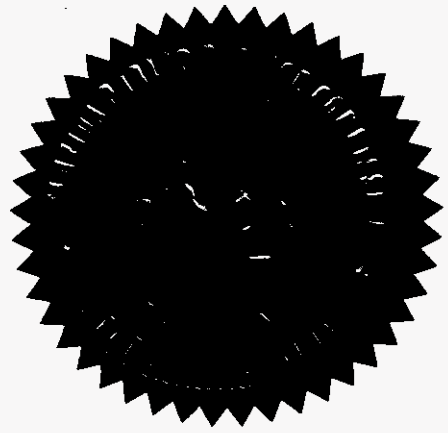


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Application for a rate increase
and increase in service
availability charges by SOUTHERN
STATES UTILITIES, INC. for
Orange-Osceola Utilities, Inc.
in Osceola County, and in
Bradford, Brevard, Charlotte,
Citrus, Clay, Collier, Duval,
Highlands, Lake, Lee, Marion,
Martin, Nassau, Orange, Osceola,
Pasco, Putnam, Seminole,
St. Johns, St. Lucie, Volusia
and Washington Counties.

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DOCKET NO. 950495-WS
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VOLUME 3 - EVENING SESSION

Pages 259 through 330

PROCEEDINGS: **PREHEARING CONFERENCE**

BEFORE: **COMMISSIONER DIANE K. KIESLING**
 Prehearing Officer

DATE: **Friday, April 19, 1996**

TIME: Commenced at 10:00 a.m.
 Concluded at 6:25 p..m.

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

REPORTED BY: **JOY KELLY, CSR, RPR**
 Chief, Bureau of Reporting
 Official Commission Reporter

APPEARANCES: (As heretofore noted.)

8424

DOCUMENT NUMBER-DATE

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P R O C E E D I N G S

(Transcript continues in sequent from Volume 2.)

COMMISSIONER KIESLING: Are we ready?

Before we get back too far into it, I have been given the rewording for Issue 75 that I understand everyone has at least discussed and is okay with. And so to that extent I won't read it in the record unless there is some disagreement about it.

MR. FEIL: Could we have one additional moment to look at it, please? (Pause)

Commissioner, though we're still somewhat concerned with what specifically is being driven out by wording of the issue, we can stipulate as to the wording of the issue. We're going to have to revise our position, however.

COMMISSIONER KIESLING: So is everybody --

MR. FEIL: Apparently so.

COMMISSIONER KIESLING: And that would also go for Mr. Twomey, if I could impose on you enough to pass that on to him.

MR. McLEAN: No imposition. I'd be happy to do so.

COMMISSIONER KIESLING: Thank you. All

1 right. 101. I guess I was trying to figure out, did
2 SSU propose this simply as a defensive issue, and if
3 the issue wasn't raised by anyone else, do you still
4 want it in there?

5 MR. HOFFMAN: Which issue is that?

6 COMMISSIONER KEISLING: 61.

7 MR. HOFFMAN: 61.

8 COMMISSIONER KEISLING: 62, 63.

9 MS. O'SULLIVAN: Is that Issue 101?

10 COMMISSIONER KEISLING: Yeah, I'm sorry.

11 I'm sorry. Issue 101, 102, 103.

12 MR. FEIL: Commissioner, we can delete Issue
13 101.

14 COMMISSIONER KIESLING: Okay. Dropping that
15 one.

16 MR. FEIL: But Issues 102 and 103 we would
17 request stay in.

18 MR. BECK: Commissioner, I'd like to address
19 those two issues.

20 COMMISSIONER KEISLING: All right.

21 MR. BECK: With respect to Issue 102, I'd
22 ask that it be reworded to be "Should an attrition
23 adjustment of 2.49% be applied," and so forth. I
24 think the way Southern States has worded it it's a
25 bit, let's say, leading. I don't really mean that but

1 it's biased towards the conclusion they want you to
2 draw.

3 COMMISSIONER KIESLING: I'm having trouble
4 hearing you because you've moved the mike away from
5 you.

6 MR. BECK: I'd ask that it be changed. I
7 think the way Southern States has worded it leads you
8 to the conclusion they want you to reach. And I think
9 a more neutral wording would be "Should an attrition
10 factor of 2.49%" and then go the same from there.

11 COMMISSIONER KIESLING: 1996 attrition
12 factor or is that also --

13 MR. BECK: That's fine.

14 MR. FEIL: That's fine with SSU,
15 Commissioner.

16 COMMISSIONER KIESLING: Then does OPC have a
17 position on 102? You hadn't up until now. And --

18 MR. BECK: The answer would be no.

19 COMMISSIONER KIESLING: All right. 102. Is
20 that also one that needs to be rephrased or dropped or
21 what?

22 MR. BECK: I think we just did 102.

23 COMMISSIONER KIESLING: 103. I should have
24 gotten up and walked around. (Laughter)

25 MS. O'SULLIVAN: Commissioner, we need to

1 update Staff's position on that to say no. We agree
2 with OPC. No.

3 COMMISSIONER KIESLING: No.

4 MR. BECK: Commissioner, with respect to
5 103, I object to the issue. It relates to the Motion
6 to Strike the testimony of Broverman that we've filed.

7 COMMISSIONER KIESLING: Oh. Okay.

8 MR. BECK: Perhaps this would be the time to
9 address the motion to strike the testimony.

10 COMMISSIONER KIESLING: All right. Staff,
11 do you have any words of wisdom on this?

12 MS. O'SULLIVAN: Commissioners, I'd like to
13 double-check with you. I know you have the Motion to
14 Strike Mr. Broverman's testimony. Did you receive a
15 copy of the Utility's reponse to that? It was filed
16 yesterday afternoon.

17 COMMISSIONER KIESLING: Yes, and that's what
18 I was just reading. And I have not finished reading
19 it. I, however, did not read the entire footnote on
20 Page 3.

21 MS. O'SULLIVAN: It's a pretty big footnote.

22 COMMISSIONER KIESLING: And considering what
23 it was a footnote to, I decided to ignore it.

24 MS. O'SULLIVAN: Staff went back and removed
25 Mr. Broverman's testimony and Ms. Lock's testimony.

1 We initially believe this testimony is not necessary.
2 Ms. Lock addressed this type of material in her direct
3 testimony and filed rebuttal on that. So we would
4 tend to agree with OPC.

5 COMMISSIONER KIESLING: Tend to or you do?

6 MS. O'SULLIVAN: We do. I haven't had the
7 time to review this that I'd like, but -- in looking
8 at the Utility's response just right now, so --

9 COMMISSIONER KIESLING: Let me just ask you
10 a couple of questions and I'm not trying to put you on
11 the spot, but the Motion to Strike -- I guess maybe I
12 just need to let Mr. Beck tell me. The Motion to
13 Strike, what are the grounds for it? You said a lot
14 of stuff in here, so is it that -- I mean, all of
15 Paragraph 1 summarizes what his testimony says. So is
16 your entire position that FAS 106 expense is not at
17 issue in this proceeding?

18 MR. BECK: The grounds are that the
19 Company's filing is a supplemental change of its case
20 in disguise; that they attempted to disguise as
21 rebuttal testimony. They have filed their case. The
22 intervenors, Staff and other parties then filed our
23 case responding to that. No one took issue with FAS
24 106 expenses. Then comes in Southern States' witness
25 and says, "Well, here's some more information about

1 FAS 106," purporting to be rebuttal, when, in fact, it
2 doesn't rebut anybody. It's just an attempt to create
3 a new direct case.

4 So my grounds for it is that it's a change
5 in their case, it's not rebuttal, and it should be
6 stricken because it's not rebutting any testimony of
7 any witness that was filed.

8 COMMISSIONER KIESLING: Okay. And I'm not
9 trying to be picky but your motion doesn't say those
10 things.

11 MR. BECK: We tried to.

12 COMMISSIONER KEISLING: Where? The only
13 place -- only thing I can find that you say is that
14 FAS 106 expense is not at issue in this case, that's
15 one ground, therefore, I assume it's irrelevant. The
16 second ground would be prefiled testimony -- there's
17 no prefiled testimony of any intervenor witness that
18 addressed FAS 106 expenses. The third is that no
19 customer testimony addressed FAS 106 expenses.

20 MR. BECK: And based on that I conclude that
21 there's a ruse.

22 COMMISSIONER KIESLING: A ruse to submit
23 untimely direct testimony.

24 MR. BECK: That's what I was trying to say
25 there, as I just explained it.

1 COMMISSIONER KIESLING: Okay. It's not
2 really rebuttal; it's not rebutting anything.

3 MR. BECK: That's correct.

4 COMMISSIONER KIESLING: Okay. And I've read
5 your response, but you went into things like how bulky
6 it was and --

7 MR. HOFFMAN: Commissioner, I think too many
8 points need to be made.

9 This morning the ground that Public Counsel
10 set forth for taking the position that the additional
11 rebuttal testimony we wish to submit should not be
12 submitted, was that this company has the right to file
13 rebuttal testimony when such testimony responds to the
14 testimony of customers at customer service hearings.
15 Now that's what they said this morning. Now that's a
16 true statement. Because that right is unequivocal.
17 It's in your rules. And we cited that in our motion.

18 Now, at the customer service hearings, and
19 we have this in our response, it was repeatedly stated
20 that we have inflated our costs for the projected test
21 year. Mr. Broverman's rebuttal testimony responds to
22 those allegations.

23 Secondly, in the prefiled direct testimony
24 filed back with the Minimum Filing Requirements,
25 Public Counsel and anyone else who has read the

1 testimony of Dale Lock was placed on notice that the
2 study attached to Mr. Broverman's rebuttal testimony
3 was forthcoming, and so it has. And this is a study
4 that Ms. Lock is not competent to sponsor. We cannot
5 get it in through Ms. Lock. We have put it in through
6 Mr. Broverman and his firm. So there was plenty of
7 notice. And it directly responds to allegations of
8 customers at the customer service hearing.

9 MR. BECK: May I respond?

10 MR. HOFFMAN: They can't pick and choose
11 which customer statements we get to respond to in our
12 rebuttal.

13 COMMISSIONER KEISLING: I'm not suggesting
14 that they can. I just am trying to understand then
15 it's your position that anyone who questioned the
16 accuracy of the projections in the MFRs, projected
17 expenses, was bringing up FAS 106 even though they
18 didn't bring it up in that way.

19 MR. HOFFMAN: They didn't bring up FAS 106
20 in that way. But when they contest the accuracy of
21 our projections, don't we have a right to respond?

22 COMMISSIONER KIESLING: I'm not disagreeing
23 with that.

24 MR. HOFFMAN: I understand. And I'm saying
25 that we do and this is how we have done it. And the

1 way we have done it is consistent because we have used
2 the information that we anticipated would be
3 forthcoming, through Ms. Lock direct testimony filed
4 last year. And a copy of this study was provided as a
5 late-filed deposition exhibit in January of this year.
6 You know, they have -- I'll conclude this.

7 They have not been prejudiced. They don't
8 claim that they have been. But had they made such a
9 claim -- you know, they have, with Ms. Dismukes's
10 testimony on two occasions filed motions to supplement
11 her testimony to respond to information that they
12 received, you know, at a certain date and time. If
13 they were at all prejudiced by this, they could have
14 filed the same type of motion to have some individual
15 rebut this testimony and they've chosen not to do so.

16 COMMISSIONER KIESLING: All right. Now back
17 to you.

18 MR. BECK: This is a sham that no
19 customer -- taking their argument to its logical
20 conclusion, that means they can refile their case on
21 any expense, any revenue, any rate base item they
22 choose because some customer gets up and says, "I
23 don't trust your numbers." Nobody contested FAS 106
24 expenses, and they are taking a generalized statement
25 from customers to try to go in and bolster their case

1 on this. Now, perhaps when this study was done they
2 should have filed supplemental direct testimony along
3 with a motion asking to do that. But instead of doing
4 that, they came up with a sham excuse of trying to put
5 it in as rebuttal testimony when it is not rebutting
6 any testimony that was filed in the case.

7 Had they followed that procedure, it might
8 be different. But I am prejudiced. I'm trying to go
9 through this last weekend when I saw this testimony.
10 I said, "What am I going to do with this? Here's some
11 brand-new testimony that we didn't even contest that
12 the Company is trying to put in." So we are
13 prejudiced in our ability to prepare for this case.
14 And I object to the way they put it in and object to
15 them putting it in at all at this point in time.

16 COMMISSIONER KEISLING: Let me just be sure
17 I understand one other thing. I believe that
18 Mr. Hoffman said that this study was furnished in
19 January as part of Lock's --

20 MR. HOFFMAN: January 23 of 1996. A
21 late-filed exhibit to the deposition of Dale Lock.

22 COMMISSIONER KIESLING: To Dale Lock.

23 MR. BECK: Filing a late-filed deposition
24 exhibit doesn't give them permission to file sham
25 rebuttal testimony.

1 COMMISSIONER KIESLING: I'm not asking that.
2 Did you get this? I'm trying to figure out the
3 prejudice in terms of when you got this material, for
4 one thing. There are a lot of factors I have to look
5 at.

6 MR. BECK: I can't answer that. I don't
7 know when I got it. And certainly they didn't notify
8 me that they were going to try to present it as
9 testimony.

10 Now, if they put in direct testimony, which
11 is what they're saying, the fact that Dale Lock files
12 direct testimony, says maybe there will be something
13 coming later, that doesn't equate in any way, shape or
14 form to me to all of a sudden get rebuttal testimony
15 that doesn't rebut anything. The filing of a
16 late-filed deposition exhibit doesn't give me notice
17 that we're going to be facing that as testimony in the
18 case. Because that's purely discovery materials that
19 I think that Staff asked for. I don't recall getting
20 it. I'm sure we've gotten it. I'm not contesting
21 that. But nothing put me on notice that this is going
22 to be testimony that I've got to prepare for and
23 question for the hearing. It's just different.

24 COMMISSIONER KIESLING: Okay. One more from
25 you and then I'm going to see what Staff has to say.

1 MR. HOFFMAN: Commissioner, the only thing
2 that I would add is that I think that Mr. Beck's whole
3 argument, he characterizes this whole thing as a sham
4 and, of course, we disagree with that. His whole
5 argument comes down to the fact that he's essentially
6 saying that had this testimony been styled as
7 supplemental direct, well then maybe it's okay. The
8 way they did Ms. Dismukes' testimony, which, of
9 course, they being the intervenor, they don't have any
10 direct or rebuttal. They only have what I would call
11 direct testimony. And I would submit to you that
12 that's a distinction without a difference. Because it
13 would end up in their hands on the same day. And to
14 the extent they needed some type of opportunity to
15 respond, they could have used it. Whether it was
16 called rebuttal -- and, again, we do believe it
17 rebutted those customers' comments -- or whether it
18 was called supplemental direct.

19 MS. O'SULLIVAN: Commissioner, in looking at
20 the testimony itself there's basically a few lines
21 mentioned rebutting customer testimony without naming
22 the customers, without naming the service hearing
23 where it was made. What you typically do in rebuttal
24 is list who you're rebutting, or at least discuss more
25 in detail. The rest of the testimony goes into great

1 detail into FAS 106. I think there's a great leap
2 made from the statement they are rebutting testimony
3 which suggests that SSU has inflated expenses in the
4 MFR projections to a very, very detailed updating of
5 FAS 106. Again, Staff would agree with OPC, the main
6 purpose of this was to increase the FAS 106, not rebut
7 other witnesses.

8 COMMISSIONER KIESLING: All right. And do
9 you have a recommendation then as to the Motion to
10 Strike?

11 MS. O'SULLIVAN: We recommend granting it.

12 COMMISSIONER KIESLING: Let me just ask one
13 more thing. Since I'm serving here as a Prehearing
14 Officer, is this one of those items that I could
15 preserve for the whole Commission to decide whether to
16 strike this or not, since at this point I have not had
17 an opportunity to read all of the testimony that is
18 being referred to. And, you know, I have some level
19 of concern about striking this if -- you know, if the
20 other Commissioners think that it would be useful.

21 MS. O'SULLIVAN: Certainly you could defer
22 that ruling. You could even take it up at the very
23 beginning of the technical hearing as a pending
24 matter.

25 COMMISSIONER KIESLING: All right. I

1 realize that doesn't help you much, but I mean I
2 haven't had a chance to read this yet. And -- I mean
3 I had read the motions, but I hadn't had the response
4 until just now when I started reading it. And I just
5 feel like I'm not prepared to be able to rule on that
6 right now. And --

7 MR. FEIL: Commissioner, if I may make a
8 suggestion. It's probably the most efficient thing
9 for you to do, to take it up at the beginning of the
10 technical hearing. That way if Mr. Broverman doesn't
11 need to show up, we'll know ahead of time rather than
12 bringing him here and then perhaps having his
13 testimony stricken.

14 COMMISSIONER KIESLING: No, I agree. If I
15 don't rule on it it will be one of the items I'll
16 indicate the whole panel needs to take up before we
17 begin taking evidence. I can only suggest even though
18 you have plenty to do, that you need to at least be
19 prepared to deal with that testimony if the Commission
20 votes to allow it. And, again, you know, I just don't
21 have time to get the answer to everything. And I hate
22 delaying ruling on a motion. That's not my style.
23 But I just don't feel like I can rule on this one.

24 MR. BECK: Thank you.

25 COMMISSIONER KIESLING: So that's how we'll

1 handle it.

2 So, how does that relate to Issue 103? This
3 issue is in here solely to deal with this testimony.

4 MS. O'SULLIVAN: I believe Ms. Lock also
5 testified.

6 COMMISSIONER KIESLING: Okay.

7 MS. O'SULLIVAN: I'm not sure it's the
8 Utility's issue.

9 MR. HOFFMAN: It's the Utility's issue.

10 COMMISSIONER KIESLING: Utility is saying
11 yes, OPC and Staff say no.

12 MS. O'SULLIVAN: Our position would be no.

13 COMMISSIONER KIESLING: It's as clear as it
14 can be. 104. Darn. Twomey is not here.

15 MS. O'SULLIVAN: That was --

16 COMMISSIONER KIESLING: I mean, I'm almost
17 inclined to strike this issue because I cannot even
18 understand what this issue is. And Mr. Twomey is not
19 here to clarify it. It's his issue and his only
20 answer is no. Does anyone have any insight into this
21 issue or what he was getting at or anything?

22 MS. O'SULLIVAN: I think it's the similar
23 problem with earlier issues, if the answer is yes,
24 then what? The issue just says are they reasonable
25 and prudent. If not, what's the penalty? What's the

1 reduction? What's the adjustment? That's not being
2 asked for as stated in their position.

3 COMMISSIONER KIESLING: Someone just
4 conveyed to Mr. Twomey again -- and I guess it's going
5 to be you, Mr. McLean, that unless we have a restated
6 issue that examines all of the repercussions of the
7 issue that's stated here, that I'm going to strike the
8 issue and -- if he can reword it and have it to us by
9 noon on Monday, then I allow the issue. I'll allow
10 all of the parties to give some kind of a response to
11 it.

12 MR. McLEAN: Yes, ma'am I'll advise him.

13 MR. FEIL: Commissioner, tentatively I
14 suppose our position could be yes. We don't know what
15 the issue is, as you've indicated.

16 COMMISSIONER KIESLING: Well, so you --

17 MR. FEIL: We have an objection to the issue
18 as stated.

19 COMMISSIONER KIESLING: And I'm indicating
20 that I have an objection to the issue as stated. So
21 it will be stricken unless there is a restatement of
22 the issue that satisfies the concerns that we've
23 discussed. And if there is a restated issue that I do
24 allow, you'll have some time from when you get it
25 to -- and I'll figure out what that time is after I

1 see it. I mean it all becomes then this, then this --
2 and I can't think that far ahead.

3 MR. McLEAN: If Twomey can get the issue
4 right, I can get him to fax it to SSU.

5 COMMISSIONER KIESLING: And Staff.

6 MR. McLEAN: And Staff, of course, try to
7 get it done before Monday.

8 COMMISSIONER KIESLING: That would be great.

9 MR. McLEAN: Try to get Twomey to do it
10 before Monday.

11 COMMISSIONER KIESLING: Good luck. 105, no
12 changes. I'm just going to keep on rolling. 106 any
13 changes?

14 MR. HOFFMAN: Commissioner, we submitted an
15 updated revised addition, one sentence addition, on
16 our positions on 105 and 106 and that was in writing.
17 Filed -- rather served today.

18 COMMISSIONER KEISLING: And OPC, your
19 response to 106 is as per your memo from the 16th.

20 MR. BECK: Yes.

21 COMMISSIONER KIESLING: Okay. And Staff has
22 no position.

23 MS. O'SULLIVAN: That's correct.

24 COMMISSIONER KIESLING: Okay. 107. OPC has
25 not taken a position. Are you agreeing with Staff?

1 MR. BECK: Yes, we agree with Staff.

2 COMMISSIONER KIESLING: Okay. 108. 109 is
3 there a stipulation?

4 MS. O'SULLIVAN: Let me double-check just
5 one moment.

6 Staff noticed that Staff's position, which
7 is agreeing with OPC, is that it should be reducing
8 property tax. However, the Utility is proposing
9 reduction to A&G expenses and there is a difference
10 there.

11 COMMISSIONER KIESLING: Okay. 109. Is that
12 just using -- do you need to make any changes to yours
13 in order to have the stipulation?

14 MR. HOFFMAN: We can stipulate to OPC's
15 position.

16 COMMISSIONER KIESLING: Yes, you can. Can
17 you?

18 MR. HOFFMAN: Yes, we can. I'm saying that
19 we can.

20 COMMISSIONER KIESLING: And if they can, can
21 you?

22 MS. O'SULLIVAN: Yes.

23 COMMISSIONER KEISLING: 110. Staff.

24 MS. O'SULLIVAN: We have a revision.

25 COMMISSIONER KIESLING: Let's see, 110 is

1 one of the ones that has been updated by SSU. OPC any
2 changes? No. Then Staff.

3 MS. O'SULLIVAN: Yes, Commissioner.

4 COMMISSIONER KIESLING: What's your answer
5 now?

6 MS. O'SULLIVAN: I'll restate it since it's
7 pretty much crossing out what we have right there.
8 "The amount of the parent debt adjustment (PDA) is
9 dependent on the resolution of other issues. PDA
10 should be allocated to the individual plan basis."

11 COMMISSIONER KEISLING: 111. OPC has no
12 position and SSU has revised. Still no position.

13 MR. BECK: That's correct.

14 COMMISSIONER KIESLING: For Staff. No
15 position at all.

16 MR. BECK: Yes.

17 COMMISSIONER KIESLING: 112, has been
18 revised by SSU. Any position OPC?

19 MR. BECK: No.

20 COMMISSIONER KIESLING: 113 has also been
21 revised.

22 MS. O'SULLIVAN: Back to 112 for just a
23 second. We have a small change to our position.

24 The second sentence beginning on the third
25 line should read, regarding the proper amount, "No

1 position pending receipt of other --

2 COMMISSIONER KIESLING: Receipt of.

3 MS. O'SULLIVAN: Crossing out "review"
4 replacing "receipt" of discovery received.

5 MS. O'SULLIVAN: Thank you.

6 COMMISSIONER KIESLING: 113 has been revised
7 by SSU, their position has. Has OPC got a position?

8 MR. BECK: No, we do not.

9 MS. O'SULLIVAN: Staff has revised their
10 position. Basically flipping around the sentences.
11 "The appropriate amount of federal income tax expense
12 is dependent upon further discovery and the resolution
13 of other issues. However, income tax expense should
14 be reduced for state income tax, which are zero
15 because of state net operating loss carry forwards."

16 COMMISSIONER KEISLING: 114. Has been
17 revised by SSU. OPC any position.

18 MR. BECK: No, Commissioner.

19 COMMISSIONER KIESLING: Staff any change to
20 yours?

21 MS. O'SULLIVAN: No.

22 COMMISSIONER KIESLING: The 115. I had some
23 trouble trying to understand the wording of it. Have
24 you had any success in trying to make -- use words
25 that I can understand?

1 MS. O'SULLIVAN: I think if we cross a few
2 words out.

3 COMMISSIONER KIESLING: Which ones should we
4 cross it?

5 MS. O'SULLIVAN: Cross out first line "a
6 total PSC jurisdictional or individual."

7 COMMISSIONER KIESLING: So it's just going
8 to be "Should SSU revenue requirements be calculated
9 on plant-specific basis?"

10 MS. O'SULLIVAN: Correct.

11 COMMISSIONER KIESLING: Not a plant.

12 MS. O'SULLIVAN: On a plant-specific basis.
13 Yes. Staff's position would be yes to that answer.

14 COMMISSIONER KIESLING: SSU's position is
15 yes. I mean you haven't revised it but you also
16 didn't put a yes or no, so I'm just inserting a yes
17 for you in front of yours. OPC any position?

18 MR. BECK: No.

19 COMMISSIONER KEISLING: 116. Is a fallout.
20 SSU has begin us a revised one. OPC has not taken a
21 position but it's a fallout, so --

22 COMMISSIONER KIESLING: 117. Any changes?
23 OPC.

24 MR. BECK: No position.

25 COMMISSIONER KIESLING: No position. 118.

1 Any Staff position yet?

2 MS. O'SULLIVAN: Staff has a position. I
3 think we passed this one out.

4 COMMISSIONER KIESLING: Pardon?

5 MS. O'SULLIVAN: Passed a copy of that one
6 out to the parties. Shall I read it into the record?

7 COMMISSIONER KIESLING: Well, it's been
8 passed out I think we've all got it. I'm willing to
9 not read it unless you all haven't read it.

10 COMMISSIONER KIESLING: 119. OPC do you
11 have any position on this, yes or no?

12 MR. BECK: On 119. I think that was in our
13 memo and Issue 122 in the memo.

14 MS. O'SULLIVAN: They did provide us with a
15 position.

16 COMMISSIONER KIESLING: The answer was yes.

17 MR. BECK: Yes.

18 COMMISSIONER KIESLING: Which way, up or
19 down? I mean, you know, --

20 MR. BECK: I think Ms. Dismukes has a
21 proposal on changing the base facility charge and
22 gallonage and proportions and I believe that's what
23 that would refer to.

24 COMMISSIONER KIESLING: Okay. Is there any
25 way you could have that by Monday at noon, just let us

1 know which way you think it would be adjusted, up or
2 down?

3 MR. BECK: We'll endeavor to do that.

4 COMMISSIONER KIESLING: OPC any position?
5 That's bulk rates.

6 COMMISSIONER KIESLING: 120, any position?

7 MR. BECK: No position. I think also on 119
8 we'd like to take no position at this time.

9 COMMISSIONER KIESLING: Okay. Instead of
10 yes then?

11 MR. BECK: That's correct.

12 COMMISSIONER KEISLING: Okay. So noted.
13 121.

14 MR. FEIL: Commissioner, on Issue 121 SSU's
15 position should state "Not at this time." With the
16 remainder of what is there stricken, except for
17 witnesses are still Kowalsky and Ludsen.

18 COMMISSIONER KIESLING: Okay. Any OPC
19 position on this one?

20 MR. McLEAN: No position.

21 COMMISSIONER KEISLING: Okay. 122. I
22 needed a little bit of clarification on SSU's and
23 you've given it to me. So it's marked as revised.
24 OPC no position?

25 MR. McLEAN: I thought our testimony

1 addressed that. These cases merge after a while. I
2 know we had testimony about that in several recent
3 cases.

4 COMMISSIONER KIESLING: You may but you
5 didn't take a position in your prehearing, so that's
6 all I'm trying to do is find out if you have a
7 position.

8 MR. McLEAN: I'm trying to imagine whether
9 we do or not. I think I had better get back to you
10 before Monday on that one, or before Monday noon.

11 COMMISSIONER KIESLING: Okay. If you're
12 going to take a position just get it in on Monday by
13 noon.

14 MR. McLEAN: Yes, ma'am.

15 MR. FEIL: Commissioner, so you're advised
16 we might have a minor change to our wording on but
17 Issue 122, that will be a Monday submittal.

18 COMMISSIONER KEISLING: Okay. All right. I
19 have a problem with Issue 124 as stated. Is there any
20 proposed rewording of it?

21 MS. O'SULLIVAN: Could I go back to 123's
22 position briefly for Staff. I'm sorry.

23 COMMISSIONER KIESLING: Yes.

24 MS. O'SULLIVAN: The last sentence of the
25 paragraph at the beginning of Staff's position.

1 Should have the phrase in front of it, "If a revenue
2 increase is granted, --"

3 COMMISSIONER KEISLING: The following --

4 MS. O'SULLIVAN: Right. Thank you.

5 COMMISSIONER KEISLING: All right. 124. Is
6 there anything from Staff on this?

7 MS. O'SULLIVAN: No, we have not changed our
8 position.

9 COMMISSIONER KIESLING: Well, then all I can
10 say is I don't believe that setting goals and
11 objectives is part of this proceeding, and unless we
12 can reword --

13 MS. O'SULLIVAN: We could reword the issue
14 itself.

15 COMMISSIONER KIESLING: That's what I'm
16 asking.

17 MS. O'SULLIVAN: I'm sorry. We could reword
18 it to make clear what goals and objectives the
19 Commission should consider for rate structure for SSU
20 in particular. Is that what your concern lies towards
21 is that it's too generic in its policy setting.

22 COMMISSIONER KIESLING: Yeah. What it says
23 right now is "What goals and objectives of the
24 Commission are appropriate to consider?" I mean this
25 Commission may have hundreds of goals and objectives,

1 and I don't know any way that, you know, the parties
2 can sort through or the Commissioners can sort through
3 to try to figure out which ones are appropriate to
4 consider. So that's my problem.

5 MR. HILL: Commissioner, if I may try to
6 clarify. Perhaps it's poorly worded. I made this an
7 issue specifically because our analysis in this case,
8 the work that we do in formulating our professional
9 opinion in making a recommendation, will include an
10 evaluation of how the various rate structures mesh
11 with the Commission's policies, goals and objectives.
12 And I certainly didn't want to get to the end of the
13 proceeding and have the parties say they had no idea
14 that that was going to be a part of the analysis. And
15 so we felt that an issue specifically on that would
16 allow the parties to say, "Yes, these are goals and
17 objectives." "No, they aren't. We think they should
18 be considered and should not." And that's
19 specifically why it is here. Just an overabundance of
20 caution to put everyone on notice as to what our
21 analysis will include.

22 COMMISSIONER KIESLING: Is it possible to
23 reword it something like "What factors should the
24 Commission consider in deciding the -- in determining
25 the appropriate rate structure and service

1 availability charges?" No? Okay. Somebody help.

2 MS. JABER: I think, Commissioner, when we
3 looked at that yesterday, quite frankly, we went to
4 the dictionary and we went to the Thesaurus. Factors
5 are different. Factors are subparts, they are
6 elements that go into looking at something before you
7 make a final determination. Goals and objectives are
8 a term of art that -- how can I describe it? Do you
9 remember what some of the words were, Chuck, that we
10 came across? Goals and objectives are something like
11 ensuring financial viability of a utility. They are
12 like ensuring that customers don't go through rate
13 shock. Factors are contribution levels.

14 COMMISSIONER KEISLING: Okay. I guess where
15 my concern comes in is it would seem to me that before
16 I would want -- as a Commissioner before I would want
17 a goal or an objective attributed to me, I would have
18 liked to have had some proceeding where I made a
19 decision that that was a goal, and what objectives I
20 was going to engage in to try to reach that goal.

21 MS. JABER: Exactly. And that's what we're
22 trying to do with this issue.

23 Believe it or not this issue was actually at
24 the suggestion of the Commission. I don't mean to
25 imply the wording of the issue or the focus of the

1 issue, but this was, I think -- Mr. Hill can correct
2 me if I'm wrong -- but it first came about in a
3 separate docket, a more generic kind of a docket,
4 where the Commission at that time said, well, if
5 you're going to look at specific things involving
6 utilities, you need to do it within the context of
7 rate cases. And that's what this is all about. We do
8 have suggested rewording if you want me to read it
9 out.

10 COMMISSIONER KIESLING: I'd love to hear it.

11 MS. JABER: "For SSU, what goals and
12 objectives should the Commission consider in
13 determining the appropriate rate structure and service
14 availability charges?"

15 COMMISSIONER KIESLING: All it does is move
16 "for SSU" to the beginning.

17 MS. JABER: And making it clear that the
18 Commission would consider -- the Commission has to
19 consider what its goals and objectives are.

20 COMMISSIONER KIESLING: Okay. As opposed to
21 what's here, which makes it sound like we have goals
22 and objectives --

23 MS. JABER: Exactly.

24 COMMISSIONER KEISLING: -- and we're just
25 deciding among them as to which is appropriate.

1 MS. JABER: Exactly.

2 COMMISSIONER KEISLING: That's my concern.

3 MS. JABER: That's what I'm attempting to do
4 and we could certainly work on the language if that's
5 not to everyone's satisfaction. But that's exactly
6 the intent. The Commission needs to set the goals and
7 objectives for this utility for this docket. Do you
8 want me to try reading that again?

9 COMMISSIONER KIESLING: Sure.

10 MS. JABER: "For SSU, what goals and
11 objectives should the Commission consider in
12 determining the appropriate rate structure and service
13 availability charges?"

14 COMMISSIONER KIESLING: I still am pretty
15 hesitant on that one, but --

16 MS. JABER: What about putting in
17 parenthesis after "goals and objectives", a "for
18 example," taking something out of Greg Shafer's
19 testimony.

20 COMMISSIONER KIESLING: Or Beecher's, since
21 you also cite to Beecher's testimony.

22 MS. JABER: Well, actually Witness Beecher
23 is more on a national scope. I don't think she ever
24 uses the words "goals and objectives" but Witness
25 Shafer does say, for example, "you could look at the

1 following" and some of those things are safe and
2 efficient service at an affordable price, resource
3 protection, financially healthy and independent
4 utility, regulatory inefficiency,

5 COMMISSIONER KIESLING: That's fine. I
6 mean, that sounds more like a list of criteria that we
7 need to weigh and balance in deciding appropriate rate
8 structure. And I can live with that.

9 MS. JABER: So the way I've reworded the
10 issue, if I put in parenthesis what I just read to
11 you --

12 COMMISSIONER KIESLING: Let me ask you this,
13 if we were to call it "What criteria and standards
14 should the Commission consider in determining the
15 appropriate rate structure and service availability
16 charges," does that do it?

17 MS. JABER: No. It may be semantics.
18 Again, goals and objectives are a term of art.

19 COMMISSIONER KIESLING: I know that. My
20 problem is that within management kinds of
21 publications and articles, setting goals and
22 objectives is a specific kind of process also. And so
23 I'm having trouble separating the process, or lack of
24 such a process, from your use of it as a term of art
25 in some other kind of discipline. I mean who is it a

1 term of art for?

2 MS. JABER: Just in management and business.

3 It's a business term.

4 COMMISSIONER KIESLING: I know. But if I
5 understand what happens in management and business is
6 that, you know, you set out to adopt a set of goals.
7 Then once you adopt those goals you go back and you
8 look at all of the possibilities and adopt objectives
9 for how to get to those goals, etcetera, etcetera.

10 MS. JABER: And I think that's what Staff is
11 saying.

12 COMMISSIONER KIESLING: That we have to go
13 through that entire process in this case?

14 MS. JABER: I think that Staff is suggesting
15 that you may need to do that in this case.

16 COMMISSIONER KIESLING: Well, let me just
17 tell you then, the very best I'm going to give you is
18 bringing this up at the beginning of the technical
19 hearing because that is so far beyond what I think
20 we're doing in this case that, you know, either I
21 don't understand what we're doing in this case or
22 other Commissioners will find it equally of concern.
23 But I'm willing to leave it in only tentatively at
24 this point until we can --

25 MS. JABER: Beginning of the hearing.

1 COMMISSIONER KIESLING: Yeah.

2 MS. JABER: Thank you. And the one thing I
3 do want to bring to your attention to emphasize our
4 intent here, is separating it out as an issue like
5 this gives the parties the opportunity to say, "No,
6 Commission. These should be your goals, these should
7 be your objectives." And I understand that you don't
8 agree with those words, but that is the intent. I
9 think we could have easily combined this with the rate
10 structure issue but that would have served no one any
11 purpose.

12 COMMISSIONER KIESLING: Okay. I would
13 suggest that you go ahead and at least use the
14 rewording that you did suggest in this tentative
15 issue, but indicate that it's not a firm issue until
16 the entire Commission says -- or a majority of the
17 Commission says they want it as an issue stated in
18 that way.

19 MS. JABER: Thank you, Commissioner.

20 COMMISSIONER KIESLING: Can SSU -- you have
21 formulated a position. How, I don't know, but you
22 did. Do you have any changes, corrections, etcetera
23 to that? No?

24 MR. HOFFMAN: No.

25 COMMISSIONER KIESLING: All right. OPC you

1 didn't take any position and since --

2 MR. McLEAN: We have entirely too many dogs
3 in that fight.

4 COMMISSIONER KIESLING: You have too many
5 dogs. That's what I was trying to figure out. I
6 understand rate structure has a number of components
7 and certainly service availability charges is
8 something that you are involved with. So have you got
9 a suggestion on what you might do with that issue if
10 it stays in? Because --

11 MR. McLEAN: I'm reasonably certain we won't
12 take a position on it.

13 COMMISSIONER KIESLING: No position.

14 MR. McLEAN: Which is what I meant to say.

15 COMMISSIONER KIESLING: Okay. Is Staff
16 going to enlarge upon its position in any way?

17 MS. O'SULLIVAN: In 124?

18 COMMISSIONER KIESLING: Yeah.

19 MS. O'SULLIVAN: I think we may, dependent
20 upon the rewording of the issue.

21 MS. JABER: It will be done by Monday if we
22 have a reword, Commissioner.

23 COMMISSIONER KIESLING: Okay. 125, any
24 changes?

25 MS. O'SULLIVAN: No.

1 COMMISSIONER KIESLING: None to Staff. 126.
2 No changes.
3 127 is a fallout issue and SSU has filed a
4 revised --
5 MS. O'SULLIVAN: Staff is revised as well.
6 Strike that position and instead state "The rates are
7 dependent upon the resolution of other issues."
8 COMMISSIONER KIESLING: I'm sorry, the rates
9 are dependent upon the --
10 MS. O'SULLIVAN: -- the resolution of other
11 issues.
12 COMMISSIONER KIESLING: Okay. 128. Any
13 position from OPC on that? I'm assuming no, but --
14 MR. BECK: That's correct.
15 COMMISSIONER KEISLING: Staff, any change in
16 your position on 128?
17 MS. O'SULLIVAN: No, Commissioner.
18 COMMISSIONER KIESLING: 129 is another
19 fallout. We have a revised from SSU. I'm assuming we
20 have no position from OPC.
21 MR. FEIL: Commissioner, on 129 I noticed at
22 the bottom there we cross-reference Issue 122, and I
23 assume the numbering of the issues is going to change
24 so that cross-reference may have to change as a
25 result.

1 COMMISSIONER KIESLING: The numbering of the
2 issues as they are set out in --

3 MR. FEIL: Here. Are we going to maintain
4 this number?

5 COMMISSIONER KIESLING: Yes. We're
6 maintaining these numbers.

7 MR. FEIL: Then that's not a problem.

8 COMMISSIONER KIESLING: Okay. Anything from
9 Staff on 129? If not, 130, is there a stipulation?
10 Says there may be.

11 MS. O'SULLIVAN: I think at this point we
12 probably cannot stipulate to that.

13 COMMISSIONER KEISLING: Fallout. Fallout?
14 That's going to be the position?

15 MS. O'SULLIVAN: Yes.

16 COMMISSIONER KEISLING: Okay. 131.
17 Anything from OPC on this one? No position.

18 MR. McLEAN: No position.

19 COMMISSIONER KIESLING: 132 has been revised
20 by SSU. This is service availability charges.
21 Anything from OPC on that one?

22 MR. McLEAN: No position.

23 COMMISSIONER KEISLING: 133. No change?
24 SSU's revised. Nothing from OPC.

25 MR. McLEAN: No position.

1 COMMISSIONER KIESLING: And Staff has a
2 position on this one. No, it's the next one.

3 MS. O'SULLIVAN: That's correct. Next one.

4 COMMISSIONER KEISLING: Okay. 134. This is
5 another Marco one that I don't know that I understand
6 but --

7 MS. O'SULLIVAN: We took a shot at it.

8 COMMISSIONER KIESLING: Took a shot at it.

9 MS. O'SULLIVAN: We have passed out the
10 deposition. It's pretty lengthy.

11 COMMISSIONER KIESLING: And has SSU taken a
12 position or are you objecting to this issue or what
13 are you doing?

14 MR. HOFFMAN: We're going to be submitting a
15 position.

16 COMMISSIONER KIESLING: Okay.

17 MR. McLEAN: OPC has no position.

18 COMMISSIONER KIESLING: No position. And
19 Staff? I won't make you read it into the record.
20 We'll just go with what you've already submitted in
21 writing.

22 135. Yes or no SSU?

23 MR. FEIL: SSU is going to have to revise
24 its position obviously. The position should say "Yes.
25 The changes should be segregated between the --" I'm

1 sorry, I'm reading somebody else's handwriting.

2 COMMISSIONER KIESLING: Why don't you just
3 turn it in.

4 MR. FEIL: I'll turn it in Monday.

5 COMMISSIONER KIESLING: OPC, any position on
6 135?

7 MR. McLEAN: No position.

8 COMMISSIONER KIESLING: Any change from
9 Staff on 136?

10 MS. O'SULLIVAN: No. I mean on 135. 136
11 any change for SSU? Or OPC is no position.

12 MR. McLEAN: Correct.

13 COMMISSIONER KIESLING: No change from
14 Staff. 137. No position OPC?

15 MR. McLEAN: Correct.

16 COMMISSIONER KEISLING: I'll keep assuming
17 that until you tell me differently.

18 MR. McLEAN: Good idea. Thank you.

19 COMMISSIONER KIESLING: 138 is a fallout
20 issue. We do have a revised from SSU and no position
21 from OPC: And no change for Staff.

22 139 is the one that we've -- that Mr. Twomey
23 withdrew, so the Staff position that's in here we
24 don't need.

25 MS. O'SULLIVAN: I assume he withdrew it.

1 COMMISSIONER KIESLING: That's what he said.

2 MS. O'SULLIVAN: Delete that.

3 COMMISSIONER KEISLING: Drop that issue.

4 140. 141. I'm just going through. Anybody that has
5 got anything, let me know.

6 MR. FEIL: 141 SSU can stipulate to Staff's
7 position.

8 MS. O'SULLIVAN: We have a slight addition
9 to our position that should change that. We just
10 wanted to add reference to a rule at the end of our
11 position, "comma, pursuant to Rule 25-30.434(4)
12 Florida Administrative Code."

13 COMMISSIONER KEISLING: Okay. Still okay
14 SSU?

15 MR. FEIL: Can you give us a moment to check
16 the rule and we'll come back to it. What was the rule
17 cite again?

18 MS. O'SULLIVAN: 25-30.434(4)

19 COMMISSIONER KIESLING: It's the rule on
20 AFUDC.

21 MS. O'SULLIVAN: Right. I'm sorry, FPI.

22 COMMISSIONER KIESLING: Yes. What? Where
23 are you? Somebody said "Commissioner". Okay.

24 You look at that and then you let me know if
25 you still agree with Staff. OPC, any position?

1 MR. McLEAN: No, ma'am. No position.

2 COMMISSIONER KEISLING: 142. No position
3 for OPC.

4 MR. BECK: Our position is yes.

5 COMMISSIONER KIESLING: Oh. You have a
6 position. Okay. Yes. Any Other changes?

7 MS. O'SULLIVAN: Are we on 142?

8 COMMISSIONER KEISLING: We're on 142.

9 MS. O'SULLIVAN: Staff has a new position.
10 We provided it. It's fairly short. "Through further
11 development of the record, if it is --"

12 COMMISSIONER KIESLING: I've found it.
13 We'll do it consistent with what you've already filed.

14 143. I don't have a clue what this issue is
15 about other than what I was able to ascertain when I
16 first saw it, which is that apparently there was a
17 customer at a customer hearing who complained about
18 something. Other than that, can you tell me what this
19 issue is and why it is here? It's got to be your
20 issue.

21 MR. BECK: This is a customer who addressed
22 the Commission at Marco Island. The Staff, I believe,
23 began an investigation. I received a letter from a
24 Staff engineer transferring the case to us, and
25 subsequently about a week later Ms. Jaber sent a

1 letter to the customer saying Staff was going to
2 handle it in the quality of service portion of the
3 hearing. And that's what I think led to this issue
4 being here.

5 COMMISSIONER KIESLING: Okay.

6 MS. O'SULLIVAN: Commissioner, Staff
7 provided the information to Public Counsel, I believe,
8 I'm not quite sure the exact circumstances, but we did
9 clarify we do not mean to make it a separate
10 complaint.

11 OPC has requested that it be an issue in
12 this docket apparently because Mr. Gross is not
13 satisfied with the resolution that's been suggested by
14 the Utility; that he be required to pay for the
15 gallons which registered in December of '95.

16 COMMISSIONER KIESLING: Why aren't we just
17 dealing with it through our regular complaint process?
18 I mean --

19 MS. O'SULLIVAN: That is a possibility.

20 COMMISSIONER KIESLING: That's what I'm
21 trying to understand. Is this an OPC issue?

22 MR. BECK: It's a long tortured history.

23 COMMISSIONER KIESLING: It may be.

24 MR. BECK: I think the complaint process may
25 be fine for handling it.

1 COMMISSIONER KEISLING: I mean I just don't
2 want to introduce a complaint process into this
3 that --

4 MR. BECK: If Staff would take Dr. Gross's
5 complaint and deal with it in that fashion that would
6 be fine I believe.

7 COMMISSIONER KIESLING: Has Dr. Gross filed
8 a complaint?

9 MR. BECK: I think he has been led to
10 believe that it would be handled in this case.

11 MS. JABER: Commissioner, we can open up a
12 docket Monday or Tuesday.

13 COMMISSIONER KIESLING: Okay.

14 MS. JABER: To deal with it.

15 COMMISSIONER KIESLING: Through Complaints.
16 You can open up a complaint.

17 MS. JABER: Yes.

18 COMMISSIONER KIESLING: Okay. And if
19 Complaints needs any more information, I'm sure they
20 can get it from Dr. Gross.

21 MR. BECK: Yes.

22 COMMISSIONER KIESLING: Okay. Then 143 is
23 not going to be an issue here. It will get dealt with
24 through the regular complaints process.

25 144. Anything from OPC on this one?

1 MR. BECK: No position.

2 COMMISSIONER KIESLING: Okay. Nothing from
3 Staff on 144.

4 MS. O'SULLIVAN: No, Commissioner.

5 COMMISSIONER KIESLING: 145.

6 MR. FEIL: Commissioner, intuitively I
7 wouldn't think it would be appropriate to list
8 witnesses on what's going to be a legal issue,
9 although those witnesses do testify concerning that
10 subject matter. And there's an issue earlier on in
11 the Prehearing Order that deals with that. It doesn't
12 seem to me to make sense to list them as witnesses on
13 what is defined as a legal issue.

14 COMMISSIONER KIESLING: That's what I had
15 marked on here, too, as well. I didn't know if any of
16 them were lawyers and if they were going to be
17 testifying as to the legal issue or why you had
18 witnesses listed there.

19 MR. FEIL: They do rely on the law, however,
20 in their testimony.

21 COMMISSIONER KIESLING: They rely on their
22 interpretation of the law.

23 MR. FEIL: Yes, ma'am.

24 COMMISSIONER KIESLING: Okay. I'll delete
25 them as witnesses as to the legal issue, although I

1 recognize they will be testifying based on their
2 understanding of those statutes, one of which is
3 primarily within their jurisdiction, or authority, and
4 one of which is primarily in ours. So to the extent
5 that we may have a difference of opinion, I don't know
6 how we'll resolve that.

7 146. Legal issue 146. We reworded that one
8 after speaking with Mr. Twomey, and that's it.

9 MS. O'SULLIVAN: I have just a couple little
10 things to fix, if you want to go back to the ones we
11 left behind.

12 COMMISSIONER KEISLING: And then we have, I
13 think, one or two from somebody.

14 MR. BECK: We have one.

15 MR. FEIL: Commissioner, I did want to
16 address just one thing with respect to 146, even
17 though Mr. Twomey is not here. He has posited it as a
18 constitutional issue. I'm assuming he has done that
19 to preserve some sort of right of appeal.

20 SSU doesn't intend to brief a constitutional
21 issue --

22 COMMISSIONER KIESLING: I agree.

23 MR. FEIL: -- since the Commission doesn't
24 have jurisdiction to decide it.

25 COMMISSIONER KIESLING: Obviously. The only

1 purpose for even bringing it up would be to have the
2 opportunity to make your record and bring it up on
3 appeal.

4 MR. FEIL: Commissioner, with respect to one
5 of the issues we're supposed to go back to on AFUDC.

6 COMMISSIONER KIESLING: Which number?

7 MR. FEIL: 141. We can stipulate to Staff's
8 position but the rule that Ms. O'Sullivan cited was
9 the AFPI rule, not AFUDC rule. So if the reference is
10 corrected to 25-30.116.

11 MS. O'SULLIVAN: That's the correct
12 reference. Yes. We've corrected that.

13 COMMISSIONER KEISLING: Okay. And then with
14 that -- okay, that takes care of that one.

15 Let me go back here to the paper clipped
16 ones quickly before we get to the witnesses.

17 40 is one that I still have outstanding.
18 Has there been anything reworded on 40?

19 MS. O'SULLIVAN: Yes, commissioner, we've
20 got a proposed rewording of the issue. The issue
21 should now be worded "Should iron filtration equipment
22 be considered water treatment plant? And if so,
23 what's the appropriate used and useful percentage?"

24 COMMISSIONER KEISLING: So you are leaving
25 out from consideration in Issue 40 RO and lime

1 softening.

2 MR. FEIL: That's correct. The wording we
3 agreed to focused in just on iron filtration
4 equipment. That was the only issue. And SSU will
5 submit a position Monday noon.

6 MS. O'SULLIVAN: Staff's position would be
7 yes.

8 COMMISSIONER KIESLING: And OPC, you have a
9 problem with the rewording. And if you do, tell me
10 now.

11 MR. McLEAN: No problem with the rewording
12 of the issue.

13 MR. BECK: We may need to change our
14 position.

15 COMMISSIONER KIESLING: That's what it
16 looked like, you might need to. So I'll just put you
17 down to revise it on Monday with everybody else.

18 MS. O'SULLIVAN: Commissioner, I have a
19 correction to a Staff position on Issue 127.

20 We had previously reworded the issue. We'd
21 like to go back to our original statement of "No
22 position pending further development of the record."
23 I think I was looking at the wrong issue when I gave
24 you that one.

25 COMMISSIONER KIESLING: Okay.

1 MS. O'SULLIVAN: That's square one on that
2 one. Thank you.

3 COMMISSIONER KIESLING: I still had a clip
4 on Issue 51 that -- is there anything else I need to
5 do with that until we get the updates?

6 MS.O'SULLIVAN: I think 51 we fixed.

7 COMMISSIONER KIESLING: You're right.
8 You're right. I'm sorry. I didn't pull the clip off.

9 MS. O'SULLIVAN: We have one on 65 we need
10 to go back and correct as well.

11 COMMISSIONER KIESLING: Position or
12 rewording?

13 MS. O'SULLIVAN: Rewording of the issue.

14 COMMISSIONER KIESLING: Okay.

15 MS. O'SULLIVAN: We were I think trying to
16 clarify the issue. I think we may have gone too
17 narrowly on that. We had added the phrase
18 "adjustments to gain on sale." And we notice that
19 some parties' positions talked about more than
20 adjustments to gain on sale. So we'd like to strike
21 that.

22 COMMISSIONER KIESLING: So the issue should
23 go back to "question mark" after "structure".

24 MS. O'SULLIVAN: That's correct.

25 COMMISSIONER KIESLING: And delete "for

1 gains on sale."

2 MS. O'SULLIVAN: We would be striking that.

3 COMMISSIONER KIESLING: I said delete.

4 MS. O'SULLIVAN: Okay. Sorry.

5 COMMISSIONER KIESLING: That's okay. And it
6 doesn't make anyone's position. Okay. Sorry I keep
7 hitting the mike.

8 71. There was a question of whether this
9 one was going to be stipulated or not. Did we finally
10 stipulate it?

11 MR. FEIL: Commissioner, it's my
12 understanding that we can agree to stipulate to
13 Staff's wording with the understanding that we're
14 talking about projected test year revenues before any
15 rate increase in this case. Staff is nodding yes.

16 MS. O'SULLIVAN: That's correct. You are
17 correct, sir.

18 COMMISSIONER KIESLING: Then OPC you agreed
19 with Staff so this is now a stipulated issue.

20 MR. BECK: Yes.

21 COMMISSIONER KIESLING: Okay. 75 I still
22 had some questions on, anything -- or is that just
23 going to happen by Monday?

24 MR. McLEAN: Yes, ma'am, that's for Monday
25 noon, Dismukes and Twomey.

1 COMMISSIONER KEISLING: Okay. 85, that was
2 also one you were going to consult with Ms. Dismukes
3 on.

4 100. That was another one. And I think
5 that's all the others that I had clipped.

6 Are there any other issues we need to talk
7 about before we spend the last seven minutes on
8 exhibit list?

9 MR. BECK: Yes. We wish to add an issue
10 concerning the Palm Coast.

11 COMMISSIONER KEISLING: And you've already
12 turned that in somewhere.

13 MR. BECK: Yes.

14 MS. O'SULLIVAN: It was the last page of
15 their issue filing.

16 COMMISSIONER KIESLING: Okay. Why don't I
17 first find out if there's any objection to this issue.
18 And then if there is, we'll figure out where to go
19 from there. Yes, SSU objects to this issue.

20 MR. HOFFMAN: Madam Chair, we don't have a
21 copy of that document. We weren't served with a copy
22 of that document.

23 COMMISSIONER KIESLING: You're right. It
24 just went to Ms. O'Sullivan.

25 MR. BECK: Yes.

1 COMMISSIONER KIESLING: So have you served
2 in any way a copy of your proposed new issue to SSU?

3 MR. BECK: I had not. It was an oversight.
4 But I did not.

5 MR. FEIL: As Mr. Beck said earlier, he did
6 hand deliver to us, when we came in this morning, the
7 proposed supplemental testimony but we don't have a
8 motion or --

9 MR. BECK: And this goes back to the request
10 for Ms. Dismukes Third Supplemental Testimony, we've
11 made the oral motion and this would be the issue that
12 accompanies that.

13 COMMISSIONER KEISLING: Okay. And the issue
14 you're proposing is "Should the Commission allocate a
15 portion of the company's overhead cost to the
16 facilities at Palm Coast which an affiliate of
17 Southern States has the option to purchase?"

18 MR. BECK: Yes.

19 COMMISSIONER KIESLING: All right. Staff,
20 do you have any position on that proposed issue and
21 whether it's appropriate at this time?

22 MS. O'SULLIVAN: We could have a position.
23 I think our position, and I guess our stance on the
24 issue, is that it is very speculative, both in terms
25 of when the purchase will take place and the

1 affiliated party involved. We're not sure how you
2 could possibly include that in the overhead costs when
3 it hasn't occurred yet.

4 COMMISSIONER KIESLING: I kind of have some
5 of those same kind of questions. Why don't I hear
6 from SSU and then we'll have a quick discussion about
7 what this -- what inclusion of this issue could
8 possibly add to this case.

9 MR. HOFFMAN: Commissioner, our intention
10 was to have an opportunity to further review the
11 proposed Third Supplemental Testimony of Ms. Dismukes
12 and to file a response, hopefully, by the end of the
13 day on Monday, maybe sooner in the day on Monday.

14 COMMISSIONER KEISLING: Okay.

15 MR. HOFFMAN: At this time we would reserve
16 the objection to the inclusion of the issue until we
17 have had an opportunity to study it further.

18 COMMISSIONER KEISLING: Let me see if I
19 understand. I understand you have not even reviewed
20 Ms. Dismukes' testimony. I'm still looking at kind of
21 the base level things of is this relevant? Is it
22 probative of any issue in this proceeding? Is it
23 material? Is it speculative? And can I assume that
24 by reserving your opportunity you're not waiving any
25 of those objections?

1 MR. HOFFMAN: You can assume, Commissioner
2 Kiesling, that we object to the inclusion of the
3 issue, and if you don't rule on it today, that we will
4 expound on that objection on Monday.

5 COMMISSIONER KEISLING: Mr. Beck, why don't
6 you deal with speculative first since I don't know any
7 more about this transaction than what I have heard
8 here. Some affiliate of Southern States --

9 MR. BECK: Commissioner, we have, on a
10 number of times, asked Southern States about their
11 anticipated purchase and sales of utility systems.
12 I'm not trying to -- facilities, whatever, and have
13 gotten back "No, no."

14 It was approximately the beginning of last
15 week that we said well, Southern States isn't
16 purchasing any facilities, but we'd like you to know
17 an affiliate of Southern States has acquired an option
18 to purchase Palm Coast.

19 Whether or not it's speculative or so forth
20 I think would be something that the witnesses would
21 address and would question Southern States witnesses
22 about it. I'm sure that would be an issue on it.
23 Nonetheless, there's a forecasted test year with a
24 large amount of overheads that get allocated to
25 various systems. Whether or not this system is

1 included will have a very large affect on the rates
2 that are charged to customers. If you allocate a
3 portion of the overheads, because this is a forecasted
4 test year, it will change the rates customers pay.

5 COMMISSIONER KIESLING: Let me ask this:
6 Does SSU hold the option to purchase? Can they
7 exercise that option?

8 MR. BECK: My understanding, it is an
9 affiliate of SSU. And we would have to develop
10 evidence -- again, we had no opportunity to do this
11 because it didn't happen until just this month. But
12 we would have to develop evidence during the hearing
13 regarding that.

14 Let me be up front about this, I would
15 anticipate asking for leave to question some Southern
16 States witnesses about that issue.

17 COMMISSIONER KEISLING: I am going go strike
18 the issue. And if you get more information that
19 indicates that, you know, that it is something that is
20 going to happen -- is going to happen during this test
21 year -- and that SSU is going to do it, then fine. If
22 after this case and after this projected test year, if
23 it turns out that something does happen, you do have
24 evidence to bring that up. I simply -- this is too
25 complicated a proceeding at this point to also go into

1 things that are purely speculative, and are only at
2 this point tangentially tied to SSU.

3 MR. BECK: Without any offense, I wonder if
4 we could raise this with the full Commission.

5 This is a large adjustment. I think it
6 would be very unfair to customers to allow Southern
7 States to purchase this system.

8 COMMISSIONER KIESLING: But you see, this is
9 where my problem comes in: SSU is not purchasing this
10 system.

11 MR. BECK: I understand.

12 COMMISSIONER KEISLING: I mean, that's what
13 makes it speculative. You can file a motion for
14 reconsideration if you want to.

15 MR. BECK: Okay.

16 COMMISSIONER KIESLING: But I'm telling you
17 I'm making a ruling on this one right now, recognizing
18 that any ruling that goes against you, you ask for
19 reconsideration anyway, so you can go right ahead.

20 MR. BECK: Okay.

21 COMMISSIONER KIESLING: I think that raising
22 this at this time with these nebulous facts and
23 without a direct connection to SSU is unconscionable.
24 So no, you're not going to include it. You can do
25 whatever you wish to do about it.

1 MR. BECK: I understand.

2 MR. HOFFMAN: Do I understand then that part
3 of your order on this issue would also be that
4 Ms. Dismukes, that her supplemental testimony shall
5 not be filed?

6 COMMISSIONER KIESLING: If it relates only
7 to this, then -- if this isn't an issue, there's no
8 need for testimony on it.

9 Anything else on issues before -- I
10 recognized I promised you 6 o'clock but we're very
11 close. Can you push it another 15?

12 THE REPORTER: Oh, sure.

13 COMMISSIONER KIESLING: We're this close.
14 I'd like to go through.

15 Exhibits, other than the addition of
16 exhibits from Mr. Twomey, which he raised earlier, are
17 there any renumbering additions, deletions or
18 corrections to the exhibits that are listed here and
19 I'll go to SSU first. Since your exhibits are all the
20 first ones for the first -- let see, until page --
21 your exhibits.

22 MR. HOFFMAN: We'll double-check. If we see
23 anything we'll include it in the Monday submission.

24 COMMISSIONER KIESLING: Okay. I mean I'm at
25 Page 102 and I still haven't reached the end of your

1 witnesses. Here we go. OPC, any to yours, which
2 begin on Page 105?

3 MR. BECK: No changes.

4 COMMISSIONER KIESLING: No changes no
5 additions no.

6 MR. BECK: That's correct.

7 COMMISSIONER KEISLING: And Staff, any to
8 yours?

9 MS. O'SULLIVAN: No Commissioner.

10 COMMISSIONER KIESLING: Okay. Then I think
11 that gets us to an unnumbered page, must be 128.
12 Proposed stipulations. So all of the things that we
13 were able to stipulate today you're going to include
14 there; is that correct?

15 MS. O'SULLIVAN: Yes. Yes.

16 COMMISSIONER KIESLING: And I don't need to
17 look at this Category 1, Category 2, Category 3
18 stipulations which I understand I have Mr. Feil to
19 thank for from previous cases. Who came up with these
20 categories?

21 MR. FEIL: I recognize the language there.

22 MS. O'SULLIVAN: I won't take any ownership
23 of it.

24 COMMISSIONER KIESLING: And pending motions.
25 Let's see, I have taken care of -- well, pending

1 motion No. 1 had been dealt with by the Commission.
2 Pending motion No. 2 has been dealt with by the
3 Commission. Motions Nos. 3, 4 and 5 I signed this
4 morning. Motion No. 6 I ruled on during the course of
5 this hearing and permitted the late filing. Motion
6 No. 7, what's that take us to on that one?

7 MR. FEIL: Commissioner, we filed objections
8 to some of OPC's discovery requests. In the
9 objections we told OPC the information that we would
10 provide. They didn't file a response to that
11 objection. I took that to mean that they would be
12 stated with what we proposed providing them. I'm
13 prepared to argue the objection though if need be.

14 COMMISSIONER KIESLING: When does the
15 response time run on this?

16 MS. O'SULLIVAN: Runs on the 17th.

17 MR. FEIL: Commissioner, I believe these are
18 some of the interrogatory requests and document
19 requests which you recently ordered we serve by the
20 22nd.

21 COMMISSIONER KEISLING: Other than those,
22 Mr. Beck, are you planning to take any further action
23 on the objections?

24 MR. BECK: I don't believe so. I'm really
25 not -- can't even say what they are. Mat, do you

1 recall what objections they are?

2 MR. FEIL: Hewitt Study calculations.

3 MR. BECK: Yes. We didn't plan to respond
4 to that.

5 COMMISSIONER KIESLING: So their objections
6 are acceptable to you if I sustain them.

7 MR. BECK: Yes.

8 COMMISSIONER KIESLING: I mean you're not.

9 MR. BECK: You order them to provide the
10 balance of the unobjected once.

11 COMMISSIONER KIESLING: Yes. That's what's
12 I understood. I've dealt with Staff's request to
13 strike witnesses. OPC's motion for a protective
14 order. This is the one, if I understand, is asking
15 for the work papers that were asked for at the
16 deposition but not provided?

17 MR. BECK: Oh, no, there's much, much more
18 than work papers. There must be 50, 60
19 interrogatories as well as numerous interrogatory
20 document requests.

21 MS. O'SULLIVAN: The Utility filed a
22 response on the 15th which in itself expedites
23 requests.

24 COMMISSIONER KIESLING: This is No. 9. When
25 does the response time pass? Has it be filed?

1 MS. O'SULLIVAN: I have a copy if you don't.

2 COMMISSIONER KIESLING: I have it now but
3 obviously I haven't read it, so --

4 Do either of you want to argue this or do
5 you want to just leave it to me, once I have had a
6 change to review both of the pleadings, that I'll
7 enter some kind of an order?

8 MR. BECK: We'll go ahead and accept a
9 ruling without oral argument.

10 MR. HOFFMAN: Commissioner, I'd like to make
11 a very brief argument.

12 MR. BECK: Then I would want to, also.

13 MR. HOFFMAN: It's Mr. Beck's motion so I'll
14 let him go first.

15 COMMISSIONER KIESLING: Okay. It is your
16 motion, Mr. Beck.

17 MR. BECK: Commissioner, this deals with a
18 series of discovery requests that Southern States
19 served on us in violation of your order cutting off
20 discovery as of this Monday.

21 There isn't one of their discovery requests
22 that doesn't relate to information they had on
23 February 12th. That's when we filed our testimony.
24 They ignored our testimony, they never deposed the
25 witness. They waited until this late hour to file

1 discovery relating to our testimony that had been
2 filed in February.

3 One of the discovery requests, about 50, 60
4 interrogatories and so forth, is due next Friday. The
5 remaining are due during the second week of the
6 hearings, according to their schedule.

7 Many of them are --

8 COMMISSIONER KIESLING: Have you seen their
9 response where they also included a motion for
10 expedited discovery responses?

11 MR. BECK: Yes. They mailed that to us on
12 Monday.

13 COMMISSIONER KIESLING: Okay.

14 MR. BECK: Let me say this: They have not
15 shown good cause for why they delayed until this late
16 hour to serve their discovery, particularly in view of
17 the fact that it all relates to our testimony filed in
18 the beginning of February. It would be extremely
19 onerous for us to have to respond to this at this
20 point.

21 We mentioned with respect to Ms. Dismukes.
22 She is testifying in a case before the Commission next
23 week, she will be preparing testimony for us in the
24 Palm Coast case and has this case as well. She's
25 extremely busy, and I think it's unconscionable for

1 the Utility to expect us to answer their questions
2 while the hearing is going on. So we object very
3 strongly to their discovery.

4 MR. HOFFMAN: Commissioner Kiesling, I'm
5 glad he uses the word "unconscionable" because I think
6 that appropriately characterizes the way they have
7 conducted themselves in this case in terms of
8 discovery.

9 You entered a discovery order on December
10 20th and we received nothing for over two months from
11 these folks. And what we got was basically useless.

12 We tried to get into the the substantive
13 issues on discovery back in November of this year.
14 And what we got was basically useless. What they said
15 to us was basically "Wait until someone files
16 testimony. Then you "can take a look at that.

17 I think that you've entered a ruling over
18 the last few days, when you granted their motion,
19 which said April 22nd. I'm taking the position, "I,
20 Commissioner Kiesling, am saying April 22nd is the
21 deadline for responding to discovery." And our
22 position is very simple. If that's your
23 interpretation of the discovery deadline, then
24 certainly it applies equally to all parties.

25 I think you indicated in your order that it

1 was appropriate to file a motion for expedited
2 discovery responses. And in quick response to that
3 order we have done so. We've moved as quickly as we
4 can in this case. You know, we have been very busy in
5 this case as has everyone else. We have been at all
6 of these depositions, many of which, you know, go to
7 the allegations in the Motion to Dismiss. We've
8 responded to hundreds and hundreds of discovery
9 requests, and we've tried to give them all of the
10 information they need. And in comparison with what
11 they've requested of us, what we have requested of
12 them is very, very small. They won't even give us the
13 work papers that purport to support the testimony, and
14 we need to see the work papers that their witnesses
15 used and relied on in the submission of their
16 testimony.

17 We took the deposition of Ms. Dismukes the
18 other day. And she made it very clear that it would
19 take her about a few hours, maybe as long as a day,
20 to put together a copy of work papers for us. We
21 think we're entitled to this discovery. We think we
22 have the very same discovery rights that the Office of
23 Public Counsel has in this case. No more, no less.

24 And the last thing I'll say because I said
25 I'll be brief, is that with respect to the second set

1 of interrogatories, which were served by hand delivery
2 on March 29th under the Order Establishing Procedure,
3 the Motion for Protective Order, which I view to be
4 tantamount to objections, is not timely. It was filed
5 on April 12th.

6 COMMISSIONER KIESLING: All right. Do you
7 want to respond to the timeliness, which was raised
8 for the first time?

9 MR. BECK: Yes. I consider their discovery
10 a nullity, first of all, because it was served in
11 violation of your order. I don't see -- in fact, I
12 filed a motion for protective order in abundance of
13 caution rather than just ignoring their discovery
14 requests. I thought it better to bring the issue
15 before you at this point. So it's not. It's a total
16 objection to discovery that was not authorized.

17 With respect -- and this will be it -- with
18 respect to the late filing of discovery, you granted
19 our motion but it was -- we filed discovery concerning
20 their rebuttal, which was voluminous, and processed
21 our discovery in one week's time and served it on them
22 immediately. This is completely different because
23 none of this relates to anything they have received
24 recently. They've had it since February. For
25 whatever reason they have waited until this point to

1 serve discovery that relates to items they have had
2 for months. And they have still not provided good
3 cause. Mr. Hoffman's argument, there's nothing in
4 there about the good cause about why they waited until
5 this point in time.

6 COMMISSIONER KIESLING: All right. Let me
7 just -- as to the work papers, which is the only part
8 that I know anything about right now, do you have a
9 problem with providing those work papers which
10 apparently Ms. Dismukes indicated she would provide
11 within a few hours of her deposition?

12 MR. McLEAN: I think I'm probably best
13 situated to answer that.

14 COMMISSIONER KIESLING: Okay.

15 MR. McLEAN: After this weekend Ms. Dismukes
16 is getting on a plane Tuesday morning, meet me in
17 Tampa Tuesday afternoon; go down to a case for two
18 days. In the meantime, she'll be writing the Barefoot
19 Bay brief.

20 I think the simple answer is we will be
21 prejudiced in our other cases as well as this one if
22 she is to spend her time that way. And for my part I
23 would say that had Southern States asked for the work
24 papers contemporaneously with this particular piece of
25 testimony, I would have carried it to them myself if

1 need be because I think it is of critical importance.
2 But they waited until a time that would be virtually
3 impossible for us to comply with. That's my
4 objection.

5 To answer your question, Commissioner
6 Kiesling, we'll have to take her off of the other
7 thing she is doing for a day to deal with it. That
8 doesn't get it to them at the same time.

9 Ms. Dismukes gathers up her papers, carries
10 them off to a contractor to copy them, carries them
11 back home, tries to put them where they were and tries
12 to get them to us and to the Utility.

13 COMMISSIONER KEISLING: I want to ask my
14 Staff something. Were either of you present at the
15 deposition of Ms. Dismukes?

16 MS. O'SULLIVAN: No. Mr. Jaeger was.

17 COMMISSIONER KIESLING: So you don't have
18 any knowledge as to whether Ms. Dismukes indicated in
19 that deposition that she could or would provide the
20 work papers within a few hours?

21 MS. JABER: No, we do not.

22 COMMISSIONER KIESLING: Okay. Do you have
23 that deposition with you?

24 MR. HOFFMAN: No. It's at my office.

25 COMMISSIONER KIESLING: Okay. But is it

1 indicated on the record in there?

2 MR. HOFFMAN: Yes.

3 COMMISSIONER KIESLING: Or was that an off-
4 the-record discussion?

5 MR. HOFFMAN: On the record.

6 COMMISSIONER KIESLING: And did Ms. Dismukes
7 say she would or she could provide those work papers?

8 MR. HOFFMAN: She could.

9 What happened was I asked her for them.
10 Mr. McLean objected. Then I asked her -- Mr. McLean
11 objected to preserve the consistency with the
12 objections that Public Counsel had filed. Whereupon,
13 I asked Ms. Dismukes, "Would it be burdensome for you
14 to put these materials together?" Over Mr. McLean's
15 objection she then, my best recollection, said, "I can
16 put these together in a few hours." I think she also
17 said maybe as long as a day.

18 MR. McLEAN: I think Mr. Hoffman and I are
19 agreed on the length of time where she said she'd
20 take. We don't have a disagreement as to anything
21 substantive with respect to that. I think we both
22 agreed it would take somewhere between a few hours and
23 a day to put them together.

24 MR. HOFFMAN: I think that's what she said.

25 MR. McLEAN: Mr. Hoffman did not ask her

1 about any of the other things which would be attentive
2 to that, for example, taking them, copy them and send
3 them here.

4 MR. HOFFMAN: I understood, Commissioner,
5 that when she was answering my question she was
6 answering how long it would take her to put the
7 documents together to get them out to us.

8 MR. McLEAN: If that's Mr. Hoffman's
9 recollection I agree with it, because I don't have a
10 specific recollection.

11 COMMISSIONER KIESLING: My concern here is
12 that if I take this under advisement, and even if I
13 rule on it on Monday, according to what you've just
14 indicated to me, Ms. Dismukes is going to be not even
15 in the city of Tallahassee for three, four of the five
16 days next week.

17 MR. McLEAN: It might do to mention that
18 Ms. Dismukes doesn't live here. She lives in
19 Louisiana as of six or eight months ago. We deal with
20 her -- she's in Baton Rouge as we speak now, I
21 believe. So she has to fly to Tampa.

22 But she has Saturday, Sunday and Monday when
23 she could deal with this if she weren't dealing with
24 many other things.

25 COMMISSIONER KIESLING: And I understand

1 that but I'm dealing with this case.

2 MR. MCLEAN: Well, she's dealing with this
3 case as well. But I wanted to clarify the point that
4 she no longer lives with us here in Leon County.

5 COMMISSIONER KIESLING: I would make this
6 suggestion. It's probably -- having not reviewed all
7 of the requests, I can only deal with the work papers,
8 but I am inclined to have those provided by -- when do
9 you need them by? Monday, the 22nd, like everybody
10 else?

11 MR. HOFFMAN: Yes.

12 COMMISSIONER KEISLING: Since this is Friday
13 and I'm not going to have an opportunity to look at
14 this and advise you, if she's spending the weekend
15 doing something, she probably needs to be spending it
16 getting those work papers together.

17 I have looked at the interrogatories, or
18 some of the other things, but if the work papers were
19 discussed at her deposition, be prepared to provide
20 them.

21 MR. BECK: Commissioner, I don't see how --
22 I guess it would have to leave tomorrow morning for
23 Federal Express to get here by Monday. I don't even
24 know how we can physically do it in that time frame.

25 MR. HOFFMAN: Commissioner, if it would

1 assist Ms. Dismukes and OPC, we would agree to having
2 Ms. Dismukes Federal Express those documents out on
3 Monday.

4 COMMISSIONER KEISLING: Okay.

5 MR. BECK: That's certainly a big
6 difference.

7 MR. HOFFMAN: We ask they be Federal
8 Expressed by overnight courier. Of course, I would
9 remind you for the record that the work paper request
10 went to all of their witnesses, it was as to all of
11 their witnesses, not just Ms. Dismukes.

12 MR. McLEAN: In discovery but not -- in your
13 interrogatories or PODs perhaps, but not your
14 deposition.

15 MR. HOFFMAN: The document request that we
16 served went to -- requested the work papers of all of
17 the Office of Public Counsel's witnesses. The
18 exchange that took place that Mr. McLean and I have
19 talked about was only as to Ms. Dismukes during her
20 deposition.

21 COMMISSIONER KIESLING: That's why I was
22 dealing with that one. Let me do this: Is there some
23 reason that you did not request the work papers of the
24 other witnesses back when their testimony was filed?

25 MR. HOFFMAN: Commissioner, I can't add

1 anything other than to what I've already told you, and
2 that is that we were busily engaged in responding to
3 an approximately 2,000 pages of testimony filed by the
4 intervenors and Staff, attending depositions and doing
5 all of the things that I articulated in our response.
6 I wouldn't add anything to that.

7 COMMISSIONER KIESLING: Okay. Even though
8 it may be a burden for you, I'm going to have to
9 reserve ruling until Monday, and then I'll let you all
10 know what I'm going -- what, if anything, I'm going to
11 require, and by when. I can't deal with it today.

12 MS. JABER: Commissioner, when we find out
13 from you we'll immediately call --

14 COMMISSIONER KIESLING: Oh, I knew you
15 would. And, you know, if you all can put together --
16 since I don't have copies of these particular
17 interrogatories, etcetera, if you could put together
18 what it is they are seeking so that I can have all of
19 it in a packet first thing Monday morning, I'll make a
20 ruling before noon.

21 MS. JABER: Certainly.

22 COMMISSIONER KIESLING: Okay. That was
23 Issue 9. Other matters. 1, was addressed at the
24 agenda conference. 2, I've already taken care of. 3,
25 we've already taken care of. 4, we've already taken

1 care of. Is there anything else that we need to do
2 today?

3 MS. O'SULLIVAN: If there was I wouldn't say
4 it. (Laughter)

5 COMMISSIONER KIESLING: You all have a good
6 weekend.

7 MR. HOFFMAN: You do the same.

8 (Thereupon, the hearing concluded at
9 6:25 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

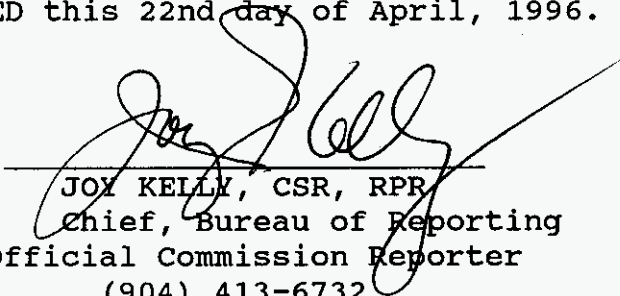
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 950495-WS was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 329 pages, constitutes a
13 true transcription of my notes of said proceedings.

14 DATED this 22nd day of April, 1996.

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