

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for 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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IN RE: SPECIAL AGENDA

BEFORE: SUSAN F. CLARK, CHAIRMAN  
 JOE GARCIA  
 JULIA L. JOHNSON  
 J. TERRY DEASON  
 DIANE K. KIESLING

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TIME: COMMENCED AT 9:00 A.M.

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APPEARANCES:

ROSEANN CAPELESS, ESQUIRE, MARGARET O'SULLIVAN,  
ESQUIRE, MARSHALL WILLIS, ESQUIRE, RALPH JAEGER, ESQUIRE,  
LILA JABER, ESQUIRE, CHARLES PELLEGRINI, ESQUIRE, Florida  
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32399-0850.

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P R O C E E D I N G S

1  
2 COMMISSIONER CLARK: We'll call the agenda  
3 conference to order.

4 MR. RENDELL: Good morning, Commissioners. We  
5 are here today to present staff's recommendation on  
6 the final revenue requirement for Southern States  
7 Utilities. On June 28, 1995, Southern State Utilities  
8 filed for an application for approval to file a rate  
9 increase and increase the service availability  
10 charges. August 2nd, 1995 has been designated as the  
11 official filing date.

12 In addition to the special instructions indicated  
13 on the front cover of the memo, staff would like to  
14 add that Issue 145 should be considered before Issue  
15 29. Due to the fact that subsequent issues rely on  
16 decisions of earlier issues, staff suggests proceeding  
17 issue by issue with a brief introduction to each  
18 issue. Also, in order to avoid additional confusion,  
19 as staff introduces each issue, we will be making  
20 minor corrections to that individual issue.

21 MS. JABER: Commissioners, first we suggest that  
22 you take up Issues A and 5 together. In Issue A staff  
23 addresses the Intervenors' Motions to Dismiss that or  
24 pending. In Issue 5, staff addresses the misconduct  
25 or mismanagement issue that arose out of your



1           deferring ruling on the Motion to Dismiss. We are  
2           prepared to answer any questions that you may have on  
3           either of those issues.

4           COMMISSIONER CLARK: All right. So the first  
5           issue that we need to take up is the Motion to  
6           Dismiss. Okay, are there any questions or  
7           discussions, Commissioners?

8           COMMISSIONER DEASON: I have no questions. I can  
9           move staff on Issue A.

10          COMMISSIONER GARCIA: Let me ask staff  
11          something. We are dealing with just Issue A, I'm  
12          sorry?

13          COMMISSIONER CLARK: Yes.

14          MS. JABER: Yes, just the Motion to Dismiss.

15          COMMISSIONER GARCIA: I'll second.

16          COMMISSIONER CLARK: Okay. All those in favor  
17          say aye.

18          (AFFIRMATIVE INDICATIONS)

19          COMMISSIONER CLARK: Opposed.

20          (NO RESPONSE)

21          COMMISSIONER CLARK: Issue 5.

22          MS. JABER: In Issue 5 staff recommends that the  
23          Commission find that there has been some level of  
24          misconduct by SSU for which SSU should be sanctioned  
25          by a hundred basis point reduction to their ROE.

1           COMMISSIONER CLARK: Let me ask you a question,  
2           this is the maximum that the company can be fined from  
3           what I understand.

4           MS. JABER: That's correct.

5           COMMISSIONER GARCIA: Anything above this would  
6           be invalid?

7           MS. JABER: Well, it would bring them below their  
8           low end of range of return which is prohibited by law.

9           COMMISSIONER GARCIA: Commissioners, I -- and  
10          hopefully staff can point me out, but what I had  
11          thought that might be doable, and I would like to  
12          discuss it, is to half this amount and then go with  
13          the alternative recommendation on Issue 4 on quality  
14          of service since we max out there. And while I do  
15          agree that the staff is right for considering what the  
16          company did and sort of I guess fining them, I do  
17          believe that the quality of service was a central  
18          issue to a lot of the customer hearings I went to. I  
19          can't recall how many of them I went to, but quality  
20          of service was a big factor, and I think we should --  
21          It also sends a very strong message out, and I just  
22          think that in furtherance of that policy I would like,  
23          maybe just throw it out there for discussion and see  
24          how you all feel about it.

25          COMMISSIONER DEASON: Well, let me ask the

1 question. Is the limitation on a reduction in return  
2 on equity, is that affected by quality of service, or  
3 is it just a limitation when there has been some type  
4 of an assertion of mismanagement on a company's part?

5 MS. JABER: Gulf talks about the Commission's  
6 authority to reduce basis points to ROE, and what Gulf  
7 holds is that the Commission has the authority to do  
8 that as long as you don't bring the utility below its  
9 authorized range of return, and I think that's true  
10 regardless of what you penalize the utility for. It's  
11 just you can't on the one hand say that this is their  
12 authorized range of return, it's a reasonable range,  
13 and then by penalizing them bring them below. You  
14 have to have -- you've got to afford the utility the  
15 opportunity to earn a fair rate of return.

16 COMMISSIONER DEASON: So in the Gulf case, as I  
17 recall, and it's been a while so you may need to  
18 refresh my memory, there was no penalty, if that's the  
19 way you want to term it, for poor quality of service.  
20 It was concerning the management of the company in  
21 some of those decisions, and there were some  
22 allegations of improprieties and things of that nature  
23 at the company.

24 MS. JABER: That's correct.

25 COMMISSIONER DEASON: And that was the reason for

1 the reduction in return on equity.

2 MS. JABER: That's correct.

3 COMMISSIONER DEASON: It had nothing to do with  
4 the actual quality of the service that the customers  
5 were receiving in terms of voltages and outages and  
6 things of that nature?

7 MS. JABER: No, sir. That's correct. And as a  
8 matter of fact, staff recommended a hundred basis  
9 points in Issue 5 knowing the alternative in Issue 4  
10 recommends the 50 basis points. What we are saying is  
11 that those penalties would run concurrently, that they  
12 have to max out at a hundred basis points. And I  
13 guess Commissioner Garcia's suggestion is to do 50 in  
14 Issue 5 and 50 for Issue 4.

15 COMMISSIONER DEASON: Well, I have no problem  
16 with the suggestion, if it is correct, that there is a  
17 total limitation of a full percentage point, one  
18 hundred basis. If that is the full extent to which we  
19 can make an adjustment to return on equity, I have no  
20 problem with your suggestion of delineating basically  
21 half for quality of service and half for the  
22 discussion which is contained within Issue 5.

23 MS. JABER: I think there is a limitation.  
24 Anything above a hundred basis points would be  
25 confiscatory at that point.

1           COMMISSIONER DEASON: Well, what about situations  
2 where we have had companies of smaller size and there  
3 have been situations of quality of service problems in  
4 the one percentage or the hundred basis point because  
5 of the size of the company or else due to the small  
6 amount of equity investment within the company, that  
7 those penalties were really termed to be a slap on the  
8 wrist because the dollar impact was so small and we've  
9 actually made the decision to determine a specified  
10 dollar amount? And if you do the calculations, it's  
11 much more than a hundred basis points on equity. How  
12 do we justify that situation given your interpretation  
13 of the law?

14           MS. O'SULLIVAN: I'm going to jump ahead to our  
15 analysis in Issue 4 we talked about. I think the case  
16 you are referring to, I believe it's Pine Island, the  
17 one percent reduction was only 314 dollars. The  
18 Commission found that was insufficient and instead  
19 imposed a fine of a thousand dollars, which I'm  
20 assuming was a one-time fine as opposed to an ongoing  
21 ROE penalty for each year.

22           COMMISSIONER DEASON: Now was that a fine in the  
23 sense that it was a dollar amount that was paid to,  
24 not to the Commission, but I assume to the State of  
25 Florida?

1 MS. O'SULLIVAN: I'll double check, but I believe  
2 that is the case. I can pull the case out.

3 MR. WILLIS: Commissioners, normally fines and  
4 penalties do get paid to the general fund of the State  
5 of Florida, they don't come to the Commission's  
6 general revenue fund. I'd also point out that the  
7 alternate recommendation in Issue 4 is only for the  
8 water facilities. The recommendation is not to  
9 penalize the wastewater facilities.

10 COMMISSIONER CLARK: Well, I am concerned about  
11 getting into the discussion of Issue 4, and what we  
12 might do is just decide that we are going to penalize;  
13 and when we get through -- and when we get through,  
14 sort of decide how we are going to allocate that  
15 penalty if in fact that's what we vote on. I'm  
16 concerned about sort of prematurely voting on 4 before  
17 we have the opportunity to discuss it.

18 COMMISSIONER GARCIA: That's fine.

19 COMMISSIONER CLARK: What we might do is just if  
20 we agree that there needs to be a penalty --

21 COMMISSIONER GARCIA: That's fine. I just wanted  
22 to keep it in mind as we go through this.

23 COMMISSIONER KIESLING: Okay.

24 COMMISSIONER JOHNSON: Let me make sure I  
25 understand that then. If we were to vote out 5, we

1 would just state that there -- vote whether or not  
2 there will be a penalty and not put the -- not at this  
3 point in time state what that penalty would be?

4 (AFFIRMATIVE INDICATIONS)

5 COMMISSIONER JOHNSON: Okay. One more question  
6 to that issue then. It was my understanding that  
7 although the Gulf case stated that the company -- you  
8 had to stay within the range, the reasonableness range  
9 that we set, if we were to decide to impose a penalty  
10 of a hundred basis points in Issue 5 and then in Issue  
11 4 decided to impose 50, we could in fact do that but  
12 we could only reduce their -- we could only reduce the  
13 return on equity down to 10.88, although the fine --  
14 although the penalties would appear to reduce it even  
15 further. Did you understand that?

16 COMMISSIONER CLARK: Let's be careful about  
17 talking about it in terms of a penalty.

18 COMMISSIONER JOHNSON: Okay.

19 COMMISSIONER CLARK: Because I think it is -- if  
20 we speak of it in terms of a penalty, then I think we,  
21 there may be some argument that it's not within the  
22 range of activities that we can penalize for. I  
23 recall in the Gulf case that was what was argued, but  
24 the court seemed to indicate that that wasn't what we  
25 were doing, that we were in fact recognizing a

1           mismanagement in that case that had -- did or had the  
2           potential for adversely affecting the price or the  
3           cost of service.

4           Lila, is that what the Gulf case said?

5           MS. JABER: Right. Let me just read you this  
6           couple of sentences. I think this is what you are  
7           referring to. In affirming the Commission's action,  
8           what the court said is:

9                        "In this case, however, the  
10                      Commission did not deny Gulf Power  
11                      a rate increase or impose a penalty  
12                      that would deny Gulf Power a  
13                      reasonable rate of return. On the  
14                      contrary, the return of equity set  
15                      by the Commission, 12.05 percent, is  
16                      well within the range found to be  
17                      fair and reasonable. The reduction  
18                      was neither a penalty nor confiscatory."

19           COMMISSIONER JOHNSON: Where are you reading  
20           from?

21           COMMISSIONER CLARK: The Gulf case.

22           MS. JABER: Page 3, it's I think at 270.

23           COMMISSIONER JOHNSON: Okay. But that is fine  
24           with me that we not -- to the extent that we decide to  
25           impose something, that we not set the number right



1 now.

2 COMMISSIONER CLARK: I have some questions I  
3 wanted to pursue with staff. Your recommendation for  
4 mismanagement is based on the fact that there was  
5 contact made with an elected official and a letter  
6 supplied to that elected official with the  
7 recommendation that it be sent over to the Commission.

8 MS. JABER: Specifically -- I've got four  
9 points here. Would you like me to just go ahead and  
10 run through why we think they're --

11 COMMISSIONER CLARK: Yes, and let me ask you to  
12 address, if you will -- I guess my concern is this  
13 is somewhat unlike anything we have ever done before,  
14 and I get concerned about issues of freedom of speech  
15 and freedom to contact your elected officials, which I  
16 think you do discuss, but I think you do cover the  
17 fact that there should have been -- The utility  
18 knows the rules, knows how to conduct rate cases, and  
19 you know, it's -- there seems to be some poor judgment  
20 certainly, and I just want you to contrast those two  
21 and tell me how you reconcile that.

22 MS. JABER: Okay. Well, let me just start by  
23 telling you that we didn't see this part of the issue  
24 as a free speech issue. We didn't look at it from  
25 that standpoint, and we also are not saying that they

1 are not free to contact the public officials. They  
2 absolutely have a free speech right, and that is why  
3 we didn't look at it as a free speech argument. What  
4 we are saying is that what their -- Their actions  
5 have been improper is what we are saying, and there  
6 are certain things that they have done in our minds  
7 that were improper in that when they solicited the  
8 letter from the lieutenant governor to you, the  
9 chairman of the Florida Public Service Commission,  
10 they did not bring to his attention that there were  
11 two pending rate cases, specifically this rate case.  
12 That is the first thing.

13 The second thing is that the solicitation of the  
14 letters appear to be for the purpose of influencing  
15 the Commission. For example, the January 3rd  
16 deadline, the timing is a problem. On January 4th you  
17 made the decision on interim rates, and there is  
18 plenty of evidence in the record to support that  
19 Mr. Sharkey gave that deadline to Secretary Dusseau's  
20 secretary -- Secretary Dusseau's, yeah, secretary.

21 By FAX there is evidence in the record that  
22 indicates that Mr. Sharkey requested that the  
23 lieutenant governor send the letter knowing that there  
24 was a pending rate case, and there is also evidence in  
25 the record to show that Mr. Smith, Tracy Smith, asked

1 several members of the legislature to send you similar  
2 letters, although we acknowledge that those letters  
3 were not sent, but it's the actions of the utility  
4 that we are saying are improper.

5 COMMISSIONER CLARK: In not being fully  
6 disclosive about the fact that we had a pending rate  
7 case and the information that they were providing was  
8 related to the rate case?

9 MS. JABER: That's right, that there was going to  
10 be a communication between the lieutenant governor and  
11 yourself that related to the merits of this  
12 proceeding.

13 COMMISSIONER JOHNSON: And just on that point, as  
14 I read the staff recommendation, I thought that the  
15 misconduct that staff had thought the evidence clearly  
16 showed was the solicitation of the ex-parte letters on  
17 pending matters. Whether or not, whether they had--  
18 If they had told the lieutenant governor, by the way,  
19 there is a rate case and handed him a letter anyway,  
20 you would still make this same recommendation?

21 MS. JABER: That's right.

22 COMMISSIONER JOHNSON: You're not just saying  
23 because they didn't disclose, you're saying the  
24 solicitation of those ex-parte letters on a pending  
25 matter is the misconduct?

1 MS. JABER: That's correct.

2 COMMISSIONER KIESLING: Well, how does that not  
3 then have some chilling effect on any citizen's right  
4 to petition their elected official? I mean it seems  
5 to me that they had the right to ask just like they  
6 asked legislators who declined to send the letter. I  
7 mean the fact that the lieutenant governor sent a  
8 letter without being fully advised and without  
9 inquiring, I see attributing that to their bad motive  
10 as having a chilling effect on their right to  
11 communicate with whomever they wish on behalf of their  
12 company.

13 MS. JABER: You could certainly view it that  
14 way. The difference is we are not saying that they  
15 can't communicate with the lieutenant governor or the  
16 governor or anyone that they want to and complain  
17 about the actions that the PSC took or didn't take.  
18 What we are saying is asking him by virtue of -- it's  
19 a circumvention. It's getting around 120 and 350. We  
20 are not saying that SSU signed the letter. The  
21 president of SSU didn't sign those letters. It was  
22 the lieutenant governor, but it's the action of, You  
23 know what the law is; are you circumventing the law?  
24 We think so.

25 COMMISSIONER GARCIA: Distinguish that from

1 asking customers to write letters.

2 MS. JABER: There is a specific exemption for  
3 customers in 350.

4 COMMISSIONER GARCIA: But the act of asking is  
5 what you're --

6 MS. JABER: Right. The difficulty in this is we  
7 regulate SSU. SSU is the regulated utility. The  
8 parties are not what is regulated. The customers to a  
9 degree are not regulated. It's the utility itself  
10 that you have jurisdiction over, and --

11 COMMISSIONER CLARK: Let me ask you this. With  
12 regard to an ex-parte communication, there is some --  
13 there is penalties in effect.

14 MS. JABER: Right.

15 COMMISSIONER CLARK: Is this, I guess I'm  
16 concerned about the fact that I think one could  
17 construe this as being strictly a penalty. Because if  
18 you contrast it to the Gulf case, what mismanagement  
19 we were concerned about was the use of company  
20 employees to do work for company officials, the use of  
21 company equipment and the use of appliances, which  
22 certainly I think directly if there is -- impacts  
23 prices customers pay. It directly impacts the cost of  
24 service and, therefore, that mismanagement should be  
25 taken into account when you set the rates, and I

1 think that's part of the reason --

2 COMMISSIONER DEASON: I hate to interrupt, but  
3 let me ask a question.

4 COMMISSIONER CLARK: Yeah.

5 COMMISSIONER DEASON: And I may be mistaken with  
6 my memory, but I also thought there was an allegation  
7 of improper solicitation of political contributions  
8 which were not included in cost of service but that  
9 was an allegation that concerned the Commission. Now  
10 I may be mistaken.

11 MS. JABER: No, let me tell you what the Gulf  
12 case says. It says:

13 "The record is clear, Gulf  
14 Power Company admitted that  
15 corrupt practices took place at  
16 Gulf Power from the early 80's to  
17 1988, including but not limited to,  
18 theft of company property, use of  
19 company employees on company time  
20 to perform services for management  
21 personnel, utility executives  
22 accepting appliances without payment,  
23 and political contributions made by  
24 third parties and charged back to Gulf  
25 Power Company."

1           COMMISSIONER CLARK: Yeah, see it wasn't just the  
2 political contributions, it was the charge back to the  
3 company. So I guess my concern was it clearly had an  
4 impact on the cost of service. And what is that same  
5 nexus here?

6           MS. JABER: We didn't -- to be very honest with  
7 you, we didn't look for that sort of nexus. We didn't  
8 look for a monetary impact to customers or any kind of  
9 rate impact to customers. We used Gulf to say that  
10 you've got the authority to do it. We didn't use Gulf  
11 to say that the factual circumstances are similar to  
12 that of SSU's because obviously we can't.

13           COMMISSIONER JOHNSON: Let me ask you, following  
14 up on what the chairman said then, I just want to be  
15 clear that Gulf does give us the authority to do this  
16 then. The issue that was raised was whether or not  
17 the misconduct or activities, improper activities,  
18 have to relate to having an impact on the cost of  
19 service to the customers. Is that the test? When we  
20 look at the actions and the activities of a company,  
21 must there be that nexus? And to the extent that that  
22 is required under Gulf, where is it here? But you may  
23 be saying it's not required under Gulf.

24           MS. JABER: Gulf doesn't come out and say that.  
25 I think that Chairman Clark has drawn that out of the

1 case. Gulf doesn't give you the standard. It doesn't  
2 say, Look for these facts, and this is what shall  
3 apply from now on. It doesn't define misconduct. It  
4 doesn't define mismanagement.

5 What Gulf says is this is what happened. You  
6 have authority under your statutes as long as you  
7 don't let the -- they use penalty as a matter of  
8 fact -- as long as you don't let the penalty go below  
9 the low end of the range of return.

10 COMMISSIONER JOHNSON: I'm sorry, you said that  
11 the court did use --

12 MS. JABER: They do. They --

13 COMMISSIONER CLARK: One of the difficulties I  
14 may be having is I remember the briefs and the  
15 arguments in that case, and the position Gulf Power  
16 took was this was an unauthorized penalty and that  
17 state agencies only have the authority to impose  
18 penalties that are authorized by statute. And that  
19 was my concern in characterizing this in that kind of  
20 penalty because I think that would play into that kind  
21 of argument. And what the court keyed in on, it  
22 seemed to me, was that this management, this  
23 mismanagement, had an impact on the ratepayers such  
24 that it was appropriate to take it into account when  
25 setting their range of return.



1 MS. JABER: Right. They rejected the company's  
2 penalty argument, that we didn't have authority. They  
3 said that -- and by the same method that the  
4 Commission can make adjustments. I stand corrected,  
5 Commissioner Johnson, they refer to it as adjustments.  
6 If you can make adjustments to return on equity from  
7 management efficiency, then you could likewise make  
8 adjustments for mismanagement.

9 And what they say about the ratepayers is that  
10 the record reflects a disregard for ratepayers and  
11 public service, and we really looked at it from a  
12 public service, due process angle. We truly didn't  
13 look at this issue and make any analysis from a rate  
14 impact to customers because I don't think you can do  
15 that.

16 COMMISSIONER CLARK: Let me be very clear. I  
17 find the activity very troublesome and certainly an  
18 exercise in poor judgment, but I'm struggling with the  
19 authority to make the basis -- any kind of adjustment  
20 based on that.

21 Let me ask you one other question. I seem to  
22 recall a case, and I think you were able to  
23 distinguish it for me, Lila, on -- there was a utility  
24 that was also a developer and they had made some  
25 misstatements on their developer or the brochure, and

1 we had made an adjustment and the court didn't allow  
2 us to make it. I think you satisfied me that that  
3 wasn't relevant.

4 MS. JABER: Right. That was, if I'm not  
5 mistaken, Deltona versus Male (phonetics), and we made  
6 a similar adjustment to the utility's ROE saying that,  
7 and I'm recalling the facts not as well as I should  
8 be, but based on the Commission's finding that there  
9 was a fraudulent land sale. And the Commission docked  
10 the utility's ROE, and the court came back and said  
11 there was a problem with that. They quashed the  
12 order, and they said that you found on the one hand  
13 that they were authorized a certain range, but you  
14 took them below that range and, therefore, it's  
15 confiscatory, so that is why I don't think it is  
16 relevant. We are not suggesting that you do that.

17 COMMISSIONER JOHNSON: My concern with respect to  
18 this whole issue, and that's why I was trying to frame  
19 what the misconduct was so we would be clear on that,  
20 and then apply whatever legal standard to that that we  
21 had here, and the case law in this instance is the  
22 Gulf case; and that's why I asked, again, the question  
23 to legal because I want to be clear on this.  
24 Certainly the case stands for the proposition that we  
25 can reduce the ROE. The question is, under what

1 circumstances?

2 MS. JABER: Right.

3 COMMISSIONER JOHNSON: And to the extent that  
4 actions that may not directly impact what the customer  
5 pays, is that the kind of action that would merit  
6 under this case reducing the ROE? This may be the  
7 test case. This may be the next case, the next set of  
8 facts that say, okay, you said we could do this,  
9 reduce these things, reduce the ROE, here is another  
10 fact situation. And I guess you're saying the case is  
11 not clear as to these facts?

12 MS. JABER: Right. I hate to throw this back on  
13 you, but it depends on what you think is mismanagement  
14 because in Gulf they don't define mismanagement. What  
15 they say is we find that the Commission has the  
16 authority to make this adjustment as long as the  
17 resulting rate of return falls within the reasonable  
18 range. They found that under the circumstances of  
19 Gulf that rose to the level of mismanagement. I  
20 think --

21 COMMISSIONER JOHNSON: So we would have to make  
22 that finding, that soliciting of ex-parte letters on  
23 pending matters is mismanagement?

24 MS. JABER: Yes.

25 COMMISSIONER JOHNSON: Whether or not it relates

1 to the bottom line, how much customers pay, we would  
2 have to make that initial determination?

3 MS. JABER: I think so.

4 COMMISSIONER DEASON: Let me make an observation  
5 or maybe phrase it in the form of a question. It  
6 seems to me that there has been some over concern here  
7 with the impact that an action may have as it relates  
8 to directly impacting customers' rates. If you look  
9 at the Gulf case very closely, none of those actions  
10 impacted customer rates because the Commission made  
11 the appropriate adjustments. It seems to me that the  
12 finding to make the adjustment and return on equity  
13 was the possibility that those actions, had they not  
14 been detected by the Commission, could have impacted  
15 customer rates and that perhaps there were things that  
16 Gulf Power, that went on during that period of time  
17 which did not surface and we had no way of knowing  
18 because, while we strive to be as careful we can, we  
19 cannot detect everything that a company engages in  
20 that perhaps we would make an adjustment for.

21 So technically, the rates were not impacted  
22 because all of the adjustments for those actions which  
23 were cited in that order, appropriate adjustments were  
24 made to take those items out of cost of service. It  
25 seems to me that the crucial question is could those

1 actions have adversely impacted the customers of that  
2 company? And I think the answer to that question is  
3 yes.

4 And if you take that standard, if you assume that  
5 is the standard in Gulf and apply it here in Southern  
6 States, it seems to me that the standard is the same.  
7 Could those actions have adversely, had they not been  
8 surfaced or detected or some type of an adjustment  
9 made, could those actions have adversely impacted the  
10 customers of this utility which is before us today?  
11 And I think that the answer to that question would be  
12 yes.

13 So I guess that wasn't a question; it was a  
14 statement.

15 MS. KIESLING: Well, since we are making  
16 statements, let me tell you my discomfort. In reading  
17 the recommendation, it appears to me and I think your  
18 summary of the basis for your recommendation is that  
19 Mr. Sharkey on behalf of the utility misled both the  
20 lieutenant governor and Secretary Dusseau about  
21 whether there were pending rate cases, or misled by  
22 omission, didn't lie to them but just didn't tell  
23 them; and that the letter that they solicited was  
24 improper because it had the appearance of  
25 intimidation.

1 MS. JABER: Well, that the actions were that  
2 those two individuals were misled and that in fact the  
3 solicitations occurred. The solicitations of the  
4 letter is improper in our recommendation; that is our  
5 recommendation.

6 MS. KIESLING: But yet had either Secretary  
7 Dusseau or the lieutenant governor not sent the  
8 letter, since they also did try to get the governor to  
9 send one and he obviously didn't, if they had  
10 exercised better judgment, this would not be -- you  
11 would not be recommending an adjustment because the  
12 letters would have never been sent.

13 MS. JABER: I can't say that, Commissioner,  
14 because our recommendation is based on the fact that  
15 they solicited the letters. I don't know what we  
16 would have recommended if the letters weren't sent.

17 COMMISSIONER JOHNSON: Yeah, I go back to that.  
18 The way that I read what staff is stating here, it  
19 wasn't just that these people didn't know and they  
20 didn't disclose. To me it's almost the four corners  
21 of the action, the misconduct, the mismanagement was  
22 the solicitation of ex-parte letters on pending  
23 matters. Whether or not those letters were actually  
24 sent or not because you all use Senator Johnson to  
25 say, you know, that Mr., is it Tray (phonetics) --

1 MS. JABER: Sharkey?

2 COMMISSIONER JOHNSON: No, Trace (phonetics)?

3 MS. JABER: Tracy Smith.

4 COMMISSIONER JOHNSON: Tracy Smith, yeah. That  
5 Mr. Smith had attempted to solicit ex-parte letters  
6 and had drafted ex-parte letters and that that action  
7 amounted to misconduct and that that was something  
8 that could -- that would rise to the level that we  
9 could perhaps apply this Gulf test here. So I wanted  
10 to be clear and to know what message we are sending  
11 and what our standard is. And what I've read here is  
12 that solicitation of ex-parte letters on pending  
13 matters is something that we would consider, to the  
14 extent we vote this out, misconduct, mismanagement and  
15 something that could activate -- I don't want to use  
16 the word penalty, but a reduction in the return on  
17 equity.

18 MS. KIESLING: Exactly. Adjustment.

19 COMMISSIONER JOHNSON: An adjustment, yeah.

20 MS. JABER: That is our recommendation.

21 COMMISSIONER GARCIA: Well, staff uses the word  
22 "sanctions."

23 MS. KIESLING: I know, that troubles me too.

24 MS. JABER: Yeah, I think that if you move staff  
25 we need to change that to adjustment.

1 MS. KIESLING: I guess I'm concerned about what  
2 precedent we are setting here because this is  
3 certainly not the first case where we have gotten  
4 letters that had to be placed on the record because  
5 they were ex-parte from government officials and, you  
6 know, to the extent that there are in this case or  
7 other cases parties who are also soliciting letters,  
8 whether they are sent or not, causes me some concern.  
9 Are we saying that in every case from here on, if  
10 anybody who is a party to a case solicits an ex-parte  
11 letter from a government official and we find out  
12 about it, we are going to in some way make an  
13 adjustment? And if we are, I'm very concerned about  
14 that precedent because I believe that it has a  
15 chilling effect on any parties, whether it's the  
16 utility or another party. I think every party has a  
17 right to at least communicate with their elected  
18 officials, and I don't think we can go behind the  
19 nature of that communication without having a chilling  
20 effect on it.

21 COMMISSIONER DEASON: Well, let me make two  
22 observations. First of all, we only regulate utility  
23 companies, we don't regulate the parties; and so I  
24 don't think there is any concern about whether we --  
25 Obviously we don't have the authority to penalize the



1 parties. Our concern is impact on the customers, that  
2 is what we are here to protect. And if we make a  
3 finding that the actions were inappropriate and could  
4 have had an adverse impact on the customers, I think  
5 that we could make an adjustment. And I apologize, I  
6 forget what my second point was going to be. I'll  
7 think of it in a minute.

8 COMMISSIONER CLARK: We'll keep the discussion  
9 going for you.

10 Let me ask, that brings up a good point, and I  
11 think Commissioner Deason has indicated that he thinks  
12 the nexus, and I think the argument can be made, the  
13 nexus is an attempt to influence. That might have an  
14 adverse impact on what comes out. I would venture to  
15 say, I doubt anyone of the commissioners on this  
16 Commission could be influenced in that way knowing  
17 them the way I do.

18 What about the fact that we got other letters  
19 from other elected officials that had an adverse  
20 effect on some other customers? I can recall I had a  
21 letter condemning the Commission for doing uniform  
22 rates, and I had another one condemning the Commission  
23 for doing stand-alone. I have to say that when it  
24 comes from an elected official, I look at it, I  
25 respond to it to the extent I can under the law, and I

1 put it on the record.

2 MS. JABER: Correct.

3 COMMISSIONER CLARK: Are you --

4 MS. JABER: I'm looking at --

5 COMMISSIONER CLARK: Is what we are saying today  
6 carrying the implication that it's okay for some  
7 people to do that, it's not okay for utilities to do  
8 that and they will be penalized?

9 COMMISSIONER DEASON: When you answer that, I  
10 know my second point, so go ahead.

11 MS. JABER: You'll have to write it down.

12 That's a difficult answer. Let me try it this  
13 way, a review of 120 and 350 says that communications  
14 by parties or any person who directly or indirectly  
15 would have a substantial interest in the proposed  
16 agency action, that would constitute an ex-parte  
17 communication.

18 With this situation we were focusing on who  
19 solicited the letters. Under 350, you should probably  
20 do what we do under 350, do the memo to records and  
21 reporting, you allow all the parties the ten days to  
22 respond. The difficulty in answering your question,  
23 Chairman Clark, is those two letters you're referring  
24 to, I don't know who solicited that. I would only  
25 tell you that, for example, if one of the parties,

1 other parties solicited it, I don't know what you  
2 would do because you don't regulate those parties, you  
3 regulate the utility.

4 COMMISSIONER DEASON: Let me make my second point  
5 before I forget it again. What is particularly  
6 troubling in this particular case is the appearance  
7 that these letters were solicited at a very key time  
8 right before a critical vote, which would not have  
9 allowed the parties to have -- for that to have been  
10 placed on the record and parties to have responded  
11 because it was filed -- it was sent on the eve before  
12 the interim increase, and --

13 MS. JABER: One of the letters.

14 COMMISSIONER DEASON: And we had testimony that  
15 was not orchestrated, but at the same time it seems to  
16 be a very large coincidence that that solicitation  
17 occurred when it did with instructions that a response  
18 be sent by a certain time. To me that is troubling.

19 COMMISSIONER GARCIA: Let me, I want you to go  
20 back to Commissioner Clark's question because that  
21 answer troubles me because you didn't seem sure of  
22 that answer, and I'm starting to have grave doubts --

23 COMMISSIONER CLARK: It doesn't make it right.  
24 That everybody does it, doesn't make it right.

25 COMMISSIONER GARCIA: Right. No, but if there is

1 someone on this Commission who is even bothered by the  
2 existence of this law that doesn't allow us to -- is  
3 myself, because I do believe that -- unfortunately  
4 it's illegal, but I do believe you should be able to  
5 communicate and discuss with all parties at all times;  
6 it's not going to affect my decision. So had the  
7 letter had been from anyone except God, it really  
8 wouldn't have affected my decision; and I doubt  
9 Southern States could have asked God for a letter.  
10 But if that were the case, if that were the case, is  
11 this decision saying to me that any letter I get from  
12 this moment forward is going to create this type of  
13 effect? Because we, I mean we get them from citizens  
14 all the time, and are we -- and we get them from --  
15 you know, representatives come before us, and they  
16 send us letters. I've got a box full on when we did  
17 305954, not as Public Service commissioner, but as  
18 commissioner from Miami, and so they all wanted to  
19 make an effect on what we were going to do.

20 Are you saying that when that happens --

21 MS. JABER: I'm not saying anything about that.  
22 That's what you have to decide. My answer would be  
23 that some of that, the majority of that is probably  
24 not appropriate.

25 COMMISSIONER JOHNSON: Lila, what you're doing,

1 and I keep trying to frame the misconduct or the  
2 mismanagement, and I guess I could be a little more  
3 narrow because you are limiting this to the companies  
4 that we regulate.

5 MS. JABER: That's right.

6 COMMISSIONER JOHNSON: And you are saying if  
7 there is a solicitation by a regulated utility for  
8 ex-parte letters on pending matters that our position  
9 on that, this Commission will send a message that you  
10 can't do that, and to the extent that you do that, we  
11 may -- we have remedies. We have ways to address that  
12 other than transferring the case, recusing  
13 commissioners, which kind of goes to a different  
14 issue. But as you look at the mismanagement, you are  
15 saying solicitation by a utility -- and if the utility  
16 had solicited their customers to write letters on a  
17 pending matter, it appears to me by what you're saying  
18 here is your response would be the same.

19 COMMISSIONER KIESLING: Except that there is a  
20 statutory exemption for customers.

21 MS. JABER: Exemption for customers.

22 COMMISSIONER JOHNSON: Oh, yeah, that's true.

23 MS. JABER: The problem with that analogy is that  
24 in 350 there is a specific exemption that allows  
25 customers to write letters or comment on pending

1 matters. But it is the solicitation by a utility, and  
2 that's the only thing I can emphasize, we regulate  
3 utilities. I don't know what precedent this case  
4 would be setting if you moved staff, I honestly don't  
5 know; but the intent of the recommendation is that we  
6 focus on the utility and the utility's action in this  
7 case based on the evidence in the record, nothing  
8 more.

9 COMMISSIONER GARCIA: Are we sending a message  
10 here?

11 MS. JABER: Probably.

12 COMMISSIONER JOHNSON: Oh, yeah, we are sending a  
13 message.

14 COMMISSIONER GARCIA: I mean obviously we are  
15 sending a message, but what I'm worried about is now  
16 the message we are sending, which is different than  
17 the one I thought, and I'm worried that we are getting  
18 astray from what we were doing in the first place.

19 COMMISSIONER DEASON: Well, let me go back to  
20 where -- perhaps the precedent is not as broad, if we  
21 adopt staff's recommendation, is not as broad as we  
22 would fear because I put, as I indicated before, I put  
23 great reliance upon the fact that the timing of this  
24 particular solicitation causes me great concern.

25 Obviously we, ex-parte communications are

1 prohibited, but there are procedures in place to  
2 remedy those when they occur because, you know, we  
3 can't just lock ourselves up in a room and not  
4 communicate with the world. Ex-parte communications  
5 are going to happen. Perhaps through no fault of any  
6 particular person, through no solicitation or  
7 whatever, things are going to happen. But there are  
8 remedies in place, we put it on the record, and then  
9 parties have an opportunity to respond so nobody is  
10 adversely impacted.

11 My concern here is, is that this solicitation,  
12 the timing of it was such that -- and let me firmly  
13 state that I think that it had absolutely no impact  
14 whatsoever on the decision on the interim case, but  
15 the timing of it was such that had another party  
16 wanted to respond before we voted on the interim, that  
17 opportunity was not there for them to do, therefore,  
18 there was not a remedy to them to basically correct  
19 that problem with that particular communication.

20 COMMISSIONER JOHNSON: That's understood then.  
21 And what I want to do is, I know that we all, all of  
22 the commissioners have been very -- and I don't want  
23 to use the word disappointed, but very disturbed by  
24 the actions that occurred, and I think we had a lot of  
25 information that was provided and evidence provided in

1 the hearing that validated some of the allegations  
2 that were quite disturbing. But what I want to do in  
3 this instance is frame and craft this issue in a way  
4 that whatever message we are sending, if we decide to  
5 do this, that we have it crafted in a way that,  
6 whether -- I don't know if it is going to be narrowly  
7 focused or if it is going to be broadly focused, but  
8 that it be clear, and that it be clear what we are  
9 doing and why we are doing what we are doing.

10 As I read through the recommendation, I had to  
11 keep coming back to, What are we saying here? What  
12 were the actions? What was the misconduct? What was  
13 the mismanagement that I'm judging? And I think we  
14 need to be very clear in order for the utility, for  
15 the citizens, for ourselves to determine what those  
16 actions and activities are and exactly what we are  
17 saying here.

18 Commissioner Deason has stated that it goes more  
19 to just, than just soliciting of letters by the  
20 utility, ex-parte letters on pending matters, but it  
21 is the timing issue also. There is no way that this  
22 problem could have been corrected. And I don't know  
23 if that is what we are -- I would like to hear others'  
24 opinion on that particular point. If we are saying  
25 the way that this was done, we had poor judgment on



1 the part of management, overly zealous lobbyist and  
2 this timing was such that the perceived damage and the  
3 parties opportunity to respond was, they didn't have  
4 that opportunity given the strategic timing or the  
5 timing in which this activity occurred, so if we could  
6 be clear. Before I can vote on this issue, I would  
7 like to clearly understand the misconduct, the message  
8 that we're sending and why.

9 And I hear staff, staff seemed a little broader  
10 than that. Staff seemed to be in my mind suggesting  
11 that any solicitation by a utility of ex-parte letters  
12 on pending matters would give rise to the kind of  
13 sanction or adjustment that has been recommended in  
14 this particular case.

15 COMMISSIONER KIESLING: And could I just add to  
16 that? Because I'm with you on having that concern,  
17 and some of the reasons I have that concern are on  
18 Page 29 of the rec. where in the first full paragraph  
19 all they talk about is the failure to inform, that  
20 there were pending rate cases. And right in the  
21 middle of that paragraph they say, Staff believes that  
22 SSU's actions do in fact rise to the level of  
23 mismanagement.

24 And I cannot make, for example, that leap. I  
25 cannot say that failing to tell a public official who

1           you're talking to that there is a pending rate case is  
2           so egregious and improper that it amounts to  
3           mismanagement. I mean -- and that's why in reading  
4           just what is in the rec. I'm having trouble  
5           understanding exactly what it is that staff believes  
6           amounts to -- rises to the level of misconduct such  
7           that, or mismanagement, such that this kind of an  
8           adjustment should be made, and so I'm with you.

9           COMMISSIONER JOHNSON: Yeah.

10          COMMISSIONER KIESLING: I mean if we were to just  
11          send out the language that is in this rec. as our  
12          order on this, I'd be terribly upset because I don't  
13          think it's clear from the language in here what it is  
14          and why it is that we are doing this if we do it.

15          COMMISSIONER JOHNSON: I would agree. I had that  
16          same point on 29, second paragraph, last line,  
17          "Failure to disclose that there was a pending case is  
18          improper and misleading." I said, okay, is that what  
19          they did? Well, what if they had disclosed, then is  
20          it okay? And then on the next paragraph, the third  
21          paragraph, "SSU provided the lieutenant governor with  
22          a letter they drafted to Chairman Clark." That is  
23          improper because -- This is the recommendation.  
24          "This is improper as the letter has the appearance of  
25          intimidation." So if we receive an intimidating

1 letter, is that -- so we really need to be careful on  
2 how we are going to craft this and craft what the  
3 actions are that rise to the level that an adjustment  
4 would be necessary. And to the extent that we can  
5 articulate those and articulate those clearly, I'm  
6 ready to vote. I mean I think we -- I'm ready to  
7 vote after we have done that. I think we --

8 MS. JABER: They certainly can be modified any  
9 way that you choose to modify it.

10 COMMISSIONER JOHNSON: Sure.

11 MS. JABER: Let me see if I can summarize what  
12 you all have said so that we can make sure we've got  
13 the vote correct if you choose to vote that way. It  
14 is the solicitation of the letters by a regulated  
15 utility regarding a pending matter. It is also the  
16 fact that one of those letters came before a very  
17 important decision on interim and there may have not  
18 been enough time for the parties -- was not enough  
19 time for the parties to respond to that ex-parte  
20 communication.

21 COMMISSIONER JOHNSON: And Terry had also --

22 MS. JABER: Poor judgment by the utility.

23 COMMISSIONER JOHNSON: Terry had also raised as  
24 kind of like perhaps the test that we're applying is  
25 it could be one of not did it directly impact what the

1 customers paid, but could the actions have adversely  
2 impacted, could they have kind of --

3 MS. JABER: That they could have impacted,  
4 right. And I think that is the summary of what you  
5 all were saying. And to answer your question, right,  
6 staff's concern was more broad.

7 COMMISSIONER JOHNSON: And then I think too we  
8 need to look back -- And I haven't had as much  
9 experience with this as I'm sure Chairman Clark or our  
10 most current past chairman, Chairman Deason in  
11 receiving these kind of letters, and I probably -- I  
12 would think that sitting in the chairman's office you  
13 probably receive more of these things. I don't know  
14 if this is --

15 COMMISSIONER DEASON: Hopefully you'll get your  
16 chance.

17 COMMISSIONER JOHNSON: But by then we'll have  
18 some clearly delineated policies and standards on  
19 this. But I don't know if -- I look at this and say,  
20 well -- which is an awful thing to think, but does it  
21 happen all the time and is it the norm? And as  
22 Chairman Clark said, the norm doesn't make it right.  
23 And are we ready to send this message? Should the  
24 parties have been on notice? Should the utility have  
25 known that this is the kind of misconduct and poor

1 judgment that this Commission will not tolerate and  
2 that in fact amounts to the kind of mismanagement and  
3 misconduct that could merit an adjustment? And  
4 answering -- I have to kind of go through my mind and  
5 answer those questions.

6 Indeed I think it was, at a minimum, poor  
7 judgment; at a maximum, I'm still dealing with that.  
8 Is it the kind of mismanagement -- I understand, and  
9 it was a good point that Commissioner Deason raised  
10 with respect to could this have had an adverse impact  
11 on the customers? We know that it had an impact on  
12 perhaps the process and tainting the process and the  
13 credibility of the process, and that in my mind was  
14 quite damaging and caused me great concern. But is  
15 that enough? And what else is there that we look at  
16 and what factors do we delineate? Because I figure no  
17 matter how we go on this, this will probably be  
18 appealed.

19 And that is another thing that I am looking at,  
20 is this something that could stand up in a court of  
21 law? Does this meet the Gulf test? Those are the  
22 kind of things that I think we need to have more  
23 conversation on here on the bench.

24 COMMISSIONER CLARK: There is one other thing I  
25 want you all to address. The statute provides

1 penalties for ex-parte communications. Unfortunately,  
2 the only penalties appear to be directed at  
3 commissioners.

4 MS. JABER: Right.

5 COMMISSIONER KIESLING: Yeah.

6 COMMISSIONER CLARK: But it does indicate an  
7 intent as to how you remedy them and how you deal with  
8 an infraction, and is this -- do we have the authority  
9 to deal with it in this way? We don't unless we  
10 characterize it as mismanagement.

11 MS. JABER: That's our recommendation, correct.

12 COMMISSIONER CLARK: Okay.

13 MS. JABER: To add on to the summary of what you  
14 would consider misconduct, I would only add that you  
15 would say that those actions constitute misconduct  
16 arising to the level of mismanagement. And the only  
17 other thing I could throw out for authority is 367.121  
18 says that the Commission could exercise and do all  
19 things necessary for the full and convenient exercise  
20 of its authority.

21 COMMISSIONER JOHNSON: Was that used in the Gulf  
22 case?

23 MS. JABER: It's in the rec.

24 COMMISSIONER JOHNSON: In the Gulf case?

25 MS. JABER: No.

1           COMMISSIONER JOHNSON: They didn't need that to  
2 rely upon?

3           MS. JABER: Not in Gulf.

4           COMMISSIONER CLARK: Just to summarize what I  
5 think the conversation has reached up to this point in  
6 terms of defining the conduct that was inappropriate,  
7 it would be the improper solicitation which appeared  
8 to be for the purpose of influencing the Commission  
9 given the timing of it and the fact that such a  
10 solicitation of influence would have the potential to  
11 adversely impact customers. Is that a fair statement  
12 of what it has evolved to?

13           MS. JABER: That's what we have that you stated.

14           MR. WILLIS: Commissioners, I would like to add a  
15 little bit about the perception problem here too on  
16 the technical side of this. The utility is the one  
17 that this Commission actually deals with directly.  
18 They are the ones who have filed the rate case. They  
19 are the ones who have their revenue up for grabs in  
20 this case.

21           The perception by soliciting these letters to the  
22 consumers out there is that there is a method of  
23 influence upon the Commission, and that's where the  
24 perception problem comes in, and that is why staff  
25 came down with a hefty penalty on that. Maybe it

1 didn't contribute, and we know it didn't contribute to  
2 anything as far as a penalty -- or not a penalty. It  
3 didn't contribute to any kind of increase in their  
4 revenue requirement as far as staff or the Commission  
5 goes. It had no real impact at all, but the problem  
6 is there is a perception of those consumers out there  
7 that it could have, and it does taint this order when  
8 it comes out. There will be a taint upon the  
9 consumers as to whether or not it ever did have any  
10 influence.

11 COMMISSIONER CLARK: And I understand that and  
12 agree with it, and I don't like what happened. I  
13 don't think it's appropriate that it happened, but my  
14 question is, what is our authority to do this? And I  
15 think the authority has to come from concluding that  
16 it rises to the level of mismanagement. Because if we  
17 say it's because it had an adverse impact on  
18 perception, that they should be penalized for their  
19 misconduct, then I think it is going to be thrown back  
20 to us that you don't have authority to penalize for  
21 soliciting ex-parte communications; first, assuming  
22 that it is an ex-parte communication. I think a good  
23 case can be made that it was, that -- and that's, you  
24 know, I'm looking more, not to the fact that the  
25 conduct was inappropriate, but what authority do we



1 have to deal with it?

2           Commissioners, you know, we don't -- We have  
3 discussed this. If you're not ready to vote on it, we  
4 can pass over it and come back to it and get through  
5 some other issues and allow us to think about it. I  
6 mean this, you know, this -- almost, you know, reached  
7 an impasse myself in just getting past this first  
8 issue and to the other issues. We can deal with it  
9 now or just move on and come back to it. I mean we  
10 have to deal with it, but if we are not prepared to  
11 vote, then we can go on.

12           COMMISSIONER DEASON: Well, I think that we need  
13 to consider this in relation to the quality of service  
14 issue and whether there should be some impact on  
15 return on equity as a result of some quality of  
16 service problems. And the reason I say that is that  
17 if we agree with staff's recommendation that we are  
18 limited by law to a total adjustment to return on  
19 equity of one hundred basis points, then I think that  
20 we need to, when it actually comes -- If we make a  
21 decision to make an adjustment on when it comes to  
22 actually quantifying, putting an amount on that  
23 adjustment, that we need to weigh those two together.  
24 And to me, for purposes of delineating these issues, I  
25 think staff did the right thing, and there was one on

1           this, and there was another one on quality of service;  
2           but in reality, to me, those things go together in  
3           determining the quality of management, which we have  
4           to make an evaluation on in this case, and that they  
5           both go to that question because I think we have  
6           already concluded that we have discussed here that  
7           consistent with the Gulf case, if there is to be an  
8           adjustment on return on equity, it has to be related  
9           to a determination of actions by management. And I  
10          think that management also is responsible for quality  
11          of service, and so I think that we can -- when it  
12          comes time to actually quantify that adjustment, I  
13          think we perhaps ought to roll it together and just  
14          say whatever adjustment we make to return on equity is  
15          a result of both these problems with solicitations and  
16          the improper conduct, that we believe that that  
17          constituted as well as problems with quality of  
18          service because it seems to me they are all  
19          intertwined.

20                 COMMISSIONER JOHNSON: I would agree with that.

21                 COMMISSIONER CLARK: Commissioners, are you ready  
22          to vote on Issue 5, or would you like to move on?

23                 COMMISSIONER KIESLING: Well, I think that  
24          depends on whether on Issue 5 we are voting on both  
25          whether or not this is mismanagement and how much of

1 an adjustment should be made if we --

2 COMMISSIONER CLARK: We can do either.

3 COMMISSIONER KIESLING: You know, I can break  
4 out, if we can break out Issue 5 into those two parts  
5 so that we figure out if we have, if there is a  
6 majority of us who think that this conduct,  
7 reprehensible as it may have been, arises to the level  
8 of mismanagement that should involve some adjustment  
9 without deciding the amount of the adjustment at this  
10 time then, you know, I think that would be the most  
11 efficient way to go if people are ready to vote on  
12 that issue.

13 COMMISSIONER GARCIA: Here is my quandary, and  
14 then I guess I'm ready though I'm still not sure. If  
15 it's a question of we are voting on mismanagement, I  
16 don't have a problem with what staff has recommended  
17 with the exception of what I stated before of relaying  
18 it out; but if we are sending a message, I do have a  
19 problem because I think you fine them differently.  
20 One is completely different from the other. If when I  
21 do something that I know is wrong -- It's completely  
22 different than something we have never -- and I think  
23 staff was pretty clear, we have never done anything  
24 like this. Then I also have a problem with the level  
25 of the fine. So I need to know what exactly it is we

1 are voting on so that I can determine whether I can  
2 vote for that or not.

3 COMMISSIONER CLARK: Well, we'll know when we get  
4 a motion I suppose.

5 COMMISSIONER KIESLING: Well --

6 COMMISSIONER JOHNSON: Let's have some general  
7 conversation some more, a little bit more.

8 COMMISSIONER CLARK: Okay.

9 COMMISSIONER JOHNSON: One of the issues that  
10 Commissioner Kiesling raised is one of the bothersome  
11 aspects of this to me too, the chilling effect, and  
12 what effect will that have on others' ability to  
13 communicate and lobby; and certainly a utility is a  
14 regulated company, but they have rights with respect  
15 to if they disagree with the decision of this  
16 Commission, if they disagree with water policy, then  
17 they should be able to go to the elected officials,  
18 the legislature. To the extent that they want a law  
19 changed, they should be able to -- they have the  
20 right. And I want to make sure if whatever we craft  
21 here, if we decide that something is mismanagement,  
22 that that is not characterized as mismanagement, for  
23 them to lobby the governor, lobby the lieutenant  
24 governor, hire lobbyists to help them in that regard.  
25 Those activities aren't mismanagement.

1 MS. JABER: No, case in point, Sandbulte's  
2 testimony says that he sent the letter to the  
3 governor, if I'm not mistaken, so that maybe the  
4 governor could help in proposing legislation or maybe  
5 members of the governor's staff could aid SSU in  
6 obtaining legislation. We didn't use that at all in  
7 our recommendation. We are not saying there is  
8 anything wrong with that. There is a difference  
9 between lobbying for the purpose of achieving  
10 legislation than lobbying for the purpose of  
11 soliciting a letter to go to the chairman who sits on  
12 the panel of a pending matter. I think that the order  
13 would need to be clear on that. You can send whatever  
14 message it is you choose to send by this order.

15 COMMISSIONER JOHNSON: Then let me go back to how  
16 we were couching what the issue was and what we need  
17 to evaluate in terms of misconduct rising to the level  
18 of mismanagement, and I don't know if I can. Susan,  
19 you did a real good job with your summation. Perhaps  
20 you could -- I think you said the improper  
21 solicitation by a utility for the purpose of  
22 influencing the Commission. I don't know how we put  
23 the timing issue.

24 COMMISSIONER CLARK: Well, the timing factors  
25 into that, that as evidenced by the timing of the

1 solicitation and the letter and the fact that there  
2 was really no opportunity to respond, and it rises to  
3 the level of mismanagement because it has the  
4 potential to influence the vote which may adversely  
5 influence the customers. That is what I -- I mean  
6 adversely affect the customers, and that was what  
7 staff proposed to address and what Commissioner Deason  
8 pointed out, to address the notion of this nexus to  
9 our authority to economically regulate these utilities  
10 and how that misconduct has a potential economic  
11 impact.

12 I mean that is how I understood it. You can't  
13 take my understanding as necessarily agreement with  
14 it. I'm still having difficulties with it. I mean I  
15 felt in the Gulf Power case it was very defensible,  
16 that it was not a penalty, that it was, you know, for  
17 a pattern of mismanagement that allowed that to occur.  
18 And the pattern of mismanagement and management  
19 efficiency had to be addressed, and that's why we were  
20 able to convince the court that it could be  
21 distinguished, and just -- I'm concerned that we  
22 can't -- it's difficult to make that kind of nexus and  
23 given the fact that the statute sets out penalties,  
24 although the statute is somewhat remiss in the fact  
25 that it only penalizes commissioners. You know, this

1 is the activity that is of concern here, and how you  
2 deal with it is specifically addressed in the  
3 statute.

4 COMMISSIONER JOHNSON: And to the extent that  
5 this is viewed as a penalty for misconduct, you aren't  
6 suggesting that that is something that we cannot do,  
7 you are just saying there is a different vehicle and  
8 it would have to be a direct penalty as opposed to --

9 COMMISSIONER CLARK: No, can we penalize them for  
10 it?

11 COMMISSIONER JOHNSON: Yeah.

12 COMMISSIONER CLARK: I don't think so.

13 COMMISSIONER JOHNSON: Oh.

14 MS. JABER: Let me just read you a paragraph from  
15 Gulf. To answer your question, I don't think that --  
16 Your decision here today, even if staff were to modify  
17 the rec. so that the bottom line is still the same,  
18 you would not be couching this as a penalty. To be  
19 consistent with Gulf, you would call it an adjustment.

20 Gulf recognizes in dicta but nevertheless  
21 the decision says:

22 "In a competitive market  
23 environment, the market would  
24 provide the necessary incentives  
25 for management efficiency and

1           corresponding disincentives for  
2           mismanagement.  However, for a  
3           utility that operates as a monopoly,  
4           this discretionary authority to  
5           reward or reduce a utility's rate of  
6           return within a reasonable rate of  
7           return range is the only incentive  
8           available."

9           But Gulf really does concentrate on the Commission's  
10          authority to play with the range of return as long as  
11          it is within that range for awarding a utility for  
12          management efficiencies as stated earlier or for the  
13          inefficiency.

14          COMMISSIONER JOHNSON:  Now help me with this.  
15          How do you get to the position that these activities  
16          were indeed mismanagement?  How would you argue the  
17          facts amount to misconduct that is, therefore,  
18          mismanagement?  How is this going to be written in the  
19          brief in order that it can be defensible on appeal?

20          MS. JABER:  I would tell you that the  
21          solicitation of the letters appears to circumvent 350  
22          and 120.  I would tell you that as a regulated utility  
23          they exercise poor judgment and surely under Gulf that  
24          that would rise to the level of management  
25          inefficiency.  I would tell you that the timing is a



1 very important factor, that it is hard to argue that  
2 those communications were not for the purpose of  
3 influencing the Commission when on January 4th you  
4 were to decide the interim rate agenda, the interim  
5 rates.

6 COMMISSIONER GARCIA: I'm comfortable with that  
7 justification. I'm just not -- let me ask you in  
8 terms of time, this hundred basis points, is it on a  
9 yearly basis? Is it --

10 MR. WILLIS: If you were to apply the hundred  
11 basis point adjustment, it would be on a yearly  
12 basis. It would actually be affected by the rates. I  
13 mean it would be an adjustment to the rates, and it  
14 would be there until this utility comes in for its  
15 next rate case; that's staff's recommendation.

16 COMMISSIONER GARCIA: There would be a reason for  
17 coming into a rate case?

18 MR. WILLIS: Would there be a reason?

19 COMMISSIONER JOHNSON: Could this provide an  
20 incentive --

21 COMMISSIONER GARCIA: Could this provide an  
22 incentive for --

23 COMMISSIONER JOHNSON: A perverse incentive?

24 COMMISSIONER GARCIA: That's the --

25 MR. WILLIS: Well, Commissioners, as long as the

1 utility is earning within their fair rate of return,  
2 that range of reasonableness, they can't come in for a  
3 rate increase.

4 COMMISSIONER GARCIA: Right, but as --

5 MR. WILLIS: So there would not be an incentive  
6 to come in for a rate increase at that point.

7 COMMISSIONER CLARK: Well, I think you have to be  
8 clear that what we would do would be targeting our  
9 rates to achieve that certain percentage. Whether it  
10 does or not will be borne out by the rates. And in  
11 order to do away with that penalty, you would have to  
12 reset the rates, but you probably wouldn't do that  
13 because it would depend on what they were earning.

14 MR. WILLIS: That's correct, it could be in two  
15 or three years they don't achieve that rate of return,  
16 and in that case that would trigger them probably to  
17 come in for a rate case. This company has a history  
18 of coming in for rate cases. In the Gulf case, there  
19 was a two-year provision on that, and after two years  
20 rates were automatically increased, from my  
21 understanding, to go back up to remove the 50 basis  
22 point penalty; that's what I've been told.

23 COMMISSIONER GARCIA: Just to remind me,  
24 Marshall, how much are we talking about, how much  
25 money?

1 MR. WILLIS: That I needed to tell you too. I  
2 have been told this morning that the calculation of  
3 the penalty was based on an erroneous number that I  
4 had. At this point the penalty would be a total of  
5 856 --

6 COMMISSIONER CLARK: The adjustment.

7 MR. WILLIS: The adjustment, I'm sorry.

8 COMMISSIONER KIESLING: No, let him keep saying  
9 penalty. I mean let him keep building the record.

10 MR. WILLIS: The adjustment would be for 856  
11 thousand 473 dollars, which would be a 1.43 percent  
12 revenue reduction. That is a one hundred basis point  
13 reduction.

14 COMMISSIONER GARCIA: How many years --

15 COMMISSIONER JOHNSON: Say that again. Say those  
16 numbers again, please.

17 MR. WILLIS: 856 thousand 473 dollars, which is a  
18 1.43 percent revenue reduction.

19 COMMISSIONER JOHNSON: Now you mention that in  
20 the Gulf Power case the adjustment was for a specific  
21 duration. It was two years, did you say?

22 MR. WILLIS: Specific duration, two years.

23 COMMISSIONER JOHNSON: But with respect to this  
24 one, this is in perpetuity, this is, this will --

25 MR. WILLIS: It's in perpetuity until they file

1 their next rate case.

2 COMMISSIONER JOHNSON: Until they come in. Now  
3 just to help educate me on this process, we are, we  
4 said the range of reasonableness was 10.88 to 12.88  
5 with the mid point being --

6 MR. WILLIS: That's correct.

7 COMMISSIONER JOHNSON: And now we are saying the  
8 ROE will be 10.88 which is the very, the bottom.

9 MR. WILLIS: Which is the low end of the range of  
10 reasonableness. The range will not change. The range  
11 stays from 10.88 to 12.88, it's just that your actual  
12 equity return that you are designing rates after will  
13 not be 11.88, it will be 10.88.

14 COMMISSIONER KIESLING: See, that troubles me  
15 because it seems to me that a company can come in for  
16 another rate case at any time that they are earning  
17 below their rate of return, their range.

18 MR. WILLIS: Yes, they can.

19 COMMISSIONER KIESLING: And if we are setting  
20 them at the very bottom of their range, it seems like  
21 all it does is increase the likelihood that they are  
22 going to not be earning in that range and they are  
23 going to have to come in for another rate case. I  
24 mean I don't know how you can -- I don't understand  
25 the logic of saying, no, it won't make that happen.

1           COMMISSIONER GARCIA: I follow that thinking,  
2           and that's why I wanted to put some type of limitation  
3           on the time of --

4           COMMISSIONER CLARK: Well, if we did it in Gulf,  
5           why can't we do it here?

6           COMMISSIONER GARCIA: What is the word we are  
7           using?

8           MR. WILLIS: You can.

9           COMMISSIONER GARCIA: It's not a penalty, it's a  
10          sanction, an adjustment.

11          MR. WILLIS: You very well can. There is no  
12          reason that you can't put a limitation upon the  
13          adjustment itself.

14          COMMISSIONER DEASON: Well, now if we look at a  
15          situation, and let's assume just for a moment that we  
16          didn't even have this issue and we were discussing an  
17          adjustment return on equity strictly for quality of  
18          service, if we made such an adjustment, the company  
19          could not come back in -- in my opinion, they could  
20          not come back in if they fell below that minimum  
21          unless they had corrected the quality of service  
22          problems which caused the adjustment to begin with.  
23          Now if they instantaneously could correct all of those  
24          problems, they could I guess in theory file a rate  
25          case the next day, but we would have achieved what we

1 wanted to achieve; and that is, the quality of service  
2 would have been improved.

3 COMMISSIONER GARCIA: Commissioner, but that is  
4 precisely my point when I brought up the other issue  
5 of maxing out. They can correct quality of service  
6 with the water, but how do you correct this tarnish?  
7 I mean clearly they can't go back and not have talked  
8 to the governor; there is no way to change this  
9 policy. That's why I thought that it has to -- if we  
10 are sending a message, again, it's a pretty stiff  
11 adjustment if we are sending a message; and so clearly  
12 the other issue in terms of quality of service, in  
13 terms of what was it called, is it four?

14 COMMISSIONER CLARK: Yeah. Issue 4?

15 MS. JABER: Issue 4.

16 COMMISSIONER CLARK: Yeah.

17 COMMISSIONER GARCIA: Issue 4 is something that  
18 the company can correct, and it's something that the  
19 company can control. I think this discussion alone  
20 has, will have great effect in the future from  
21 preventing something like this happening, but I don't  
22 think we want the company to go away also with a slap  
23 on the hand. And again, is it a penalty, or is it an  
24 adjustment? Regardless I would want to limit it.

25 COMMISSIONER JOHNSON: You want to limit the

1 time?

2 COMMISSIONER GARCIA: The time, because I don't  
3 want -- again, I agree with Commissioner Kiesling. I  
4 don't want to -- I want to avoid the upcoming chairman  
5 having to deal with Southern States again in a short  
6 period of time because they fall within that range,  
7 and that's why I would do a one-year limit on this.

8 COMMISSIONER CLARK: Let me ask a question. Do  
9 we have any background as to why the ex-parte statute  
10 only speaks to commissioners?

11 MS. JABER: I don't, no.

12 COMMISSIONER DEASON: You could make the  
13 assumption that the crafters of that legislation  
14 assumed that we had enough general pervasive  
15 regulatory powers that to the extent that entities we  
16 regulate engage in such activities we would take  
17 whatever measures we felt were appropriate to remedy  
18 that situation. That is an assumption you'll have to  
19 read into the statute as to why there is no --

20 MS. JABER: I don't know.

21 COMMISSIONER CLARK: Well, I would tend to agree  
22 with that assumption if I hadn't seen the case law  
23 that says, you know, your penalties have to be  
24 specific; you have no ability to penalize unless you  
25 have specific authority to do it.

1 MS. JABER: I don't know what the intent of 350  
2 was.

3 The penalty statute relates to, you know, a  
4 violation of a statute, rule or order, and there is no  
5 statute, rule or order that I could say -- That's  
6 not accurate because we are saying that it is an  
7 ex-parte communication, but it was the lieutenant  
8 governor's signature that came to that letter, which  
9 brings us back to staff's original, staff's purpose in  
10 the recommendation. It's the solicitation and the  
11 actions that in our opinion rise to the level of  
12 mismanagement.

13 COMMISSIONER JOHNSON: Did we address the issue  
14 regarding setting this at the bottom of the range of  
15 reasonableness and whether or not that would provide  
16 some perverse incentive for the company to come in  
17 earlier for a rate case? If I understand correctly,  
18 and Marshall, you can explain this to me, setting it  
19 at the 10.88 would mean that we would kind of set  
20 rates in such a way that we thought that they would  
21 achieve 10.88, but that the environment, you know, and  
22 externalities may cause it to be higher or cause it to  
23 be lower. And my concern is that when we do set it at  
24 that range, is there an increased likelihood of it  
25 being lower since they are at the bottom of the range



1 of reasonableness? And have we ever done that before?

2 MR. WILLIS: Sure, let me address that. And in  
3 that I need to go back and address some of  
4 Commissioner Deason's comments concerning when a  
5 utility can come in for a rate case.

6 To start with, a utility can come in for a rate  
7 case any time they perceive they are earning below  
8 their range of reasonableness. I don't think it  
9 really matters what kind of adjustments we have done  
10 to the return on equity if in quality of service we  
11 made adjustments on return on equity and reduced them  
12 to the low end and they still haven't achieved  
13 progress in that area, they can still come in for a  
14 rate case if their earning levels go below. I think  
15 that is the statutory right they have. Now that  
16 doesn't mean the Commission can't continue the penalty  
17 until that point in time in which that problem goes  
18 away, that's just the statutory right.

19 Now when a commission -- if you were to put that  
20 rate of return down at 10.88, a utility can have many  
21 things happen to their rate of return to cause them to  
22 have to come in. They can have growth which can spur  
23 a higher rate of return. They can have plant  
24 improvements mandated by DUP (sic) which can put them  
25 below the rate of return on equity and cause them to

1           come in for a rate case.

2           In this case it's hard to tell. We have in the  
3 past penalized utilities on quality of service, and we  
4 have done that through a basis point reduction. And  
5 in some of those cases it has been one hundred percent  
6 or a one hundred basis point penalty. And in those  
7 cases, we haven't had a utility turn around and come  
8 back in. They have corrected those problems, and they  
9 usually come back in when it's necessary.

10           You can't actually say that by putting it at the  
11 low end of the range of reasonableness they will get  
12 there quicker as far as the need to come in, and it's  
13 certainly within your latitude to reduce the  
14 adjustment if you desire, if you believe that's a  
15 reason to set it at a lower level.

16           COMMISSIONER JOHNSON: Now what about the issue  
17 of limiting it in duration, did staff consider that?  
18 In reading the Gulf case I did see where it was two  
19 years. What is staff's opinion on that issue.

20           MR. WILLIS: Well, we understood in Gulf it was  
21 two years, but we also understand with the electric  
22 industry there is a history lately of coming in for  
23 rate cases very often. In water and wastewater, there  
24 is a history of our large utilities coming in for rate  
25 cases every two to three, four years. That's pretty

1           prevalent as far as that happening, and we have never  
2           seen a need because of that to set a time frame on any  
3           kind of adjustment to the return on equity as far as  
4           basis points go.

5           It doesn't mean you can't do it here. I think in  
6           this case you could actually say that this adjustment,  
7           this one hundred basis point adjustment to your rate  
8           of return will go on for a minimum of three years,  
9           which means that if you come in prior to the  
10          three-year period we are still going to apply that one  
11          hundred basis point reduction. If you come in after  
12          the three-year period, if nothing is going on at that  
13          time, certainly we'll look at it, and you may be back  
14          up to your mid-point earnings at that point.

15          COMMISSIONER JOHNSON: I would like to consider  
16          them together later.

17          COMMISSIONER CLARK: Excuse me?

18          COMMISSIONER JOHNSON: No, I was just stating  
19          that staff has given me a lot to think about, and I  
20          would prefer it if we went through and came back.

21          COMMISSIONER CLARK: Unless someone is prepared  
22          to make a motion or is comfortable with -- if everyone  
23          is comfortable with voting on that motion I would  
24          propose that we move on to Issue B.

25          COMMISSIONER DEASON: Is there a motion? .

1           COMMISSIONER CLARK: I haven't -- There has been  
2 no motion.

3           COMMISSIONER DEASON: So it's your suggestion  
4 that we just --

5           COMMISSIONER CLARK: Commissioner Johnson has  
6 indicated she would like more time to think about it.  
7 I, you know, I don't know that it is going to get any  
8 easier, but I think we have a long day ahead of us,  
9 and it may -- for efficiency purposes we may get  
10 further ahead if we go ahead and move to the other  
11 issues.

12           COMMISSIONER DEASON: I have no objection.

13           COMMISSIONER CLARK: Okay. I looked up under our  
14 authority to penalize, and it does say any rule or  
15 order, and then it says any statute administered by  
16 the Commission. But I don't know that we administer  
17 350. It specifically provides for the Commission on  
18 Ethics to receive and investigate complaints of  
19 violations, so I'm not sure that we could bootstrap  
20 them that way.

21           All right. Let's go --

22           COMMISSIONER DEASON: That's in terms of a  
23 penalty.

24           COMMISSIONER CLARK: You're correct.

25           COMMISSIONER DEASON: Okay. Not in terms of an

1 adjustment.

2 COMMISSIONER CLARK: Not an adjustment.

3 Issue B. So we'll leave Issue 5 pending.

4 MS. JABER: Okay.

5 COMMISSIONER CLARK: Issue B.

6 MR. JAEGER: Commissioners, Issue B addresses  
7 staff's recommendation on SSU's motion for attorneys'  
8 fees and costs. Staff is recommending that SSU's  
9 motion be denied.

10 COMMISSIONER CLARK: Discussion.

11 COMMISSIONER KIESLING: I can move staff.

12 COMMISSIONER JOHNSON: I can second.

13 COMMISSIONER CLARK: All those in favor.

14 (AFFIRMATIVE INDICATIONS)

15 COMMISSIONER CLARK: Oppose, nay.

16 (NO RESPONSE)

17 COMMISSIONER CLARK: Issue Number 1.

18 MR. CROUCH: Commissioner, Issue Number 1 is the  
19 discussion on whether the Enterprise plant and  
20 facility should be removed from this docket. The  
21 staff's recommendation is that since SSU does not own  
22 that facility that it be removed from the docket, that  
23 if at a future time they wanted to, they could come in  
24 as a Class C utility and file for a staff-assisted  
25 rate case, but that under this case we remove it from

1 this docket.

2 COMMISSIONER CLARK: Questions, commissioners?

3 COMMISSIONER GARCIA: I'll move staff.

4 COMMISSIONER KIESLING: Second.

5 COMMISSIONER CLARK: Without objection, Issue 1  
6 is approved.

7 Issue 2.

8 MR. WILLIS: Commissioners, Issue 2 concerns the  
9 value and quality of service provided by Southern  
10 States of each of its water and wastewater facilities  
11 whether or not that service and value is  
12 satisfactory.

13 Staff has two recommendations in this case. The  
14 primary recommendation basically states that the value  
15 and quality of service should be considered marginally  
16 satisfactory, and it also states that the utility  
17 should be placed on notice that sanctions will be  
18 pursued in the next rate case if the service isn't  
19 considered satisfactory at that time.

20 COMMISSIONER GARCIA: Is anybody here to discuss  
21 the alternate?

22 COMMISSIONER CLARK: Mr. Walden.

23 MR. WALDEN: Yes, sir. The alternate staff  
24 conclusion is that the value and quality of the water  
25 service is unsatisfactory based upon a couple of

1 points. Essentially the customers are dissatisfied  
2 with the service they receive as evidenced by the  
3 testimony in the case.

4 Alternate staff believes that the company is  
5 generally unresponsive to its customers. I also  
6 believe that while there is some overlap to the  
7 wastewater service that this company provides, we are  
8 recommending, or I'm recommending that the value and  
9 quality of the wastewater service is satisfactory.

10 I can elaborate a little bit. There was  
11 considerable difficulty in quantifying the testimony  
12 and the data in this case. The customer satisfaction  
13 is the greatest problem. I think the recommendation  
14 explains that the quality of the product is meeting  
15 standards. The DEP testimony holds that out.  
16 Operational conditions seem to be fine. The DEP  
17 testimony, again, bears that out.

18 There are a couple of reasons, I believe, for the  
19 dissatisfaction expressed by the customers,  
20 specifically it addresses water quality and the  
21 company's response to the customers. There are  
22 problems with lead and copper at a couple of the  
23 systems. In addition to there being elevated levels  
24 of lead and copper, there are some problems in testing  
25 the water and then providing notification to the

1 customers about the elevated levels.

2 Customers complained about chlorine levels that  
3 are excessive. Customers also complained about  
4 information from the company not being accurate.  
5 There were several incidents there, and I believe  
6 those are laid out in the recommendation clearly.  
7 There were customers who complained about staining and  
8 corrosive properties of the water, and then there were  
9 some isolated problems about billing.

10 There were a number of customers who came and  
11 offered testimony at all of the customer service  
12 hearings. I know you all attended all of those as  
13 panels and so forth. In my review of the customer  
14 service hearings and the customer testimony that was  
15 taken in this case, there were 364 customers who  
16 testified. There were 47 hundred letters that came  
17 in. Customers sat down and took the time to put pen  
18 to paper and write to the Commission explaining  
19 problems they had, and then there were more than 23  
20 hundred phone calls. The customers sat down at the  
21 telephone and dialed the Commission to express their  
22 displeasure.

23 I believe when you review all of that evidence,  
24 the conclusion is that the value and quality of  
25 service, the water service, is not satisfactory.



1 Let's distinguish this now from normal quality of  
2 service issues that are before the Commission.  
3 Usually we address quality of service and we look at  
4 the operational conditions and the quality of product  
5 and the customer satisfaction. This issue is framed  
6 just a little differently. It addresses the value of  
7 service, and I think that is an important distinction.

8 COMMISSIONER GARCIA: Let me -- I'm going to move  
9 alternative, but I wanted to ask you something. It  
10 was, and forgive me, but in my notes I couldn't find  
11 the name, but there was -- I believe it's the city,  
12 the facility outside of Orlando where they had a water  
13 problem where all their piping was falling apart, I  
14 mean houses, walls falling, things of that nature.  
15 Could you remind me which system that was? Was that  
16 Sebring, if I'm not mistaken, or --

17 COMMISSIONER CLARK: I thought it was  
18 Jacksonville.

19 MR. WALDEN: Yes, it was Jacksonville, and for  
20 Beacon Hill and Cobblestone, those two subdivisions  
21 are interconnected.

22 COMMISSIONER GARCIA: Now I remember staff saying  
23 that there was very little we could do in terms of --  
24 I want to see if there is some way, and I'm asking  
25 staff here, if we could craft our order to ask the

1 company to do something about this, in other words,  
2 get together with the people in that area, because  
3 there are people that are losing homes. I remember  
4 people coming in and showing us bills for thousands of  
5 dollars, and I want to know if there is some way we  
6 can incorporate --

7 COMMISSIONER CLARK: Not for the utility, but to  
8 replace pipes, right?

9 COMMISSIONER GARCIA: Right. Right, to replace  
10 walls, rooms, repipe the house, or what is it called,  
11 replumb the house. And I wanted to ask if there was  
12 something we could do about that. I remember that  
13 staff told us that there was very little in terms of  
14 the quality required by the law the company was  
15 meeting in terms of the chemicals in the water and  
16 whatever. I just wanted to ask if there was some way  
17 we could craft something to ask the company to do  
18 something about this.

19 MR. CROUCH: Commissioner, I believe we work  
20 continuously with DEP to follow up on many of these  
21 problems and complaints that come in --

22 COMMISSIONER GARCIA: This one was --

23 MR. CROUCH: -- without the pending of a rate  
24 case.

25 COMMISSIONER GARCIA: This one was particular. I

1 had never seen anything like this, and not that I, you  
2 know, I've been at the Commission that long; but in  
3 the time that I have been here I had never seen these  
4 conditions. And this wasn't in particular something  
5 that the people could help. I mean the developer had  
6 put in certain pipes which for all the world, except  
7 this part of the country I guess, you know, is the  
8 best, copper plumbing, and their houses were coming  
9 down around them. And I'm wondering, and I guess this  
10 goes to the engineers, if there is something that the  
11 company could do or work with the people in the area  
12 to do to prevent this from happening any longer.

13 MR. WALDEN: Commissioner Garcia, I think we  
14 might more appropriately address that point under  
15 Issue 3, but let me answer your question by saying,  
16 yes, there is something we can do. We can provide  
17 some specific instruction in the order that addresses  
18 corrective measures, asking -- or requiring the  
19 company to provide us specific answers on what they  
20 are doing in the Jacksonville area to diminish the  
21 corrosive properties of the water.

22 COMMISSIONER GARCIA: Okay.

23 MR. WALDEN: There was some testimony by Witness  
24 Terrero that there was some additional treatment that  
25 had been put in place already in Jacksonville. I

1 don't specifically recall his testimony as to whether  
2 or not he was addressing the lead and copper problem  
3 or the corrosiveness problem. But certainly the  
4 Commission can require the company to address the  
5 corrosion and the steps that it's taking to reduce the  
6 corrosive properties of the water, and we can require  
7 that in any, in reports. Issue 3 talks about  
8 quarterly reports in terms of corrective --

9 COMMISSIONER GARCIA: And you're saying it would  
10 be more properly addressed under Issue 3?

11 MR. WALDEN: I think so. I think so.  
12 Remembering too, though, that anytime you have a  
13 quality of service problem, the Commission's goal has  
14 always been compliance. Well, that's the goal, you  
15 know, we want the --

16 COMMISSIONER GARCIA: In this case, though,  
17 more -- compliance, what we want them to do is comply  
18 with this order that is going to come from here  
19 because clearly, if I remember correctly, they were  
20 complying with what they were required, you know, the  
21 basic requirements by all the departments of the  
22 state. Mine goes a little bit further. I think there  
23 is a problem there that is uncommon, and we would like  
24 that corrosive effect that it has on people's homes to  
25 be corrected. And if you're saying we can do that in

1 Issue 3, that is fine, if the other commissioners  
2 don't have a problem with that, including that as part  
3 of Issue 3.

4 COMMISSIONER JOHNSON: I had some questions for  
5 Mr. Walden because one of the problems that I was  
6 having with the alternative recommendation was that it  
7 did appear as if, and please help me with this, as if  
8 they were meeting most of the other governmental  
9 agency requirements or were in the process of meeting  
10 those particular requirements. I was wondering if  
11 there were instances where they weren't meeting  
12 requirements and/or they were on notice by the  
13 Commission that -- and hadn't met a Commission  
14 requirement. Say we required more than DEP, were  
15 there any circumstances where they had not complied  
16 with the Commission order or were not in compliance  
17 with some other governmental mandate?

18 MR. WALDEN: There is no incidence that I know of  
19 where the utility had failed to comply with any  
20 Commission directive. Witness Terrero talked about  
21 two consent orders that the utility had pending, but  
22 they were striving toward, you know, complying with  
23 those orders.

24 COMMISSIONER JOHNSON: And I would like to hear  
25 some more conversation on this issue because it

1 strikes me that to the extent that they were complying  
2 with DEP and the other agency, I know that there were  
3 still problems, and it looks as if we might say in  
4 Issue 3, okay, that is fine, you complied with DEP,  
5 but we want you to do more. And that is good because  
6 I think there were some legitimate complaints, some  
7 that really disturbed me, particularly with respect to  
8 the iron, lead and copper elements that were found in  
9 the water in the Jacksonville area to which the  
10 gentleman did an excellent job of testifying and  
11 graphically demonstrating that there were problems.

12 My first goal is to solve the problems and make  
13 sure that they are addressed. My second, as I look at  
14 the public interest, I don't want to penalize the  
15 company for something that they were trying to  
16 resolve, that was not a legal problem, that we had not  
17 imposed higher and higher obligation and just say,  
18 well, you should have known; you should have done  
19 something about it. Because on the other end,  
20 particularly when we start talking about reducing  
21 their return on equity down to the lower end of  
22 reasonableness, this stuff is going to cost, and it's  
23 going to cost somebody. So I don't know if they were  
24 doing a balancing test too, saying, well, you know,  
25 this would make our rates go up. We would have to put

1 in new equipment. You know, where do we draw the  
2 line? Well, we are complying with the law. When we  
3 start doing more, does it look like we are gold  
4 plating. You know, you get into those kind of  
5 issues.

6 I would like for you to kind of address some of  
7 those and how you work that out in your mind to  
8 conclude that they were still, their quality was not  
9 satisfactory and that -- well, I guess we will get to  
10 the penalty later -- but that their quality of service  
11 was not satisfactory.

12 MR. WALDEN: Many customers testified about  
13 excessive chlorine levels. You are going to find that  
14 customers have different sensitivities to chlorine.  
15 There is no upper limit on the amount of chlorine that  
16 you can put in the water in terms of the DEP  
17 regulations. There is a minimum; there is no  
18 maximum.

19 This is not the only utility that the Commission  
20 has faced where the customers came and complained  
21 about the chlorine, you know, I can taste it. I can  
22 smell it. It doesn't make a good cup of coffee. It  
23 burns my eyes in the shower, those kinds of things.

24 Chlorine demand in water also -- this is  
25 generically. Chlorine demand changes. Water quality

1 as you pump it out of the ground changes some, and you  
2 need to, you know, monitor the chlorine and adjust the  
3 feed rate appropriately. So chlorine is an area where  
4 the utility can do a little closer monitoring and  
5 adjust the feed, certainly to achieve more than the  
6 minimum, because you certainly don't want to fall  
7 below the minimum, but also to monitor the maximum  
8 level.

9 COMMISSIONER JOHNSON: Okay. Let me stop you and  
10 just ask you one question then. Was that something  
11 that we had ordered them to do in any of these  
12 instances where certainly they were meeting the  
13 minimum but we wanted them to do more or do less and  
14 where they did not comply? I mean was that one of the  
15 things that you based this upon?

16 MR. WALDEN: As I said before, there is nothing  
17 that the Commission has required the utility to do in  
18 this area of quality of service that they failed to  
19 do.

20 COMMISSIONER JOHNSON: Okay.

21 MR. WALDEN: My basis --

22 COMMISSIONER CLARK: Tom, I think -- if I can  
23 interject, I think she is talking generically.

24 COMMISSIONER JOHNSON: Yeah.

25 COMMISSIONER CLARK: When we have had complaints



1 about the chlorine, our difficulty in taking any  
2 penalty action or adjustment action based on quality  
3 of service was that they were meeting the requirements  
4 of DEP, but we nonetheless had some concerns when we  
5 had people indicating that, you know, when they washed  
6 their clothes they were coming out with spots on them  
7 because of chlorine. And what we have indicated to  
8 them is while you are meeting the criteria you ought  
9 to do more monitoring. Haven't we required that in  
10 some cases, indicated to them that you need to be more  
11 sensitive to how you are putting chlorine, the rate of  
12 flow in it and that sort of thing?

13 MR. WALDEN: Yes, we have. The Commission has  
14 made those statements before, and perhaps,  
15 Commissioner Johnson, I misunderstood your question.  
16 The Commission has never ordered a company to, you  
17 know, do more extensive testing and provide those  
18 results. It's been more of a discussion that  
19 customers have expressed some interest in the chlorine  
20 level, and it appears that, you know, sometimes it's a  
21 little high and the company should monitor this more  
22 closely; that's the statement that has been made by  
23 the Commission.

24 COMMISSIONER CLARK: And the rationale for that  
25 has been that the statute directs us to determine

1 quality of service based on the standards of DEP and  
2 HRS.

3 MR. WALDEN: That's correct, and then we also  
4 have, you know, the rule or statute that requires us  
5 to look at the, not just the quality of the product,  
6 and the standard set forth by DEP but also the  
7 operational conditions and the customer satisfaction.

8 There are --

9 COMMISSIONER JOHNSON: Let me ask, back to that  
10 question, were there instances in this case that we  
11 reviewed where we had asked the company to do more  
12 monitoring, suggested that they look at certain areas  
13 where they did not respond, where the company did not  
14 indeed respond and did not do what we requested or did  
15 not look into the issue? Are there any instances in  
16 the record that demonstrate that?

17 MR. WALDEN: No.

18 COMMISSIONER JOHNSON: Okay.

19 MR. WALDEN: There are other properties of water  
20 specifically brought out most vocally by the customers  
21 in Kissimmee and Stuart at those customer service  
22 hearings where the water was dark or brown or  
23 sediment. I believe Leisure Lakes, that system, there  
24 were a number of customers who came to Sebring and  
25 talked about that problem. It's not an isolated

1           problem, but as was discussed in the recommendation,  
2           it seemed to be a little more prevalent at Leisure  
3           Lakes, and perhaps that is due to the seasonality of  
4           the customers. Many customers are gone for months at  
5           a time.

6           The DEP rules do not address that point with  
7           sediment and those kinds of problems that I  
8           mentioned. The best method for remedying that problem  
9           is increased flushing, that's what most of the  
10          companies do. Let me look back at my notes. There  
11          were a couple of other things that seemed to be more,  
12          you know, very common.

13          COMMISSIONER KIESLING: Let me ask you there, how  
14          can a company flush the lines inside someone's house  
15          when they are not there?

16          MR. WALDEN: They can't.

17          COMMISSIONER KIESLING: Okay.

18          MR. WALDEN: The company can flush its, you know,  
19          its main lines. There will be some -- for instance if  
20          a customer is gone for a month and the water is left  
21          on, there will probably be some discoloration, you  
22          know, in the house service line. You know, you are  
23          going to have quite a few gallons that will be  
24          discolored. But with regular use, once the customer  
25          comes back, you know, that should diminish, the water

1 should be, you know, clear.

2 MR. CROUCH: Commissioners, I would like to add  
3 one factor here. Regardless of what happens in this  
4 case, we plan on pursuing the lead problem in Beacon  
5 Hills, along with HRS who has primacy on that in the  
6 Jacksonville area.

7 According to HRS, more testing is required. They  
8 have until '97 to come up with some results, but we do  
9 intend to follow up on that from an engineering  
10 standpoint regardless of what the decision is today,  
11 so that will not be dropped.

12 Commissioner Kiesling, your question on the  
13 flushing, it's primarily an education of the customers  
14 that they need to flush out the lines. The utility  
15 can flush the lines out at fire hydrants and things  
16 like that, but that does not stop the sediment buildup  
17 in the homes themselves.

18 COMMISSIONER JOHNSON: Yeah, and I think you  
19 stated in the primary and in both issues that there  
20 were certain conditions that we would be trying to  
21 work with the company in order to ensure that these  
22 issues are addressed. I mean the lead issue was a  
23 serious -- all of them are serious, but that this was  
24 very damaging with respect to our obligation to  
25 protect the health, safety and public welfare. But I

1           understood the Southern States' witness to say that,  
2           well, you know, there was -- they had a problem but  
3           the law gave them more time to rectify it, and that,  
4           candidly, that answer came off as kind of a --

5           COMMISSIONER CLARK: Cavalier?

6           COMMISSIONER JOHNSON: -- like they weren't  
7           very -- Yeah, cavalier and as if they weren't very  
8           sensitive to the needs of their customers, and that  
9           may be part of the problem. If a customer calls and  
10          they have a concern, they say, Well, we are dealing  
11          with it but, you know, we have until 1997, you know,  
12          that might bother a customer, so that may be a PR  
13          problem on their part. But whether or not it means  
14          that their quality of service and what they have been  
15          doing does not comply with the law is another matter.

16          The most important thing to me here is that we  
17          deal with these problems in as expeditious a manner as  
18          we can. And as I say expeditious, I understand that  
19          part of being expeditious will bring into  
20          consideration cost and, you know, and whether or  
21          not -- what this means to rates and what this means to  
22          customers' bottom-line bill, as the company must  
23          invest more in order to remedy these problems. So I  
24          understand that there is a balancing test, but I think  
25          the most important thing here is what you just hit on,

1 Mr. Crouch, is that we are working with them and that  
2 we are trying to remedy these particular issues, and  
3 that irregardless of where we come down on this issue,  
4 staff intends to pursue, one, requesting that the  
5 company do more education -- I think on the high  
6 sulfur content was it, Bob?

7 MR. CROUCH: High sulfur content in some areas is  
8 causing corrosion in the copper lines as Commissioner  
9 Garcia had pointed out. The utility --

10 COMMISSIONER JOHNSON: It's not on.

11 MR. CROUCH: Excuse me. Commissioner Garcia had  
12 pointed out the corrosion problems in some of the  
13 lines and the sulfate -- or sulfite problems that are  
14 causing that. We are looking at putting  
15 polyphosphates in it, at getting the utility to add  
16 more of that to possibly help the corrosion, working  
17 with them on what they can do for the lead problem,  
18 first off identifying where the lead is coming from.  
19 So we do intend to work with the utility on each of  
20 these as complaints come in. We don't just wait for a  
21 rate case before we follow up on many of the  
22 complaints.

23 COMMISSIONER JOHNSON: And Mr. Crouch, I think  
24 you provided the primary recommendation, and it was  
25 your recommendation that this at least met -- was

1 marginally satisfactory?

2 MR. CROUCH: That's correct.

3 COMMISSIONER JOHNSON: And you haven't had an  
4 opportunity to explain how you reach that conclusion.

5 MR. CROUCH: Here again, we look at three things  
6 in quality of services. As Mr. Walden pointed out, we  
7 look at quality of the product, that meets all the  
8 standards. We look at the quality of their plant,  
9 their manning, their personnel, et cetera; they meet  
10 standards there. The third is the intangible, and  
11 that is, customer satisfaction. And from the vast  
12 number of complaints that we have had, many of them  
13 very valid, tangible, technical complaints, there is a  
14 dissatisfaction with the customers. However, our  
15 feelings were that it was not strong enough to give  
16 them unsatisfactory, that since they met all rules and  
17 regulations put forth by the health department, by DEP  
18 and ours, that their quality of service is not  
19 unsatisfactory but still leaves something to be  
20 desired.

21 And this is why we would like to give them the  
22 message, work with the customers a little bit better,  
23 get a better PR going, get a better education going  
24 for the customers. And that is why the position  
25 marginally unsatisfactory rather than totally

1           unsatisfactory. We can't just give them a  
2           satisfactory on it.

3           MR. WILLIS: Let me add a little bit to that  
4           too. In the utility's last rate case, we found their  
5           quality of service to be marginally unsatisfactory.

6           COMMISSIONER CLARK: Unsatisfactory?

7           MR. WILLIS: Marginally unsatisfactory, yes, we  
8           did.

9           COMMISSIONER CLARK: Okay.

10          MR. WILLIS: And the reason for that were  
11          technical violations. We found that there were  
12          approximately 20 of their facilities which had  
13          problems that had to be dealt with, and we gave them  
14          direction on exactly what to do with those facilities.  
15          Those are now completely cured as far as I know.  
16          There are no problems with the areas that we found  
17          last time.

18          In the primary recommendation, we are saying that  
19          the quality of that service rendered to customers is  
20          basically meeting all requirements and, therefore, it  
21          is satisfactory. We have a hard time looking at the  
22          transcripts, looking at the record, saying that  
23          service is anything but satisfactory. What we are  
24          saying is marginally unsatisfactory comes as far as  
25          the customers go, the handling of the customers.



1           There seems to be a real cavalier attitude on how they  
2           handle customers and how they address their customers'  
3           problems and concerns. That's the area we believe in  
4           this case needs to be worked on.

5           COMMISSIONER CLARK: Let me ask a question with  
6           regard to the -- well, I guess we would get to that in  
7           Issue 4.

8           MR. WILLIS: Which, the --

9           COMMISSIONER CLARK: Well, I guess the concern  
10          that I have is that -- Has this occurred before in  
11          the sense that we have been -- with respect to the  
12          alternative's recommendation. And that is, basically  
13          as I read it, as can be seen from the record, the  
14          customers are especially displeased with the water  
15          quality and the inadequacy of the utility's response  
16          to customers' inquiry. And as I understand what  
17          you've said, Mr. Walden, that's what it boils down to  
18          and that is why you have made the alternative  
19          recommendation?

20          MR. WALDEN: That's correct.

21          COMMISSIONER CLARK: Okay. And then you also  
22          recommend that we make some adjustment to equity as a  
23          result of that.

24          MR. WALDEN: Yes, in Issue 4.

25          COMMISSIONER CLARK: Right. My question is, have

1 we done that in the past? How have we addressed when  
2 there has been this kind of dissatisfaction, or has it  
3 not come up before?

4 MR. WILLIS: Well, commissioners, it has come up  
5 before. It has mostly come up in the smaller  
6 utilities, the Class C utilities. We have had  
7 dissatisfaction with customers over management of a  
8 company and how they were treated, and I know in one  
9 case we ordered the owner of the company not to have  
10 any contact with the customers, but that is not really  
11 something you can do in a company the size of Southern  
12 States because I don't think that's the problem.

13 COMMISSIONER JOHNSON: Wasn't there a case where  
14 the issue was there was a quality of service issue and  
15 that we found it marginally satisfactory and still  
16 imposed an adjustment or a penalty or something?

17 MR. WALDEN: Yes, in fact we've quoted that case.

18 MS. O'SULLIVAN: On Page 66 of the  
19 recommendation.

20 MR. WALDEN: Consolidated Water Company.

21 COMMISSIONER JOHNSON: What page?

22 MS. O'SULLIVAN: I think it's Consolidated.

23 Yeah, the last sentence. I'm sorry, it's Ocean  
24 Reef.

25 COMMISSIONER KIESLING: What page?

1 MS. O'SULLIVAN: Ocean Reef, Page 66 of the  
2 recommendation, the first paragraph discusses two  
3 cases. Consolidated, the Commission was concerned  
4 about the utility's lack of response and lack of  
5 concern, lack of maintaining books and records and  
6 penalized them. The next case that is mentioned there  
7 in that paragraph, Ocean Reef. There were lots of  
8 problems with DEP, long-term DEP problems. The  
9 Commission found they were making some repairs, but it  
10 was still marginally satisfactory but still reduced  
11 the ROE by 50 basis points.

12 COMMISSIONER CLARK: Was Ocean Reef because they  
13 weren't making the repairs? I guess my question is  
14 were they for the reasons of --

15 MS. O'SULLIVAN: They were mostly for very severe  
16 DEP problems.

17 COMMISSIONER CLARK: I'm sorry?

18 MS. O'SULLIVAN: Severe DEP problems in terms of  
19 poor plant facilities.

20 COMMISSIONER CLARK: Okay. So they were DEP  
21 quality of service problems, not just, not where --

22 COMMISSIONER JOHNSON: I think Tom called it  
23 value of service.

24 COMMISSIONER CLARK: Yeah.

25 MS. O'SULLIVAN: Right. Yeah, the order goes

1           into quite detail about the historical problems with  
2           DEP. Upon consideration we believe that Ocean Reef  
3           Club's quality of service was historically less than  
4           satisfactory given the poor condition of the treatment  
5           and collection facilities.

6           MS. CLARK: Okay.

7           MS. O'SULLIVAN: They have taken some steps.  
8           They are in compliance, but we cannot overlook the  
9           recent history of the utility.

10          COMMISSIONER CLARK: In other words, they weren't  
11          moving fast enough to address the quality of service  
12          issues that gave them problems with DEP?

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

14          COMMISSIONER CLARK: Okay.

15          MR. WALDEN: Commissioners, as I recall with  
16          Ocean Reef, that was primarily addressing the  
17          wastewater system and the wastewater plant. The  
18          wastewater system was somewhat leaky, salt water  
19          intrusion, and the plant was not able to achieve the  
20          DEP standards.

21          MR. WILLIS: Commissioners, I'd also like to  
22          point out one other thing. As far as the alternative  
23          recommendation goes, I know Tom has only recommended  
24          that the quality of service is unsatisfactory for  
25          water, but I have a concern over that because my

1 concern is customer satisfaction. My concern is the,  
2 you know, the way the customers are being treated.  
3 And I don't think you can narrowly say that is just  
4 water. And if you are looking to penalize the company  
5 for quality of service because of customer  
6 satisfaction, and I think that has to go to both water  
7 and wastewater; that is just my own personal opinion.

8 COMMISSIONER CLARK: You mean you have to look at  
9 both?

10 MR. WILLIS: I think you have to look at both  
11 because you are dealing with water and wastewater  
12 bills. You are dealing mostly with the meter readings  
13 for the water, but that goes to the wastewater service  
14 also.

15 COMMISSIONER CLARK: Are you suggesting  
16 satisfaction with one would cancel out dissatisfaction  
17 with the other?

18 MR. WILLIS: Well, no, I'm saying that the  
19 complaints that were in the record dealt a lot with  
20 meter readings, how the meters were read, but your  
21 wastewater bill is a direct correlation to your meter  
22 reading and water. So of course the customer is going  
23 to call up and say my water bill is high because my  
24 meter reading is wrong.

25 COMMISSIONER CLARK: Okay.

1 MR. WILLIS: And the satisfaction he gets as far  
2 as how the company treats him over that I think has to  
3 go to both water and wastewater. You just can't  
4 single out water when you are looking at customer  
5 satisfaction.

6 COMMISSIONER CLARK: Okay.

7 COMMISSIONER KIESLING: Well, I would also add I  
8 certainly remember customer testimony relating to  
9 wastewater about, you know, calling up because there  
10 was a leak that was bubbling up in the street and, you  
11 know, nobody came, and they called back and nobody  
12 came. And so, you know, those kind of things -- I  
13 mean I think that if we look at, you know, the  
14 percentage of customers who complained about the water  
15 service from the water side and the percentage that  
16 complained about service from the wastewater side, if  
17 we are going to find that those quality of service in  
18 terms of customer relations and responsiveness is  
19 sufficient to move them below satisfactory, I think we  
20 have to find it in both. I don't think -- I'm not  
21 comfortable if we make that decision saying that it  
22 only applies to the water side because I think that  
23 there were comparable problems, we just didn't hear  
24 about them as much because there aren't as many  
25 wastewater customers.

1           COMMISSIONER CLARK: Do we need further  
2 discussion on this point?

3           COMMISSIONER KIESLING: I was just going to say I  
4 reluctantly support the primary because I think that  
5 when we start getting into intangibles that cannot be  
6 measured by standards that are known to the company  
7 ahead of time, that I think we are getting into what I  
8 think is a little bit shaky ground. I find that I  
9 agree with staff that they are marginally  
10 satisfactory, and the areas in which I think that make  
11 it marginal do relate to their relations with  
12 customers, how they respond to customer requests and  
13 phone calls and problems and complaints, not so much  
14 to the actual quality of the product itself; but  
15 because that is an intangible, that I don't know how  
16 we can measure and I don't know what standard we can  
17 put it up against unless it's, you will respond to  
18 every customer within 20 minutes of when they first  
19 call or something; I mean those are standards. But  
20 because I don't think that there are clearly  
21 enunciated standards in that area, I would find that  
22 they are marginally satisfactory and with a caution to  
23 the company that they are on notice that they had  
24 better be really working in this area because if we  
25 hear the same thing the next time we see them, you

1 know, we are going to take some action.

2 So that's to kind of just lay out where I am.  
3 That's where I am. I equally had concerns about some  
4 of the water and the pipes and the corrosion and those  
5 items, but I think that if the water is meeting EPA  
6 and DEP standards, you know, that's all that at this  
7 point we can require on the quality of the water  
8 itself because there are too many other factors that  
9 go into it, like -- you know, I remember that one jar  
10 that a customer brought in that was, it was like full  
11 of black dirt but, you know, we don't know the  
12 circumstances under which that was captured. I think  
13 it's absolutely true that in areas that have sulfates  
14 and sulfides in the water -- I mean I grew up with it.  
15 I know what this stuff is like, and it leaves those  
16 black particles and that's the facts of life. If you  
17 want to live near the coast, you are going to have  
18 some problems with sulfur water.

19 You know, and I will say that of all of the other  
20 samples that people brought in that said, look, would  
21 you drink this? It stinks, it is terrible, I drank  
22 every one of them, and I didn't think they were that  
23 bad. The only one I didn't drink was the black one.

24 COMMISSIONER CLARK: Yeah, I think the statute,  
25 our statute does address quality of service in terms



1 of meeting the standards, and what the statute  
2 indicates is that you can address return on equity if  
3 the standards aren't met. It does say may, and it  
4 doesn't preclude an adjustment for other reasons, but  
5 in discussing this with staff, I was concerned with  
6 the fact that this turned on the notion of how they  
7 dealt with customer complaints and not with the  
8 quality of the service; and when I pursued this with  
9 Mr. Crouch, he indicated that in the last case we have  
10 had we had specific quality of service problems that  
11 they did address and, you know, we have to recognize  
12 the fact that they have taken some actions to address  
13 the quality of service. They now need to turn their  
14 attention, it appears, to better customer relations,  
15 but I'm not sure that it rises to the level of finding  
16 it unsatisfactory.

17 COMMISSIONER JOHNSON: And I concur, and I guess  
18 that is why I began my line of questioning. Because  
19 as Commissioner Kiesling said, with respect to this  
20 value of service, we still aren't giving the company  
21 any measurable standards; and to the extent that there  
22 were measurable standards in the law, they were  
23 meeting those, the DEP, the other standards.

24 And one of the issues on value of service, that I  
25 felt throughout the testimony that the customers had

1 very legitimate concerns, but one of the overriding  
2 concerns was perhaps the price and the product was bad  
3 as it related to the price they had to pay for and  
4 that that caused some anger and some real frustration  
5 that they might have water that smelled like eggs even  
6 though it was, DEP said it was okay. But then it  
7 wasn't just the water that smelled like eggs, it was  
8 the price they had to pay for that ugly water that  
9 smelled like eggs.

10 So to me that caused a lot of anger, and I think  
11 it generated a lot of the concerns from the customers;  
12 but overall, my main objective here would be to remedy  
13 as many of those problems as we can. And even if they  
14 meet DEP's requirements, work with the company as Bob  
15 had suggested, to suggest that, and I don't know if we  
16 can require, but we can give them a warning, well, we  
17 can't require these things, but when you come back,  
18 this may have another reflection on quality of  
19 service; or when staff brings it to our attention, we  
20 can say, well, you know, these things were brought to  
21 their attention. We made them, to the extent that we  
22 could, objective and measurable, and they still didn't  
23 meet them, and the customers still have those  
24 concerns, then I think we have more to hang our hats  
25 on and a better basis perhaps for finding that there

1 is a problem with respect to quality of service.

2 But given the facts that we have, certainly the  
3 disappointment is there, and certainly I have some  
4 concerns and would like for us to remedy all of the  
5 problems that the customers raise, but I don't think  
6 it rises to the level of unsatisfactory quality of  
7 service.

8 COMMISSIONER DEASON: I'm going to second the  
9 motion that was made and perhaps in vein.

10 COMMISSIONER CLARK: What is the motion?

11 COMMISSIONER KIESLING: What motions?

12 COMMISSIONER GARCIA: I moved the alternative.

13 COMMISSIONER CLARK: Okay. All right.

14 COMMISSIONER DEASON: Long time ago Commissioner  
15 Garcia moved the alternate recommendation, and I want  
16 to second that motion, and I want to briefly state  
17 why.

18 When he made his motion, he made the statement  
19 that he had not been on the Commission that long but  
20 he was really amazed at some of the service hearings.  
21 Well, I have been on the Commission a little bit  
22 longer, and I have been associated with the Commission  
23 even longer than that, and some of those customer  
24 hearings even amazed me. I mean some of the things,  
25 some of the testimony, some of the examples that were

1 presented to the Commission during this round of  
2 service hearings in my opinion were unprecedented. I  
3 had not seen some of the problems and the magnitude of  
4 the problems that we have encountered during this  
5 round of service hearings.

6 Mentioning service hearings, I think it is  
7 important that we hear from the customers. I know  
8 there has been some concern expressed by some  
9 commissioners that, well, standards have been met.  
10 Well, perhaps the Commission has failed in that we  
11 don't have more and better standards, I'm not sure.  
12 But I think our job as regulators goes way beyond just  
13 seeing to it that some strict standard that the DEP or  
14 the HRS has is being obtained. I think that is  
15 important; I don't mean to minimize that. But if that  
16 was all our responsibility, we wouldn't have customer  
17 hearings. All we would have to do would be go to a  
18 regional office of HRS or DEP and see if the numbers  
19 were above or below some standard, and that is all we  
20 would have to do; we wouldn't be concerned about  
21 hearing from customers.

22 But we go to the effort to hear from the  
23 customers, and I think that it is very important that  
24 we do. And we have heard complaint after complaint  
25 after complaint, and I think quality of service, that

1           that term goes way beyond just whether chlorine levels  
2           are above a certain level or whether iron is above or  
3           below a certain level. I think it goes to customer  
4           satisfaction, and that is the difficulty, how do you  
5           measure customer satisfaction?

6                     And I don't know even how we would determine  
7           standards for measuring customer satisfaction if we  
8           were to do that. I think it is one of those  
9           subjective things that we as commissioners have the  
10          responsibility to try to measure and ascertain as to  
11          whether this company is meeting customer expectations.  
12          And I would note that one of the points that this  
13          company stresses over and over again and during this  
14          rate case is the quality of the management of this  
15          company and the expertise this company has and the way  
16          this company is run and all of the testing that they  
17          do and all the customers.

18                    And I would also note that when we look into some  
19          of the salary issues that some of the managers of this  
20          company are very well compensated for the expertise  
21          that they are providing to these customers, and I  
22          think customers can expect, should expect a very high  
23          level of service based upon the rates they are being  
24          asked to pay. I think that we don't -- should not  
25          disassociate the two. I think rates and quality

1           should go together, and based upon some of the rates  
2           that are being requested in this case, we should  
3           expect a very high quality of service.

4           So one last thing is that we as regulators, from  
5           time to time it has been expressed in the economic  
6           literature that regulation is a surrogate for  
7           competition in an industry where there is no  
8           competition. Well, I would submit that if there were  
9           competition and customers had a choice, they wouldn't  
10          be going and saying, well, they meet the DEP standards  
11          so, therefore, I must be satisfied. Their  
12          expectations go way beyond just those minimal  
13          standards, and I think that is what we have to try to  
14          make an objective determination of even though it is  
15          difficult to do. And for those reasons I second the  
16          motion.

17          COMMISSIONER CLARK: There has been a motion and  
18          a second. All those in favor say aye.

19          COMMISSIONER GARCIA: Aye.

20          COMMISSIONER DEASON: Aye.

21          COMMISSIONER CLARK: Opposed nay.

22          COMMISSIONER JOHNSON: Nay.

23          COMMISSIONER KIESLING: Nay.

24          COMMISSIONER CLARK: Nay.

25          Is there another motion?

1 COMMISSIONER JOHNSON: Move primary.

2 COMMISSIONER CLARK: Is there a second?

3 COMMISSIONER KIESLING: Second.

4 COMMISSIONER CLARK: All those in favor say aye.

5 COMMISSIONER JOHNSON: Aye.

6 COMMISSIONER KIESLING: Aye.

7 COMMISSIONER CLARK: Aye.

8 Opposed Nay.

9 COMMISSIONER DEASON: Nay.

10 COMMISSIONER GARCIA: Nay.

11 COMMISSIONER CLARK: We are going to take a  
12 10-minute break. I apologize to the court reporter.

13 COMMISSIONER GARCIA: Let me move on real quick.

14 COMMISSIONER CLARK: Go ahead.

15 COMMISSIONER GARCIA: I would like to ask staff,  
16 and I guess this is a good forum to do this because  
17 Commissioner -- I think we are talking about  
18 standards, and perhaps -- As reticent as I am to make  
19 more rules and more regulations, then we need more  
20 standards, and I know that is expensive, but I think  
21 staff should sit down and come up with some proposals  
22 because -- and I guess I want to expound on the  
23 comment I made for my motion knowing that it's dead.  
24 I think that some of the things that people had to  
25 tolerate were intolerable, and I also know that if we

1 had standards that wouldn't be going on, so that's  
2 just for the record.

3 COMMISSIONER CLARK: We'll take a break until --  
4 Go ahead.

5 COMMISSIONER KIESLING: I want to say something  
6 to what Commissioner Garcia just said. You know, to  
7 an extent I agree with you, but I also know that there  
8 is research out there as to value of service, how you  
9 measure value of service, none of that was presented  
10 in this case. If it had been, I might have voted  
11 differently, but I'm bound by the record, and I don't  
12 know from this record how I can establish value of  
13 service and whether it is being satisfactorily met.

14 COMMISSIONER GARCIA: I guess you and I had  
15 differences on what I found in the record because I  
16 find that the customer testimony was record in and of  
17 itself of what value of service. And Commissioner,  
18 had it not -- one of the things that particularly  
19 perturbed me is the fact that there were places where  
20 people would come in having massive rate increases and  
21 they say, I can't complain about the service, I can't  
22 complain about the quality. I mean, and that honesty  
23 I appreciated in this evaluation. There were places  
24 where people weren't paying that much but said the  
25 water is intolerable. And so I think that that adds,



1 and provided I guess sufficient evidence for myself.

2 COMMISSIONER CLARK: We are going to take a break  
3 until 25 'til 12.

4 (BRIEF RECESS TAKEN)

5 COMMISSIONER CLARK: We'll call the agenda  
6 conference back to order. I'm not sure if we have  
7 taken a vote on Number 2, but one of the things that I  
8 didn't mention was we had talked somewhat about the  
9 Beacon Hills and the corrosion control, and it was my  
10 understanding from customers there that it wasn't just  
11 this utility that was having problems. You are going  
12 to pursue that in terms of what is being done in the  
13 whole area. And I guess, I understand that they are  
14 meeting quality of service levels, but there may be  
15 some customers whose plumbing systems can handle it  
16 and some that cannot. And it seems to me even though  
17 it is meeting a quality that the most cost effective  
18 thing for the whole area may be for the utility to be  
19 doing something to address it even though it affects,  
20 may not affect all the customers, and I think we need  
21 to look into that, and I wanted to make sure that that  
22 was going to be something the staff would be looking  
23 into.

24 MR. CROUCH: We will continue working with -- HRS  
25 has the primacy on that in Duval County, and we are

1 working with them on that.

2 COMMISSIONER CLARK: On the corrosiveness?

3 MR. CROUCH: Yeah, on trying to fix --

4 COMMISSIONER CLARK: HRS has primacy on that one?

5 MR. CROUCH: HRS has primacy on the health parts  
6 over in Duval County. DEP gives that to HRS.

7 COMMISSIONER CLARK: What I'm suggesting to you  
8 is they may meet the standards. It may be okay, but  
9 it may still be corrosive because of the type of pipes  
10 the customers put in. But for the customers as a  
11 whole, it may be better to address it at the point of  
12 origin than for everybody to replace their plumbing;  
13 and I think that is something that needs to be looked  
14 into.

15 MR. CROUCH: The utility has started putting  
16 polyphosphates into the lines in many areas to coat  
17 the lines to stop the corrosiveness, and we are  
18 pursuing that more.

19 COMMISSIONER CLARK: Good.

20 MR. WALDEN: Commissioner Clark, I think your  
21 point is that although the water may meet standards  
22 and the utility is taking some steps to enhance the  
23 quality of the water, you want us to go further and to  
24 make sure that the corrosion is minimized and that it  
25 is most effective --

1           COMMISSIONER CLARK:  If it is cost effective to  
2 do it that way.  So what I'm suggesting to you is that  
3 each customer might be able to address it by changing  
4 their pipes.  But when you have such a high number of  
5 people and such a degree of corrosion, it may be most  
6 cost effective to address it at the source.

7           MR. WALDEN:  I understand.

8           COMMISSIONER CLARK:  And that's the kind of  
9 customer relationship I think it behooves the utility  
10 to pursue, that not just to say it's your problem  
11 because you put in the wrong kind of pipes but to say,  
12 here are the things that are causing it, and these are  
13 the things we can do.  And if it is ultimately  
14 concluded that it is best to do it, even though they  
15 are already currently meeting standards, it probably  
16 is something that needs to be pursued.

17           COMMISSIONER GARCIA:  I would like to see that as  
18 part of the order though.

19           MR. CROUCH:  That may be under Issue 3,  
20 commissioner.

21           COMMISSIONER CLARK:  Oh, okay.

22           MS. O'SULLIVAN:  Yes, on Page 62 of the  
23 recommendation, the first couple of paragraphs talk  
24 about treatment at the plant to try to reduce the  
25 level of metals, and I think our last sentence --

1 COMMISSIONER CLARK: Is that Issue 3?

2 MS. O'SULLIVAN: Yes.

3 COMMISSIONER CLARK: Okay.

4 MS. O'SULLIVAN: Our last sentence says, "Utility  
5 should be cautioned that it need not wait until '97 to  
6 find the solution," that was staff's --

7 COMMISSIONER CLARK: Now we are talking about the  
8 corrosiveness, not the iron and lead?

9 MS. O'SULLIVAN: Right.

10 COMMISSIONER CLARK: Or the lead and copper,  
11 okay.

12 MR. WALDEN: We are talking about lead and copper  
13 specifically in that paragraph, but I think from the  
14 conversation this morning, the Commission is expanding  
15 that to include the corrosion problem.

16 COMMISSIONER CLARK: Yeah, and what I have  
17 reference to is when we were down at JJ Mobile Homes  
18 they were meeting the standards too, but the water  
19 smelled. And this sort of gets to the issue that  
20 Commissioner Deason addressed, and that is, you know,  
21 if they had an alternative, they'd probably go  
22 elsewhere to get water that didn't smell. And what  
23 I'm suggesting, if the customers want that, just  
24 because they are -- and are willing to pay for it,  
25 just because they meet standards, it's something that

1 I think the utility should look into.

2 COMMISSIONER GARCIA: I know that the utility  
3 reacted differently at different times. And I commend  
4 the utility, when the pipes burst and the utility  
5 would come in and, if I remember correctly, in some  
6 cases paid for the house to be cleaned. And this  
7 wasn't a direct responsibility of the utility, and  
8 they did it, and I thought that is great customer  
9 relations, and I commend the company for doing that,  
10 but there didn't seem to be a consistency there, and  
11 that is why I want this to be part of this because the  
12 only way -- as Commissioner Clark said, the only way  
13 we are going to take care of this, if it's in a  
14 concentrated area, is using the utility as a vehicle  
15 for that, and clearly the only regulated is a utility,  
16 not the developers putting in the plumbing. So I  
17 would request that staff ask that the company try to  
18 figure out a way around this so that the next time we  
19 get into this rate case -- a rate case with this  
20 company or in that area, we have something to hang our  
21 hat on when we get aggravated by them not doing  
22 something or trying to do something.

23 COMMISSIONER CLARK: Issue 3.

24 MR. WALDEN: Issue 3 addresses the adjustments  
25 that should be made and corrective action the

1 Commission will require of the utility for the  
2 facilities that are not meeting, that are currently  
3 meeting DEP standards.

4 Staff recommendation is that the utility take  
5 corrective action to improve the water quality at  
6 Leisure Lakes and also in Duval County, and further,  
7 that the utility be required to file quarterly reports  
8 with the Commission until the problems are resolved.  
9 As a result of the discussion this morning, as I said,  
10 we want to certainly address the lead and copper  
11 problems in Duval County. I believe there was also  
12 some isolated testimony -- that is not a good  
13 description. There was some testimony from Marco  
14 Island that there was elevated lead there also, but we  
15 are going to also include the corrosion problem that  
16 was addressed this morning in Duval County, and we  
17 want to follow up on that until that problem goes  
18 away.

19 COMMISSIONER GARCIA: I'll move staff.

20 COMMISSIONER KIESLING: Second.

21 COMMISSIONER DEASON: Let me ask a question. By  
22 approving staff, are we making the finding that the  
23 quality of service is unsatisfactory for these  
24 systems?

25 MR. WALDEN: No, commissioner, I believe what we

1 are finding is that the quality of service is  
2 marginally satisfactory as discussed in Issue 2 and as  
3 voted there, and --

4 COMMISSIONER GARCIA: If that is the case, then I  
5 remove my motion. Maybe we should have someone else  
6 move.

7 COMMISSIONER DEASON: Well, I'm just reading the  
8 issue, and it says it doesn't meet standards or it has  
9 unsatisfactory quality of service and, therefore,  
10 corrective action needs to be taken.

11 COMMISSIONER GARCIA: Exactly, that is how I read  
12 it.

13 COMMISSIONER DEASON: And I want to make sure  
14 when we vote on this issue that is what we are  
15 finding.

16 COMMISSIONER KIESLING: In that case I withdraw  
17 my second because I believe that it is marginally  
18 satisfactory because these systems are --

19 COMMISSIONER CLARK: Meeting standards.

20 COMMISSIONER KIESLING: -- meeting standards, but  
21 we want the company to do more. We want the company  
22 to be more aggressive in trying to solve these  
23 problems even if it doesn't go to whether or not the  
24 quality of the water is satisfactory. And so to the  
25 extent that somewhere in here it's saying that for

1           these the water quality is unsatisfactory, even though  
2           it meets standards, I think that is inconsistent with  
3           our vote on the last --

4           COMMISSIONER CLARK: Well, I think the problem is  
5           the issue is stated one way, the recommendation is  
6           stated another way.

7           COMMISSIONER KIESLING: Exactly.

8           COMMISSIONER CLARK: And I guess what I'd suggest  
9           is look at the recommendation, and is there a motion  
10          to approve the recommendation?

11          COMMISSIONER KIESLING: Yes, I move that we  
12          approve the recommendation but not make any finding  
13          that the quality of service is unsatisfactory.

14          COMMISSIONER CLARK: Okay. Is there a second?

15          COMMISSIONER JOHNSON: Second.

16          COMMISSIONER CLARK: All those in favor say aye.

17          (AFFIRMATIVE INDICATIONS)

18          COMMISSIONER CLARK: Opposed nay.

19          (NO RESPONSE)

20          COMMISSIONER DEASON: The reason I can vote with  
21          the majority is the very reason that -- we are making  
22          no finding in this issue concerning the satis --  
23          whether this quality of service is satisfactory or  
24          unsatisfactory is simply in the recommendation. Staff  
25          is recommending that some remedial action be taken to



1 correct problems, and there is no finding as to  
2 whether those problems cause these systems to be  
3 satisfactory or unsatisfactory. I mean I have an  
4 opinion on it, but we are not making that finding.

5 COMMISSIONER CLARK: Okay. Issue 4.

6 MR. WILLIS: Commissioners, Issue 4 addresses  
7 whether or not there should be a penalty for the value  
8 and quality of service. The primary recommendation  
9 would be that there isn't. Consistent with your vote  
10 on Issue 2, there should be no penalty.

11 COMMISSIONER JOHNSON: Marshall, let me better  
12 understand this before we vote on it. Even if we  
13 found, and I just want to know how this works just  
14 based on one of the comments that Commissioner Deason  
15 had stated, even if we found this was marginally  
16 satisfactory, you could still impose a penalty. So  
17 should we take this up with the other issue? Because  
18 I don't know how the commissioners, how all the  
19 commissioners would vote on this. This is still kind  
20 of tied to the other issue of whether or not we want  
21 to penalize them.

22 MS. O'SULLIVAN: I would suggest that you could  
23 consider each issue separately if you are concerned  
24 about the numbers, just purely whether the numbers add  
25 up to a hundred basis points or not. You could still

1 consider them separately.

2 COMMISSIONER JOHNSON: Or are they tied?

3 COMMISSIONER CLARK: If I understood what  
4 Commissioner Deason suggested and I think what I hear  
5 Commissioner Johnson articulating, is that how they  
6 deal with their customers and the value of service can  
7 all be aggregated into the notion of how they manage.  
8 And while you may not hang an adjustment to equity  
9 solely on the ex-parte issue, when you couple that  
10 with other activities, you may find that on a  
11 comprehensive look they are not doing as well as they  
12 should, and that is what I heard Commissioner Deason  
13 suggesting.

14 COMMISSIONER JOHNSON: And that is how I  
15 interpreted the Deltona case. They found the company  
16 was marginally satisfactory but yet still imposed the  
17 adjustment. Wasn't that Deltona?

18 COMMISSIONER KIESLING: See, I'm confused because  
19 if I understand correctly --

20 COMMISSIONER JOHNSON: Oh, not Deltona.

21 COMMISSIONER KIESLING: -- for mismanagement and  
22 what we were dealing with in Issue 5, we would be  
23 making an adjustment. But for quality of service,  
24 unsatisfactory quality or value of service we are  
25 imposing a penalty. So we are doing it under two

1 different provisions, aren't we?

2 COMMISSIONER DEASON: That is not my  
3 understanding at all.

4 COMMISSIONER CLARK: It's an adjustment also in  
5 this.

6 COMMISSIONER DEASON: It's an adjustment to  
7 return on equity.

8 COMMISSIONER CLARK: And I would point out,  
9 commissioners, that is specifically authorized in the  
10 statute. I mean that --

11 COMMISSIONER KIESLING: Right.

12 COMMISSIONER CLARK: The statute says that when  
13 the quality of service does not meet the standards you  
14 may adjust return on equity.

15 COMMISSIONER DEASON: In fact I would argue, and  
16 I don't really mean to get into a legal argument, but  
17 from a theoretical level, I could argue that if there  
18 is going to -- we are not constrained when it comes to  
19 the adjustment to equity for quality of service to the  
20 one basis point. As I indicated earlier, we are here  
21 as a surrogate for competition. And if a company in a  
22 competitive area is not providing quality of service,  
23 they will not earn their market rate of return. And  
24 what we are saying is that with a one basis point  
25 limitation, that that is still within that zone of

1           reasonableness, their market required rate of return.  
2           And what I'm saying is if you make a finding, we  
3           didn't do it, but if we made a finding of  
4           improper -- I'm sorry, inadequate quality of service,  
5           that I would think that it was within our discretion  
6           to have a set return on equity at what we would think  
7           would be lower than that authorized in the market  
8           based upon the surrogate of competition standard, but  
9           that is just --

10           COMMISSIONER CLARK: And I think the Gulf case  
11           speaks to that because it talked about the two sides  
12           of a coin. If you are going to reward management  
13           efficiency, which we did at one time for Gulf, you can  
14           likewise penalize or adjust for management  
15           inefficiency.

16           COMMISSIONER JOHNSON: And I was citing to the  
17           wrong case. It was a case that staff had cited to on  
18           Page 66 which was Ocean Reef Club, Inc. where the  
19           quality of service was marginally satisfactory and the  
20           utility's return on equity was reduced by 50 basis  
21           points.

22           COMMISSIONER CLARK: Okay. We are still on Issue  
23           4. Further discussion?

24           COMMISSIONER JOHNSON: And I think, my point was  
25           that I would like to consider this with the other

1 issue because they are still --

2 COMMISSIONER CLARK: So defer it and take it up  
3 when we take up Issue 5. I have no objection to  
4 that.

5 COMMISSIONER DEASON: No, but my question is, is  
6 now an appropriate time to do four and five?

7 COMMISSIONER JOHNSON: We can go back, that's  
8 fine.

9 COMMISSIONER CLARK: Okay.

10 COMMISSIONER DEASON: I don't mind waiting. I  
11 mean we are here at five now.

12 COMMISSIONER JOHNSON: No, that is fine because  
13 we have done this one, and I really wanted to kind of  
14 tie them together.

15 COMMISSIONER KIESLING: Well, can we break out  
16 five so that we deal with whether or not the actions  
17 arise --

18 COMMISSIONER JOHNSON: I think that is what we  
19 have to do.

20 COMMISSIONER KIESLING: -- to the level of  
21 mismanagement? And then once we resolve the  
22 Commission's position on that, then figure out how  
23 much of an adjustment.

24 COMMISSIONER CLARK: Well, I would suggest to you  
25 that is one way to deal with it, but it seems to me

1 that we can decide not to vote on the issues as framed  
2 by staff and put them together, and has there been  
3 mismanagement as evidenced by not just one or the  
4 other but a confluence of both? I mean that is one  
5 thing that is available, or we can take it up Issue 5  
6 and then Issue 4. It doesn't, I'm just suggesting to  
7 you that it doesn't have to be done one way or the  
8 other. Commissioners.

9 COMMISSIONER JOHNSON: I'm just thinking about  
10 the best way to do it.

11 COMMISSIONER CLARK: All right. Let's leave it  
12 pending and go on and try and get some more issues  
13 done now.

14 Issue 6.

15 MS. KAPROTH: Commissioners, Issue 6 addresses  
16 Tract C, and staff has recommended to remove Tract C  
17 for the amount of 22 thousand 723 dollars.

18 COMMISSIONER GARCIA: I move staff.

19 COMMISSIONER KIESLING: Second.

20 COMMISSIONER CLARK: Without objection, Issue 6  
21 is approved.

22 Issue 7.

23 MS. MONIZ: Commissioners, on Issue 7 staff is  
24 not recommending that an adjustment be made to the  
25 original cost of --

1 COMMISSIONER GARCIA: I move staff.

2 COMMISSIONER CLARK: Sally, you need to get  
3 closer to the --

4 COMMISSIONER KIESLING: Yeah, I can't hear you.

5 COMMISSIONER GARCIA: I move staff.

6 COMMISSIONER KIESLING: Second.

7 COMMISSIONER CLARK: Without objection, Issue 7  
8 is approved.

9 Issue 8.

10 MS. AMAYA: Commissioners, Issue 8 addresses the  
11 Collier property on Marco Island.

12 COMMISSIONER GARCIA: Move staff.

13 COMMISSIONER KIESLING: Second.

14 COMMISSIONER CLARK: Without objection, Issue 8  
15 is approved.

16 Issue 9.

17 COMMISSIONER KIESLING: I can move it.

18 COMMISSIONER GARCIA: I'll second.

19 COMMISSIONER CLARK: Without objection, Issue 9  
20 is approved.

21 Issue 10.

22 MS. KAPROTH: Commissioners, Issue 10 --

23 COMMISSIONER KIESLING: Move staff.

24 COMMISSIONER GARCIA: Second.

25 COMMISSIONER CLARK: Without objection, Issue 10

1 is approached.

2 Issue 11.

3 MS. MONIZ: Commissioners, Issue 11, staff is  
4 recommending an adjustment be made to the BVL,  
5 Buenaventura Lakes.

6 COMMISSIONER KIESLING: Could you talk louder?  
7 I'm sorry, I mean it is like shout into it or  
8 something because for some reason over the noise in  
9 here I can't hear you.

10 COMMISSIONER CLARK: I can't hear you well  
11 either.

12 MS. MONIZ: In Issue 11 staff is recommending  
13 that adjustments be made to reflect the transfer order  
14 for the BVL property, the BVL plant.

15 COMMISSIONER KIESLING: And I move staff.

16 COMMISSIONER CLARK: Let me just make sure. I  
17 had asked the staff about this, and it seems to me  
18 this is just an error that needed to be corrected, but  
19 we don't have the information in this docket, but we  
20 can correct it later on.

21 MS. MONIZ: We did make adjustments based on the  
22 transfer order. The company came in and said, no, the  
23 adjustments were not right, they should be made for  
24 '96, but the information -- they did not include the  
25 exhibit in the record so we don't have the information



1 but we can have them go ahead and make it and then  
2 correct it.

3 MS. MERCHANT: And then there is another part  
4 that will be coming along in the future.

5 COMMISSIONER CLARK: Yes, but there was another  
6 docket.

7 MS. MERCHANT: Well, it's the same docket.

8 COMMISSIONER CLARK: To get the books and  
9 records.

10 MS. MERCHANT: That's correct, and we will tune  
11 this up in the next rate proceeding.

12 COMMISSIONER KIESLING: Wait, are you telling me  
13 that we are not going to make this adjustment here?

14 MS. MERCHANT: Yes, we're going to -- Well, we  
15 are recommending that the adjustment be made, but only  
16 one of three parts is being made because the second  
17 part was not in the record. The third part has not  
18 been approved by the Commission at this point in time.

19 COMMISSIONER KIESLING: Okay.

20 COMMISSIONER CLARK: Issue 12 has been dropped.  
21 Issue 13.

22 COMMISSIONER KIESLING: On Issue 11, did it --

23 COMMISSIONER CLARK: We moved and --

24 COMMISSIONER KIESLING: Okay.

25 COMMISSIONER CLARK: I think. Well --

1           COMMISSIONER KIESLING: I moved it, but then you  
2 never took a --

3           COMMISSIONER CLARK: Without objection Issue 11  
4 is approved.

5           Issue 12 is dropped.

6           Issue 13.

7           MS. JEANNE CLARK: Commissioners, Issue 13 is the  
8 staff's recommendation to adjust the utility's plant  
9 in service on account of project slippage and double  
10 bookings.

11           COMMISSIONER KIESLING: Move staff.

12           COMMISSIONER GARCIA: Second.

13           COMMISSIONER CLARK: Without objection Issue 13  
14 is approved.

15           MR. CROUCH: Commissioner, Issue 14 discusses the  
16 different categories that SSU listed their projects in  
17 as to whether they were well founded. Staff  
18 recommendation is although that some projects may have  
19 been classified under a different code, such as safety  
20 or quality of service, each project was evaluated to  
21 determine if it was a prudent investment. If so, it  
22 was a legitimate expense and that what category they  
23 put it in was really immaterial.

24           COMMISSIONER CLARK: All right. Is there a  
25 motion?

1           COMMISSIONER KIESLING: Well, I'm going to move  
2 staff and only because what category they put it in is  
3 really not relevant to whether it was prudent because  
4 I do have some concerns about money that was spent for  
5 growth, but this isn't the right place to deal with  
6 it.

7           COMMISSIONER GARCIA: I'll move it.

8           COMMISSIONER CLARK: Without objection Issue 14  
9 is approved.

10           Issue 15 has been dropped.

11           Issue 16 and 41, should they be taken up  
12 together, or have you already combined them?

13           MS. AMAYA: They are already combined,  
14 Commissioner.

15           COMMISSIONER CLARK: Okay.

16           MS. AMAYA: Issue 16 addresses the utility's  
17 methodology of converting ERCs to --

18           COMMISSIONER CLARK: Questions, commissioners?

19           COMMISSIONER KIESLING: Well, yeah, if I  
20 understand what we are voting on here, what staff is  
21 recommending, and I need to restate it because I have  
22 trouble with the issues the way they are stated, is  
23 that it should -- we think the preferable method is  
24 lot to lot.

25           MS. AMAYA: Correct.

1           COMMISSIONER KIESLING: But that is not possible  
2 in this case; and therefore, the best surrogate for  
3 lot to lot that we can come up with is lot to ERC.

4           MS. AMAYA: No. What we have are the --

5           COMMISSIONER KIESLING: ERCs to lot. Go ahead.

6           MS. AMAYA: Well, what we have are the maps that  
7 the utility filed, and if we were to assume that all  
8 the maps were correct as filed, we could go through  
9 and count the actual number of customers on each lot  
10 and look at that to the total lots available. What we  
11 did, or what the utility did in the last rate case is  
12 they looked at ERCs to lots connected. And when you  
13 look at ERCs, it might give a skewed picture.

14           What Issue 16 is saying is the first part of  
15 that, how did the utility determine the number of lots  
16 connected? What they did was a surrogate procedure  
17 rather than actually count the lots off the maps.  
18 They took the number of ERCs and used a ratio of  
19 customers to ERCs and came up with a number of  
20 connected meters which is a surrogate for number of  
21 connected lots.

22           What staff is recommending in Issue 16 is that  
23 method of coming up with the number of connected  
24 meters to equal connected lots is the best method  
25 available right now in lieu of going through and

1 counting the number of customers off of the system  
2 maps.

3 Issue 41 is addressing the actual methodology,  
4 whether it be ERCs to lots or lots to lots or meters  
5 to lots. And staff is recommending that it be lots to  
6 lots, but we need to use the surrogate methodology in  
7 Number 16 in order to derive that percentage.

8 COMMISSIONER KIESLING: Okay.

9 MS. AMAYA: Does that help?

10 COMMISSIONER KIESLING: I think that that was --  
11 That is what I was trying to capture --

12 MS. AMAYA: Okay.

13 COMMISSIONER KIESLING: -- in trying to figure  
14 out if my understanding was correct.

15 COMMISSIONER CLARK: So is there a motion?

16 COMMISSIONER GARCIA: Are we giving a message  
17 that this is the way we want to go next time, is the  
18 lots to lots method or --

19 MS. AMAYA: Yes, and I think that --

20 COMMISSIONER GARCIA: I just want to make sure  
21 that that is part of what we are saying to the  
22 company.

23 MS. AMAYA: Right. These two issues are  
24 intricately tied to Issue Number 24, which is broken  
25 out separate, which is the hydraulic analysis.

1 COMMISSIONER GARCIA: Right.

2 MS. AMAYA: And I think that is something the  
3 Commission is going to want to look at and consider  
4 for possible future methodology as well.

5 COMMISSIONER JOHNSON: With respect to the  
6 methodology, it appears as if in the recommendation  
7 staff talks about the onerous nature of lot to lot,  
8 and I was wondering, and I know in the previous rate  
9 case it was not required.

10 Let me go back to a question that Commissioner  
11 Garcia just asked. Are we suggesting then, despite  
12 the fact that we say it is a very difficult, onerous,  
13 time consuming and maybe costly process, that is going  
14 to be the recommended methodology; is that what we are  
15 saying here?

16 MS. AMAYA: I think normally it's not an onerous  
17 burden to determine the number of connected lots.

18 COMMISSIONER JOHNSON: Okay.

19 MS. AMAYA: Normally a utility comes in and they  
20 might have a total of a thousand customers and can  
21 look at the system maps and determine that easily.  
22 There are other surrogates available, like looking at  
23 the number of average bills over the year and  
24 determine the number of customers. I think in this  
25 instance it could be onerous simply because there are

1 so many different plants at issue and this information  
2 was not requested or filed initially.

3 COMMISSIONER JOHNSON: Was not what?

4 MS. AMAYA: Was not filed initially as a separate  
5 number. The MFRs request that the utility file the  
6 historical number of ERCs, and we look at total lots  
7 connected and available but not on a historic basis.  
8 But to answer your question, I don't think this would  
9 normally be an onerous or arduous task.

10 COMMISSIONER JOHNSON: Okay, thank you.

11 COMMISSIONER KIESLING: But are we saying that  
12 for whatever their next rate case is that we want them  
13 to do it on a lot to lot basis?

14 MS. AMAYA: If you go with staff's  
15 recommendation, yes.

16 COMMISSIONER KIESLING: Okay. And I'm prepared  
17 to move staff on Issue 16 and 41.

18 COMMISSIONER JOHNSON: Second.

19 COMMISSIONER CLARK: Without objection staff  
20 recommendation on Issues 16 and 41 are approved.

21 MR. CROUCH: Commissioners, Issue 17 is should a  
22 margin reserve be included in calculations of used and  
23 useful for each facility? And consistent with past  
24 Commission policy, yes, for those facilities that are  
25 demonstrating growth and that can accommodate growth,

1 staff recommends a margin reserve be included.

2 COMMISSIONER CLARK: Questions, commissioners?

3 COMMISSIONER JOHNSON: Move it.

4 COMMISSIONER CLARK: Without objection, Issue 17  
5 is approved.

6 Issue 18.

7 MR. CROUCH: Issue 18 goes along with 17. It  
8 says if a margin reserve is included in the  
9 calculation, what is the appropriate margin reserve  
10 period? Here primarily we go along with past  
11 Commission policy in that the 12-month period for  
12 water and sewer lines is appropriate time. 18 months  
13 for water plant is appropriate time. However, we have  
14 a change from existing policy in that because of DEP  
15 requirements in advance planning for wastewater  
16 treatment plants because of DEP regulations it takes a  
17 utility longer time, therefore, we are recommending 36  
18 months be allowed for margin reserve for wastewater  
19 treatment plant; 12 months for lines; 18 months for a  
20 water plant; 36 months for wastewater treatment  
21 plant.

22 COMMISSIONER CLARK: Questions, commissioners.

23 COMMISSIONER KIESLING: Yes, I need that somehow  
24 translated into dollars or impact.

25 MR. CROUCH: We go in and we look at how many



1 customers will be added each year based on previous  
2 history. We either do a five-year average, or we do  
3 regression analysis. We come up with how many  
4 customers are estimated to be put on each year. In  
5 the case of 36 months, we would allow them enough  
6 growth, enough expansion to handle 36 months, three  
7 years of customer growth. For the lines we would only  
8 allow one-year customer growth. We would convert that  
9 to gallons or to ERCs and figure that in the equation  
10 for used and useful.

11 COMMISSIONER KIESLING: And I'm trying to figure  
12 out how I can conceptually understand what the impact  
13 on revenue requirement is of that extended margin  
14 reserve for wastewater treatment plant and effluent  
15 disposal.

16 MR. WILLIS: Commissioner, I understand what you  
17 are asking, and that is going to take us a while to  
18 calculate. We don't have it separately calculated  
19 back to the 18 months, and it's going to be a  
20 difference between the 18 and the 36.

21 COMMISSIONER KIESLING: So it's going to double  
22 as to wastewater?

23 MR. WILLIS: It's going to double as far as  
24 wastewater goes, as far as the margin would go.

25 COMMISSIONER KIESLING: Right.

1 MR. WILLIS: The problem we are having is there  
2 is so many used and usefuls dealing with wastewater  
3 plants that this would apply to it is going to take us  
4 a while to go back and calculate that difference, but  
5 we can do it; it's just going to take a while to do.

6 COMMISSIONER KIESLING: Can you give me a ball  
7 park? I mean is it going to raise the revenue  
8 requirement two percent, five percent, the total  
9 wastewater revenue requirement? I mean I just need  
10 some ball park.

11 MR. WILLIS: If you give me a second, I might be  
12 able to do that.

13 COMMISSIONER KIESLING: I mean because I  
14 understand -- Okay. I understand where DEP is on  
15 this. I also have a great concern about how much  
16 current customers ought to be paying to take care of  
17 future growth, and that's a big concern for me. So  
18 unless I can understand at least what the,  
19 conceptually what the impact is of this change --

20 MR. CROUCH: This is a combined function between  
21 engineering and accounting in that the engineers  
22 convert it to the number of ERCs, give it to the  
23 accountants and they in turn figure out the dollars on  
24 that.

25 COMMISSIONER KIESLING: I understand.

1 MS. AMAYA: Under Issue 45 in Attachment B, it  
2 doesn't give the revenue impact, but what you can look  
3 at is the starting point. And I'm looking at Page 190  
4 of staff's recommendation.

5 The different margin reserve periods have been  
6 calculated for purposes of used and useful, so you can  
7 see what kind of impacts the different margin reserve  
8 periods do have on those percentages. For example,  
9 looking at Amelia Island --

10 COMMISSIONER GARCIA: Where are you reading from?  
11 I'm sorry, I missed the page number.

12 MS. AMAYA: Oh, it's Page 190.

13 COMMISSIONER GARCIA: 190.

14 MS. AMAYA: It's the first page of the used and  
15 useful calculation schedule that deals with the  
16 wastewater system. And we really don't get to a good  
17 example until you get down to Beacon Hills. And if  
18 you look down at Beacon Hills under treatment and  
19 disposal plant, calculated used and useful without any  
20 margin reserve period, this would be for 1996, is  
21 88.81 percent. If you use the 18 months, the one and  
22 a half year, you jump that figure up to 96 percent.  
23 And then stretching it out to three years, it jumps it  
24 up to 103.3 percent.

25 That does not give you the revenue impact, but

1 what staff could do is go through and see where the  
2 major impacts are in each wastewater plant and maybe  
3 come up with some kind of dollar impact.

4 MR. CROUCH: And Ms. Amaya had done that for  
5 every wastewater treatment plant that had margin  
6 reserve, those calculations are included.

7 COMMISSIONER KIESLING: And I'm glancing across  
8 all of them at this point which will take me a minute,  
9 so --

10 MS. MERCHANT: For the Beacon Hills system, if  
11 you'll look down there, the utility had requested a  
12 hundred percent used and useful, and the three-year  
13 brings them up to 103 percent, so there was no used  
14 and useful adjustment made by staff on the accounting  
15 schedule.

16 COMMISSIONER KIESLING: Right, but if we stayed  
17 with the 18 months, there would have been because it  
18 would have been 96 percent used and useful.

19 MS. AMAYA: That depends on what the Commission  
20 goes with in Issue 45 because one thing staff is doing  
21 is rounding up from 95 percent up to a hundred, so  
22 with that 96 it would have been a hundred anyway if  
23 you went that way with your recommendation.

24 COMMISSIONER KIESLING: Okay, how about  
25 Buenaventura on Page 190, it would have been 88,

1 almost 89 at 18 months but under --

2 MS. AMAYA: With three years it comes up to  
3 almost 93 percent.

4 COMMISSIONER KIESLING: Yeah.

5 COMMISSIONER CLARK: Commissioners, let's  
6 temporarily pass Issue 18 and go to 20, and then that  
7 will give them time if we take a lunch break to look  
8 at that.

9 COMMISSIONER KIESLING: What I needed to look at  
10 is right here, I just didn't know where it was that I  
11 had to look.

12 COMMISSIONER CLARK: Okay. All right.

13 COMMISSIONER KIESLING: So let me just ask you  
14 about a couple of specifics then as I see them. Burnt  
15 Store which is on Page 191, if we stay with the 18  
16 months, they have a 68.82 percent used and useful.

17 MS. AMAYA: Correct.

18 COMMISSIONER KIESLING: The utility requested  
19 85.97 percent, so --

20 MR. CROUCH: Even with three years we would give  
21 them less than they requested.

22 COMMISSIONER KIESLING: Yeah, but if we stay with  
23 the 18 months it will even be more less than they  
24 requested.

25 MR. CROUCH: That's true.

1 MS. AMAYA: Correct.

2 MR. CROUCH: That is why this is definitely a  
3 departure from past Commission practices; however, the  
4 utility presented a fairly good argument as to the DEP  
5 requirements that are causing them to have to go in  
6 and spend money several years ahead of time now.

7 COMMISSIONER DEASON: Well, let me --

8 COMMISSIONER KIESLING: Well, I -- Go ahead, I'm  
9 sorry.

10 COMMISSIONER DEASON: I was just going to ask a  
11 question on that. I remember a great deal of  
12 testimony concerning DEP, changes in their planning  
13 horizons, but I had great difficulty taking that and  
14 taking the next step to indicate that that would  
15 impact, directly impact the utility company to start  
16 expending dollars sooner than they would otherwise.  
17 It seems to me that what we really should be concerned  
18 about is construction period of time and more along  
19 the lines of what Mr. Hartman was advancing, and that  
20 is, economies of scale in construction lead times. I  
21 was not so much convinced by the time horizons  
22 contained -- in fact, we had their time horizons in  
23 the DEP concerning 10 years in some instances.

24 MR. CROUCH: This is true. They were pushing for  
25 five, seven, even ten years.

1           COMMISSIONER DEASON: And I see a very distinct  
2 difference between what they were trying to accomplish  
3 in their rules and what we tried to accomplish with  
4 our concept of margin reserve, and I think they are  
5 two different concepts.

6           MR. CROUCH: Well, we include both concepts in  
7 margin reserve, both the economies of scale preparing  
8 for, you know, just that next customer that just adds  
9 on, whereas DEP's new rule now says that when they  
10 reach a certain capacity they have to start planning.  
11 They have to have the land purchased. They have to  
12 have the requesting permits when they reach a certain  
13 level, so they have had to go a little bit beyond what  
14 they did in the past because of the DEP requirement.  
15 They have had to contact engineers to get the designs  
16 made to actually submit proposals for expansions  
17 several years earlier than they did under the previous  
18 DEP rule, so the utility is having to incur expenses.  
19 Now not five years, seven years, ten years in advance,  
20 no, we could not in good conscience justify that; but  
21 36 months we thought was a reasonable compromise. The  
22 utility does have to expend money earlier now under  
23 the DEP rules than they would have in the past in  
24 order to --

25           COMMISSIONER DEASON: Significant amounts in

1 relation to the total cost of construction, from the  
2 time construction actually begins?

3 MR. CROUCH: In some cases, yes.

4 COMMISSIONER KIESLING: But not in all cases. I  
5 mean if I understood, if I recall correctly DEP's  
6 testimony and their knew planning horizon rules, at 18  
7 months is when they have to have the permit in hand  
8 and be ready to start construction, but at 36 months  
9 they were still in a planning function. I didn't  
10 recall that in every case that would require them to  
11 acquire the land.

12 MR. CROUCH: This is true. It has to be on a  
13 case by case basis. This is why going back to number  
14 17, Issue 17, we are saying where the utility is  
15 demonstrating growth and can justify a requirement for  
16 it. We don't just blindly say we give you a margin  
17 reserve, they have to show that they are past the 80  
18 percent capacity, DEP is requiring them to do this,  
19 and their growth justifies it.

20 MS. AMAYA: One other thing that I'd just like to  
21 throw in there to add to what Mr. Crouch has said is  
22 that with wastewater plants it's a lot more  
23 complicated as far as designing, permitting and  
24 getting the whole process moving as opposed to water  
25 plants. You'll notice that the 36 months only goes to



1 the wastewater plants.

2 MR. CROUCH: But I believe DEP says when you  
3 reach a certain percentage of capacity you have to do  
4 this. When you reach a certain percentage of  
5 capacity, you have to get permits. When you reach a  
6 certain percentage of capacity, you better be building  
7 the plant. When you reach 80 percent of capacity, 90  
8 percent of capacity, you've got to have that plant  
9 ready to operate. So it's not so much on the timing  
10 as to when they reach a certain capacity. They may  
11 have very accelerated growth and start reaching that  
12 capacity a lot more rapidly than other places. So  
13 it's more on capacity, on percentage of capacity than  
14 it is on time line.

15 COMMISSIONER DEASON: Well, how did you determine  
16 that changing it from 18 months to 36 is appropriate?

17 MR. CROUCH: Primarily just a compromise between  
18 what the utility and DEP was asking for, five years,  
19 seven years, ten years, we felt that was totally  
20 unrealistic; but that by the time they have actually  
21 put forth money -- When they sit around a table and  
22 start planning, we don't consider that expending money  
23 because that is just normal planning sessions that  
24 they are working on what their projects are. But when  
25 they have to go out and get an engineering firm to

1 draw up the plans for it, that is costing them some  
2 money. In many cases 15 to 20 percent of their  
3 overall cost is a preliminary engineering plan, so  
4 they are having to put forth money at that stage of  
5 the game, and that is at about 36 months.

6 COMMISSIONER DEASON: But if you were to assume  
7 that once that is triggered and they start expending  
8 funds, obviously the first month there is just so  
9 much, and then it keeps getting larger and larger and  
10 that if you were to average that over the construction  
11 period of time that -- and what you're assuming with  
12 the 36 months is that they need 36 months of capacity  
13 right now, even though if you're assuming it is a 36  
14 period (sic) planning and construction period, actual  
15 expenditures of dollars would be averaged over that  
16 period of time so that in my opinion by granting 18  
17 months, in effect, you are granting 36 months of  
18 planning and construction time. And I guess my  
19 question is, assuming an expenditure of dollars on an  
20 equal basis throughout the period of time, and that  
21 that may be a false assumption, but I guess my  
22 question is, is planning and construction, the 36  
23 months, is that reasonable? And if that is, why don't  
24 we just allow 18 months as the margin of reserve  
25 concerning, recognizing the averaging of the dollars

1 over that period of time?

2 MR. CROUCH: Well, comparing wastewater to water,  
3 since we have allowed 18 months historically for water  
4 plants and wastewater plants in the past, 18 months  
5 has been the norm. But because of the additional  
6 requirements that DEP is putting on them, we felt that  
7 an additional time frame in wastewater treatment  
8 plants was justifiable.

9 MS. AMAYA: One other thing to throw in there,  
10 Mr. Hartman had brought up the idea of economies of  
11 scale, and economies of scale is a very hard thing to  
12 formulate as far as, you know, putting it into a used  
13 and useful calculation by allowing the longer margin  
14 reserve period that somehow incorporates the idea of  
15 economies of scale such that utilities can look out in  
16 the planning horizon that much.

17 COMMISSIONER KIESLING: Well, I have to tell  
18 you, I just have some concern about us extending the  
19 margin reserve as a response and reaction to an action  
20 of DEP that we didn't -- I mean DEP sure didn't  
21 consider the rate impacts when it did its rule, and I  
22 think that the rate impacts in some of these  
23 situations is not acceptable at 36 months, for me. I  
24 don't like the idea of having current customers paying  
25 too much of the future growth, and I think that in

1 some of these situations it is too much.

2 So I guess since Commissioner Deason and I are  
3 the only ones who are asking questions, I'll go ahead  
4 and make a motion and see where we are; and that is,  
5 that I move staff on 18 on the first two items but  
6 that I would move to deny staff on the 36 months for  
7 wastewater, and I would leave wastewater treatment  
8 plant and effluent disposal under the current 18  
9 months.

10 COMMISSIONER JOHNSON: Second, and I can second  
11 that. I agree with everything that you said, and my  
12 main concern was if we do this -- and I heard the  
13 testimony of DEP and I can understand the engineers'  
14 point of view on that, but again, we are doing a  
15 balance, and we are looking at the impact that this  
16 will have on rates. And looking at some of the  
17 numbers at this point in time, this is unacceptable.  
18 Certainly we will have another opportunity to review  
19 this issue in a more comprehensive way in our hearings  
20 that we will be holding in December. I'd like to be  
21 better educated and have some dialogue with respect to  
22 impacts on customers and those other kind of issues  
23 that we can consider in our proceedings that they  
24 don't appear to consider in some of their  
25 proceedings.

1           COMMISSIONER CLARK: Commissioner Garcia, are you  
2 ready to vote on this?

3           COMMISSIONER GARCIA: I haven't heard a motion.

4           COMMISSIONER JOHNSON: Yeah, she moved, I  
5 seconded.

6           COMMISSIONER GARCIA: And what was the motion?  
7 Forgive me.

8           COMMISSIONER CLARK: Well, basically it's to  
9 approve staff with the exception that the wastewater  
10 plant would be back at 18, not at 36.

11          COMMISSIONER GARCIA: Okay.

12          COMMISSIONER CLARK: I have some difficulty with  
13 this issue too because I think there are two things  
14 going on. I think there is more requirements that  
15 require longer lead time, and there is the notion of  
16 economies of scale, and I think there was evidence  
17 presented on that. But the difficulty I'm having is I  
18 think what is being articulated by other  
19 commissioners, is somewhat concern that 36 months is  
20 the correct spot to put it at. And as Commissioner  
21 Johnson has pointed out, we have proposed our rule on  
22 used and useful. Doesn't it include margin of reserve  
23 in there?

24          MR. CROUCH: It's the margin reserve rule that is  
25 proposed that we go to hearing on in December, just

1 margin reserve.

2 COMMISSIONER CLARK: Okay. You know, I  
3 understand that DEP has reasons for requiring those  
4 long lead times because we do need to make sure that  
5 the equipment is there to protect the environment.  
6 You don't want to wait until you are at capacity and  
7 you are going to have a series of violations before  
8 you start addressing it, and there are economies of  
9 scales, but there is a matter of equity between who  
10 should pay for it.

11 COMMISSIONER KIESLING: And that is my  
12 preference, is that we look at it in a more generic  
13 way when we look at margin reserve generally because I  
14 don't want to change our policy in this case and have  
15 that apply to everyone else until we have had the  
16 chance to look at it in a more complete way.

17 COMMISSIONER CLARK: There has been a motion and  
18 a second. All those in favor say aye.

19 (AFFIRMATIVE INDICATIONS)

20 COMMISSIONER CLARK: Opposed, nay.

21 (NO RESPONSE)

22 COMMISSIONER CLARK: Issue 20.

23 MR. McROY: Commissioners, Issue 20 is what is an  
24 acceptable level of unaccounted for water. Staff  
25 recommends that 10 percent of the water pumped and

1 purchased is an acceptable level of unaccounted for  
2 water.

3 COMMISSIONER CLARK: Questions, commissioners.

4 COMMISSIONER KIESLING: I move staff.

5 COMMISSIONER JOHNSON: Second.

6 COMMISSIONER CLARK: Without objection, Issue 20  
7 is approved.

8 Issue 21.

9 MR. McROY: Commissioners --

10 MS. KIESLING: Yeah, I need some clarification on  
11 this one. When I look at Attachment A, which I have  
12 to find right now, I guess I just -- I'm troubled to  
13 say the least with systems such as Stone Mountain that  
14 had a 58.77 percent unaccounted for water without any  
15 further understanding of what is happening there and  
16 what we are going to do to make the company address  
17 those kinds of things. I am satisfied with the  
18 company's explanations of what happened at Amelia  
19 Island, Beecher's Point, Woodmere, Lehigh and Valencia  
20 Terrace, but I don't recall any explanations of what  
21 happened at some of these others. And to the extent  
22 that, you know, our record is lacking in those  
23 explanations, I guess I just -- I don't want to just  
24 blanketly go ahead and move staff because I want there  
25 to be some pursuit of explanations on some of these

1 others.

2 COMMISSIONER CLARK: Well, I'm guess I'm curious.  
3 My feeling is you set a standard that is appropriate  
4 for unaccounted for water, and they'll have to address  
5 it. You know, it really doesn't matter what occurred  
6 in the past, it's unacceptable to have that kind of  
7 level because it impacts -- you know, customers are  
8 paying more for treatment in unaccounted for water. I  
9 mean let me just make sure, am I talking about water  
10 or wastewater here?

11 COMMISSIONER KIESLING: Talking about water.

12 COMMISSIONER CLARK: Yeah, so that there is water  
13 being treated that we don't know where it is going,  
14 and for a prudently managed system, you shouldn't have  
15 that much. I don't know that it is necessary to sort  
16 of pursue the whys and wherefores. Am I wrong?

17 MR. McROY: That is normally correct,  
18 commissioners. If they can't account for it after it  
19 is being processed, we tend to count it as being  
20 unaccounted for.

21 COMMISSIONER CLARK: You said a level that is  
22 excessive, and they need to find out why and pursue  
23 that to correct it.

24 COMMISSIONER KIESLING: Yeah, I guess I'm  
25 concerned that the level of adjustment on some of the



1 more egregious ones is high enough.

2 MS. O'SULLIVAN: I think that the five ones that  
3 were listed out were ones we are recommending that  
4 they made the appropriate corrections.

5 COMMISSIONER KIESLING: Right. Right.

6 MS. O'SULLIVAN: And I think the adjustments on  
7 the previous page encompass all of those facilities  
8 that had high percentages. I guess is your question  
9 that we should require them --

10 COMMISSIONER KIESLING: The adjustment on the  
11 previous page. Are you talking about in the dollar  
12 amount of the adjustment?

13 MS. O'SULLIVAN: What 50 thousand 130 dollars?  
14 I'm sorry, it's actually 22 thousand 774 excluding  
15 those five service areas.

16 COMMISSIONER KIESLING: Right.

17 MS. O'SULLIVAN: That's the amount that remains.

18 COMMISSIONER KIESLING: I know.

19 MS. O'SULLIVAN: Your concern is just -- not  
20 just, but that the utility hasn't addressed those  
21 other systems' high rates?

22 COMMISSIONER KIESLING: I guess it's more akin to  
23 our discussion about penalties again -- or  
24 adjustments, I'm sorry. Because to me having this  
25 level of unaccounted for water needs to be looked at

1 in a much stronger way than just making adjustments to  
2 purchase power and chemicals.

3 MS. O'SULLIVAN: In other words, it doesn't fix  
4 the problem, it just addresses the expenditures.

5 COMMISSIONER KIESLING: Right. Yeah. And so  
6 that's why I guess -- When we get back to Issues 4  
7 and 5 on what adjustments we are going to make, I  
8 guess I just need to let you all know that I consider  
9 this kind of unaccounted for water to be  
10 mismanagement.

11 COMMISSIONER CLARK: What system is it that you  
12 are talking about?

13 COMMISSIONER KIESLING: I'm talking about Stone  
14 Mountain.

15 COMMISSIONER CLARK: Have they had this for a  
16 while, Stone Mountain for a while?

17 COMMISSIONER KIESLING: Well, that's the problem,  
18 there was not anything in the record that really  
19 explained, or that I could find that adequately  
20 explained how long this had been going on or what  
21 efforts were being made to remedy it, and that  
22 concerned me a whole lot. I mean that is more than  
23 half of their water.

24 MR. CROUCH: We encourage the utilities to try to  
25 keep adequate records, and this is the biggest

1           problem. Most of the unaccounted for water is due to  
2           poor record keeping. They use a lot of non-revenue  
3           producing water to flush lines, to clean filters, a  
4           number of legitimate plant uses; but if they don't  
5           document those, we have no idea where they go. And  
6           this is why we try to say, if you keep adequate  
7           records and can show us that you flushed so many lines  
8           a day each week, you used X-amount of water on that,  
9           while it is not revenue producing, it is not  
10          unaccounted for, we know where it went. It is for  
11          those systems that for whatever reason, usually poor  
12          record keeping, had above the ten percent unaccounted  
13          for water, then we say we make the adjustments on  
14          that. And they get the message then, get their  
15          records squared away.

16                 MS. AMAYA: One other item I think the Commission  
17                 should recall is that not only are they being --  
18                 having adjustments on power and chemical expenses, but  
19                 whatever the Commission finds is excessive unaccounted  
20                 for water is reduced from customer demands, thereby  
21                 lowering their used and useful percentage.

22                 COMMISSIONER KIESLING: You're right, I had  
23                 forgotten that entirely. That gives me a whole lot  
24                 more comfort, and with that I don't have any more  
25                 questions.

1 MS. MERCHANT: Commissioners, I would like to  
2 point out that due to an oversight these unaccounted  
3 for water adjustments were not flowed through to the  
4 revenue calculation, but we can certainly fix that.

5 COMMISSIONER CLARK: It's appropriate to do that?

6 MS. MERCHANT: Yes, based on the Commission's  
7 vote.

8 COMMISSIONER CLARK: Well, and there will be  
9 other adjustments that have to be made based on --

10 MS. MERCHANT: That's correct, any other  
11 corrections also that you make today.

12 COMMISSIONER CLARK: Okay. Is there a motion on  
13 Issue 21?

14 COMMISSIONER KIESLING: I move it.

15 COMMISSIONER JOHNSON: Second.

16 COMMISSIONER CLARK: Without objection, Issue 21  
17 is approved.

18 Commissioners, it is now just a little bit past  
19 12:30. I think we should go ahead and take a break  
20 for lunch, and we'll come back at ten after one.

21 (WHEREUPON, THE AFTERNOON SESSION WAS REPORTED BY  
22 CATHY H. WEBSTER)

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COURT CERTIFICATE

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 1st day of August, 1996.

  
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NANCY S. METZKE, CCR, RPR