

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

ORIGINAL

IN RE: Application for a rate increase by SOUTHERN STATES
UTILITIES, INC.

DOCKET NO. 920199-WS

COPY

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

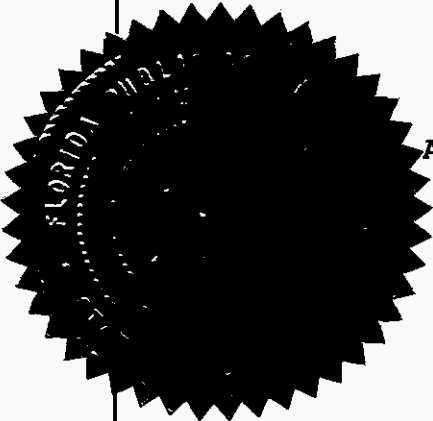
PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 25A**

DATE: November 23, 1993

PLACE: 106 Fletcher Building
Tallahassee, Florida

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



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

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1 PARTICIPATING:

2 Kenneth A. Hoffman, Esquire, representing Southern
States Utilities, Inc.

3 Ms. Fox, representing COVA, Cypress and Oak
Villages Association.

4 Michael Gross and Michael Twomey, representing
Office of Attorney General and Citrus County.

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STAFF RECOMMENDATIONS

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Issue 1: Recommendation that Citrus County's request for
order argument be granted.

9 Issue 2: Recommendation that the utility's Motion to Vacate
10 Stay be granted and the utility be required to post a bond
in the amount of at least \$3,000,000.

11 Issue 3: Recommendation that Citrus County's Motion For
12 Reduced Interim Rates, Recalculated Bills, Refunds and
Penalties be denied.

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P R O C E E D I N G S

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2 MS. BEDELL: Item 25A is Staff's recommendation to
3 grant Southern States motion to vacate automatic stay.
4 This is a post-hearing motion and participation is
5 limited to the parties. This Commission has concurrent
6 jurisdiction with the appellate court to rule on this
7 motion pursuant to Appellate Rule 9.310. Staff
8 believes that under the PSC Rule 25-22.061(3)(a) the
9 Commission does not have discretion in the decision to
10 vacate a stay where the utility posts good and
11 sufficient security in the form of a bond or corporate
12 undertaking. Staff is prepared to go through the
13 recommendation issue-by-issue. However, the first
14 issue Staff has recommended that oral argument on the
15 pending motions be granted, and there are parties
16 present to address the Commission. Mr. Twomey and Mr.
17 Gross are co-counsel for Citrus County. Mr. Ken
18 Hoffman is present for the Company. There are four
19 representatives of COVA who are here. There is also a
20 representative of Springhill Civic Association here
21 which was not a party to the original proceeding.

22 CHAIRMAN DEASON: Thank you. Commissioners, do
23 you want to go ahead and address Issue 1, which is the
24 question of allowing oral argument?

25 COMMISSIONER JOHNSON: I move Staff.

1 CHAIRMAN DEASON: Without objection. With no
2 objection, then we will grant Staff's recommendation to
3 allow oral argument. And since, Mr. Hoffman, this is
4 your motion, is it not? You may go first.

5 MR. HOFFMAN: Thank you, Mr. Chairman. Mr.
6 Chairman, Commissioners, my name is Kenneth A. Hoffman,
7 I'm with the Messer Vickers firm, Post Office Box 1876,
8 Tallahassee, Florida, 32302, and I'm appearing on
9 behalf of Southern States Utilities.

10 Commissioners, the issue before you today is
11 really very simple. The issue is whether or not you
12 should grant Southern States' motion to vacate the
13 automatic stay, which was triggered by an appeal filed
14 by Citrus County and Cypress Oak and Villages
15 Association, who I'll refer to as COVA. The reason
16 that the issue is simple is because you have a rule,
17 and the rule is mandatory in nature. It says that in
18 cases involving a rate increase, an appeal of that
19 increase by a public body, such as Citrus County, there
20 are two things that happen. The first thing that
21 happens is the appeal by the public body triggers an
22 automatic stay. The second thing that happens is that
23 the automatic stay must, must be vacated if the utility
24 files a motion asking you to vacate the stay, which we
25 have, and post a good and sufficient bond or corporate

1 undertaking and, yes, we have a bond on file with the
2 Commission.

3 In this case, as I said, we filed the motion to
4 vacate the stay, and our bond is in excess of \$5.9
5 million. Under your rule, which is not discretionary,
6 but it's mandatory in nature as the Staff points out in
7 their recommendation, the motion to vacate the
8 automatic stay must be granted. Now, I think that is
9 the primary principle that you have to keep in mind
10 during the discussion today. Now, I'm going to briefly
11 go through with you some of the pertinent background
12 facts of this matter. And the reason I'm going to do
13 that is because in some of the pleadings that have been
14 filed by Citrus County and COVA, they keep saying that
15 Southern States has violated the automatic stay, and
16 that is simply inaccurate. It's false. It's untrue.
17 And I'm going to give you the factual scenario, which
18 is undisputed, which will lead you to the same
19 conclusion that those allegations are untrue.

20 Now, on March 22nd of this year, 1993, the
21 Commission entered its final order approving the
22 uniform rates for Southern States Utilities. Citrus
23 County and COVA then timely filed a request for
24 reconsideration challenging the uniform rates. Under
25 your rule, Rule 25-22.060(1)(c), those motions for

1 reconsideration did not automatically stay the
2 effectiveness of the March 22nd final order. However,
3 Citrus County or COVA could have filed a motion
4 requesting the Commission to stay the effectiveness of
5 that final order and the uniform rates, which may or
6 may not have been granted. The fact of the matter is
7 no request was ever made of that nature. Thus, as of
8 March 22nd, Southern States had the legal authority to
9 implement the newly authorized uniform rates so long as
10 Southern States obtained approval of the tariff sheets
11 reflecting the new rates. However, because the Company
12 was aware that the motions for reconsideration
13 challenging the rate structure had been filed, in order
14 to avoid customer confusion should those motions be
15 granted, Southern States refrained from submitting the
16 tariff sheets to implement the new rates until the
17 decision was made on the motions for reconsideration.
18 That decision denying the motions for reconsideration
19 was made on July 20th of this year.

20 Under Section 367.084 of the Florida Statute, as
21 pointed out by your Staff, as a matter of law, July 20,
22 1993 is the effective date of the denial of Citrus
23 County's and COVA's motion for reconsideration
24 challenging the uniform rates under the file and
25 suspend law.

1 Thereafter on August 13th, of 1993, Southern
2 States filed its tariff sheets reflecting the uniform
3 rates. Copies of those tariff sheets were served on
4 all parties, including Citrus County and COVA.
5 Subsequently, in August and September, Southern States
6 filed corrections to the tariff sheets. Again, serving
7 copies on all parties, including Citrus County and
8 COVA. The tariff sheets were approved by the Division
9 of Water and Wastewater effective September 15th, of
10 1993.

11 On October 8th, of 1993, Citrus County and COVA
12 filed a notice of appeal. By that time, October 8th,
13 Southern States had already completed 49 billing cycles
14 under the new rates, billing cycles applicable in all
15 but four of the counties in which Southern States
16 provides service in this docket. But because the
17 notice of appeal that Citrus County and COVA filed on
18 October 8th was legally defective, they filed a second
19 notice of appeal titling it an amended notice of
20 appeal, in which they added the Public Service
21 Commission as an appellee. That was filed on October
22 12th. Therefore, Citrus County and COVA legally
23 perfected their appeal on October 12th of 1993. By
24 that time, Southern States had completed 51 billing
25 cycles under the new rates. Again, in 17 out of the 21

1 effected counties in this docket.

2 Citrus County and COVA recently filed their third
3 notice of appeal on November 18, 1993. Now, as a
4 matter of law, their appeal was perfected on October
5 12th. One week later, on October 19th, 1993, Southern
6 States filed a motion to vacate the automatic stay
7 triggered on October 12th. That filing was made with
8 the Commission. In its motion to vacate the automatic
9 stay, Southern States suggested in its motion that a
10 bond is not necessary because the appeal taken by
11 Citrus County and COVA, if it is limited only to rate
12 structure issues, is revenue neutral in terms of total
13 revenue requirements.

14 However, we do not know at this point, sitting
15 here today, if Citrus County or COVA will also
16 challenge other findings of the Commission in this
17 docket which do have a direct revenue requirements
18 impact. In addition, yesterday I received a copy of a
19 notice of appeal filed by the Office of Public Counsel.
20 Since the Office of Public Counsel took no position on
21 rate structure issues, it's clear that their appeal
22 will deal directly with findings of the Commission
23 which have a revenue requirements impact.

24 Southern States presently has a bond on file with
25 the Commission in an amount in excess of \$5.9 million.

1 That bond was initially posted after the approval of
2 interim rates. It was renewed and is now effective
3 through September 4th, of 1994. In light of the
4 appeal, the notice of appeal filed by the Office of
5 Public Counsel, we believe that the Staff's
6 recommendation that the bond that we have posted remain
7 on file and be renewed if the appeal goes beyond
8 September of 1994, we believe that recommendation is
9 reasonable. However, as I will mention to you in a few
10 moments, we believe that a corporate undertaking would
11 save money for the Company and still adequately protect
12 our customers.

13 Commissioners, the undisputed facts clearly
14 demonstrate that Citrus County and COVA elected not to
15 request a stay from this Commission. And, instead,
16 waited until the uniform rates became effective and
17 were billed before filing an appeal, and that appeal
18 does get them an automatic stay, at least on a
19 temporary basis. Make no mistake about it, Southern
20 States was authorized to and began billing these new
21 rates before that automatic stay went into effect.
22 Again, those final rates were effective and 51 systems
23 had already been billed before that automatic stay was
24 triggered. Most importantly, under your Rule
25 25-22.061(3)(a), you must vacate the automatic stay.

1 You must lift the automatic stay, since Southern States
2 has filed a motion requesting you to lift the automatic
3 stay, and presently has a bond on file effective
4 through September 4th of 1994 which would cover any
5 obligations of Southern States to make refunds to
6 customers should the appellate court reverse the
7 Commission.

8 We support and believe under your own rules you
9 must approve the Staff recommendation to grant Southern
10 States motion to vacate the automatic stay, and to deny
11 Citrus County's motion for reduced interim rates
12 pending judicial review and imposition of penalties
13 against Southern States.

14 And one final point, I had mentioned a corporate
15 undertaking. Posting of a bond is an expensive
16 proposition. Southern States paid close to \$30,000 to
17 renew the bond on file with the Commission, and does
18 have an opportunity to obtain a partial refund on the
19 premium paid if the Commission substitutes a corporate
20 undertaking for the bond requirement while this cases
21 on appeal. Southern States has over \$70 million in
22 equity, and is certainly capable of making good on any
23 refunds without the necessity of a guarantee bond. So
24 we are also asking that you condition the lifting of
25 the stay upon the posting of a corporate undertaking in

1 lieu of the bond presently on file with the Commission.

2 Thank you, Commissioners.

3 CHAIRMAN DEASON: Thank you. Mr. Twomey.

4 MR. TWOMEY: Mr. Chairman, Ms. Fox will go first.

5 CHAIRMAN DEASON: Ms. Fox.

6 MS. FOX: Thank you. I represent COVA, Cypress
7 and Oak Villages Association, which is a party here.
8 These are the people who will actually be bearing the
9 effect of this rate increase.

10 First, I would like to say that we disagree
11 categorically with virtually everything Mr. Hoffman had
12 to say. To go back, historically, COVA did file a
13 motion for reconsideration, so did the Office of Public
14 Counsel, so did Citrus County, so did SSU and various
15 other parties. Commissioner Clark, herself, also
16 subsequently filed a sua sponte Commission motion for
17 reconsideration on certain points. SSU filed a motion
18 to stay the effective date of the automatic rates in
19 April of this year. That's in a package that has been
20 handed out to you. On June 8th, 1993, this Commission
21 entered an order granting stay of Order Number
22 PSC-93-0423. The order states, I'm just going to read
23 the concluding sentence, "Based on the foregoing, SSU's
24 motion for stay of Order Number PSC-93-0423 pending the
25 disposition of all motions for reconsideration is

1 hereby granted."

2 So I submit to you that we have a problem with not
3 just one stay, but two stays. The stay was already in
4 effect by this Commission's order of June 8th, that
5 stay was effective from June 8th through November 2nd,
6 1993, when this Commission disposed of the last of the
7 pending motions for reconsideration. We also have the
8 stay that is in effect as a result of the Florida
9 appellate rules adopted by the Supreme Court of Florida
10 which are binding, of course, on this tribunal that was
11 effective as of October 8th, and continues to be in
12 effect through this date. And I respectfully disagree
13 with Mr. Hoffman on the effective date of our filing of
14 the notice of appeal. Any deficiencies, if he deems
15 there were any, in the form of the notice are not
16 substantive and are not jurisdictional.

17 The next point I would like to address is the
18 issue of our knowledge, as it were, of SSU's imminent
19 implementation of the final rates. I believe by the
20 fact that the stay was in effect and the final order
21 disposing of the motions for reconsideration that
22 neither COVA nor Citrus County had reason to suspect
23 that the final rates might be implemented without our
24 knowledge. To the best of our knowledge, the first
25 bills went out approximately October 16th, and we have

1 witnesses here to testify to that, should that become
2 an issue in dispute. SSU contends that it had already
3 begun processing these sometime prior, and I am not in
4 a position to dispute that, but only to state that they
5 were mailed out to the customers October 14th,
6 approximately. At that point certainly they could have
7 withdrawn them and respected the automatic stay that
8 was then in effect, and had been in effect for already
9 a week at that point. In fact, at the time they began
10 sending the modified bills to the customers, both stays
11 remained in effect.

12 The appeal was filed on October 8th because COVA
13 and Citrus County learned right around October 1st that
14 SSU and the Staff were planning to implement the final
15 rates. We found this out, essentially, by accident.
16 Michael Gross who was new to the case at that point
17 talked to Ms. Bedell, got a copy of the Staff approval
18 letter. You will note that none of the parties were
19 copied on the letter by which the Staff approved the
20 final rates. We later attempted to clarify what was
21 going on. On two occasions -- this is documented in
22 the correspondence that has been passed out to you --
23 the first time was after the August 30th Agenda
24 Conference in which this Commission voted to open an
25 investigation into the uniform rate issue. Then again

1 on October 5th, Mr. Twomey wrote to Mr. Hoffman and
2 asked him what the utility's plans were, that we had
3 heard something to the effect that they were planning
4 to implement the rates. We found out on October 8th
5 that SSU was planning on implementing the rates when
6 Mr. Hoffman sent us a letter to that effect. We filed
7 our notice of appeal that day.

8 The notice of appeal states that the final agency
9 action that we are appealing was the March 22nd order
10 which was placed in effect by the Staff's approval of
11 the tariff sheets which was, in effect, final agency
12 action, even though the orders on motion for
13 reconsideration had not yet been issued. On that day
14 there was a meeting here with the Staff and SSU in
15 which we gave them a copy of the notice of appeal, told
16 them it had been filed. They still had a week before
17 any bills had been sent out to honor the automatic
18 stay. They didn't do so. They are sitting before you
19 in flagrant violation of the Supreme Court rules.

20 SSU has not presented you with any justification
21 for its haste in implementing these rates. As I said,
22 the motions for reconsideration were not disposed of,
23 and, in fact, Commissioner Clark's sua sponte motion
24 wasn't even considered until the October 12th Agenda
25 Conference. That was the last of the motions for

1 reconsideration to be taken up. And the order then was
2 issued 20 day after that, November 2nd, 1993, which, by
3 the way, explains the latest amendment to the notice of
4 appeal was to advise the court of the entry of that
5 order.

6 SSU has stated in its affidavit before the
7 Commission that they essentially had no idea that COVA
8 or Citrus County were planning to appeal this order.
9 And if it's necessary, I would like to read the
10 Commission a statement that was presented on the record
11 from me, COVA's appellate attorney, concerning the
12 appeal, essentially asking this Commission to consider
13 it on investigation before the courts had to consider
14 it on appeal.

15 In addition, Mr. Twomey's correspondence with Mr.
16 Hoffman, copies of which you have in front of you, also
17 reference the imminent appeal. For these reasons --
18 SSU says that the Staff was authorized to implement the
19 rates because the motions for reconsideration don't act
20 as an automatic stay under Rule 25-22.060(c), and that
21 COVA and Citrus County never sought such a stay. I
22 point out to you, we didn't have to. They had already
23 sought the stay. The Commission had already ordered a
24 stay. The Commission never lifted the stay.

25 Under the circumstances, the argument that's

1 presented by SSU and the Staff borders on being
2 misleading, since they failed to advise you of the stay
3 that you had already entered. Staff has said, and SSU
4 has argued in its motion that there is no irreparable
5 harm to any party by what is in effect two months
6 between September 15th and the present date, or the
7 date this Commission issues an order on the automatic
8 stay, that we are not harmed by this two-month period
9 in which they have implemented the final rates in
10 violation of not only your order, but the Supreme Court
11 rules. Well, I would like to remind you that this is
12 going to cost my clients, COVA, \$100,000 in two months.
13 The annual cost to them is about \$600,000. It's going
14 to cost the customers in Springhill about \$300,000.
15 It's going to cost other customers about \$400,000. A
16 total of about \$800,000 in two months. This is not a
17 de minimis issue. I believe that term was used in
18 their filings.

19 There is a statement in the Staff recommendation
20 that is on the bottom of Page 9, and it says
21 essentially that Citrus County placed the utility in an
22 untenable position by waiting months to file the notice
23 of appeal and invoke the automatic stay. I submit to
24 you that just the opposite is true. Ordinarily, the
25 appeal time doesn't begin to run until the motions for

1 reconsideration are disposed of, that's stated right up
2 front in the appellate rules. The order is not deemed
3 rendered for appeal purposes until that point.

4 COMMISSIONER CLARK: But can't the rates go into
5 effect?

6 MS. FOX: If you're speaking hypothetically, if
7 there were no stay order?

8 COMMISSIONER CLARK: I'm speaking of the statute
9 that says -- the statute says in term of taking an
10 appeal, you have to wait until the order is out. But
11 doesn't it also say the rates can be implemented?

12 MS. FOX: Well, I believe Mr. Gross is going to
13 address that in a little more detail, but I think on
14 that procedural point, I think the statute runs up
15 against the Supreme Court rule. And since it is a
16 procedural issue, the Supreme Court rule will probably
17 govern. And I also think there are due process
18 problems with implementing them at a time when the
19 aggrieved party is unable to take an appeal. Because
20 that leaves the appellate court without jurisdiction,
21 in effect, to grant any relief for the period prior to
22 the finality of the order.

23 But without getting into that hypothetical issue,
24 I was addressing Staff's statement that the County
25 somehow placed the utility in an untenable position by

1 delaying filing of the notice of appeal. And, as I
2 said, just the opposite is true. We had no notice or
3 no reason to believe that the Staff was going to
4 administratively approve these final rates. Remember,
5 COVA and Citrus County are parties to this docket and
6 are entitled to notice and a hearing whenever our
7 rights are being effected.

8 The rule that the Utility and the Staff rely on,
9 of course, no longer applied. That went out on June
10 8th when the Commission, itself, stayed the rates. We
11 submit that SSU has placed itself in an untenable
12 position by violating the Commission order, or
13 violating the Supreme Court rule, and that this
14 Commission should not reward it by either using that
15 fact as a ground for lifting the stay, or by attempting
16 to protect SSU from the results of its own conduct.

17 CHAIRMAN DEASON: Let me ask you a question on
18 that point.

19 MS. FOX: Yes.

20 CHAIRMAN DEASON: In a nutshell, what I understand
21 you to say is that under your interpretation of
22 applicable procedural rules here at the Commission, and
23 at the court, that Southern States implemented the
24 rates before they were authorized to do so, or should
25 have.

1 MS. FOX: That's correct.

2 CHAIRMAN DEASON: And that that should be a basis
3 -- and that Southern States should not now be rewarded
4 by vacating the automatic stay. I guess my question is
5 isn't the question before us today just whether the
6 automatic stay should be vacated and what does --
7 whether or not we agree or disagree whether the rates
8 were implemented before they should have, what bearing
9 does that have if we agree with Mr. Hoffman's argument
10 that the rule is very specific that says if a bond is
11 posted, that we don't have the discretion, according to
12 our rule, that the stay has to be vacated.

13 MS. FOX: Let me just make two points in response
14 to that. One is that both SSU and the Staff, as I read
15 their respective pleadings, have used this idea that it
16 would confuse the customers to rescind the rates now.
17 Used that to sort of bootstrap them into keeping the
18 rates into effect. And I submit that would be
19 rewarding, essentially, a violation of your order, a
20 violation of the appellate rules, and I don't think you
21 should do that.

22 But, secondly, just sticking to the merits of
23 whether or not the automatic stay should be vacated, I
24 disagree with Mr. Hoffman that the stay is
25 nondiscretionary, that the lifting of the stay is

1 nondiscretionary. I think that in itself would be in
2 violation of the Supreme Court rules which state that
3 when a governmental agency appeals an order, they are
4 entitled to an automatic stay. Then the Commission can
5 consider lifting that stay on good and sufficient
6 grounds presented by the utility within its sound
7 discretion. So, the nondiscretionary nature of the
8 lifting of the stay that has been presented to you, I
9 think is an erroneous interpretation of your rules,
10 because it would run up against the Supreme Court
11 rules. In the exercise of your sound discretion, I
12 would like to simply say that there is no party before
13 this Commission who bears the financial impact of these
14 final rates who has asked you to put them into effect.

15 It is a revenue neutral issue to the utility.
16 They are entitled to collect the same amount of money
17 one way or the other. The effect on the customers,
18 though, is to force certain customers to pay more to
19 subsidize other customers. We submit to you that the
20 Staff has essentially no position to advocate on this
21 issue, because it benefits some customers, it harms
22 others. And what the appeal is all about is the
23 legality and fairness of those rates. The OPC has
24 essentially admitted it has got a conflict of interest
25 on this issue, and has no position.

1 The only parties directly impacted by this issue
2 are here begging you to leave Citrus County's automatic
3 stay in effect, that is the automatic stay that is
4 granted under the Florida appellate rules while this
5 case is on appeal. We don't think there is an
6 alternative to propose some kind of unconscionable
7 risk. In the meantime, this Commission has opened an
8 investigation docket to review the fairness of the
9 uniform rates. There is a bill pending in the
10 legislature which could preclude you from adopting
11 uniform rates. The appellate court is going to examine
12 the notice legality, fairness issues related to these
13 rates. We submit to you a better course, instead of
14 lifting the stay now, is to let these matters take
15 their course with the stay in effect, to do otherwise
16 is going to create the perception among the customers
17 who get an interim subsidy that somehow they get a rate
18 increase at the end of the day, and that simply
19 wouldn't be true.

20 That would simply confuse and complicate the
21 issues in this docket unnecessarily. Those customers
22 have no right to ask or require COVA and other
23 customers to subsidize their rates. In fact, no
24 customer did ask you to do that. The Commission Staff
25 brought it up. SSU didn't ask you to do it. The

1 Commission Staff brought it up on cross examination.
2 And, of course, you know the history on how that became
3 the Commission's final order.

4 CHAIRMAN DEASON: Ms. Fox, I don't want to
5 relitigate the case. We are here on a very narrow
6 question, let's stick to that.

7 MS. FOX: My point was simply that there is nobody
8 before this Commission who is bearing the financial
9 impact of these that wants these rates put into effect.
10 The only parties you have before you are the ones that
11 will be irreparably harmed in the interim.

12 CHAIRMAN DEASON: How are they irreparably harmed
13 if there is a bond posted?

14 MS. FOX: Well, I have some representatives of
15 COVA here who could address that. But if the rates go
16 into effect, these customers rates are going to jump
17 from about \$440 on an annual basis to 750. It's an
18 increase of about \$315 on an annual basis. And they,
19 of course, would have to be paying that in the interim.
20 These people are on limited incomes, a lot of them are
21 retirees on social security, this amounts to something
22 like half of a monthly social security check. These
23 people would have to modify their life style
24 substantially to accommodate these, and there is no way
25 you can go back and change that by giving them a refund

1 two years from now. And in the meantime, SSU would be
2 absorbing a huge unfunded liability, because they can't
3 go back and surcharge the customers who paid too
4 little, if this is reversed on appeal.

5 I would also, I meant to point out earlier that
6 the bond that has been posted in the rate case doesn't
7 cover this. They have not posted an appeal bond.
8 Therefore, they haven't even met the requirement for
9 lifting the stay under your rule. We don't know
10 whether they could get an appeal bond, given the type
11 of this liability. That is my answer to your question.

12 CHAIRMAN DEASON: Thank you. Mr. Gross.

13 MR. GROSS: Mr. Chairman, members of the
14 Commission. I'm Michael Gross here on behalf of the
15 Attorney General's office representing Citrus County.
16 Before I present the argument that I prepared, I would
17 like to highlight some of the issues that have just
18 been discussed, and there are some questions directed
19 to some of the issues. But I think we have to be
20 careful not to forget that on June 8th, 1993, the
21 Commission entered its own order granting SSU's motion
22 for a stay of the order of March 22nd, 1993 approving
23 statewide uniform rates. And that is something that
24 just simply can't be overlooked. Moreover, the notice
25 of appeal that was filed on October 8th is totally

1 adequate notice of appeal sufficient to invoke the
2 automatic stay provided by the Supreme Court rules. I
3 know of no rule of law, nor has any opposing party
4 pointed one out, nor has the Staff, that rendered the
5 initial notice of appeal deficient to invoke the
6 automatic stay simply because the Public Service
7 Commission was not named as an appellee. That was a
8 strategic decision that was made. So it's our position
9 that the automatic stay was invoked on October 8th,
10 1993.

11 Now there is some question as to whether the
12 Commission has the discretion to keep the stay intact
13 in the event that SSU posts an adequate bond. I would
14 first like to point out that the Florida Rule of
15 Appellate Procedure regarding stays pending review,
16 Rule 9.310(b)(2) explicitly states on motion the lower
17 tribunal or the court may extend the stay, impose any
18 lawful condition or vacate the state. This rule of the
19 Florida Supreme Court which prevails over any rule on
20 procedure that is in the PSC rules gives this tribunal
21 the discretion to extend the stay.

22 COMMISSIONER CLARK: Let me ask you a question
23 about that. We have adopted rules dealing with stays.
24 And in that rule we set out the criteria under which
25 the stay will be lifted. Are you saying that we cannot

1 have a rule that limits our discretion on a
2 case-by-case basis? We can't pass a rule that says if
3 you meet these circumstances, the stay will be lifted?
4 We can't exercise our discretion through rulemaking?

5 MR. GROSS: I think that the Commission has the
6 power to establish criteria for lifting the stay, but
7 the Supreme Court has given you the authority to extend
8 the stay. In other words, it's simply not true that
9 you don't have authority to extend the stay.

10 COMMISSIONER CLARK: Let me state my question
11 again, and it was one I asked Ms. Fox. I want to know
12 if -- we have a rule, and as I understand Mr. Hoffman's
13 argument, we have no discretion. He has met the
14 criteria in the rule. My question is can we, as the
15 Commission, in implementing the Supreme Court's rule
16 that gives us, the lower tribunal, the authority to
17 vacate a stay, can we state in a rule if you meet this
18 criteria you shall be entitled to having that stay
19 vacated, can we do that? I would like a yes or no, and
20 then an explanation.

21 MR. GROSS: I would say no, I would say the answer
22 is no, for the reason that there are numerous cases
23 that have held that even when the legislature attempts
24 to encroach upon the rulemaking authority of the
25 Supreme Court that those statutes are invalid. And

1 what can't be done by statute certainly can't be done
2 by rule.

3 COMMISSIONER CLARK: How have we encroached on
4 their authority?

5 MR. GROSS: Well, you are taking the position by
6 rule that you do not have the authority to extend the
7 stay by setting forth criteria that limit that
8 authority, that criteria that categorically, if meant,
9 entitle the movant to a lifting of the stay.

10 COMMISSIONER CLARK: So our rule is invalid.

11 MR. GROSS: Right. I think to the extent that it
12 attempts to limit authority given to the agency by the
13 Supreme Court, it is an encroachment on the Supreme
14 Court's rulemaking authority. This is not the only
15 answer to this question, though. The rule that we are
16 talking about is 25-22.061(3)(a) which indicates that a
17 stay may be vacated if a sufficient bond is posted when
18 you're dealing with a rate increase case, and also in a
19 situation where a public body has invoked the automatic
20 stay. Although it's conceded that rate increase is a
21 component of this appeal, the primary thrust of this
22 appeal is a policy decision that changes the ratemaking
23 concept never before implemented in this state, and
24 that shifts at least one of the issues here to
25 25-22.061(3)(b), which indicates that where a nonrate

1 increase issue is appealed, there is much more
2 discretion and much more latitude given to, by this
3 rule, reserved to the Commission to determine whether
4 to require a bond, or no bond at all, or any lawful
5 conditions. And this is the case that because it has a
6 rate increase component but a primary thrust, that is,
7 a non-rate issue, doesn't squarely fit in either (3)(a)
8 or (3)(b).

9 COMMISSIONER CLARK: Can I ask you a question
10 about your appeal. Did your appeal specifically state
11 what -- your point on appeal? I know sometimes that is
12 done.

13 MR. GROSS: No, it does not. It is an appeal of
14 the order, so the rate increase component is certainly
15 still a viable issue on appeal.

16 Also, though, after considering the public
17 interest here versus the harm, and I'm going to go into
18 that in a little more detail, there is a question about
19 whether any bond could be adequate, even under (3)(a)
20 of your rule. So I don't think it is a foregone
21 conclusion that if a bond is posted that the Commission
22 mandatorily must lift the stay, that is simply not the
23 case. By the Supreme Court rule, by the fact that this
24 particular appeal doesn't squarely fit in either Sub A
25 or Sub B of the stay lifting rule, and the question of

1 whether any bond would be adequate, even under Sub A.
2 But I would like to go back and also point out why the
3 misconduct of SSU in violating the Commission's stay
4 order, especially when they are the ones who asked for
5 the stay, and also violating the automatic stay, that
6 is relevant because the integrity and the credibility
7 of the Company have now been put into question. And
8 that is an issue that is relevant to lifting the stay
9 and letting the Company move forward. Also, there is
10 another motion pending asking for penalties and
11 sanctions to be assessed for a violation. So this is
12 relevant, and this is why I'm going to proceed with
13 some argument on these issues. I mean, SSU's motion
14 itself, being entitled a motion to vacate automatic
15 stay necessarily concedes that there is an automatic
16 stay in effect, as we speak. SSU's argument in its
17 pleadings is essentially that we already started the
18 billing process, and it would be a tremendous
19 inconvenience to stop now. But inconvenience is not an
20 excuse for violation of a Commission order, violation
21 of a Supreme Court rule. And to lift the stay on such
22 grounds would be to award SSU for its misconduct. SSU
23 and the Staff, which joins with SSU in opposing the
24 stay took a very aggressive position in precipitating
25 the implementation of the uniform rates. On September

1 15th, the tariff approval letter to SSU was not copied
2 to Citrus County, and the letter on its face shows that
3 it wasn't copied to anybody. And this is the very
4 event which triggered SSU's authority to implement the
5 new rates, and it was effectuated without notice to
6 Citrus County, a certainly interested party. And this
7 is a procedure which is inherently unfair and raises
8 serious due process questions, and which accounts for
9 some of the delay in the appeal process. Improper lack
10 of notice.

11 It is also SSU's and Staff's aggressive actions
12 which created a situation where the stay would now
13 cause SSU inconvenience. In any case, there are 30
14 days to appeal. And it is a better practice followed
15 by a majority of attorneys to exercise caution and wait
16 out the appeal period before acting on a judgment. SSU
17 knew that the order on reconsideration was imminent,
18 that the Commission could rule at any time. And it is
19 presumptively aware of this when it implemented the
20 rates. It knew that the order on reconsideration could
21 be entered at any time, and that there were appellate
22 rights which would invoke an automatic stay. And it
23 took the risk which it now complains about, which are
24 the consequences of its own aggressive actions. Now,
25 SSU has also, in my opinion, shown arrogance and

1 judicial disrespect and contempt for a rule of the
2 Florida Supreme Court and moreover in arguing in its
3 pleadings and filing affidavits that it could not
4 foresee this appeal when it, in fact, has filed a
5 motion and was granted a stay by the Public Service
6 Commission.

7 In its motions for stay, SSU argued the strong
8 policy of the Commission in favor of granting stays,
9 and in its motion -- and the Commission in its order
10 acknowledged that it would be senseless and wasteful to
11 require action which would have to be undone when the
12 order on reconsideration could have an impact on that
13 action. This is precisely Citrus County's argument
14 today. We agree with the arguments that SSU made when
15 it requested a stay.

16 Now, there are some specific concerns of the Staff
17 that I would like to address that are in the Staff
18 recommendation. The Staff points out that if the stay
19 is lifted, but the order of March 22nd approving the
20 statewide uniform rate is reversed, then SSU, while it
21 would not have overcollected, it would have to refund
22 to customers who overpaid, which is a risk incurred by
23 SSU. And this would have to come out of their assets.
24 This would not come from money that could be put aside
25 from overpayments or overcollections. But the Staff's

1 response to that is SSU has elected to take that risk.
2 The Staff admits SSU's risk, but indicates that that is
3 really up to SSU to determine whether it should take
4 that risk. But it is submitted by Citrus County that
5 the Public Service Commission as a regulator has the
6 duty to protect SSU from its own financial
7 indiscretions, and to assure to the ratepayers the
8 solvency of their utility company. You know, there is
9 some responsibility of a regulator to look at that, and
10 I think this would go without saying.

11 The other scenario pointed out by Staff is that if
12 the stay remains intact, but the order approving the
13 uniform rates is affirmed, contrary to the Staff
14 recommendation, at least my interpretation of it, SSU
15 would not have to refund to customers who paid more
16 under the interim stand-alone rates. The stay merely
17 delays the new rate structure going into effect without
18 risk to SSU. The net effect is that if the stay
19 remains in effect, there is no risk to SSU, the revenue
20 requirements will have been met during the pendency of
21 the appeal while the stay is in effect. But if the
22 stay is lifted, there is risk to SSU that it will have
23 to pay back money to ratepayers who have overpaid when
24 SSU has not overcollected. So it's not just the risk
25 of those fixed income people who will have to advance

1 money and incur that hardship which may be irreparable
2 because a belated refund may be too little, too late.

3 Also another argument to keep the stay in effect
4 is that the current rate structure which would be in
5 effect, and when I say current rate structure, I
6 acknowledge that the uniform statewide rates have been
7 implemented, but the stand-alone rate structure that we
8 are asking be reinstated during the pendency of the
9 appeal is noncontroversial. It has been tried and
10 proven and well established legally. Whereas the
11 effect of lifting the stay is to allow a new,
12 conceptually new controversial rate concept to go into
13 effect when there is a potential for reversal on
14 appeal, and a reevaluation and a reversal of the
15 Commission's position after the investigative docket.
16 And it just makes no sense to move forward aggressively
17 when there is no harm to the utility during the
18 pendency of the appeal, if it is a revenue neutral
19 issue.

20 Now, it is not really relevant to Citrus County's
21 argument as to whether an oral announcement at an
22 Agenda Conference as to a ruling renders the rates
23 effective or not, because there was an order staying
24 the order of March 22nd, '93 in effect. It is Citrus
25 County's position that that stay, the stay of that

1 order was not lifted until, I believe someone said
2 November 2nd, I thought it was November 3rd, 2nd or
3 3rd, when the order on reconsideration was reduced to
4 writing. But at the earliest, it was October 12th that
5 there was an oral ruling on the last of the motions for
6 reconsideration involving the interim refund. And the
7 order of June 8th staying the uniform statewide rates
8 made it clear that that stay would be in effect until
9 all motions for reconsideration were disposed of.

10 I also know of no rule of law that would allow the
11 rates to go into effect, notwithstanding the statute
12 and the rule when the order has not been reduced to
13 writing, and is not appealable. I mean, that is a
14 heads I win, tails you lose situation, where you can't
15 seek relief from it, but we are going to go ahead with
16 the adverse decision.

17 COMMISSIONER CLARK: Let me ask you a question. I
18 thought -- I haven't looked at it recently, but I
19 thought there was a provision in the statutes that
20 addresses that specifically. It gives us 20 days to
21 get an order out, but it doesn't -- it allows the rates
22 to go into effect upon the vote.

23 MR. GROSS: I would like to pull that section.

24 MS. BEDELL: Can I read that to you?

25 COMMISSIONER CLARK: Yes.

1 MS. GROSS: I would like to pull that --

2 COMMISSIONER CLARK: She is going to read it.

3 MS. BEDELL: Section 367.084 on rate adjustment
4 orders, at the end of that section it says, "Such an
5 order," that is, a rate adjustment order, "is not
6 considered rendered for purposes of appeal, rehearing,
7 or judicial review until the date the copies are mailed
8 as required by this section. The provision does not
9 delay the effective date of the order. Such an order
10 is considered rendered on the date of the official vote
11 for the purposes of 367.081(6), which is --" .081 is
12 the rate relief section, and Paragraph 6 is the one
13 that addresses our time frames for entering an order.

14 COMMISSIONER CLARK: So it's considered rendered
15 on the date of the vote?

16 MS. BEDELL: Yes.

17 MR. GROSS: I would like to respond to that. I
18 have found my copy, and I am prepared to respond to
19 that. Firstly, the Supreme Court rules provide the
20 definition of rendition. Once again, this statute is
21 very suspect. If it is interpreted as encroaching upon
22 the Supreme Court's rulemaking authority on the
23 definition of rendition, that's point number one. Now,
24 the second point is this definition of rendition cross
25 references 367.081(6). It says, "Such an order is

1 considered rendered on the date of the vote for the
2 purposes of 367.081(6) for a very limited purpose."
3 And if you go back and look at that Subsection 6, it
4 has to do with certain time constraints that are
5 imposed upon the Public Service Commission and
6 consequences that would fall upon the Public Service
7 Commission if they don't meet those time constraints.
8 And I think what this is saying is that for the limited
9 purposes of determining whether the Commission has
10 lived up to its time obligations --

11 COMMISSIONER CLARK: Is that the eight-month time
12 clock?

13 MR. GROSS: Yes. Rendition is --

14 COMMISSIONER CLARK: Let me ask you this. If we
15 don't live up to the eight-month time clock, can't the
16 utility implement the rates that they petitioned for?
17 It has always indicated to me that's the drop dead
18 date. And one of two things happens. The rates that
19 we approved by the vote, if you don't read it that way
20 then the utility has the authority to put into effect
21 the rates it asked for.

22 MR. GROSS: I'm not going to dispute that. But
23 getting into the definition of rendition, I think it is
24 limited to that purpose. But this is getting far
25 afield. Because even -- let's assume, arguendo, that

1 Staff's position is correct, that the oral vote of the
2 Commission on October 12th on the last motion for
3 reconsideration lifted the previous stay order of June
4 8th. SSU would still have been in violation of that
5 stay order of June 8th as well as the automatic stay
6 for several days. And that is very questionable as to
7 the propriety of implementing the rates when there
8 hasn't been a written order on reconsideration at that
9 point.

10 COMMISSIONER CLARK: You read me, or Ms. Fox read
11 me the final paragraph on that order staying. And does
12 it say until all motions for reconsideration are
13 disposed of?

14 MR. GROSS: Yes. I will read the sentence again.
15 Based upon the foregoing, SSU's motion for stay of
16 order number, et cetera, pending the disposition of all
17 motions for reconsideration is hereby granted.

18 COMMISSIONER CLARK: And it's your view that
19 disposition means a written order.

20 MR. GROSS: Yes, it is. A written appealable
21 order, and that is what is intended by the Florida
22 Appellate rules. And it seems to me that any rule or
23 statute that is interpreted, and I agree that this is
24 ambiguous, and I would urge an interpretation that will
25 save the constitutionality of the statute and the rule,

1 that it be interpreted in a limited manner so that it
2 does not encroach upon the rules of the Supreme Court,
3 and it doesn't allow implementation of rates for which
4 there is no order, no appealable order.

5 CHAIRMAN DEASON: Mr. Gross, I hope that you're
6 about to wrap up.

7 MR. GROSS: In conclusion, the uniform statewide
8 rates remain controversial. The status quo, which we
9 are asking for, that is, you know, reinstating interim
10 stand-alone rates is noncontroversial. There is a risk
11 both to the customers and to SSU if the uniform rates
12 remain in effect during the pendency of the appeal, if
13 there is a reversal on appeal. There is also a motion
14 asking for penalties and sanctions to be imposed on
15 SSU, and we are submitting that that be given due
16 consideration for the unilateral disregard of the
17 automatic stay and the Commission's own order by SSU.
18 Thank you.

19 CHAIRMAN DEASON: Thank you. Mr. Twomey, I'm
20 going to ask you that if you have got new points and
21 new areas, to please express those to the Commission.

22 MR. TWOMEY: Yes, sir, that was my intention. I
23 appreciate your concern.

24 MR. HOFFMAN: Mr. Chairman, I'm going to object.
25 We have already heard from Counsel for Citrus County,

1 that's Mr. Gross.

2 CHAIRMAN DEASON: Mr. Twomey, you're representing
3 the same client?

4 MR. TWOMEY: Yes, sir, I am. And I just said at
5 your direction that I would be brief.

6 CHAIRMAN DEASON: If you can address your remarks
7 to areas that have not been covered, I will entertain
8 those. But if we get repetitious, I'm going to ask you
9 to --

10 MR. TWOMEY: Thank you, sir, I will.

11 MR. HOFFMAN: Mr. Chairman -- excuse me. Before
12 he is brief, maybe -- we have heard a lot from the
13 attorneys from the other side on this, and I will not
14 have that much in rebuttal. But there is something
15 that I want to point out, and it may cut short Mr.
16 Twomey a little bit. There has been a critical and I
17 hope inadvertent misrepresentation of this stay order.
18 And if you will allow me, I will very briefly tell you
19 what it is. Or if you want me to wait, I will wait
20 until he is done.

21 MR. TWOMEY: That's fine with me, Mr. Chairman, if
22 it is fine with you and it will speed things up.

23 CHAIRMAN DEASON: Well, if it has the possible
24 benefit of speeding things up, please proceed, Mr.
25 Hoffman.

1 MR. HOFFMAN: The order is in response to a motion
2 filed by Southern States Utilities, I'm reading you
3 from the motion, quote, "Southern States," quote,
4 "Hereby requests the Commission to enter a stay of that
5 portion of Order Number PSC-93-0423-FOF-WS requiring a
6 refund with interest of the difference between
7 originally approved and revised interim rates pending
8 disposition of all motions for reconsideration filed in
9 this proceeding. Order issued June 8th, 1993, ordered
10 by the Florida Public Service Commission that the
11 motion for stay of Order Number PSC-93-0423-FOF-WS
12 pending the disposition of all motions for
13 reconsideration filed by Southern States Utilities,
14 Inc. is hereby granted." It was a specific request to
15 stay that portion of the final order pertaining to a
16 requirement to refund the difference between the
17 revised interim rates and the final rates. It did not
18 request, it did not grant a stay of the uniform rates
19 authorized by the final order. Thank you.

20 CHAIRMAN DEASON: Mr. Twomey.

21 MR. TWOMEY: Mr. Chairman, I want to reiterate
22 that I don't think that you can, nor should you have
23 the ability to limit your discretion with respect to
24 requirement imposed by the rule fo the Florida Supreme
25 Court.

1 Notwithstanding that, the question becomes, and
2 you raised this early on, Mr. Chairman, don't you have
3 before you the question of whether you should lift the
4 stay. Now, as pointed out by Ms. Fox, you've got no
5 one here that bears any financial responsibility for
6 these rates in anyway asking you to lift the stay so
7 that the uniform rates can be imposed. To the
8 contrary, you have repeatedly had customers who were
9 forced to bear the subsidies imposed by these rates
10 asking you, begging you, soliciting that you not. And
11 in just a minute I would like your leave to read this
12 letter from Senator Brown-Waite.

13 On the other side you have the utility who didn't
14 ask for the rates. You have the Staff who is pushing
15 this thing. One has to ask why the headlong rush to
16 impose uniform rates that will harm some people, we say
17 irreparably. The very rates that are the subject of
18 the appeal, and the very rates that this Commission has
19 graciously agreed to review during its investigation to
20 determine whether they are legal, to determine whether
21 their implementation, their imposition on these
22 customers is, in fact, in the public interest.

23 Now, the status quo is the situation that exists
24 with the interim rates. As you know, the interim rates
25 already require some of these customers to bear

1 subsidies over and above the stand-alone rates. They
2 are being harmed now. I think I heard a snort from the
3 audience back there earlier when Ms. Fox made the
4 representation that some of these retirees, some of
5 these people on social security, some of these elderly
6 people, these customers that will be forced to bear the
7 subsidy will be harmed by this. I'm not sure who the
8 person was back there, probably a person with a
9 well-paying job. But be that as it may, there is
10 nothing to be gained by imposing these rates pending
11 the outcome of the appeal, pending the outcome of your
12 investigation.

13 Now, even if your rule is without discretion, that
14 is, if you have tied your own hands -- and I don't have
15 the cite, but I think there is case law to the effect
16 that under certain circumstances you're not bound by
17 your own rules, procedural rules. But even if you are
18 bound by the rule and you have no discretion whatsoever
19 to consider this and consider extending the stay, you
20 have to ask yourself is there an adequate and
21 sufficient bond. In fact, you have to ask yourself is
22 it possible to structure an adequate and sufficient
23 bond that will protect those parties that are bound to
24 be hurt by this. I would submit to you, we submit to
25 you that it cannot. As pointed out by Ms. Fox, the

1 bond that is apparently in effect that Mr. Hoffman
2 referred you to is for purposes of interim rates,
3 collection pending final. It does not have the terms
4 and conditions that any reasonable surety would want to
5 look at before they posted a bond in this case.

6 Keep in mind that up until this time the Company
7 was collecting interim rates that exceeded what they
8 got on final. They were holding some of that money
9 subject to refund, whether a bond was issued or not
10 under those circumstances, and what premium was due was
11 one question. Under the uniform rates, if they are
12 imposed, it will be revenue neutral for the Company.
13 The money that some customers are forced to pay in
14 subsidies won't be kept by the company in some pot that
15 they can give back, it will be spent for the benefit of
16 those customers receiving the subsidy. We submit to
17 you that the company not only does not have a bond that
18 can -- that is applicable to the appeal, but that no
19 reasonable surety would issue one. And then, secondly,
20 while it's apparently true that in the past that the
21 Commission has denied the ability of this company to
22 have money subject to refund pursuant to a corporate
23 undertaking, the Commission in reaching its
24 determination should analyze how much money would be at
25 risk during the pendency of the appeal and the

1 investigation and consider what the effect would be on
2 the company's financial integrity if it were forced to
3 make these payments out of its equity, inasmuch as it
4 cannot go back and retroactively bill any of its
5 customers for it. And you have to ask yourself,
6 Commissioners, I would submit, why is the utility
7 willing, when it's a revenue neutral issue, when it did
8 not ask for these rates in the first place, why is it
9 willing to subject itself to the potential of having to
10 pay out shareholder's equity to support the
11 implementation of these rates.

12 Now, I'm not going to go into it, but I'm not sure
13 if it is --

14 COMMISSIONER CLARK: I'm confused as to the point
15 you're making. You're saying we should not -- assuming
16 that we would lift the stay, we should not accept a
17 corporate undertaking.

18 MR. TWOMEY: Yes, ma'am. I'm saying you should
19 not accept a corporate undertaking.

20 COMMISSIONER CLARK: They should have to file a
21 bond.

22 MR. TWOMEY: They should have to file a bond.

23 COMMISSIONER CLARK: Because it doesn't meet any
24 of the financial viability criteria?

25 MR. TWOMEY: Yes. And I am saying further that I

1 don't think you can construct a bond that will protect
2 the interests of the customers who have to pay the
3 subsidy. If you approve the uniform rates, there is
4 going to be one group of customers out here, the
5 customers of Sugar Mill Woods and Springhill, for
6 example, who will have to pay more than their fair
7 share, Commissioner, that is, more than under
8 stand-alone rates. The Company won't be able to keep
9 that money because it will go to support the rates of
10 the customers who are receiving the subsidy. If a year
11 passes and this goes by, and the Company's sales
12 figures are accurate in the rate case, it will only
13 have enough money to meets its expenses and recover its
14 return on equity authorized by the Commission.

15 COMMISSIONER CLARK: But your appeal does not
16 address any change in revenue. Your appeal addresses
17 where you get that revenue from.

18 MR. TWOMEY: Yes, ma'am. And I'm not being
19 sufficiently clear, obviously, because what I'm saying
20 to you is that because it's revenue neutral, I would
21 say to you, "Why is the Company running headlong into
22 doing this, because they don't gain anything from it?"
23 But more importantly, the customers that pay too much,
24 if the Commission's order is reversed on appeal, or if
25 the Commission after its investigation determines that

1 the uniform rates shouldn't be imposed, those customers
2 who paid too much are going to have to have refunds.
3 They are going to have to receive refunds back to the
4 level of what their stand-alone rates would be, or
5 whatever the ultimate rates are. And I'm saying to
6 you, "Where is the money going to come from?" You
7 can't go back and allow a utility to retroactively bill
8 the customers who receive the benefit of the subsidies,
9 that is against the law, plus it would be a real shock
10 for them getting a benefit, and then doubling back.
11 I'm suggesting to you that -- I'm telling you, I
12 believe, that the Company, while it has a bond that it
13 obtained from a surety based on certain representations
14 of how much it would collect during the pendency of the
15 rate case, and what might have to be refunded, I don't
16 think Mr. Hoffman is telling you that he has talked to
17 a surety, and he is saying to these people, "We have
18 got a revenue neutral issue here. We are going to
19 collect a bunch of money, and if we lose on appeal we
20 are going to have to give two, three, four whatever the
21 millions are back, and you are going to have to pay it.
22 And the odds on being reversed on appeal, or through
23 the investigation are 50/50, or whatever they are."
24 The bigger point is that even if you could do all of
25 that, I'm suggesting to you that given the pendency of

1 the investigation, given the pendency of the appeal, it
2 is fundamentally unfair to make these retirees, people
3 on fixed incomes and the like, pay these things because
4 they will be irreparably damaged, even if they get the
5 money back later.

6 Now, I thank you for your time. I would like to
7 read Senator Brown-Waite's letter and I will be
8 finished. The letter is dated November 22, 1993. It
9 is to Chairman Deason.

10 "Dear Mr. Deason: Due to a previous commitment, I
11 am unable to attend the Commission meeting scheduled
12 for tomorrow, November 23rd. However, I do want to
13 share my thoughts and comments with the Commission.
14 Therefore, this fax is being sent today, and the hard
15 copy will follow.

16 Southern States Utilities customers were delighted
17 when the Commission agreed to investigate how the
18 statewide rates for SSU customers came about. I
19 believe it would be unfair to those SSU customers for
20 you to now sanction the same rates being questioned by
21 Docket No. 930880-WS. Therefore, I'm requesting that
22 the motion to vacate the stay not be granted. I
23 disagree that the Company will not be harmed because
24 there is an alternative available to implement the
25 continuation of the interim rates or to apply the

1 Company applied for stand-alone rate which will have
2 the same revenue result.

3 Please read this letter into the record at the
4 Commission meeting. I urge that the Commission not
5 agree with the Utility's motion to vacate. Very truly
6 yours, Jenny Brown-Waite, State Senator, District 10."

7 Thank you, Mr. Chairman.

8 CHAIRMAN DEASON: Thank you, Mr. Twomey.

9 COMMISSIONER CLARK: Let me ask you one question.
10 As I understand -- would you read the last sentence in
11 the middle paragraph. Does that mean that she does
12 believe that the Utility will be harmed? "I disagree
13 that the Company will not be harmed."

14 MR. TWOMEY: Well, I'm not exactly positive what
15 she is saying here. What I think she is saying is
16 something that we have alluded to, or tried to allude
17 to, and that is that if this company has to pay the
18 premium, which we submit would be high compared to
19 regular bonds, has to pay the premium or has to out of
20 its own shareholder's equity pay for the cost of a
21 refund to these customers, that it could harm its
22 financial integrity, that is what I think she is
23 saying. I don't know.

24 CHAIRMAN DEASON: Mr. Hoffman.

25 MR. HOFFMAN: Mr. Chairman, I'm going to be very

1 brief, just kind of run through a few points. The
2 first thing I will say to you is that I want to remind
3 you, despite all of the discussion that you have heard,
4 this is a very limited legal issue. I pointed out to
5 you previously that Counsel for COVA and Citrus County
6 have misrepresented, and I presume inadvertently,
7 misrepresented the ruling of the Commission in Order
8 No. PSC-93-0861-FOF-WS which, in fact, granted Southern
9 States' request for a partial stay of the final order.
10 And in that motion Southern States had requested for a
11 stay only of the requirement that we refund the
12 difference between the revised interim rates and final
13 rates, and that motion was granted by this order. That
14 is the first thing.

15 CHAIRMAN DEASON: Now, that was pending
16 disposition of all petitions for reconsideration. What
17 petitions for reconsideration?

18 MR. HOFFMAN: Motions for reconsideration had been
19 filed by Citrus County, COVA, Southern States, Public
20 Counsel, and I think that Hernando County may have
21 asked for something at a very late point in time.

22 CHAIRMAN DEASON: But it was just for -- the stay
23 was just applicable to the requirement to refund the
24 difference between final and interim?

25 MR. HOFFMAN: Absolutely. That was specifically

1 what was requested, and it was the motion that was
2 granted. Secondly, I believe it was Ms. Fox, Counsel
3 for COVA, said that they found out on October 8th, or
4 shortly before October 8th, that the Company was going
5 to implement the rates. Don't get me wrong, I don't
6 think that this has anything to do or is even relevant
7 to your decision in this matter, but I want the record
8 to be clear. Mr. Twomey approached me after the agenda
9 on the new rate structure docket and asked me what our
10 intentions were and what we would be willing to do.
11 And I got back with him I would say about ten days
12 later and told him that the Company intended to
13 implement the uniform rates. Subsequently, I got a
14 call from Mr. Gross, I told him the same thing. Then I
15 got a letter from Mr. Gross. And I said, "Well, why do
16 they keep asking me the same thing?" And I guess that
17 was, you know, I thought it might be, but that was part
18 of their strategy was to somehow build up some type of
19 argument based on discussions with me rather than going
20 to you, rather than going to the Commission. And it's
21 in their package. This time I sent them a written
22 letter saying, "No, the Company intends to implement
23 the uniform rates."

24 So that's factually what happened on that, and I
25 will go back to the first point because I think it's

1 very important. The Company did not violate an order
2 of the Commission. They also mentioned they had no
3 reason to believe Staff would administratively approve
4 the rates. Well, I don't know why they would think
5 that, because that's what Staff always does. There is
6 a final order issued, those tariff sheets are submitted
7 by the utility, and they are stamped approved by the
8 Division of Water and Wastewater, not by the
9 Commission. That's the Commission's practice. That's
10 how it's done.

11 They talk about the utility's headlong rush. The
12 utility has not been in a headlong rush. I would
13 submit to you this utility has not been arrogant. Its
14 attorneys have not been arrogant. If this utility was
15 in a headlong rush, this utility would have attempted
16 to implement these uniform rates directly after the
17 final order as it was authorized to do and could have
18 done unless a stay was requested by COVA and Citrus
19 County, and granted by the Commission. But we didn't
20 do that, we waited. And why did we wait, because we
21 didn't want to have different rates within a short
22 period of time going out to our customers. So we
23 waited until a decision was made on the motions for
24 reconsideration. They have talked about fixed incomes,
25 and, I mean, they are completely off the issue here,

1 respectfully, in my opinion, Mr. Chairman, but I would
2 submit to you there are customers with fixed incomes on
3 most all of our systems that we serve in this state.

4 We have asked you for a corporate undertaking. We
5 think that it is appropriate in this case. Mr. Twomey
6 says, with no support whatsoever, that he doesn't
7 believe that a bond could be issued to protect
8 customers on this appeal. There is no support for that
9 statement. We have a bond on file with the Commission.
10 If the Commission approves Staff's recommendation,
11 which directs the utility to have the nature of that
12 bond changed, to change it from interim, to protect
13 customers during the interim on interim rates versus
14 protecting the customers on appeal, that can be done
15 and it can be done quickly. And I think that's all I
16 have on rebuttal, Mr. Chairman. Thank you.

17 CHAIRMAN DEASON: Let me ask you a question.
18 There has been a lot said today about the fact that the
19 rates themselves are revenue neutral, it's just a
20 question of rate structure and whether they are going
21 to be system-specific or if they are going to be
22 uniform rates; do you agree with that characterization?
23 Is that accurate that Southern States will be receiving
24 the same dollars of revenue, it's just a question of
25 which rate structure?

1 MR. HOFFMAN: If what, if the interim rates are
2 implemented?

3 CHAIRMAN DEASON: We have before us the question
4 of whether we are going to vacate the stay or not.
5 Regardless of whether the stay is vacated or not, is
6 Southern States going to receive the same dollar of
7 revenue from its customers?

8 MR. HOFFMAN: There is a difference.

9 CHAIRMAN DEASON: There is a difference, because
10 if the stay is vacated what rates will you collect?

11 MR. HOFFMAN: The final rates, which subject to
12 check, Mr. Chairman, amounts to a rate increase of
13 approximately \$6.7 million. And if the automatic stay
14 is enforced, if it's not vacated and you then go to our
15 revised interim rates, I believe that, subject to
16 check, that revenue requirement is at 6.4 million.
17 It's a different number. But I would reiterate to you
18 that we do not believe there is any discretion and that
19 the rule is mandatory. But that's my answer to your
20 question, Mr. Chairman.

21 CHAIRMAN DEASON: Let me ask you this. If the
22 stay is vacated, do you agree that Southern States is
23 putting itself at risk to make those customers whole
24 whose rates are higher under statewide rates?

25 MR. HOFFMAN: No, I don't. But I don't think that

1 the Commission needs to resolve that issue today.
2 Because in our opinion, Mr. Chairman, we believe that
3 on a rate structure appeal, where we are implementing
4 the rates authorized by the Commission, in an appeal
5 which would be strictly revenue neutral, that the
6 Company does not place itself at risk. However, if we
7 are wrong in that position, and the first District
8 Court of Appeal reverses the Commission, there will be
9 a corporate undertaking or a bond on file with this
10 Commission to protect the customers in the event we are
11 wrong.

12 CHAIRMAN DEASON: Now, is that protection just for
13 the difference in revenue amounts and not
14 customer-specific?

15 MR. HOFFMAN: I think it could be tailored by the
16 Commission, Mr. Chairman. I think that the Staff
17 recommendation recommended a bond amount which would
18 protect the customers of the systems who are currently
19 paying higher rates under the uniform rates.

20 CHAIRMAN DEASON: Well, do you agree that if the
21 stay is vacated there are going to be customers that
22 are going to be paying more under statewide rates?

23 MR. HOFFMAN: Yes.

24 CHAIRMAN DEASON: And if the stay is vacated and
25 the appeal is successful on COVA and Citrus County's

1 part, you're saying there is not going to be a refund
2 to those customers who are paying more?

3 MR. HOFFMAN: Our position that we have taken, Mr.
4 Chairman, is that there is not a refund. And I think I
5 have already explained to you why. But what I'm saying
6 to you is we do not dispute, particularly now that
7 Public Counsel has filed an appeal and they are going
8 to put revenue requirements at issue, we do not dispute
9 the need for corporate undertaking or bond at this
10 point of this proceeding and we are willing to make
11 sure that it's posted.

12 CHAIRMAN DEASON: But that is a question of
13 overall revenue requirements, not customer-specific
14 rates?

15 MR. HOFFMAN: That's correct.

16 CHAIRMAN DEASON: Does Staff agree with that?

17 MS. BEDELL: Yes.

18 COMMISSIONER CLARK: Surely this has come up
19 before where we have had a rate design at issue. Maybe
20 it's not come up, maybe not in water and sewer.

21 MR. WILLIS: Commissioners, I can't remember in
22 the past where we had a rate design at issue after the
23 final decision of the Commission.

24 COMMISSIONER CLARK: Well, the fact of the matter
25 is it's not at all clear as to whether or not there

1 would be a refund for those people who overpaid based
2 on -- who would pay more under statewide rates than
3 stand-alone.

4 MR. WILLIS: That's correct.

5 COMMISSIONER CLARK: It's not at all clear that it
6 just wouldn't be from a going-forward standpoint that
7 you would address the rates, and the rates that were in
8 effect is water under the bridge.

9 MR. WILLIS: I agree with you, Commissioner, it's
10 not clear at all.

11 COMMISSIONER JOHNSON: So how do we make these
12 people whole? Or we can't.

13 MR. WILLIS: Well, Commissioner, I think if there
14 is protection in place, whether it be a corporate
15 undertaking or a bond, which we are recommending a
16 bond, those customers will be held whole. I mean, if
17 someone in the future dictates that those customers who
18 are paying more now under uniform rates than they would
19 be under stand-alone are deserving of a refund, then
20 those customers would receive a refund with interest.

21 COMMISSIONER CLARK: That's the part that's not
22 clear, that we have never addressed before when it's an
23 issue of money between customers and not the overall
24 revenue what you do.

25 MR. WILLIS: (Indicating yes.)

1 MR. HILL: The customers are going to be
2 protected. There is not a doubt in my mind about that.
3 It's the Company that's going to be at risk, and I
4 won't try to drag this out to explain it.

5 COMMISSIONER CLARK: But I think that Commissioner
6 Johnson is correct, is that the customers as a whole
7 are protected, but not individual customers that under
8 statewide rates are paying more than they would under
9 stand-alone.

10 MR. HILL: I believe that if the courts say --

11 COMMISSIONER CLARK: A bond doesn't address that
12 at all.

13 MR. HILL: I understand. And if the courts say
14 that you cannot do what you have done, then you have
15 got to go back to a system-specific rate and revenue
16 requirement. That's where you have to go, there is no
17 other place to go. And we may end up arguing with the
18 utility over refunds, but there isn't a doubt in my
19 mind that if we are reversed on that and have to redo
20 it, they have collected money they should not have
21 collected and it will have to be refunded. And the
22 Company will end up on the short end of it.

23 COMMISSIONER CLARK: Well, they have collected
24 money they should have recovered from the wrong people.

25 MR. HILL: Absolutely, and they will have no way

1 to go back to the right people and collect those funds.

2 COMMISSIONER CLARK: Unless you do an adjustment
3 on a going-forward basis to remedy that, but I'm not
4 sure you can.

5 CHAIRMAN DEASON: And what Mr. Hoffman is saying,
6 it's his opinion that the Company is not putting itself
7 at risk, it does not have the liability to make the
8 customer-specific whole. Their only requirement is to
9 make customers as a general body of ratepayers whole.
10 That is, if they have collected more total revenue than
11 what they are authorized as a result of the final
12 decision on appeal, they are liable for that, but they
13 are not liable to make specific customers whole.

14 MR. HILL: And while that's an interesting
15 argument, I think that if indeed we are overturned by
16 the courts, then the revenue requirements fall out on a
17 system-specific basis, and I think the Company will be
18 on shaky ground with that argument and will lose money.

19 MS. BEDELL: May I make a suggestion? In terms of
20 trying to make a determination of what the Company may
21 have to do in terms of a refund, under both the
22 appellate rule on stays -- it provides that you can set
23 conditions for the stay, or for vacating the stay it
24 would seem to me. If you set a condition related to
25 how, you know, the end result when the appellate court

1 makes a final decision.

2 CHAIRMAN DEASON: I understand what you're saying,
3 but wouldn't it be unfair to Southern States to say
4 that we are going to vacate the stay and put you at
5 risk for making those customers who pay more, but we
6 are not going to give you the opportunity to recoup
7 from those customers who should have paid more but who
8 did not pay more? Isn't that a very difficult position
9 to put the Company in?

10 MS. BEDELL: Yes, I think so. The whole situation
11 is difficult.

12 CHAIRMAN DEASON: Oh, I agree with that. I think
13 you can get a unanimous decision on that right now. I
14 think even the parties would stipulate to that.

15 COMMISSIONER JOHNSON: Mr. Hoffman, how would you
16 respond to the argument posed by opposing counsel that
17 Rule 25-22.061(3) does not include a mandatory nature
18 behind it, and that that would be a constitutional
19 violation?

20 MR. HOFFMAN: The first time I've heard it is
21 today. If they are saying that the word shall does not
22 include a mandatory nature, I can only tell you that my
23 common meaning of that word in the research I've done
24 on statutory interpretation tells me they are wrong. I
25 think Commissioner Clark summed it up, she said to Mr.

1 Gross you are saying that we have an illegal rule, or
2 an invalid rule. I disagree with that. I think the
3 Commission has a valid rule, and that that rule is
4 within its discretion.

5 COMMISSIONER CLARK: And, Commissioner Johnson, if
6 memory serves me correct, we were encouraged by the
7 court, and I'm not sure if it was the Supreme Court, it
8 may have been. They got tired of dealing with motions
9 to vacate stays, and they told us -- how did they tell
10 us? In oral argument I can recall some pointed
11 questions being why don't you have any rules that state
12 the circumstances under which a stay will be granted so
13 that they don't have to deal with it again. That
14 doesn't dispose of the question as to whether we did it
15 right, but it was certainly my recollection that the
16 court was tired of dealing with the stays and wanted us
17 to deal with them.

18 CHAIRMAN DEASON: Do we have the option of letting
19 them deal with it?

20 COMMISSIONER CLARK: I think they would admonish
21 us for not doing what the rule said we should do.

22 CHAIRMAN DEASON: Commissioners, I think we need
23 to move along. If we are ready for a motion now, fine,
24 if we're not, I suggest we just take a ten-minute
25 recess and come back and then dispose of this as

1 quickly as possible. What's your pleasure? In other
2 words, let's move along one way or the other.

3 COMMISSIONER CLARK: Mr. Chairman, I don't see
4 that we have any discretion, and I agree with
5 Commission Staff on this point. I think we set out the
6 rules that indicate that a posting of a bond will allow
7 us a vacation of the stay, and as Mr. Hoffman pointed
8 out, the Commission order, which did concern me, only
9 provided for a stay of refund of the interim rates, it
10 wasn't with respect to the implementation of the rates.
11 And for that reason I would move Staff on all three
12 issues.

13 COMMISSIONER JOHNSON: Second.

14 CHAIRMAN DEASON: It has been moved and seconded.
15 Let me state right now that I'm going to vote against
16 the motion. I am persuaded by the argument that we are
17 moving into a new area here where there are differences
18 between rates for different customers in different
19 areas, and that in my opinion we should keep the status
20 quo, which are interim rates, and let the court give
21 the guidance to the Commission that it sees fit. I
22 don't see where -- even though there is going to be a
23 bond posted, it's not going to be for the purposes of
24 making individual specific customers whole, it's going
25 to be for the purpose of making customers as a total

1 rate paying body whole. And that's really not the main
2 crux of this appeal, so I would oppose that. But,
3 anyway, we have a motion and a second --

4 COMMISSIONER CLARK: Mr. Chairman, can I just ask
5 a question? The concern I have is the interim rates
6 don't generate the rates that we concluded they were
7 entitled to. I mean --

8 CHAIRMAN DEASON: The interim rates, what are the
9 differences between the interim rates and the final
10 rates that have a statewide rate structure? Very
11 minimal, is it not?

12 MR. TWOMEY: They generate more, Mr. Chairman.

13 CHAIRMAN DEASON: That's what I thought. I
14 thought it was either minimal or it either generated
15 more. What's the case, Mr. Hoffman?

16 MR. HOFFMAN: My understanding is that as revised,
17 the interim rates as revised after Commissioner Clark's
18 motion for reconsideration is a total revenue
19 requirement increase of 6.4 million as opposed to 6.7
20 million final rates.

21 COMMISSIONER CLARK: Which is the final rates?

22 MR. HOFFMAN: Yes.

23 CHAIRMAN DEASON: I consider that difference to be
24 pretty inconsequential given the magnitude of the real
25 issue, which is the rate structure involved. I would

1 just keep interim rates.

2 Moved and seconded, all in favor say aye.

3 COMMISSIONER CLARK: Aye.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN DEASON: All opposed nay. Nay.

6 MR. TWOMEY: Mr. Chairman, pardon me. Can we ask
7 that either you make it clear in your vote that you are
8 ordering the Company to establish a bond that would
9 hold -- the customers would have to pay the subsidies
10 whole if there is a reversal on appeal, or conversely
11 that you make it clear that you accept that there is no
12 way to make these customers whole, assuming a reversal
13 on appeal, and that you're not going to do anything
14 about it. I mean, it's not clear to me which way you
15 come down on that. That you're going to accept the
16 Company's argument that they will make all the
17 customers whole on a revenue basis, but that the people
18 that pay too much, if there is a reversal, it's too bad
19 except on a going-forward basis. I'm asking you to
20 make it clear that you're telling them they have to get
21 that kind of bond, or make it clear that you're not.

22 MR. HOFFMAN: Mr. Chairman, let me object. I
23 don't think Mr. Twomey is being very clear. I think
24 that the Staff's recommendation is clear. And I think
25 that we can have that -- we already have a bond on

1 file. We can get the nature of the bond changed to fit
2 what is required in the Staff recommendation, and I
3 think that that dollar amount will be sufficient to
4 meet either consequence. We are sitting here
5 speculating about what may happen on appeal. We simply
6 don't know. I mean, I know the staff has estimated \$3
7 million, but that is based on the rate design issue
8 alone. I don't know what else Public Counsel may raise
9 that may have a revenue requirement impact. And I
10 think this is unnecessary, and I object to it, and I
11 think it makes the issue more cloudy.

12 CHAIRMAN DEASON: Well, Mr. Hoffman, I think not
13 only is it relevant, it is critical to know what the
14 nature of the motion is and what is being done. Now,
15 I'm not on the winning side of the motion, so I don't
16 know how to clarify it, because I'm not even supporting
17 it. If the Commissioners wish to clarify it, they will
18 have the opportunity now.

19 COMMISSIONER CLARK: I have moved Staff
20 recommendation. Now, the issue of whether or not a
21 refund will be due to the customers I don't think is
22 before us right now.

23 MS. BEDELL: What is before you is a decision
24 about whether there is good and sufficient security for
25 anything that may be coming down the pipeline.

1 COMMISSIONER CLARK: Now, will the bond cover
2 that? Let me just ask the question. Without deciding
3 the issue as to whether or not there will be a refund
4 to only those customers who are overcharged, and not a
5 making up of that revenue from the other customers.
6 Let's assume that our order is that you will only
7 refund to those who are overcharged. Will the bond
8 cover that?

9 MS. BEDELL: Yes.

10 MR. WILLIS: Commissioners, we believe the bond
11 will cover it. It's just like any rate case, it will
12 have to be reviewed at the end of one year to see if --
13 you know, we don't know how long the appeal is going to
14 be, but it will have been reviewed after one year, and
15 if the appeal is not done, it will have to be up for
16 whatever amount we believe it will have to be
17 protected.

18 CHAIRMAN DEASON: Let me make sure that we are
19 clear. What you're saying is that if that is the final
20 decision, the bond is adequate?

21 MR. WILLIS: Yes.

22 CHAIRMAN DEASON: But that is not the position the
23 company is arguing, they're saying it is not their
24 belief they are putting themselves subject to that
25 liability.

1 COMMISSIONER JOHNSON: I thought that point was
2 made painfully clear what the Company thought, but
3 Staff sufficiently satisfied me that it was something
4 that we could make those customers whole, and perhaps
5 that is something that we should definitely have
6 written in the order.

7 MS. BEDELL: That is what we had in mind in terms
8 of coming up with a dollar number. That is the
9 direction we headed in to come up with some
10 recommendation on a dollar amount. Mr. Chairman, we
11 need to know if you are dissenting on Issue 2 only, or
12 on Issue 2 and 3.

13 CHAIRMAN DEASON: Well, let's take a look at that.

14 MS. BEDELL: Issue 3 is Citrus County's motion for
15 the penalties and the reduction in rates, refund of
16 bills.

17 CHAIRMAN DEASON: Okay. We already disposed of
18 Issue 1.

19 MS. BEDELL: Yes, sir.

20 CHAIRMAN DEASON: I'm dissenting on Issue 2, but
21 I'm agreeing with Staff on Issue 3.

22 MS. BEDELL: Thank you.

23 MR. GROSS: This is an appealable order to the
24 First District Court of Appeal, so we need an order so
25 that we can avoid some of the problems we have had in

1 the past, and also the provisions in the bond are going
2 to be of interest to the First District Court of Appeal
3 as to whether there was an adequate bond in compliance
4 with the Commission's rule. Even if it is determined
5 to be mandatory, there is still that --

6 COMMISSIONER CLARK: Doesn't the bond have to
7 cover the whole amount of the rate increase, so
8 therefore it covers anything --

9 MR. HOFFMAN: Commissioner Clark, I think that
10 every issue in the rate case is put at issue in the
11 appeal, I think it would.

12 COMMISSIONER CLARK: All we need to do at this
13 point is make sure that the total amount of the bond is
14 sufficient to cover the total amount of the rate
15 increase, because it's still at issue, and covered in
16 that is the amount of any refund that would be due, if
17 it is decided that a refund is due to those people who
18 paid more under statewide rates than they would have
19 paid under stand-alone rates. And it's my
20 understanding from the Staff that it does, and that is
21 what we need to decide today.

22 CHAIRMAN DEASON: And an order will be
23 forthcoming, and it will describe what the Commission
24 did.

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

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MR. GROSS: Thank you.

CHAIRMAN DEASON: That disposes of Item 25A.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

DATED THIS 30th day of November, 1993.

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

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 30th day of November, 1993, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,

1 STATE OF FLORIDA, BY THE ABOVE PERSON WHO IS PERSONALLY
2 KNOWN BY ME.



Melanie Y. Strubble
NOTARY PUBLIC
STATE OF FLORIDA