
9 losing the flexibility if you keep the current language and
10 you are giving applicants an indication of what the
11 seriousness is of this requirement.

12 CHAIRMAN DEASON: Mr. Schiefelbein.

13 MR. SCHIEFELBEIN: May I ask the Technical Staff a
14 couple of questions on this?

15 CHAIRMAN DEASON: If they'll answer them, go
16 ahead.

17 MR. SCHIEFELBEIN: I can always ask, right? This
18 is directed to anyone, including Ms. Summerlin, really, if
19 they have knowledge of it. I don't know who is in charge of
20 this, but this rule has been on the books for at least a few
21 years, to my recollection. And says a warranty deed or
22 long-term assurance, such as a 99-year lease. What
23 percentage of what you have approved have, approximately, I
24 mean, have been warranty deeds?

25 MS. DANIEL: Off the top of my head, I would say

1 maybe 50 percent of the time has been warranty deeds. We
2 have done easements, we have done quitclaim deeds with title
3 insurance and everything in between. I believed that
4 practice would show you that your concerns probably don't
5 have good support.

6 MR. SCHIEFELBEIN: That may well be the case.
7 What percentage would you say for 99-year leases and -- what
8 percentage are 99-year leases?

9 MS. DANIEL: Oh, I can think of maybe one off the
10 top of my head, and two or three 50 years.

11 MR. SCHIEFELBEIN: My goodness, why do we have it
12 as the model in the rule, then, if you've gotten one over
13 the years? It seems like a pretty --

14 MS. DANIEL: It's the "such as" that indicates the
15 seriousness of --

16 MR. SCHIEFELBEIN: Why not say such as a written
17 easement? Why not say such as a quitclaim deed with title
18 insurance?

19 MS. SUMMERLIN: Because those are the less
20 desirable.

21 MR. SCHIEFELBEIN: But you have approved more of
22 those than you have 99-year leases.

23 MS. DANIEL: I can remember one easement.

24 COMMISSIONER CLARK: Let me ask it a slightly
25 different way. Was it your choice to approve it, or we were

1 in a bind more or less where they couldn't get the preferred
2 evidence of long-term right to use the property, and we
3 settled for what we could get. So it's better on the front
4 end if the applicants know that they ought to have title to
5 it, or at least a 99-year lease.

6 MS. DANIEL: Exactly, Commissioner.

7 MS. SUMMERLIN: That's it.

8 MR. SCHIEFELBEIN: Commissioners, we are all for
9 protecting the ratepayers. I don't know if we are all for
10 coming up with setting up the examples in the rule the most
11 expensive types of conveyances and protections for the
12 customers where they are not necessary. It sounds to me
13 like 99-year lease is the odd man out, and one of those --

14 COMMISSIONER CLARK: You would agree that in legal
15 real estate law that the 99-year lease is sort of a -- it's
16 almost a term of art or an acceptable alternative to having
17 full title to a property. It's the 99-year lease. Isn't
18 that what Hong Kong was, a 99-year --

19 MR. SCHIEFELBEIN: Now the 99 years are upon us.

20 COMMISSIONER CLARK: Thank God we don't live 99
21 years so we don't have to face the end of our lease.

22 MR. SCHIEFELBEIN: May Bob Todd, the President of
23 the Association, who I like to call Mister Easement, address
24 you on this? Go ahead.

25 MR. TODD: For the record, my name is Bob Todd,

1 and I'm the President of the Florida Waterworks Association
2 and an officer of Sun Ray Utilities, Nassau, and Sun Ray
3 Utilities, St. Johns, Inc. I am, I think, probably the
4 proponent in the Association of the easement theory, because
5 we use that for spray irrigation in our St. Johns County
6 operation, which is no longer under the jurisdiction of this
7 Commission, but was when we set up the original company. We
8 procured a spray irrigation easement over a golf course.
9 That easement was procured at a price which was less than
10 the price of having to take fee title or a lease to that
11 golf course. If we had to go out and say we are securing
12 our right to dispose of the effluent on this golf course by
13 buying the golf course itself, think about what you would
14 have said about a utility company acquiring a course;
15 probably not in the best interest of the ratepayers. But
16 the easement did not preclude the major use of the golf
17 course, which was, of course, the enjoyment of the customers
18 of Sun Ray.

19 What the easement did allow us to do is take up
20 one small portion of the bundle of rights that accompanied
21 the land and use that one small portion for our benefit and
22 for our ratepayers' benefit, which is to dispose of our
23 effluent. If we had not been able to do that, we would have
24 had to acquire fee property somewhere else in our service
25 territory to percolate, or to spray irrigate, or to use

1 whatever method we wanted to use to dispose of the effluent.
2 But instead, we're allowed to use reclaimed water to the
3 public satisfaction and to the ratepayers benefit and at low
4 cost. And that's the point, I think, the easement provides
5 that's of superior use. You wouldn't have wanted us to
6 lease that golf course. And I think we have got to address
7 that there are lower cost methods of acquiring land that
8 are, in fact, preferable to the ratepayer from a policy
9 point of view. And, hence, that's why they call me Mr.
10 Easement. I think that's a good way to do it, and I think
11 we should not preclude other uses like that. As a matter of
12 fact, I think we, as policymakers, could even encourage
13 uses like that or get multiple use of the same resource to
14 the benefit of everybody involved. Thank you.

15 MS. SUMMERLIN: Commissioners, just one little
16 response. If the Commission were of a desire to lessen the
17 cost to utilities, we could accept easements for this land
18 under the treatment plant, but that would not necessarily be
19 the prudent way to go. And that's the only response I have.

20 MR. SCHIEFELBEIN: And it may well be.

21 COMMISSIONER CLARK: Penny, let me ask you a
22 question about his example of spraying the effluent on a
23 golf course. I think that certainly there may be types of
24 treatment facilities for which easement is the better
25 choice. And when I think of treatment facilities, I'm

1 thinking about where you have to locate structures, major
2 structures.

3 MS. DANIEL: And that's what the rule is designed
4 for, where the treatment facility is located.

5 COMMISSIONER CLARK: And do you interpret
6 treatment facility to include areas where you may spray
7 effluent?

8 MS. DANIEL: No, ma'am.

9 COMMISSIONER CLARK: Oh, okay.

10 MR. SHREVE: Mr. Chairman, I would like an
11 opportunity to reply to Mr. Cresse and Mr. Seidman's remarks
12 concerning the 30 days on the testimony.

13 CHAIRMAN DEASON: Okay.

14 MR. SHREVE: I totally disagree with their
15 statement that there is no harm done to anyone. If you take
16 the cases, we have an eight-month time frame and the Company
17 has all the time in the world to decide to put their case
18 together, gather all the information and file their case.
19 At that point when they file, then the Commission, the
20 Commission Staff, and our office, and any other intervenors
21 are under an eight-month time frame. Even in the Southern
22 States case where there are 127 different systems that had
23 to be looked at, which was as cumbersome as you can get, the
24 Commission did allow them 30 additional days to file
25 testimony, and that ate into the time that we had. If it's

1 important enough to them that they file their testimony
2 late, then let them come in and agree to a 30-day extension
3 so they at least do not cut into our statutory time frame.
4 When the testimony is not in, we are not able to take
5 depositions of those people filing testimony, we are not
6 able to send out discovery on that, we are not able to go
7 into document production, and which we probably will run
8 into motions where we will have to go and compel later. So
9 there is harm. It is not to the Company, as they have had
10 all the time in the world to prepare their case. It is
11 harmful to our case.

12 MR. SCHIEFELBEIN: Commissioners, may I add a
13 quick comment on that?

14 CHAIRMAN DEASON: At this pace we will be lucky to
15 be able to get through these rules in three weeks of
16 hearings. Now I have been very lax in having responses, to
17 responses, to responses, to responses, but at some point we
18 are going to have to draw the line. And I don't know where
19 that point is going to be. I know that it's difficult, but
20 the purpose that we are here for is to make sure that the
21 Commission thoroughly understands all of the pros and cons
22 of every proposal, and it's necessary to be lax in that
23 approach. I am going to allow you to make your comment.
24 The only thing, I'm just asking the parties, please just
25 make sure it is absolutely important, because right now we

1 are probably in the third or fourth go around on these
2 particular rules. And these are probably not the most
3 substantive rules that we have got before us that are yet to
4 come. With that warning, Mr. Schiefelbein, please make your
5 comment.

6 MR. SCHIEFELBEIN: It will take me 20 seconds to
7 respond to what Mr. Shreve just brought out for the first
8 time, and I would like my remaining ten seconds to bring up
9 a point that I had asked for an opportunity to get answers
10 from Staff yesterday on. Mr. Shreve says he can't start
11 discovery if the testimony is filed 30 days. We are reading
12 different rules of civil procedure, which are that rules of
13 discovery are adopted by reference by this Commission's
14 rules. There is nothing to stop him from doing
15 interrogatories based on the MFRs. There is nothing to stop
16 him from setting for deposition the applicant, for them to
17 designate whoever they would like to testify in certain
18 topics without knowing the names of those people. Enough
19 said.

20 All right, the last point. I had mentioned
21 yesterday that Ms. Daniel had suggested that she wants her
22 department, now, for there to be prefiled legal descriptions
23 so that Staff can ensure that they are in the proper format
24 before they are published and all that expense goes through.
25 I indicated yesterday it might be a good idea, but we are at

1 a loss to know what a proper format is, and we are also
2 concerned if you have that requirement in a rule, that the
3 deluge of legal descriptions that comes in, we may see some
4 serious delays, as in weeks, as far as getting a legal put
5 into, quote, "proper format". And I would appreciate Staff
6 to have an opportunity to respond to those because perhaps
7 they have some ideas we haven't thought of.

8 CHAIRMAN DEASON: Which rule has the language
9 concerning proper format?

10 MR. SCHIEFELBEIN: None of the rules do that I
11 know of. Ms. Daniel, at Page 13 of her testimony, indicates
12 that that is where she wants -- she wants to tweak the rules
13 to require pre-approval of the legal descriptions.

14 CHAIRMAN DEASON: But we don't have a specific
15 proposal in front of us that accomplishes that.

16 MR. SCHIEFELBEIN: I think that she did -- I will
17 leave that to Ms. Daniel.

18 MS. MOORE: It's Tab 21.

19 COMMISSIONER CLARK: An attachment to her
20 testimony?

21 MS. MOORE: Page 19, Tab 21.

22 MS. DANIEL: Commissioner, Exhibit PD-1, the very
23 last sentence on that page that is highlighted, it is
24 something that we have previously struck earlier in the rule
25 revisions, and I'm suggesting that we add it back in to

1 accomplish this. This is where the utility is requesting
2 from the Commission, and this has always been the case, when
3 they prepare to notice they request from the Commission the
4 names and addresses of who they need to notice. We have
5 always provided this, and what we do is we get them to tell
6 us where they are proposing to serve so that we give them
7 the correct information. All I would like to do is enhance
8 that to say that when they tell us where this location is
9 that they propose to serve, if they will go on and give it
10 to us in the proper format, we can look that over. Mr.
11 Schiefelbein is not familiar with what that proper format
12 is, we have an internal document that I will be delighted to
13 get him a copy of today. We send it out in all of our
14 application packages, and the bottom line of that document
15 says, "Please don't refer to plat book references and lot
16 numbers, things that we can't map". And, generally, when we
17 have a developer, they are so accustomed to using plat book
18 references and lot numbers, that's what we get, and we would
19 like to just avoid some improper noticing on the front end.
20 Our time frame will not change in terms of looking at
21 something in the proper format as opposed to a bad format.
22 We've always had excellent turn around on those names and
23 addresses and we will continue to do so.

24 MR. SCHIEFELBEIN: Perhaps the guideline which I
25 am not familiar with, even though I have never had a legal

1 description bounced back at me from the Staff, ought to be a
2 part of the rule if it is going to be relied upon by the
3 Commission as a standardized approach as to what legal
4 descriptions should entail. That's Administrative Law 101.

5 COMMISSIONER LAUREDO: Mr. Chairman, I tell you, I
6 have been through a lot in this Commission, but this is
7 really getting -- at least two of us have to leave tomorrow
8 at 3:30 to be to a real world of a rate case. You probably
9 have already advised the people, but I don't know what
10 everybody in this room did during the workshops, and the
11 editorial comments is taking a good 25 to 30 percent of the
12 testimony, to either put somebody down or the previous
13 speaker. I'm at a loss. I don't know how we can instill
14 more discipline in the participants if we are going to
15 accomplish anything of substance in the next few hours.
16 It's a free comment, but I am --

17 CHAIRMAN DEASON: I'm open to suggestions.

18 COMMISSIONER LAUREDO: This is worse than cost of
19 capital testimony to me. And I really am particularly irked
20 at the editorial comments. I can do without them; about how
21 you all feel about each other, and I just wonder what they
22 did -- I just think we ought to be more current and just
23 move on, Mr. Chairman, and decide and vote on things.

24 COMMISSIONER CLARK: Mr. Chairman, I would agree
25 with Commissioner Lauredo with respect to the editorial

1 comments. But I do feel that this is sort of the final
2 proceeding in a I don't know how many year long proceeding,
3 and we are sort of right down to the end things that we need
4 to discuss, and it's just really just the fine tuning of
5 them.

6 COMMISSIONER LAUREDO: But when you get after six
7 years of one party tells the other party, you probably
8 haven't seen this form. I just wonder what we have been
9 doing for six years.

10 COMMISSIONER CLARK: I can tell you what has
11 happened is the water and sewer department is continuing to
12 refine their regulation to make it a cheaper form of
13 regulation. And if you had been here when it was not as
14 well run as it is now, you would appreciate the giant steps
15 that have been taken in terms of making the process run
16 smoother. Having said that, I did want to ask Mr. Todd a
17 question again.

18 CHAIRMAN DEASON: Okay, go ahead.

19 COMMISSIONER CLARK: Where is Mr. Todd? I wanted
20 to go back to the notion of the treatment facilities. Are
21 there any other types of property uses that you believe an
22 easement is more appropriate for beyond spraying effluent?

23 MR. TODD: Could you rephrase that, please, I'm
24 sorry.

25 COMMISSIONER CLARK: Well, you gave the example of

1 using golf courses to spray effluent, and I think Staff
2 responded that they didn't consider that to be a treatment
3 facility, that nothing is going to be located on it, except
4 sprinklers or whatever it is that you use to spray. And it
5 wasn't their intention that this subsection of the rule
6 address that type of property. Are there other treatment
7 facilities for which it would be more appropriate to use an
8 easement?

9 MR. TODD: There very well could be. For
10 instance, one of the current methods for treating wastewater
11 today that is in vogue with the environmental committee, and
12 I think probably makes a lot of sense to the citizens of
13 Florida, is using wetland systems for treatment. That's the
14 entire treatment process or can be the entire treatment
15 process depending on the type of wastewater that is being
16 treated and the amount of contamination, and that sort of
17 thing. There is no reason to keep people from going out and
18 enjoying that system; for instance, to go bird watching, to
19 do other things that environmentally enhance the quality of
20 life. And I don't think you need fee ownership of a piece
21 of property to do that. Let me go a little bit further,
22 too. The bundle of rights with land is disposition, use,
23 possession, and exclusion. That's what you buy when you buy
24 fee title. An easement can give you all of those except
25 disposition. You know, you can have an exclusive easement

1 that will allow you to exclude all other uses from that
2 piece of property, all other people, and when you say
3 easement, it's a pretty broad term and it can represent --

4 COMMISSIONER CLARK: We had something came up like
5 that in Marion County, as I recall.

6 MR. TODD: So, for me to tell you that an easement
7 allows use of that land to other uses, it does not
8 necessarily, nor does it necessarily preclude those uses. I
9 mean, that's a function of the easement, per se. I'm just
10 trying to make a point that oftentimes a different less than
11 full bundle of rights fee titled land can be acquired for a
12 much lower cost and can have a positive environmental policy
13 impact.

14 COMMISSIONER CLARK: Well, okay. How would you
15 feel about language that said something to the effect that
16 such as a 99-year lease, except where the utility can show
17 that the use to which the property is to be put, a more
18 cost-effective, yet --

19 MR. TODD: How about where the utility can show a
20 general benefit to the consumers? I mean, I think there is
21 more than one way, like I said, to acquire property. And I
22 think if you have creative thinking, you can put land to
23 more uses than one. And I think that's really what is
24 important, from a conservation point of view.

25 COMMISSIONER CLARK: Here is my concern. What I

1 don't want to get into is where you have the utility's
2 offices and their treatment plant and where they have all of
3 their trucks, to me you have either got to have a warranty
4 deed or you have to have a 99-year lease. And it's those
5 type of facilities that I think of when I think of this
6 rule. But I agree with you, I don't think it is
7 cost-effective to purchase a golf course when you can get
8 the right to spray effluent on that golf course for 30
9 years.

10 MR. TODD: Or, for instance, an orange grove,
11 where you are using reclaimed water to irrigate the orange
12 groves. You don't want us to be orange growers, you want us
13 to be providing an environmentally friendly way to dispose
14 of effluent.

15 COMMISSIONER CLARK: Okay, thank you.

16 CHAIRMAN DEASON: Commissioners, what's your
17 pleasure on Rule .025?

18 COMMISSIONER JOHNSON: I have a couple of
19 questions.

20 CHAIRMAN DEASON: I'm sorry, go ahead.

21 COMMISSIONER JOHNSON: On .033, Subsection (f), I
22 know that in your general summary statement, you stated that
23 no one had objected, and that the utilities had requested
24 the language. To me, legally, and I guess I just need a
25 general understanding of why we would put a statement that

1 to the best of the applicant's knowledge; what does to the
2 best of the applicant's knowledge mean, and what was the
3 problem with the existing language that the provision had to
4 be consistent with the local comprehensive plan?

5 MS. DANIEL: Commissioners, this was a proposal
6 that was added after a workshop, I believe. It was a
7 utility suggestion that this be added. I believe their
8 concern is, and they are in a better position to answer that
9 than I am, but they feel like they are being held to some
10 level of expertise on local comp plans. They are a very
11 lengthy and cumbersome document, and I believe the utilities
12 were concerned that their reading of a comp plan could be
13 questioned, and so to the best of the applicant's knowledge.
14 Let me also just comment that when utilities are required to
15 notice for these applications, we have them send a notice to
16 the Regional Planning Council, and that is the entity that
17 is the connection between the Department of Community
18 Affairs that reviews comp plans and the local government.
19 So these Regional Planning Councils are also reviewing the
20 comp plans, adding the qualifier there is mitigated by
21 noticing the person --

22 COMMISSIONER JOHNSON: Could not the utility then
23 contact the Regional Planning Council?

24 MS. DANIEL: They could.

25 COMMISSIONER JOHNSON: So what's the burden?

1 MS. DANIEL: Just their level of expertise in --

2 COMMISSIONER JOHNSON: But couldn't they contact
3 those experts and have those experts send a letter? I only
4 suggest that because what I thought the purpose of the rule,
5 and from meeting with Staff previously in one of my
6 orientations is that we were trying to work with the local
7 governments, the RPCs, the Department of Community Affairs,
8 to ensure that what we were doing was consistent with the
9 comp plan, the comprehensive plan in the local areas. This
10 now appears to be a step back from that. And the rationale
11 that I thought I read was that it was burdensome for the
12 utilities. But if the RPCs are noticed, I'm missing the
13 burden. I don't see the burden, but perhaps the utility can
14 explain that situation to me.

15 MR. SEIDMAN: Well, I guess there are two things;
16 one is we are being asked to look at the comprehensive plan
17 and see if we are in compliance with it, which is a matter
18 of interpretation. I think the other thing is that there is
19 no requirement that we be in compliance with the plan. I
20 don't know that there is any burden that we have to show
21 that we are either in compliance or not in compliance to
22 meet the Commission's requirements. We are being asked to
23 take another administrative step that really has no affect
24 on the result.

25 COMMISSIONER JOHNSON: So what was the purpose of

1 the -- you may be able to help me, then. Historically, what
2 was the purpose of this rule? You're saying you don't have
3 to be consistent with the plan, but we want you to just
4 check and see if you are consistent with the plan. If not,
5 then we decide what to do later.

6 MR. SEIDMAN: That's correct.

7 COMMISSIONER JOHNSON: I mean, it's not like you
8 can say I'm not consistent and we would have no authority to
9 then try to bring you into compliance.

10 MR. SEIDMAN: And we would make an interpretation
11 that to the best of our knowledge we either are consistent
12 or not consistent and go ahead with the next portion, and
13 say if we feel we are not consistent, explain why a
14 certificate should still be granted.

15 COMMISSIONER JOHNSON: Could we deny your
16 certificate because you were not consistent with the plan?

17 MR. SEIDMAN: I don't think so. You may deny it
18 because you may not feel it is in the best interest of the
19 public, but I don't think you can deny it just because it is
20 inconsistent.

21 COMMISSIONER JOHNSON: Is that Legal's view?

22 MS. SUMMERLIN: I'm sorry, I was --

23 COMMISSIONER JOHNSON: Can we deny a utility
24 because they weren't consistent with the comprehensive plan?

25 MS. SUMMERLIN: The Commission is required to

1 consider whether the utility is in compliance, whether the
2 proposed application would be in compliance, but it's not
3 dispositive.

4 COMMISSIONER JOHNSON: So it's one of the factors
5 that we could consider?

6 MS. SUMMERLIN: Yes. We must consider it, but I
7 don't believe that it is dispositive.

8 COMMISSIONER CLARK: I think we could reject the
9 certificate if it was not in compliance if we found that
10 because it's not in compliance it's not also in the public
11 interest.

12 MS. SUMMERLIN: Yes, ma'am, I agree with that.
13 But what I mean is you are not compelled to on that basis.
14 That's all I mean. It is certainly something that must be
15 considered.

16 MS. DANIEL: Commissioner Johnson, Statute
17 367.045, Paragraph 5(b) is the piece of our statute that
18 refers back to these comp plans.

19 MR. SEIDMAN: All I'm saying is I don't think just
20 being inconsistent is sufficient reason to deny it. You
21 would have to say something else about it with regard to the
22 public interest.

23 COMMISSIONER JOHNSON: Tell me the process, what
24 have you done in the past to ensure or to figure out whether
25 or not it was consistent?

1 MR. SEIDMAN: I have obtained copies of the
2 comprehensive plan and read the sections, specific sections
3 with regard to water and sewer, and usually the general
4 sections on the overall approach of the municipality or
5 county, whoever is involved. And see basically if, just an
6 interpretation of whether or not what we are doing, whether
7 adding a utility, expanding a utility is something that
8 meets the goals of that plan.

9 COMMISSIONER JOHNSON: Is there any interaction
10 with the Regional Planning Councils or the local governments
11 in that?

12 MR. SEIDMAN: No, not in my part. I don't know
13 about everybody else.

14 COMMISSIONER JOHNSON: And then you would submit a
15 document to us saying that you think it is consistent, or
16 the utility believes, upon your review of the comprehensive
17 plan, that it was consistent?

18 MR. SEIDMAN: That's correct.

19 COMMISSIONER JOHNSON: And then what do we do?

20 MS. DANIEL: Commissioners, I have never seen one
21 come in that said we weren't consistent. We have had one --

22 COMMISSIONER JOHNSON: So we really haven't had a
23 problem with --

24 MS. DANIEL: -- we have had one original
25 certificate docket where a Regional Planning Council

1 actually filed comments that went to hearing and played its
2 way out.

3 COMMISSIONER CLARK: Which one are you talking
4 about?

5 MS. DANIEL: East Central Florida.

6 COMMISSIONER CLARK: East Central Florida, yes.
7 And as I recall, the party that was sort of promoting the
8 idea that it was not in compliance with the comprehensive
9 plan was the party that had no vested interest in that
10 comprehensive plan. It was just a vehicle to --

11 MS. DANIEL: I wasn't going to get into that.

12 COMMISSIONER CLARK: But it seems to me that we do
13 notice -- do we notice the Regional Planning Council?

14 MS. DANIEL: Yes.

15 COMMISSIONER CLARK: And they are probably in a
16 better position to look at that and say, you know, this is
17 not, and at that point I would think if they are doing their
18 job they are going to come in and say, "Don't do this
19 because of this." That they are in the best position to
20 provide that information.

21 MS. DANIEL: Commissioner Johnson, there are other
22 measures that we won't go into right now, but the local
23 government has some opportunities to take care of that
24 issue, as well.

25 MS. SUMMERLIN: That language just might allow the

1 utility to, in good faith, be able to say that from the best
2 of their knowledge they are not in conflict with the local
3 comprehensive plan, but that may also entail some
4 interpretation on their part. So it's not like they are
5 saying we have gone and asked them whether they agree with
6 every last thing that we think about this or not. We are
7 not putting them in that posture when you add that phrase.

8 COMMISSIONER JOHNSON: Thank you.

9 CHAIRMAN DEASON: Other questions, Commissioners?
10 Commissioners, what is your pleasure for Rule .025?

11 COMMISSIONER CLARK: Public Council's suggestion
12 is that the 30 days -- I mean, that the testimony be added
13 to that which is considered in -- that before you can
14 establish the official date of filing that testimony has to
15 accompany the MFRs?

16 MS. SUMMERLIN: Commissioner, when Ms. Dismukes
17 was making her comments earlier, I thought I heard her say
18 that she was adding some changes, the words where
19 appropriate, is that correct? In the .025, is that what you
20 said earlier?

21 COMMISSIONER CLARK: Did you recommend a change to
22 .025?

23 MS. DISMUKES: Yes, ma'am. Yes, we didn't have
24 any disagreement with Florida Waterworks' modification to
25 our proposal.

1 MS. SUMMERLIN: Which adds the words where
2 appropriate?

3 MS. DISMUKES: I believe it is something along
4 those lines, yes.

5 MS. SUMMERLIN: Because not every case requires
6 testimony to be filed, and that's what you're trying -- and
7 as far as I know, that makes sense, and that's fine.

8 CHAIRMAN DEASON: Florida Waterworks is not
9 agreeing with the concept, but what they are saying is that,
10 if there is language in .025 concerning the filing of
11 testimony concurrently, that they think you need to add the
12 as appropriate language to that, is that correct?

13 MS. DISMUKES: I believe that's correct. I think
14 originally, Florida Waterworks Association did not have a
15 dispute with the filing of the testimony with the MFRs, it
16 was only when Mr. Cresse brought it up.

17 CHAIRMAN DEASON: Okay. In a subsequent section
18 of these proposed rules there is also language concerning
19 filing of testimony. Is that in the test year approval
20 section?

21 MR. MANN: .436.

22 CHAIRMAN DEASON: .436. Is it necessary to have
23 it in both places, or will one suffice, or what is your
24 opinion on that?

25 MR. MANN: Commissioner, we just felt that it

1 would be the best for the sake of consistency to have it
2 brought out in .025.

3 COMMISSIONER CLARK: Mr. Cresse, how about 21
4 days? I think Jack brings up a good point. Eight months is
5 quick, it seems to get quicker all the time. But I do
6 understand your viewpoint that it ought to wait until you
7 get everything correct so you can provide testimony.

8 MR. CRESSE: I think so, yes, ma'am. I think in
9 most cases 21 days would be adequate time. There may be a
10 time when it may not be adequate, and I can't think of it
11 right now. My suggestion was simply based -- I didn't think
12 it did any harm. In the giga case with Southern States, we
13 received 1,600 interrogatories and production requests and
14 then took depositions of 22 witnesses. Now, that is a big
15 deal. But we did get the 30 days. 21 days is certainly
16 better than nothing, and maybe if you said 21 days unless
17 specifically approved by the Commission. And I assume,
18 unless specifically approved by the Commission is implied in
19 most of these rules anyway. So if you put 21 days, and if
20 it's understood unless a time is longer than that, and that
21 is granted for just cause, then I think that would be
22 satisfactory.

23 COMMISSIONER CLARK: Well, I'm trying to
24 accommodate both parties here. I see both viewpoints.

25 CHAIRMAN DEASON: Mr. Cresse, if it were 21 days,

1 would you be agreeing to extend 21 days under the 8 months,
2 or that would be 21 days away from the 8 months?

3 MR. CRESSE: No, sir, I'm not suggesting that the
4 8 months be extended. What I'm really saying is, is that to
5 do it and to do it right, you need to know that your MFRs
6 are correct, and they have been accepted. And then you need
7 to get your testimony out. Most of it will be done, the
8 contents of it, but if you have to go back and redo all of
9 your testimony, it's just very much wasted time.

10 CHAIRMAN DEASON: Mr. Cresse, there is no
11 assertion when Staff reviews MFRs that they are correct,
12 only that they are complete. The numbers may be totally
13 incorrect. They don't go in and audit and verify those
14 numbers.

15 MR. CRESSE: I understand that, sir. I understand
16 that. But also when you are preparing your testimony, it is
17 going to tie back to the MFRs that you have submitted and
18 have been accepted. And if there is some errors in that,
19 then you've got to completely redo your testimony. And that
20 happens.

21 CHAIRMAN DEASON: Errors or omissions?

22 MR. CRESSE: Errors, just plain mistakes. Where a
23 figure on one piece of paper that should be the same on
24 another piece of paper, is not the same. And those are just
25 errors in the preparation of MFRs.

1 CHAIRMAN DEASON: And Staff's review is going to
2 indicate that?

3 MR. CRESSE: Sometimes you will get notice that
4 those need to be corrected before they can accept it.

5 MS. SUMMERLIN: Commissioners, can I respond just
6 one second to this? Staff, I think, is -- the primary
7 reason that we believe that the testimony should be filed at
8 the same date as the MFRs is because that makes our practice
9 consistent with the other industries, with the telephone and
10 electric and gas. And I would point out that there are very
11 major rate cases in the telephone section also that are very
12 complex and difficult, and I would also point out that there
13 are many times that throughout those cases, MFRs are being
14 corrected. So if you are going to depend on that issue,
15 that would cause a lot of trouble, I think, because you
16 could justify going a long time if you are depending on
17 trying to fix the testimony based on later corrections to
18 the MFRs.

19 COMMISSIONER CLARK: Is it our experience that we
20 generally have more trouble with the MFRs that are filed by
21 water and sewer companies than the major electric and
22 telephone utilities? I may be wrong in that.

23 MS. SUMMERLIN: My only experience has been with
24 the telephone area, and I know that there have been major
25 problems at times with the MFRs. I think that the MFRs are

1 a difficult task for anybody, in any situation. But I do
2 think that we have consistently had a problem with
3 intervenors having time to adequately address the testimony.
4 And I think that it is appropriate that if the MFRs are
5 ready to be filed, the testimony that supports them should
6 be filed at the same time.

7 CHAIRMAN DEASON: Commissioners, let me make a
8 comment, and I don't want my comments to be taken such that
9 it is interpreted as being punitive, but the Commission
10 always has the flexibility, to the extent the MFRs are
11 filed, and there are material errors in there, and there has
12 been testimony filed which incorporates those errors and it
13 is necessary to make extensive corrections which increases
14 rate case expense, we always have the authority to review
15 that rate case expense increment, and say, "No, that is not
16 justified, they should have done the MFRs correctly to start
17 with, and testimony should have been filed correctly to
18 start with." So, I agree with the goal of trying to reduce
19 rate case expense, but we do have other options. If we feel
20 like there is a case where there are material errors which
21 result in material increases in rate case expense, we will
22 need to review that to see if it is appropriate for those
23 costs to be passed along at all.

24 COMMISSIONER CLARK: Well, getting back to the
25 rule, is there a need to address it in this rule or should

1 we just leave the official date of filing as it is and then
2 deal with the requirement of testimony in the latter rule?

3 MR. WILLIS: Commissioners, I would like to
4 address the matter, too. For the record, this is Marshall
5 Willis. This is already addressed in .436; 25-30.436, which
6 is minimum filing requirements. I'm not aware of any other
7 cases where there is a need to file testimony. But in that
8 rule we are basically saying, there should not be any days
9 between filing of the testimony and the MFRs. And it has
10 been my experience that we have only had some recent
11 requests for waiver of the 30 days and that was in the
12 Southern States rate cases, and the Lehigh rate case, and
13 the Marco Island rate case. I know Florida Cities, who
14 filed six cases this year, had no problem filing their
15 testimony with the MFRs.

16 COMMISSIONER CLARK: What were those cases where
17 they asked for extension of the dates?

18 MR. WILLIS: The Southern States rate case, the
19 Lehigh rate case, and the Marco Island rate case.

20 MR. CRESSE: And they were granted.

21 MR. WILLIS: Florida Cities has filed six cases
22 this year, including the seventh they refiled, and they
23 filed testimony with every one of those cases, except for
24 the one that they went PAA with, which is something that we
25 are recommending; that if you decide to go with the proposed

1 agency action statute, then we are recommending that you
2 don't have to file testimony up front with the MFRs, because
3 it's an informal process at that point. I know our
4 experience basically says that there isn't going to be much
5 of a change to testimony at all due to MFR deficiencies.
6 It's rare that we have deficiencies of such a magnitude that
7 would cause that.

8 CHAIRMAN DEASON: Marshall, are you recommending
9 that we have it in both sections of the rule or just one?
10 The testimony requirement.

11 MR. WILLIS: Well, we were recommending it be in
12 .436, because that deals with rate cases. There are cases,
13 I imagine, where we do go to hearing on certificate cases
14 where there is a need to file testimony.

15 CHAIRMAN DEASON: If you include it in .025,
16 aren't you making it clear that the eight months begins with
17 the filing of testimony? I assume that if a company feels
18 that it is necessary to file MFRs and have those reviewed by
19 Staff, and wait to file testimony, that's their prerogative.
20 It's just that the eight months does not start until the
21 testimony is filed. I'm interpreting that correctly?

22 MR. WILLIS: Yes. I think you can have it in
23 either place. You may want it in both. I think if you look
24 at the language in .436 you are going to see that it
25 basically does the same thing. It makes it very clear that

1 the utility must file the minimum filing requirements and
2 testimony before the filing is considered filed properly.

3 MR. CRESSE: Mr. Chairman, it's on Page 131 of the
4 proposed rules, is where the language presently is that we
5 are suggesting be changed. I don't know, I guess it's
6 25-30.435, but on Page 131 of what was distributed.

7 MS. MOORE: That's 131 of the notice in Tab 2.

8 CHAIRMAN DEASON: What rule section is that, Mr.
9 Cresse?

10 MR. CRESSE: I believe it's 30.435. No, .436.

11 CHAIRMAN DEASON: It's .436, in which paragraph?

12 MS. MOORE: Sub 2. Yes, Subsection 2, Page 131 of
13 the notice.

14 CHAIRMAN DEASON: It says there that it will not
15 deem to be filed until the appropriate filing fee has been
16 paid and all minimum filing requirements have been met. And
17 then in another sentence it makes reference to the fact that
18 direct testimony shall be filed with the minimum filing
19 requirements.

20 COMMISSIONER CLARK: Am I reading that sentence
21 wrong? If you have an if then you should have a then; it
22 doesn't seem like there is a then in there. It says if the
23 applicant has not filed its petition pursuant to 367.081(8),
24 applicants' prepared direct testimony shall be filed with
25 the minimum filing requirements.

1 MS. DANIEL: That's referring to the PAA process,
2 Commissioner. If it's not PAA then filed prepared direct
3 testimony.

4 MR. WILLIS: That's the one waiver that we put in
5 about filing direct testimony.

6 COMMISSIONER CLARK: Well, I think maybe a more
7 appropriate way to word it would be an applicant shall file
8 direct testimony with the minimum filing requirements,
9 unless the applicant.

10 MR. WILLIS: We can change the wording, no
11 problem.

12 MS. MERCHANT: Commissioners, I would also like to
13 point out -- this is Patricia Merchant, with the water and
14 wastewater staff. I filed comments on this section, and
15 there is an error in my comments. I stated that the
16 testimony should be filed within 30 days, that's on Page 18
17 of my comments. And that should be changed to reflect what
18 the proposed rule says. So I just wanted to make that
19 clarification up front.

20 MR. CRESSE: She was correct in her original --

21 COMMISSIONER CLARK: Mr. Cresse, Staff's
22 enumeration of the entities which did not file within the 30
23 days certainly identifies cases for which it seems to me
24 that we were under a severe time crunch anyway. And I guess
25 looking at those three cases, I can see the argument for

1 requiring testimony be filed at the time the MFRs were filed
2 becomes more compelling to me.

3 MR. CRESSE: Well, Commissioner, if you put 127
4 different basic minimum filing requirements together, and
5 you are simultaneously trying to put together your testimony
6 while you are putting that together, essentially, what that
7 amounts to is your filing date is going to be set up at
8 least 30 days. By the time you get all of your testimony
9 after you put all the stuff together. Clearly, I don't
10 think there is any harm done by all of that data that is
11 filed. And if the people take 30 days to go through it, if
12 the Staff or, you know, Public Counsel are willing to say
13 that harm was done to them because of the delay in filing
14 testimony, you've got a different situation. But I don't
15 think harm was done. I saw no evidence that anybody was
16 stripped of any information they otherwise would have had
17 had the testimony been filed 30 days earlier. There were
18 1,600 staff interrogatories, Public Counsel interrogatories,
19 requests for documents. There were 22 depositions taken in
20 that case. They had, it appears to me, to be adequate time
21 to do that. And if there was harm done, it was never
22 mentioned in the course of those cases. We are asking for
23 some time to be sure that we can do it right. Now, the fact
24 that Florida Cities files their testimony with that, that's
25 fine. Nothing keeps Florida Cities from doing that. I'm

1 saying that it would assist in expediting and eliminate some
2 busy work if we had some time to file it after the basic
3 data is filed. And 21 days is fine, and I don't have any
4 problem with 21 days. But I don't see the necessity, and
5 have never seen the necessity. The fact that it is done in
6 the electric utility industry is fine, but I have never seen
7 the necessity to have testimony filed at the same time the
8 basic accounting data is filed.

9 CHAIRMAN DEASON: Mr. Cresse, there may not have
10 been any claim filed here at the Commission of harm in an
11 official sense, but I remember reading quite a few newspaper
12 articles where the Public Counsel is on record as stating
13 that filing of 127 cases in the time frame in which he had
14 to review those and to process his case put an extreme
15 burden on his office. So maybe that wasn't harm in the
16 official sense, but at least the public read that their
17 representative was under severe strain and didn't have
18 adequate time to represent them in those cases, and that's
19 what the public perceives.

20 MR. CRESSE: Well, let me respond to that, if I
21 can, Commissioner. I think that the filing of 127 cases,
22 systems at any given time is a burden. I don't think there
23 is any question, but I don't think that burden is enhanced,
24 made less or greater because of the timing of the filing of
25 the testimony. And I think, obviously, if you go get all

1 the data in the minimum filings requirements and you stack
2 them end to end, in the 127 systems, that is one big burden,
3 an extremely large burden. There is no question about that.
4 It is a very large burden to prepare all of that stuff, too.
5 But if it is necessary to provide fair, equitable and just
6 rates, that comes with the territory.

7 COMMISSIONER CLARK: But, you know, the testimony
8 also sort of gives you at least the Company's road map as to
9 where they believe their greatest expenses lie, which the
10 MFRs -- I'm not sure, do the MFRs sort of give that
11 information in the executive summary?

12 MR. CRESSE: I think so.

13 MR. WILLIS: Commissioner, we don't have an
14 executive summary in our MFRs with water and wastewater, you
15 do in electric and telephone.

16 COMMISSIONER CLARK: Do you agree that the
17 testimony sort of gives you a road map as to the reasons for
18 the rate increase or other requests that assists you in
19 beginning your discovery and review of the MFRs?

20 MR. WILLIS: Properly filed testimony should do
21 that. In fact, you can probably see from my last sentence
22 here that in most cases, or in at least half of our cases
23 get testimony filed which basically says this person is
24 supporting this part of the MFRs and that's all you get. We
25 have tried to get a better understanding out there to the

1 utility industry on what direct testimony should have in it
2 by putting our last sentence of the paragraph in there. But
3 you're absolutely correct, it should be giving us a road map
4 as to what they believe the biggest issues are according to
5 them.

6 CHAIRMAN DEASON: Commissioners, what's your
7 pleasure on .025?

8 COMMISSIONER CLARK: I think we should leave .025
9 the way it is and we'll deal with this issue later on in the
10 -- I don't see the necessity of having it both places with
11 respect to whether or not the testimony is due at that time,
12 and I move Staff the way it is.

13 CHAIRMAN DEASON: Do we have a second to that? We
14 have a motion to include it in .025; do we have a motion to
15 do nothing?

16 COMMISSIONER LAUREDO: A motion to adjourn.

17 CHAIRMAN DEASON: I will pass the gavel. I move
18 that we include the requirement to file testimony concurrent
19 with the MFRs in Rule .025 so it's absolutely and abundantly
20 clear that the official date of filing is not established
21 until testimony is filed. It does not mean that it has to
22 accompany the MFRs, but that the official date of filing
23 does not begin until MFRs and testimony is on file with the
24 Commission.

25 COMMISSIONER CLARK: Is there a second to that

1 motion?

2 COMMISSIONER JOHNSON: I will second that motion.

3 COMMISSIONER CLARK: All those in favor say aye.

4 CHAIRMAN DEASON: Aye.

5 COMMISSIONER LAUREDO: Aye.

6 COMMISSIONER JOHNSON: Aye.

7 COMMISSIONER CLARK: Opposed nay. Nay. The
8 motion passes.

9 CHAIRMAN DEASON: What is your pleasure on Rule
10 .030?

11 COMMISSIONER CLARK: I need to have my memory
12 refreshed. What were the suggestions with respect to .030?

13 CHAIRMAN DEASON: The Legal Staff had a concern
14 about the one-week notice versus three-week notice, and
15 there was a concern raised concerning the language
16 describing appropriate format for legal descriptions. I
17 believe that's the only two areas of concern that were
18 expressed with .030.

19 COMMISSIONER CLARK: With respect to the notice, I
20 would like to suggest that we try the single notice. I'm
21 probably married to the only person in the world that reads
22 legal notices consistently. I just don't -- I agree with
23 the comment that that is not the source to alert people who
24 should be alerted to these applications, and it is really
25 the direct contact with those people. And then I think we

1 ought to see if for some reason we ought to revise that, but
2 I think we ought to -- in the interest of reducing the cost
3 of regulation, and it's probably not a great cost, but to
4 the extent you can reduce costs in a lot of little areas it
5 will eventually add up. That would be my motion on the
6 noticing, that we accept the one public notice.

7 COMMISSIONER JOHNSON: Did Public Counsel have any
8 position on that? I don't recall.

9 MR. SHREVE: We didn't take one. I think we
10 should lean towards as much notice as possible if it's not
11 too expensive or too much of an encumbrance.

12 COMMISSIONER CLARK: But it's not a big issue with
13 you?

14 MR. SHREVE: Not if -- I guess I know the
15 certificate cases don't a lot of times draw in the public,
16 sometimes I think it may be because they really have no idea
17 what is going on and what the future holds for them. I'm
18 not sure that the legal notice will be what draws that in,
19 but I'm not so sure that doing without it would be the
20 answer, either. But we don't have that much of a strong
21 feeling on it.

22 COMMISSIONER JOHNSON: I'm going to go ahead and
23 second the motion, and to the extent when this becomes a
24 rule, if it's a problem then we can readdress it later.

25 MR. SHREVE: Fine. Thank you.

1 CHAIRMAN DEASON: What about the concern about the
2 suggested language concerning appropriate format, which Ms.
3 Daniel suggested, do you want that included?

4 COMMISSIONER JOHNSON: What about the idea of
5 attaching that form to the rule? Can't that be done? The
6 form that you're referring to as the appropriate manner.

7 MS. DANIEL: We can refer back to it. Actually,
8 what I would like to suggest on that is we are going to,
9 believe it or not, have a round two of these rules. None of
10 our certification forms are currently embodied in the rule,
11 and I would like to address it in that manner. We do send
12 out that form with every application package that we send
13 out, so the industry has access to it.

14 MS. MOORE: I would suggest for this round,
15 though, we could be more descriptive of what is appropriate.
16 We could be specific there and come back with that.

17 COMMISSIONER CLARK: Can we leave that pending for
18 when you bring the rule package back for total approval?

19 CHAIRMAN DEASON: Okay. It has been moved and
20 seconded that we incorporate the one week noticing
21 provision, and leave to Staff the opportunity of perhaps
22 clarifying what they mean by appropriate format. All in
23 favor say aye.

24 COMMISSIONER BEARD: Aye.

25 COMMISSIONER CLARK: Aye.

1 COMMISSIONER LAUREDO: Aye.

2 COMMISSIONER JOHNSON: Aye.

3 CHAIRMAN DEASON: Rule .032, I don't think that
4 there were really any significant comments concerning .032.
5 Do we have a motion?

6 COMMISSIONER CLARK: I move .032.

7 CHAIRMAN DEASON: Without objection, 032. .033?

8 COMMISSIONER CLARK: This is the one with the
9 comment on the 99-year lease in the warranty?

10 CHAIRMAN DEASON: Yes.

11 COMMISSIONER CLARK: Mr. Chairman, I would like to
12 provide the Staff to see if we can't refine the language to
13 allow alternative forms of right to use the property which
14 are appropriate for the type of facility or type of use the
15 property is going to be --

16 MS. DANIEL: We would be happy to, Commissioner.

17 CHAIRMAN DEASON: And I think that would apply to
18 .033, .034, .035, and .036. All of those.

19 COMMISSIONER CLARK: If it is appropriate, yes.

20 MS. DANIEL: We will address that, Commissioner.

21 CHAIRMAN DEASON: Okay. Without objection to that
22 suggestion? There is no objection. Staff is directed to
23 incorporate that change. Still on Rule .033, we have a
24 concern about including the identification of affiliated
25 parties. I think that we had some discussion on that.

1 What's your pleasure on that, Commissioners? Let me make a
2 suggestion. It seems to me that we have established that
3 there is information on affiliated parties required in rate
4 proceedings either in the form of MFRs or some form, that
5 this is dealing with a certificate, and that to the extent
6 that an entity requesting a certificate relies upon
7 affiliated parties, you have an obligation to identify
8 those; to the extent that they are not, and they are
9 requesting a certificate based upon their own financial
10 resources that it is not necessary to identify affiliated
11 parties. I would suggest that as a possible solution to the
12 problem.

13 COMMISSIONER CLARK: I second.

14 CHAIRMAN DEASON: Well, I can't make a motion, but
15 if you will make the motion.

16 COMMISSIONER CLARK: I so move.

17 COMMISSIONER JOHNSON: I second.

18 COMMISSIONER LAUREDO: That's Section T on Page
19 17?

20 COMMISSIONER CLARK: Is it U?

21 CHAIRMAN DEASON: I think that we can incorporate
22 in Section T a requirement to identify all affiliated
23 parties upon which there is a basis or a need for financial
24 support in determining financial viability. We perhaps can
25 leave that to Staff's discretion to formalize the language.

1 MS. DANIEL: We will take a look at something that
2 accomplishes on an as-applicable --

3 CHAIRMAN DEASON: I think the point we are making
4 here is we are not requiring an entity requesting a
5 certificate to identify all affiliated parties up front.
6 Only to the extent they are relying upon affiliated parties
7 to establish their financial viability would they be
8 obligated to make that identification. And however Staff
9 can best incorporate that into the version we will be voting
10 on in August, we will leave that to your discretion at this
11 point.

12 COMMISSIONER LAUREDO: And I imagine parties that
13 are here referred to corporations.

14 MS. DANIEL: I'm sorry, I didn't --

15 COMMISSIONER LAUREDO: I imagine the use of the
16 word parties that you want identified are corporations and
17 nothing further?

18 MS. DANIEL: Okay.

19 CHAIRMAN DEASON: I think it also could include
20 partnerships or trusts or whatever the case may be.

21 COMMISSIONER LAUREDO: But I don't want to go past
22 piercing any one of the inherent rights of the reason people
23 get organized either in off-shore corporations, or
24 corporations, or trusts, or whatever; that's not what you're
25 pursuing.

1 COMMISSIONER CLARK: I think it may be, because I
2 can think of an instance where you had a corporation and it
3 wasn't clear what the assets of the corporation were yet,
4 and then --

5 COMMISSIONER LAUREDO: I don't see how that
6 can be --

7 COMMISSIONER CLARK: -- and we looked to the
8 primary owners of the corporation, their personal assets to
9 determine financial viability.

10 COMMISSIONER LAUREDO: Well, I'm extremely opposed
11 to that.

12 CHAIRMAN DEASON: The burden, though, is on the
13 person requesting the certificate. And if they feel like
14 it's necessary to divulge all of that information and get in
15 as much detail as they see fit, that's their prerogative.
16 And if they don't want to do that, then they run the
17 jeopardy of perhaps not getting the certificate.

18 COMMISSIONER CLARK: I agree.

19 CHAIRMAN DEASON: There also was some comments
20 concerning financial statements. I think there was a
21 clarification as to what constituted financial statements,
22 and that language was suggested by Public Counsel. Is there
23 any objection?

24 COMMISSIONER CLARK: That was on the sources and
25 uses of capital, if appropriate.

1 MS. DANIEL: That's correct. And then Public
2 Counsel, I believe, agreed with Mr. Seidman's testimony, if
3 applicable.

4 COMMISSIONER CLARK: Okay.

5 CHAIRMAN DEASON: I think there is really no
6 controversy there. Public Counsel also suggested inserting
7 the term cost of service study instead of just cost study.
8 I believe Staff had a problem with that, is that correct?

9 MS. DANIEL: Yes, sir.

10 CHAIRMAN DEASON: That it contemplated more than
11 what you are envisioning at this point.

12 MS. DANIEL: I believe so.

13 CHAIRMAN DEASON: Commissioners.

14 COMMISSIONER CLARK: Well, I would recommend we
15 keep it the way it is.

16 CHAIRMAN DEASON: Just use the term cost study?
17 Without objection.

18 COMMISSIONER LAUREDO: I vote against it.

19 CHAIRMAN DEASON: Commissioner Lauredo would
20 include the term cost of. Does Staff have sufficient
21 direction on that?

22 MS. DANIEL: Yes.

23 CHAIRMAN DEASON: .034, I don't believe that there
24 were any significant comments made. Do we have a motion?

25 COMMISSIONER LAUREDO: Mr. Chairman, I vote

1 against the whole rule.

2 CHAIRMAN DEASON: I'm sorry?

3 COMMISSIONER LAUREDO: I vote against .033 again,
4 against the whole rule.

5 CHAIRMAN DEASON: Oh, you're voting against all of
6 .033?

7 COMMISSIONER LAUREDO: Yes, sir.

8 CHAIRMAN DEASON: Rule .034, do we have a motion?

9 COMMISSIONER CLARK: I move Staff.

10 CHAIRMAN DEASON: Without objection, .034 is
11 approved. .035, there were also comments concerning
12 affiliated parties, I think it would be appropriate to make
13 the same finding for .035 as we did for .033. Any
14 objection?

15 COMMISSIONER CLARK: No objection.

16 CHAIRMAN DEASON: And .036, I don't believe there
17 were any significant comments for .036.

18 COMMISSIONER JOHNSON: Move Staff.

19 CHAIRMAN DEASON: Without objection, .036. I
20 would suggest we take a break, but it's so close to lunch,
21 perhaps we should go ahead and break for lunch.

22 I think the next item we are going to take up is
23 acquisition adjustments, and we may all need to be fortified
24 for that one. Staff.

25 MS. DANIEL: On Rule .036, I had proposed in my

1 testimony, Exhibit PD-3, a slight revision. I make the
2 comment in my introductory statements, and no one seemed to
3 be alarmed, it's just making a filing requirement out of the
4 statement of conditions in that quick amendment. I don't
5 believe anyone expressed an objection to my addition of
6 that.

7 CHAIRMAN DEASON: Do any parties have any
8 objection to Ms. Daniel's PD-3 in regards to Rule .036?

9 MR. SEIDMAN: Would you refresh our memory?

10 MS. DANIEL: In my testimony on Page 21 and 22,
11 I'm taking the -- in Tab 21, I am simply making a filing
12 requirement of the statement that the utility will give us
13 that we are talking about a maximum of 25 ERCs. Right now
14 it's just a condition that must exist, and I would just like
15 to see the utility provide that statement. That's all it
16 amounts to.

17 CHAIRMAN DEASON: This is Paragraph 1A?

18 MS. DANIEL: That's correct.

19 CHAIRMAN DEASON: Any objection by any of the
20 parties to that requirement? I think then that -- any
21 objection by the Commissioners? You can incorporate that,
22 then, in the version in .036, which you recommend to us in
23 August. And at this point let me clarify that by us taking
24 action on this, we are still going to have to develop a
25 final rule, but I think it's important for Staff to expedite

1 things to indicate things that we have already voted on and
2 things that perhaps are still controversial that we left to
3 your discretion to come up with final things so that we can
4 expedite the proceeding in August. I hope that's what we
5 are doing by taking these votes that we are talking. We
6 still can change it in August, but since we have already
7 taken action on it, most likely we are comfortable with it,
8 and we don't want to change that. But it will be presented
9 to us, and to the extent any Commissioner wants to
10 reevaluate anything, we will have that right at that time.
11 Are we communicating?

12 MS. MOORE: That's correct. We agree.

13 CHAIRMAN DEASON: We will take a lunch break at
14 this time. We will come back at 12:45.

15 (Lunch recess.)

16 CHAIRMAN DEASON: Call the hearing to order,
17 please.

18 I think the first item that we probably need to
19 discuss is the anticipated schedule for the remainder of
20 these hearings. I know right now we have a motion pending
21 to defer the used and useful portion of the rule until July,
22 and that Public Counsel has joined in that motion, and has
23 even requested to expand it to include more than just used
24 and useful. It appears that at the rate we are going we are
25 probably going to have no choice but to do used and useful

1 in July, and maybe even more than that. My hope would be to
2 do as much of the rule as we can today and tomorrow,
3 realizing that Commissioner Lauredo and Commissioner Clark
4 and myself have to be at attendance at a hearing in Fort
5 Myers on Thursday and Friday of this week. So we don't have
6 the luxury of carrying this over anytime past Wednesday. In
7 fact, we need to leave at a reasonable hour Wednesday
8 afternoon to catch a plane. So we are not going to have a
9 lot of time, and so it looks like it's inevitable we are
10 going to push a lot of this to July. So, since we are going
11 to push it to July, and we are making arrangements now to
12 get days set aside, I don't anticipate killing ourselves and
13 working extremely late tonight. So we will do tonight like
14 we did yesterday, we will probably try to conclude at a
15 convenient breaking point sometime between the hour of 5:00
16 and 6:00 this evening. I don't anticipate going past 6:00
17 for any reason. If need be, we will just break at an
18 inconvenient time. We won't be going past 6:00 unless the
19 Commissioners have some desire to work past 6:00 this
20 evening. No, I didn't think they would.

21 So, unless there is a strong objection from
22 someone, I think that's the general game plan we will try to
23 follow. We will keep plugging away and trying to accomplish
24 as much as we can. Now, if parties have people here who
25 can't be here in July, we need to go ahead and get those

1 identified, or if there are particular arrangements or
2 concerns that need to be expressed we need to try to get
3 them rectified at this time.

4 MR. HOFFMAN: Mr. Chairman, just as a point of
5 clarification, if what you're saying is that we can count
6 on, at minimum, the used and useful portion of these rules
7 being pushed back into July, that will be helpful for us in
8 terms of minimizing our expense in connection with Mr.
9 Guastella's appearance.

10 COMMISSIONER DEASON: Yes, we will definitely have
11 the used and useful section of these rules postponed until
12 July. Even if by some miracle we were to conclude
13 everything else in time, we would just conclude the hearing
14 and we would consider used and useful in July.

15 MR. HOFFMAN: Okay.

16 MR. SCHIEFELBEIN: Commissioner, I don't know
17 whether you will be able to accommodate me, and we can play
18 it by ear, if you wish, but in our imperfect planning for
19 this, we were under the illusion that we probably would get
20 through all of this in these few days, and we had hoped to
21 have Ms. Debbie Swain testify, figuring we would have the
22 used and useful tomorrow. We had hoped she would be able to
23 testify sometime today. She is able to stay tomorrow, we
24 don't have a life or death emergency, but we would prefer
25 that. She is here to testify on essentially three things;

1 25-30.433(2), which is working capital, which I expect to be
2 a rather extended discussion.

3 CHAIRMAN DEASON: What's the rule reference,
4 again?

5 MR. SCHIEFELBEIN: 25-30.433(2).

6 CHAIRMAN DEASON: .433, okay.

7 MR. SCHIEFELBEIN: Which is working capital, and I
8 suspect that that might be an area that a lot of people have
9 stuff to say on. The same rule, Subsection (3), which is
10 the deferred debits section, deferred debits. And, lastly,
11 25-30. -- I believe it's .434, which is the AFPI section. I
12 don't mean to be disruptive, and I'm perfectly content to go
13 on as we are right now, but if there is some way that we
14 could get to those sections today that would be helpful.

15 CHAIRMAN DEASON: Well, unless there is an
16 objection by someone, after we finish the acquisition
17 adjustment, I don't have a problem moving to .433 and .434.
18 But, again, that may disrupt somebody else's schedule. And
19 if they have an objection when we get to that point, they
20 can raise it at that time. But to the extent we can
21 accommodate you, we will make that attempt to do so.

22 MR. SCHIEFELBEIN: I appreciate it.

23 CHAIRMAN DEASON: Mr. Hill.

24 MR. HILL: Mr. Chairman, if I may, I would like
25 some direction from the bench, if I may. I know that

1 several Commissioners want information just as quickly as
2 it's available, and I have been working late nights and
3 weekends trying to put data together, and in fact they are
4 now down in the print shop putting together some exhibits
5 that deal with the used and useful. And I know you're not
6 going to get to that now. I would like to make that
7 information available, Mr. Shreve already has some of it, to
8 all of the parties as soon as it's available, but whatever
9 is appropriate. I can wait until we reconvene at some later
10 date and introduce it at the hearing then, or I can get to
11 the parties just as soon as it's available, whatever your
12 pleasure is. I just wanted to make you aware of that, and
13 then do whatever your pleasure is.

14 CHAIRMAN DEASON: Well, given the legal constraints
15 under which we are working, my preference would be that you
16 distribute that to everyone as quickly as possible. But if
17 there is some type of legal requirement that I don't know of
18 that would prevent that, that would be my only hesitation.

19 MR. HILL: I will also have some subsequent
20 information, because I am having my staff run the rules
21 against Southern States 127 systems, as well as any other
22 '92/'93 dockets that the Commission will have concluded by
23 then. And I will make that information available as soon as
24 we have it.

25 CHAIRMAN DEASON: Just work with Ms. Moore on

1 that, and with the express desire that the parties be given
2 the information as quickly as possible.

3 MS. MOORE: If that's agreeable with everybody
4 else.

5 CHAIRMAN DEASON: So I think we are at the point
6 now to address Rule .0371, and it's my understanding that
7 there was a desire expressed that Public Counsel present
8 their position on this rule first.

9 MR. SHREVE: I prefer to go ahead. The rule
10 that's been proposed, and all the proponents including the
11 Staff are going to be -- I would prefer to go ahead and
12 continue the same we have had all along.

13 CHAIRMAN DEASON: Well, we can do it that way, but
14 realizing there is probably going to be then responses to
15 responses, and we will give it whatever review is necessary.
16 I think Staff has already given their overview of .0371.

17 MS. MOORE: That's correct.

18 CHAIRMAN DEASON: And we can go straight to the
19 parties, then.

20 MR. HOFFMAN: Mr. Chairman, we have talked with
21 the Association about this, and we would be pleased to kind
22 of take the lead on this issue. We have a number of people
23 who are going to be making some comments. This is a very
24 important issue to Southern States. We would like to begin
25 with Mr. Armstrong, who is the senior attorney with Southern

1 States in-house counsel, he is very familiar with the
2 Commission's existing policy on this issue, as well as the
3 day-to-day operations of the company. So we think that he
4 is a good person to present our overall perspective on this
5 issue. And then we will go to some other individuals who we
6 think have some pertinent comments on our position.

7 COMMISSIONER CLARK: Is this the area that you all
8 did research of other states on acquisition adjustments?

9 MR. HOFFMAN: Commissioner Clark, we did research
10 on the issue of what other states policies are. Some states
11 had rules or statutes. In the Commission's last docket on
12 the acquisition adjustment issue where the Commission
13 confirmed its policy of not allowing any acquisition
14 adjustment unless there is an extraordinary circumstance.
15 That was the docket in which we conducted the research that
16 I think you're referring to.

17 COMMISSIONER CLARK: And it is in that docket?

18 MR. HOFFMAN: It was in that docket. It was not
19 for this rulemaking proceeding.

20 COMMISSIONER CLARK: Let me ask you a different
21 way. I know you did it in connection with that docket, did
22 you take what you found and produce it as part of that
23 docket and enter it into the record in any way?

24 MR. HOFFMAN: In this docket?

25 COMMISSIONER CLARK: No.

1 MR. HOFFMAN: In this docket? No, we did not. We
2 referred to it. We filed post-hearing comments in that
3 docket, and we did refer to what was going on in some of the
4 other states in those comments. I believe in about the last
5 third of those comments that we filed there was reference to
6 Staff --

7 COMMISSIONER CLARK: Is any of that in this
8 docket?

9 MR. HOFFMAN: To my knowledge, no, we haven't
10 filed it in this docket. We can make it available, but we
11 have not filed it in this docket.

12 CHAIRMAN DEASON: Mr. Armstrong.

13 MR. ARMSTRONG: Thank you, Chairman,
14 Commissioners. The proper treatment of acquisition
15 adjustments has been beaten to death. Nothing said or
16 written to date in this proceeding on this issue is new. No
17 proposal is different from what has been proposed and
18 rejected before. It's Southern States belief that after the
19 Commission has repeatedly reaffirmed its acquisition
20 adjustment policy over the past five years, first in a
21 generic docket on ratemaking proceedings; and, second, in a
22 docket focused solely on the existing acquisition adjustment
23 policy, that large utilities like ours should be encouraged
24 to acquire a small system. However, recently we repeatedly
25 have heard that most discounts from book which create

1 potential negative acquisition adjustments are the result of
2 deteriorated, or poorly maintained, or nonfunctioning
3 utility assets. If such situations were so prevalent, why
4 have there been no Commission imposed negative acquisition
5 adjustments in the past five years? The answer is that
6 contrary to Staff Witness Daniel's assertions, deteriorated
7 or nonfunctioning assets are not the primary reason for
8 purchases below net book.

9 The primary factual motivation for acquisitions at
10 a price below net book are, first, the inability of existing
11 owners to earn an adequate return on investments; second,
12 the inability of existing owners to keep up with current
13 environmental requirements; third, the inability of existing
14 owners to find funds necessary to invest in utility assets
15 so as to be able to meet the ever increasing environmental
16 regulatory requirements; fourth, the risk of heavy fines
17 that existing owner now face if they cannot operate their
18 systems or obtain the capital required to upgrade their
19 systems to meet environmental requirements; and, fifth, the
20 disinterest of developer/owners to continue to operate a
21 utility either soon after a system is constructed or as the
22 system approaches build-out.

23 In light of these facts, the belief that
24 acquisitions below book result primarily from the physical
25 condition of utility assets is misguided, and we believe is

1 not supported by record evidence. We do not doubt that
2 there are problem systems out there, but we believe that if
3 the Commission examines past events that you will see that
4 such systems generally are not purchased by a private
5 utility at a discount, but have been held by the owner to
6 the end in hopes of a condemnation. When a condemnation
7 does not occur, and the system is deteriorated, the system
8 ends up in receivership, not purchased by Southern States.

9 Yesterday, Staff Witness Daniel emphasized that
10 Rule 25-30.0371, and particularly the sentence which reads,
11 and I quote, "The Commission shall also consider the
12 condition of the utility assets purchased in deciding if a
13 purchased asset should be removed from the rate base
14 calculation." It sends a message to utilities, and that
15 message is buyer beware. Southern States doubts the
16 likelihood of small system acquisitions in the future if
17 that is the message this Commission, or even the legislature
18 for that matter, wishes to send us. That message is
19 inconsistent with the prior messages sent by this
20 Commission. That message certainly does not encourage the
21 purchase of small systems by larger systems. That message
22 contradicts the clear message sent when the Commission has
23 approved Southern States' acquisition of small systems in
24 the past.

25 In fact, Ms. Daniel's prefiled comments contain

1 assertions that are inherently contradictory. How can Ms.
2 Daniel's statement on Page 11 of her comments that there is
3 merit to a positive acquisition adjustment where the utility
4 purchased is in an extremely run down condition be
5 reconciled with her statement on Page 10 of her comments
6 that an asset may be removed from rate base at transfer if
7 it is deteriorated or obsolete? Again, on Page 11, Ms.
8 Daniel recognizes that it is the Commission's goal to
9 encourage the acquisition of small nonviable systems by
10 larger utilities, particularly if the small system is poorly
11 run or in need of major plant improvements.

12 Southern States cannot acquire small systems if it
13 will be faced with uncertainty as to what assets it will be
14 able to earn on, either in the form of assets existing prior
15 to the transfer or improvements we must make afterwards. We
16 must be able to get a determination from the Commission of
17 these facts if requested at the time of transfer. Southern
18 States will not acquire small systems if the cost of
19 litigating the transfer will exceed the rate base amount
20 requested by two, three and even four times as has happened
21 in the past, and as we see happening if we must litigate
22 issues of what particular assets are deteriorated, and why;
23 what assets are in poor condition, and why; what assets have
24 been poorly maintained, and why; what is a deteriorated
25 asset; what is an extremely run down system; and probably a

1 host of additional issues which creative minds can raise.

2 What has changed since the Commission's
3 investigation of the acquisition adjustment policy in the
4 generic ratemaking dockets in 1990? What has changed since
5 the Commission's reaffirmation in 1991 of its acquisition
6 adjustment policy? We do not know.

7 We believe the focus of this Commission should be
8 on the fact that not only is there no change in the rate or
9 the rate base of the acquired system upon acquisition, but
10 the used and useful character of the acquired assets also do
11 not change as a result of the acquisition. If the assets
12 were not used and useful prior to the acquisition,
13 regardless of the book value of the asset, the utility would
14 not recover a return on the assets either before or after
15 the transfer. In other words, if Southern States purchased
16 a system at \$50,000 below book value of the asset, Southern
17 States will not be able to earn a return on the \$50,000
18 discount if the associated assets are not used and useful.

19 To put this all in perspective, Southern States
20 has approximately \$150 million of assets, of which only \$120
21 million remains in rate base after the Commission's existing
22 used and useful policies are applied. Of that \$120 million
23 remaining in rate base, only approximately \$500,000 relates
24 to acquisition adjustments. Perhaps the significance of
25 these facts are most clearly demonstrated by the fact that

1 as of our last calculation we determined that what Southern
2 States has paid for all of the systems we acquired was more
3 than what our company was able to recover a return on in our
4 rate cases after the nonused and useful adjustments are
5 applied.

6 Finally, we feel we must reiterate that the
7 systems acquired by Southern States to date under the
8 Commission's existing policy have already benefited from
9 each of the nine potential benefits identified by the
10 Commission in the prior acquisition adjustment policy
11 proceeding. Southern States presented unrebutted sworn
12 testimony in its recent Marco Island rate case which
13 conclusively establishes that acquired systems have
14 benefited from the infusion of approximately \$30 million of
15 capital in 1992 alone from our parent company. That capital
16 has been obtained at reduced cost in the form of parent
17 investment, industrial development bonds, and other
18 financings. That operation of the acquired systems have
19 been improved through better employee training, and the
20 creation of equipment and employee sharing between our 150
21 systems. That compliance with state and federal
22 environmental requirements have been achieved, often as a
23 results of our company's willingness to invest significant
24 funds to achieve such compliance. That economies of scale
25 and reduced costs having achieved as a result of bulk

1 purchases of materials and supplies, and that Southern
2 States decisionmaking is made by experienced utility
3 personnel and professionals who are not distracted by lot
4 sales or other short-term goals.

5 As a result of all of these benefits, and with the
6 undeniable help we obtained from the creation of uniform
7 rates, Southern States now offers rates to the many small
8 systems which we have acquired over the years, which in some
9 instances are more than five times lower than the rates
10 which otherwise would be set for those systems. This was
11 one of our goals, and we believe it was one of the
12 Commission's goals. The goal has been achieved for existing
13 customers, and we want to share the benefits we have
14 demonstrated with additional customers from large and small
15 systems alike.

16 At this time I believe Mr. Hoffman has certain
17 questions for Staff, and then Mr. Cresse and Mr. Guastella
18 will present further evidence on behalf of Southern States
19 on this issue.

20 MR. HOFFMAN: Mr. Chairman, whatever your pleasure
21 is. I have some questions for Staff with respect to one
22 sentence that is in this proposed rule, which I thought it
23 would be helpful to try and get out of the way at this point
24 because it might raise some additional issues that Mr.
25 Guastella or Mr. Cresse may want to comment on. So with

1 your permission, I would just like to direct some questions
2 to Staff.

3 CHAIRMAN DEASON: Go ahead.

4 MR. HOFFMAN: Thank you. Mr. Chairman and
5 Commissioners, my questions are going to be primarily
6 directed to Section 1 of the proposed rule.

7 COMMISSIONER LAUREDO: .371?

8 MR. HOFFMAN: If you look at Page 40 of Tab 1,
9 Section 1 of this proposed rule, and my questions are going
10 to be directed to the last sentence. And the last sentence
11 states, "The Commission shall also consider the condition of
12 the utility assets purchased in deciding if a purchased
13 asset should be removed from the rate base calculation."

14 Ms. Daniel, if I could direct a few questions to
15 you on this issue. I look at Page 18 of your testimony, and
16 it appears that you are supporting this last sentence in
17 Section 1 of this proposed rule by stating that deteriorated
18 assets should be removed from rate base, am I correct?

19 MS. DANIEL: That is correct.

20 MR. HOFFMAN: Can you give me a definition of a
21 deteriorated asset?

22 MS. DANIEL: No, sir, not at this time. I will
23 say that the intent of the language in that section of the
24 rule is to give the Commission the flexibility to consider
25 the condition of an asset. We didn't include a definition

1 in the rule. I believe that that is a flexibility that the
2 Commission should enjoy in determining the net book value of
3 the assets acquired in a purchase.

4 MR. HOFFMAN: Can you give me some examples of
5 deteriorated assets which might be removed from rate base in
6 a transfer proceeding?

7 MS. DANIEL: No, sir, I cannot. I would prefer
8 that we not try to resolve acquisition adjustments in a
9 particular or even a hypothetical case at this point in
10 time. I would prefer that we place our emphasis on
11 developing a rule that would accomplish the Commission's
12 policy in determining net book value and give them that
13 flexibility.

14 MR. HOFFMAN: From your experience, and I
15 understand that you're trying to avoid hypotheticals, but
16 all I'm asking you is from your experience can you even
17 think of one type of asset or facility which might
18 potentially be removed from rate base because of alleged
19 deterioration?

20 MS. DANIEL: An extreme example would be a
21 situation of a small run-down water system, perhaps there is
22 -- I'm not an engineer -- perhaps there is an aerator that
23 is so completely old and dilapidated that it truly is not
24 functioning as it was designed and intended to function. It
25 may or may not be in some violation of some DER rule. It is

1 simply there, but not working. That would be an example of
2 an asset that should be removed from rate base.

3 MR. HOFFMAN: And I think that's consistent with
4 what you said yesterday, because I think yesterday in trying
5 to explain this, quote, deteriorated, unquote, type of asset
6 you referred to an asset that was not functioning, is that
7 right?

8 MS. DANIEL: That's correct.

9 MR. HOFFMAN: Okay. Well, let me ask you this.
10 If equipment is not functioning because the existing owner
11 does not have access to the capital necessary to make it
12 functional, but the proposed purchaser does have that
13 capital and is willing to make that investment, should the
14 nonfunctioning asset still be removed from rate base?

15 MS. DANIEL: If it is an asset that is being
16 considered in the purchase of the system, it would seem to
17 me that removing it from rate base at the time of transfer
18 and allowing the acquiring utility in a subsequent rate case
19 to show that they have made the investment to replace or
20 repair that asset would be the appropriate way to go.

21 MR. HOFFMAN: Do you have an opinion as to whether
22 or not that approach would provide an incentive or a
23 disincentive to the purchase of a distressed system with
24 deteriorated assets?

25 MS. DANIEL: I'm not sure. I am certain that it

1 will be a factor that an acquiring utility will consider
2 when they decide what they are willing to pay for a system.
3 I don't know whether it would be an incentive or a
4 disincentive.

5 MR. HOFFMAN: Don't you agree that if the
6 Commission adopts a rule on this issue, that it should be a
7 rule that promotes the purchase of that deteriorated asset
8 by a utility which has the capital to get it up and
9 functioning again for the benefit of the ratepayers?

10 MS. DANIEL: That can go both ways. I firmly
11 believe that when we determine what the net book value of
12 the purchased assets are, and that's what Subsection 1 is,
13 net book value, that it ought to be a true and accurate
14 picture of the net book value of the assets purchased. I
15 believe that if we decide to give incentives or
16 disincentives then we are talking about Paragraph 2, which
17 is acquisition adjustments. In my mind I have a very clear
18 distinction between net book value and purchased price. And
19 those differences are simply a fall out number, incentives
20 and disincentives.

21 MR. HOFFMAN: And, of course, an asset which may
22 be deteriorated to some extent does have a net book value,
23 does it not?

24 MS. DANIEL: Possibly zero. It will --

25 MR. HOFFMAN: Sure, and possibly more.

1 MS. DANIEL: Possibly.

2 COMMISSIONER CLARK: Let me be clear. What will
3 the net book value be? It will be -- it's a function of
4 mathematics, not the condition of the asset, isn't that
5 correct?

6 MS. DANIEL: If the Commission decides that there
7 is an aerator that is physically so deteriorated that it is
8 not functioning and should not be considered something to be
9 included as having a value, then I would recommend that that
10 asset not be included in net book value.

11 COMMISSIONER CLARK: I don't think you answered my
12 question. Net book value is a mathematical calculation;
13 what you spent for it and the depreciation over time, less
14 the depreciation over time. It equals your net book value.
15 Now, whether or not you allow it in rate base because of
16 whether or not it functions, is another matter. But net
17 book value is a pure mathematical conclusion.

18 MS. DANIEL: Yes, it is.

19 CHAIRMAN DEASON: Commissioner, what you need to
20 remember is that according to the definitions or the
21 structure of the rule is that as an extraordinary
22 circumstance you're saying net book value is rate base.
23 You're equating the two by definition in the rule.

24 COMMISSIONER CLARK: Well, I was just trying to
25 get clear in my mind what distinction she was making with

1 respect to net book value not being the place to address --
2 or being the place to address acquisition adjustment or not
3 being the place. I was not understanding her comment with
4 respect to that. I agree with you that the way we have --
5 our policy has been that net book value is the rate base,
6 absent extraordinary circumstances.

7 COMMISSIONER LAUREDO: And the definition has to
8 do with mechanical functionality and not -- correct, on the
9 example that he used? The disallowance is based on
10 mechanical disfunctionality in perpetuity, because what he
11 is saying if it is a temporary state of dysfunctional
12 condition for lack of capital to buy the parts to make it
13 functional, there is a big distinction?

14 MS. DANIEL: There is. That would simply be a
15 repair.

16 MR. HOFFMAN: Ms. Daniel, let me follow up on
17 Commissioner Laredo's question, and assume for a moment
18 that it's more than a temporary state. If a utility such as
19 Southern States were to decide not to purchase a utility
20 with nonfunctioning assets, isn't it true that those
21 nonfunctioning assets would remain in the rate base of the
22 proposed purchased utility?

23 MS. DANIEL: That's correct.

24 COMMISSIONER LAUREDO: Would you say that again?

25 MR. HOFFMAN: The point that I'm trying to make,

1 Commissioner Lauredo, is that if the state of disrepair or
2 deterioration is even beyond that of temporary, and if the
3 Commission has a policy which discourages utilities from
4 purchasing a distressed system or distressed assets, those
5 assets -- and that purchase doesn't take place, those assets
6 will remain in the rate base of the utility that is never
7 purchased.

8 COMMISSIONER LAUREDO: All right. Putting aside
9 the comment about whether we have a policy to encourage or
10 not, because I'm going to get back to that and try to figure
11 out -- what you're saying the answer is that asset would
12 remain in rate base and the transfer or sale is the one that
13 triggers the discrimination.

14 MS. DANIEL: The rate base will remain the same
15 until something happens; a rate case is filed and rate base
16 is reevaluation or a transfer is filed.

17 COMMISSIONER LAUREDO: So if they don't file a
18 rate case and don't sell, it would remain?

19 MS. DANIEL: That's correct.

20 COMMISSIONER LAUREDO: How do you reconcile the
21 fairness of that with -- let's assume that it's a good step,
22 an individual purchase to a sound buyer, isn't there -- it's
23 not a disincentive, because we are not in the business of
24 being incentive or disincentive, in my opinion, but why
25 should they be penalized?

1 MS. DANIEL: As you say, I don't view it as a
2 disincentive, Commissioner Lauredo. In my mind, I believe
3 that we are trying to establish a net book value of the
4 assets. There probably is an itemized list of the assets
5 that are being acquired, and some book value that is
6 associated with that, and that is what we would like to see
7 this rule accomplish. It seems to me that in so many
8 transfer cases the Commission is in just a real bad posture
9 a lot of times in making the judgment calls whether to grant
10 a positive or a negative acquisition adjustment. And it
11 seems to me if we could focus in on what is the value of the
12 asset, and what is the purchase price, and consider those
13 two issues, put our focus and our efforts on those two
14 issues, then it will make that acquisition adjustment
15 question a little bit easier to deal with.

16 COMMISSIONER CLARK: Patti, when you say value,
17 what do you mean?

18 MS. DANIEL: When I use the phrase net book value?

19 COMMISSIONER CLARK: Well, in your previous
20 statement you said focusing on value and purchased price.
21 What do you mean by value?

22 MS. DANIEL: The net book value of the asset. The
23 value, per the NARUC account, the book value of those
24 assets. And I believe that the Commission has the
25 prerogative to when we look at what has been paid for a

1 system, and how much of that has deteriorated, and the
2 contributions, and so forth, I believe you have the
3 prerogative to decide that even though this asset isn't
4 fully depreciated, it's not useful to the customers any
5 more.

6 COMMISSIONER CLARK: But that's an argument for
7 taking it out of rate base, not adjusting the net book
8 value.

9 COMMISSIONER LAUREDO: But you said you can't take
10 it out of rate base until an event, an external event takes
11 place; which is either a sale or coming in for a rate case.
12 That's why I'm having a problem with it.

13 COMMISSIONER CLARK: Well, what we are debating
14 now is on the sale whether or not you should do that. Can
15 you explain for me, again -- one of the things that I get
16 concerned about in determining value on an other than net
17 book value basis is the ramifications otherwise. Using
18 replacement costs as opposed to net book value, and using --
19 well, primarily replacement costs. What I keep coming back
20 to is it, sort of, you have a scheme of regulation and
21 certain sort of themes you adhere to to make it all work and
22 be consistent throughout to the extent it can be consistent.
23 And we take the view that utility property should be valued
24 at original price less depreciation. And there have been
25 circumstances in cases I have been involved in where the

1 companies have come in and for some reason the records were
2 destroyed and they want to get replacement value. I guess
3 what I'm trying to suggest is we need to be consistent
4 throughout. And that's why net book value, in my mind, is
5 the good way -- is one of those consistencies that runs
6 throughout regulation.

7 MS. DANIEL: I agree. And I'm not suggesting that
8 we deviate from the net book value, the original cost
9 approach at all, except that at the point of a transfer I
10 believe that the Commission does have the prerogative to
11 look at what is being purchased in the transfer. That's one
12 of the filing requirements that we have in a transfer, is
13 that they show us the contract for sale, and we would like
14 to see an identification of the assets that are purchased.
15 And I believe that by considering the condition of those
16 assets, that's just another piece that's going to help us in
17 determining the prudence of that acquisition.

18 COMMISSIONER CLARK: What do we do if we have a
19 utility come in for a rate case and they are one of these
20 utilities who has let their property go, and they come in
21 for a rate case? Do we remove deteriorated assets from the
22 rate base?

23 MS. DANIEL: In a rate case?

24 COMMISSIONER CLARK: Yes.

25 MS. DANIEL: I'm not sure.

1 COMMISSIONER CLARK: And one of the themes that
2 runs through is that a transfer of a utility should visit no
3 change on the ratepayers. If they purchase it for more,
4 they don't get any more for it.

5 MS. DANIEL: -- a rate case expert.

6 MS. MERCHANT: If the evidence in the rate case
7 showed that the asset was deteriorated and it wasn't used
8 and useful, you would make some type of an adjustment.

9 COMMISSIONER CLARK: And then we also have to
10 determine what was the cause of the deterioration. Was
11 there a prudent management decision that resulted in it or
12 an imprudent management decision?

13 MS. MERCHANT: That's correct. And that would
14 kind of get into the issue of a loss on abandonment or loss
15 on retirement, and you would have to make that decision
16 whether or not that was prudent and whether or not to allow
17 the recovery of that loss.

18 COMMISSIONER LAUREDO: All of which is very
19 academic, but if you have a system that you have a rate base
20 and you have assets -- let me understand. If I understand
21 it correctly, you have assets that are dysfunctional, and
22 there is nothing we can do to bring it up -- assuming that
23 they can be brought up to function, what do we just do? If
24 he doesn't file for a rate case and there is not an
25 application for a sale because of whatever policy we have is

1 viewed by the prospective buyer as a disincentive, what do
2 we just do? Just let it be. Just let status quo, and the
3 asset is deteriorated, the owner has no capital strength to
4 bring it up, so we just sit there?

5 MS. MERCHANT: I would think that if they had a
6 problem, and it was a major part of their plant, that you
7 would have a quality of service problem, and you could
8 possibly have DER violations.

9 COMMISSIONER LAUREDO: All right, so let's do
10 that. So DER cites them and gives them a little piece of
11 paper and all that, and the guy doesn't have any money, so
12 what do we do next?

13 MS. MERCHANT: Well, if they don't have the money,
14 then the Commission has considered a cost to -- if it is
15 that crucial of a part to make the plant operate correctly,
16 then we would allow recovery of that cost as long as we had
17 some assurance that they were going to repair it.

18 COMMISSIONER LAUREDO: So the next step is we
19 authorize it, we actually intervene in management in a way,
20 and order them to fix it. And it takes \$30,000, we pass it
21 through to the ratepayer?

22 MS. MERCHANT: That's correct. If it were prudent
23 to fix it.

24 COMMISSIONER LAUREDO: Right. So what is the
25 difference between that and allowing the good new guy coming

1 from having that same benefit? How does the ratepayer
2 benefit?

3 MS. MERCHANT: I guess it depends on the point of
4 deterioration. I mean, if you've got --

5 COMMISSIONER LAUREDO: Well, the same point of
6 deterioration; \$30,000 is what it costs. And the guy just
7 doesn't have the money. He just doesn't have it. You can
8 cite him all you want, he cannot fix it. What do we do as
9 Commissioners?

10 CHAIRMAN DEASON: You need to get that guy out of
11 the utility business.

12 COMMISSIONER LAUREDO: All right. So we get him
13 out of the utility business, so --

14 CHAIRMAN DEASON: And we have failed as regulators
15 if we allow that to happen. And it puts a strain on -- we
16 can't be there to manage these utility systems on a
17 day-to-day basis.

18 COMMISSIONER LAUREDO: I understand. I'm trying
19 to figure out a real scenario because of whatever fault of
20 our predecessors, or because of lack of power, they may not
21 have had power, but we are confronted with this scenario,
22 and what do we do now? We have a guy, Company A comes in
23 and says, "I will come in, and I'll step in and I will bring
24 it up to function. And, further, look at my resume." I
25 mean, you know, these are real world scenarios here. "Look

1 at my resume, I know how to do these things, and I have the
2 whereabouts." We still would not allow him -- we would
3 disallow him to -- we would not allow him to benefit of
4 carrying that on rate base. It doesn't make sense.

5 MS. MERCHANT: I think it's quite common that you
6 have systems where they are run down and another utility
7 comes in and buys it, and they get their rate base set at
8 transfer, and then they have to make all types of
9 improvements. And we just had a case about a year ago where
10 this happened, a utility had to come in and make very
11 material corrections, improvements to the system, and those
12 were included in the rate case --

13 COMMISSIONER LAUREDO: But they would have to then
14 file for --

15 MS. MERCHANT: -- to the extent that they are
16 prudent.

17 COMMISSIONER LAUREDO: -- A rate case subsequent
18 to the --

19 MS. MERCHANT: That's correct.

20 COMMISSIONER LAUREDO: -- And wait eight or nine
21 months to recuperate that money.

22 MS. MERCHANT: Correct. A lot of the times the
23 improvements aren't made at the time of transfer.

24 MS. DANIEL: Commissioner Lauredo, we don't
25 normally adjust rates at the time of a transfer, either.

1 COMMISSIONER LAUREDO: I'm trying to follow up the
2 logic of this. I'm trying to think of -- I mean, you know
3 how I feel about these things. I think the only way we are
4 ever going to get a solution to these problems, Mr.
5 Chairman, is if we just decide to act irresponsibly. And
6 I'm getting this much close to just consistently for the
7 remaining of my time here just voting against everything.
8 Because every time we try to do something right, we get all
9 the blame for bringing in the medicine; and the guy who
10 stabbed the patient is gone, politically and otherwise. And
11 this sounds the same. I'm just trying to say, okay, I'm
12 going to put myself in the shoes of a businessman, and not
13 out there advertising, because I'm against some of the stuff
14 that's being said around here. The policy of -- I think Mr.
15 Shreve said it correctly, there is two underlying
16 rationales. The one that is for the sole exercise is that
17 it saves rate case expense; and, two, it's the encouragement
18 of taking over inefficient and small systems. I'm not sure
19 we are in the business of being out there advertising that's
20 what we want to do, but if it actually happens, what do you
21 tell to Company A? Forget about companies like Southern
22 States or something, you know, a big monster from up north,
23 from Minnesota or whatever, just Luis Lauredo wants to get
24 into the business.

25 COMMISSIONER CLARK: Heaven help us.

1 (Laughter.)

2 COMMISSIONER CLARK: Now, I wanted to ask you a
3 question with respect to your concern about getting into
4 incentives. In your scenario when you mention you have the
5 situation where an owner doesn't have the financial
6 wherewithal to make the improvement to the deteriorated
7 asset, do you feel it's appropriate for us to give an
8 incentive for somebody like a Southern States to come in and
9 purchase that? And that incentive being the -- absent
10 extraordinary circumstances, that they will get the current
11 rate base --

12 COMMISSIONER LAUREDO: I guess the flip side of
13 incentive is punishment. And I just don't see why they
14 should be punished for stepping up to the plate. I don't
15 know if I want to call it an incentive.

16 COMMISSIONER CLARK: Why would they come in and go
17 to all of that work? I mean, that's to me the incentive.
18 Why would they come in, somebody who has the capability of
19 running a utility, why would they want to come in if there
20 is a concern -- if they upgrade it, they are never sure they
21 are going to get the whole amount in the subsequent rates.
22 You need to provide some, I guess, rules of the game on the
23 front end that they can be fairly certain, absent
24 extraordinary circumstances, that we will continue the
25 notion of the investment in assets less depreciation is what

1 follows that utility all the way through.

2 COMMISSIONER LAUREDO: I may be getting lost on
3 the semantics here, but I don't see why we should be
4 punishing them from stepping in and losing the time value of
5 their money. Here is a guy who is earning on this rate base
6 and he is doing a terrible job, and, further, he hasn't got
7 the money to bring it up to minimum standards. And I want
8 to say, "I am an entrepreneur, me and my Cuban friends want
9 to be in the water business, and now we want to come in here
10 and buy this thing." I mean, I would at least expect the
11 same rate base. And you are saying, "You will get it, but
12 in nine months."

13 COMMISSIONER CLARK: No, no. I'm saying that the
14 rule and our policy as it is now says you will get the same
15 rate base unless there are extraordinary circumstances. And
16 I can think of one case of extraordinary circumstances where
17 it was a stock transfer. It was clear it was just done, I
18 believe, to effect a tax loss to the same individual. And,
19 therefore, we recognized -- we lowered the net book value.
20 Is that a negative acquisition adjustment?

21 COMMISSIONER LAUREDO: See, the missing element
22 here, the missing element here is purchased price in this
23 scenario.

24 COMMISSIONER CLARK: Well, that's what you figure
25 an acquisition adjustment on. I think what you're saying is

1 you don't punish them by giving them a negative acquisition
2 adjustment. What I'm saying is you incent them by giving
3 them net book value. It is a different way of saying the
4 same thing.

5 MS. MERCHANT: There are some other avenues that
6 those utilities in a situation they could come in and file
7 for a limited proceeding and get recovery possibly in that
8 situation, subject to refund, pending the final outcome of
9 the case.

10 COMMISSIONER CLARK: Is that greater uncertainty
11 than the policy we have now?

12 MS. MERCHANT: For --

13 COMMISSIONER CLARK: The person who comes in and
14 purchases it. Is that a greater risk to them that they will
15 not get their money back?

16 MS. MERCHANT: I would think that -- what I'm
17 talking about is the increased investment that they have to
18 make to correct the system, that's what I'm referring to.

19 COMMISSIONER LAUREDQ: Let me ask you, for most of
20 the questions -- I mean, we can go on a hypothetical, and we
21 can get into interesting -- I mean, an actual hypothetical.
22 It seems to me that this discussion points me in a direction
23 of flexibility is the best policy. And so why do we need
24 the rule? If it's going to take a little bit of
25 flexibility, why don't we just let it be? Who is for this

1 rule, anybody?

2 MR. CRESSE: Mr. Chairman.

3 MR. SHREVE: We're not, Mr. Chairman.

4 MR. CRESSE: Does that surprise you, Mr. Lauredo?

5 CHAIRMAN DEASON: Unless you're directing a
6 question to someone, I think we need to conclude with Mr.
7 Hoffman's questions, and then we will get back on the track
8 as we are supposed to.

9 MR. HOFFMAN: Thank you, Mr. Chairman. Ms.
10 Daniel, there has been some mention, I believe by you, of
11 old equipment and nonfunctioning equipment; are you familiar
12 with the rules regarding equipment retirements?

13 MS. DANIEL: No, sir.

14 MR. CRESSE: Patti is.

15 MR. HOFFMAN: Ms. Merchant, are you?

16 MS. MERCHANT: I didn't hear the question, I'm
17 sorry.

18 MR. HOFFMAN: Are you familiar with the rules
19 regarding the accounting treatment for equipment
20 retirements?

21 MS. MERCHANT: I don't know of a rule, but
22 accounting practice.

23 MR. HOFFMAN: Accounting practices; debits and
24 credits, and the Commission's regulatory practice?

25 MS. MERCHANT: Generally.

1 MR. HOFFMAN: Okay. If equipment is old and it's
2 not functioning, and let's assume there had been no
3 transfer, and there has been no imprudence on the part of
4 the utility owner, wouldn't it be standard Commission
5 practice for that asset to be retired with no resulting
6 impact on the rate base?

7 MS. MERCHANT: That's correct. If there was a
8 difference between the plant, that there was more
9 accumulated depreciation, the difference between the plant
10 and accumulated depreciation -- I'm sorry. No, there
11 wouldn't an effect on rate base. You would basically just
12 retire the plant through accumulated depreciation. Does
13 that answer your question?

14 MR. HOFFMAN: Yes, thank you.

15 CHAIRMAN DEASON: Let me ask a question along
16 those lines. You're assuming that there has been no
17 findings of imprudence.

18 MS. MERCHANT: Just a normal retirement.

19 CHAIRMAN DEASON: Just a normal retirement, you
20 credit the asset and you debit the reserve, that's normal
21 bookkeeping, right?

22 MS. MERCHANT: That's correct.

23 CHAIRMAN DEASON: And what about an example where
24 if there were a diesel generator that the owner for some
25 reason, say the expected life was 20 years, and he just

1 never bothered to change the oil in it or whatever. And
2 maybe this is a bad example, and it only lasts two years.
3 And that raises some suspicion in somebody's mind that may
4 be an extraordinary circumstance where you may do something
5 different. You may have a loss from that retirement and you
6 may or may not allow that loss to be amortized and be
7 recouped from ratepayers.

8 MS. MERCHANT: That's correct.

9 CHAIRMAN DEASON: So you have to base it upon the
10 facts of the situation.

11 MS. MERCHANT: That's correct.

12 MR. HOFFMAN: Ms. Daniel, isn't the standard that
13 the Commission looks at in a transfer proceeding, isn't the
14 primary issue whether or not the transfer is in the best
15 interest of the customers?

16 MS. DANIEL: I believe that is one of the primary
17 reasons the Commission would consider approving a transfer.

18 MR. HOFFMAN: Well, if a transfer would not be in
19 the best interest of the customers, the Commission will not
20 approve it, will it?

21 MS. DANIEL: That's correct.

22 MR. HOFFMAN: So if you assume for the purpose of
23 this question that we are talking about a transfer that is
24 in the best interest of the customers, do you believe that
25 it would be appropriate to deny the purchasing utility

1 recovery on the original cost of utility assets which the
2 selling utility would have been permitted to recover had
3 there been no acquisition?

4 MS. DANIEL: Mr. Hoffman, more importantly, I
5 believe that that is the Commission's opportune moment to
6 prevent customers from paying for an asset twice; once as it
7 stands in rate base without the removal if it is
8 deteriorated and not functioning, and a second time when the
9 transfer is approved and a subsequent rate case occurs where
10 the acquiring utility has replaced or repaired that asset.

11 MR. HOFFMAN: How does that differ from a
12 situation in which the original owner incurred the
13 investment to conduct the improvement?

14 MS. DANIEL: I'm sorry, give that to me again.

15 MR. HOFFMAN: How does the explanation that you
16 gave differ from a situation where the original owner made
17 the investment for the improvement?

18 MS. DANIEL: The next time that original owner
19 comes in for a rate case, the Commission will look at the
20 repairs and replacements that were made and consider the
21 prudence of those. And, hopefully, the same situation would
22 occur. Commissioner Clark and Ms. Merchant just discussed a
23 situation -- or Commissioner Deason, where the diesel engine
24 had not been properly maintained and there could be the
25 situation of extraordinary loss or whatever that proper

1 accounting treatment would be.

2 MR. HOFFMAN: Let me just try and see if I can
3 distill the last two answers you gave me so I can understand
4 what your thinking is. I think that what you're saying is
5 if you have a selling utility; okay, and there are certain
6 assets that are, let's call them deteriorated, in their rate
7 base. And then a transfer occurs, and the transfer is held
8 to be in the public interest, it's in the best interest of
9 the customers. You believe that it may be appropriate to
10 remove that asset from the rate base, from the established
11 rate base of the purchasing utility?

12 MS. DANIEL: That's correct.

13 MR. HOFFMAN: Even though that asset would have
14 remained in the rate base of the selling utility had there
15 been no transfer?

16 MS. DANIEL: That's correct.

17 MR. HOFFMAN: How do you justify that?

18 MS. DANIEL: I think the piece that we are missing
19 in this conversation is when will the rates be adjusted
20 next. When will the customers wind up paying for this issue
21 that we are discussing. In a transfer the rates are not
22 changed until a subsequent rate case. The rate base is
23 being established at the point of transfer, and there is a
24 regulatory time lag on when the rates might subsequently be
25 adjusted, and that's how I reconcile those two.

1 COMMISSIONER CLARK: Well, let me ask a question.
2 Would you then on the transfer, the deteriorated assets, you
3 take them out of rate base, but you don't do anything to
4 rates.

5 MS. DANIEL: That's correct.

6 COMMISSIONER CLARK: You come in, you have another
7 rate case, and the utility has improved those assets, put
8 them back. So what do you do? You go back and you take the
9 net book value you took out and you put it back in, and you
10 are penalizing the company that you wanted to come in and
11 take over that utility. Because what you're saying is if
12 the old owner had kept it, he will continue to get the net
13 book value plus the cost of any improvement; but the new
14 owner who hopefully is in a better position to run this
15 utility will have the net book value taken out of his rate
16 base, and all he is going to get is the improvement. So the
17 new owner is worse off.

18 MR. WILLIS: I'm not really sure that's right. We
19 deal with rate cases on an everyday basis, and we had a
20 utility owner who went in and had assets that he had let run
21 down because of lack of maintenance --

22 COMMISSIONER CLARK: A new owner.

23 MR. WILLIS: A new owner, then we would have to go
24 in and penalize that owner for that, because there is one
25 thing that we try and do, we try and not have a customer pay

1 for plant twice.

2 COMMISSIONER CLARK: But you have changed the
3 scenario in that case. You are talking about the new owner
4 who takes it over, and we are talking about an acquisition
5 adjustment that occurs with respect to assets the previous
6 owner let deteriorate.

7 MR. WILLIS: That's correct. But I think you have
8 to look at both, and you have to try and treat them in the
9 same sense. Because if you have an old owner who is out
10 there, and he has let that asset deteriorate, and now he
11 comes in and says I have to do all of these corrections to
12 the system, you have to look at why that happened. And this
13 Commission has an avenue to penalize a company for
14 improperly --

15 COMMISSIONER CLARK: So you would say what it
16 depends on is the prudence or imprudence of the previous
17 owner?

18 MR. WILLIS: That's correct.

19 COMMISSIONER CLARK: Well, I think that's
20 different, and it ought to take place at the same time. At
21 the same time the new owners come in to get a rate increase,
22 why don't you go through the same process. Was the person
23 who let it deteriorate --

24 MR. WILLIS: Commissioner, we do.

25 COMMISSIONER CLARK: -- prudent or imprudent? And

1 it's at that point you say if they are imprudent that
2 imprudency is going to be visited on the new owner.

3 MR. WILLIS: Commissioner, I believe that's what
4 is happening. Because when we get a transfer case, then we
5 look at it, what you're actually doing is testing the
6 purchased price. If you have a utility company out there in
7 which the new owner paid book value for an asset which is
8 deteriorated, you have to question the prudence of that
9 price paid. And that's one of the things we are charged
10 with is questioning the prudence of what a utility does.
11 And if you have a new owner go out there and pay book value
12 for an asset that's worth nothing, then you really have to
13 question that prudence. And you would have to tell that
14 owner that you have paid too much.

15 COMMISSIONER CLARK: But you would take that at
16 the time that you adjusted the rates, not at the time of
17 transfer. You would say it was imprudent for you to have --
18 for that asset to remain in rate base because of what the
19 previous owner did.

20 MR. WILLIS: I think the adjustment would happen
21 at the time of transfer, when rate base was established.
22 That's the point in time in which I would prefer that you
23 would do that.

24 COMMISSIONER CLARK: Does it have to occur then?
25 Why should it occur then?

1 MR. WILLIS: Because the new owner knows exactly
2 what he is getting into.

3 COMMISSIONER CLARK: But then what you're
4 suggesting is that we will not use net book value upon
5 transfer.

6 MR. WILLIS: In most cases we will use net book
7 value. It has been a rarity that we have found a case where
8 the utility has had that happen.

9 COMMISSIONER CLARK: Okay. There were
10 extraordinary circumstances requiring you to adjust net book
11 value?

12 MR. WILLIS: Correct.

13 MR. GUASTELLA: Commissioner, if I may?

14 CHAIRMAN DEASON: Mr. Hoffman, are you finished
15 with your questions?

16 MR. HOFFMAN: No, sir.

17 CHAIRMAN DEASON: Keep all of these points in
18 mind, and at the appropriate time you will have your
19 opportunity. I'm trying to keep some order here, if I can.

20 Mr. Hoffman.

21 MR. HOFFMAN: Thank you, Mr. Chairman.

22 Ms. Daniel, you state on Page 11 of your comments,
23 your testimony, on Line 7, and I'm paraphrasing, that a
24 positive acquisition adjustment would be justified when
25 there is a purchase of a utility which is in an extremely

1 run-down condition, is that correct?

2 MS. DANIEL: Give me just a minute to reread that.

3 MR. HOFFMAN: Okay.

4 MS. DANIEL: If you read it in its entirety it
5 makes more sense.

6 MR. HOFFMAN: Okay.

7 MS. DANIEL: There is merit to allowing a positive
8 acquisition adjustment when the buyer implements its
9 existing lower rates through a limited proceeding, or in
10 cases where there is a utility in an extremely run-down
11 condition. And I'm referring there back to they're getting
12 lower rates. That may not be clear the way that's worded.

13 MR. HOFFMAN: So wouldn't you agree that not only
14 should the Commission be encouraging the purchase of systems
15 that are in extremely run-down condition, it may be that the
16 situation is such that there should be a positive
17 acquisition adjustment, is that correct?

18 MS. DANIEL: Possibly.

19 MR. HOFFMAN: You also state on Page 10, Line 14
20 of your testimony, the notion that deteriorated assets
21 should be removed from rate base, is that correct?

22 MS. DANIEL: That's correct.

23 MR. HOFFMAN: Now, how do you reconcile that
24 position with the position that it may be appropriate for
25 the Commission to grant a positive acquisition adjustment

1 when there is a purchase of a utility that is in an
2 extremely run-down condition? To me those seem to be
3 conflicting points of view, but you probably disagree.

4 MS. DANIEL: When you look from the purchasers'
5 point of view, perhaps it does. But when you look at it
6 from the customers' point of view of removing the asset, a
7 deteriorated asset from rate base, it will preclude that
8 customer from paying for an asset twice when the new owner
9 comes in, the bigger, better company that is going to run
10 that system properly, and repairs or replaces that asset. I
11 don't believe the customer should pay twice for that asset.

12 MR. HOFFMAN: Mr. Daniel, let me ask you a
13 question.

14 COMMISSIONER LAUREDO: Can you explain to me the
15 consequence of paying twice?

16 MS. DANIEL: If a deteriorated asset remains in
17 rate base, and either the old owner or the new owner repairs
18 or replaces it, then you have a customer paying both for the
19 value of the old asset that is no longer useful to them and
20 for the repair or the replacement.

21 MR. HOFFMAN: Ms. Daniel, that is exactly what is
22 going to have to happen whether there is an old owner or a
23 new owner to get that asset running properly, isn't that
24 true?

25 MS. DANIEL: I'm sorry, what will have to happen?

1 MR. HOFFMAN: That asset will have to be repaired.
2 I think that's what you're characterizing as a double
3 payment.

4 MS. DANIEL: That's correct.

5 MR. HOFFMAN: If that asset is to be functioning
6 properly, if there is no transfer it, will be done by the
7 old owner, if there is a transfer it will be done by the
8 purchasing utility, correct?

9 MS. DANIEL: No argument there.

10 (Transcript resumes with Volume IV.)

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4 STATE OF FLORIDA)

5 COUNTY OF LEON)

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

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

16 DATED THIS 10th day of June, 1993.

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19 
20 JANE FAUROT
21 100 Salem Court
22 Tallahassee, Florida 32301
23 (904) 878-2221
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SWORN TO AND SUBSCRIBED TO before me, this 10th
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)