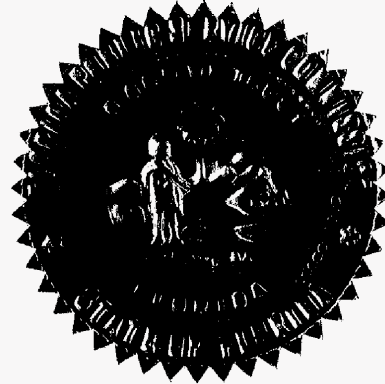


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030443-WS

In the Matter of:

APPLICATION FOR RATE INCREASE
IN PASCO COUNTY BY LABRADOR
UTILITIES, INC.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 10

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER LILA A. JABER
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, July 6, 2004

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

REPORTED BY: TRICIA DEMARTE, RPR
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FLORIDA PUBLIC SERVICE COMMISSION

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1 PARTICIPATING:

2 MARTIN FRIEDMAN, ESQUIRE, representing Labrador
3 Utilities, Inc.

4 KATHRYN G.W. COWDERY, ESQUIRE, representing Forest
5 Lakes Estates Co-Op, Inc.

6 COCHRAN KEATING, ESQUIRE, TRICIA MERCHANT, MARSHALL
7 WILLIS, and CHARLES HILL, representing the Florida Public
8 Service Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN BAEZ: And we have one last, it's Item 10.

MS. MERCHANT: Commissioners, this is a motion that was filed, and I'm waiting on our staff attorney.

CHAIRMAN BAEZ: I see several attorneys rushing to your aid; however, I'm not sure which one is actually going to make it up here.

Mr. Keating.

MR. KEATING: My apologizes.

CHAIRMAN BAEZ: Not at all.

MR. KEATING: Going with the flow of the previous items, I thought I had a minute to talk to counsel on another matter.

COMMISSIONER JABER: Mr. Chairman, bring me up to speed on what I've missed.

CHAIRMAN BAEZ: Commissioner Jaber, you may need to record a vote on Item 8.

COMMISSIONER JABER: What was the motion?

CHAIRMAN BAEZ: There was a move staff.

COMMISSIONER JABER: I would vote in the affirmative supporting the majority's decision.

CHAIRMAN BAEZ: Okay. Very well. Let the record reflect Commissioner Jaber's vote in the affirmative.

And we're on Item 10. We're just teeing it up right now. Go ahead, Mr. Keating.

1 MR. KEATING: Commissioners, Item 10 is staff's
2 recommendation concerning a pleading by Forest Lake Estates
3 Co-Op made in response to a Commission order granting an
4 interim rate increase for Labrador Utilities, Inc.

5 Forest Lake's pleading is comprised of a motion to
6 intervene, a motion for reconsideration, and a request for
7 emergency rate relief. These three separate requests for
8 relief are addressed in Issues 2, 3, and 4 respectively.

9 Issue 1 addresses Forest Lake's request for oral
10 argument on these matters. Staff recommends that you take up
11 first the request for oral argument to set the stage for the
12 remaining discussion. If you wish to hear argument, the
13 parties' counsel are present, and staff is available to address
14 any questions you may have.

15 CHAIRMAN BAEZ: Commissioners, what's your pleasure
16 on oral argument?

17 COMMISSIONER DAVIDSON: Defer to you.

18 CHAIRMAN BAEZ: Well, if you're deferring to me, I'm
19 inclined to allow it since we took it off the agenda and we
20 kept everyone waiting around. So if it's all the same to you,
21 we'll go ahead and hear oral argument. Can I get a motion on
22 Issue 1?

23 COMMISSIONER JABER: Motion to allow oral argument.

24 COMMISSIONER DAVIDSON: Second.

25 COMMISSIONER JABER: Do you want a time certain or --

1 CHAIRMAN BAEZ: You can give a time certain, but I
2 don't recognize one of the attorneys, but I know Mr. Friedman
3 will be very, very efficient with his arguments at this late
4 stage in the day.

5 COMMISSIONER JABER: My motion would be that I just
6 having reviewed the recommendation, I can't imagine parties
7 need more than ten minutes per side.

8 CHAIRMAN BAEZ: I can't imagine it either.

9 COMMISSIONER JABER: So my motion would be to allow
10 oral argument and limit it to ten minutes per side.

11 CHAIRMAN BAEZ: There's a motion and a second. All
12 those in favor say, "aye."

13 (Simultaneous affirmative vote.)

14 COMMISSIONER JABER: And they're both wondering, what
15 does she mean by that?

16 CHAIRMAN BAEZ: Mr. Friedman, are you --

17 MR. FRIEDMAN: It's her motion.

18 CHAIRMAN BAEZ: Oh, it's your motion. I'm sorry.

19 MS. COWDERY: I'm Kathryn Cowdery and with Ruden,
20 McClosky.

21 CHAIRMAN BAEZ: Forgive me, Ms. Cowdery.

22 MS. COWDERY: That's fine. And I'm representing
23 Forest Lake Estates Co-Op, Inc. today. Ten minutes for Issues
24 2, 3, and 4 combined?

25 CHAIRMAN BAEZ: Yes.

1 MS. COWDERY: All right. I would agree with staff
2 regarding the motion to intervene, and at this point I think I
3 would just reserve any time I might have to respond to
4 Mr. Friedman's comments, but I agreed with that.

5 I think the main point I just want to make on this is
6 the customers feel that they were somewhat blindsided by a very
7 huge increase in rates. They were not notified. Clearly under
8 the normal procedure for the interim rates you don't have any
9 customer notification in advance. This is not a typical
10 procedure. Staff recognizes that this is a unique case. You
11 had interim rates filed eight months prior to the final rates
12 which were just filed last week on Wednesday, the final
13 requested rates of the utility. So it's not a typical
14 situation. The increases are not a typical situation. But
15 that's why we're here today, I think, is that the customers
16 were pretty surprised by what happened.

17 I think the main issue I want to address is our
18 motion for reconsideration of the interim rate order. Staff
19 maintains that this is a pretty straightforward situation, and
20 I would maintain it is not. The situation we have here is that
21 R.V. Resort had a flat rate of about \$2,740 a month. This is
22 \$10 per lot. Interim rates were increased to more than \$7,000.
23 So it's more than a doubling of the flat rate based on a per
24 lot. Now, when the interim rate requested came in, it was, to
25 my knowledge, it was not pointed out to the Commission that the

1 R.V. Resort was a bulk customer. From May to November, there
2 are 11 residents and that is all. The R.V. Resort collects
3 \$150 in rent, so their total rent per month is \$1,650 for those
4 six months. The interim rate is now \$7,145. It's a really big
5 increase. At this point as of last week, we have final
6 requested rates that were filed clearly before my March 9th
7 motion before staff recommendation came in. Under the new
8 rates which are going to be metered with a base facility charge
9 and a gallonage charge, the rate that this customer would pay
10 in the summertime months would be about \$4,000. So you've got
11 final requested rates, which as I understand it, you know,
12 looking at it, subject to check, the requested rates on an
13 annualized basis are lower than the interim rates.

14 I also understand from staff that because the interim
15 rates are set based on a -- it's a different test year and it's
16 on a flat rate basis, the protection of the customer here,
17 which is rule book reluctant subject to refund, I don't how
18 much of a protection that is, because if these -- let's say for
19 argument that these rates, the final requested rates are put
20 into effect, okay? We're not going to go back to the R.V.
21 Resort and say, okay, we're going to read your meter for these
22 months, and even though under the final rates you'd pay about
23 \$4,000, even though under the final rates you pay \$4,000,
24 you're going to get \$3,100 back. It's not going to work that
25 way because it's a different rate structure. So the customers

1 are looking at this protection, and it doesn't look like it's
2 giving them any protection.

3 The base facility charge is about \$3,700, so that
4 excess above \$3,700 in final requested rates is, I guess,
5 usage, and 11 customers are not going to be using, you know,
6 \$3,000 or more worth of usage. So the rates, the interim rates
7 that were set here, because of this lack of additional
8 information, I maintain are unjust, and they're unfair.

9 They're not going to apparently get the refund that
10 you would get if you had the proper rate base set -- I mean,
11 the proper rate structure set to begin with. **I think if this**
12 was not a unique case where you had an eighth month hiatus
13 between filing of interim rates and final rates, I would think
14 it would be fairly likely that the interim rates set with this
15 additional information on meter readings would have been set on
16 a gallonage basis. You'd have a base facility charge and a
17 gallonage basis, and you wouldn't have interim rates that are
18 set at a higher rate than the final rates. And, you know, for
19 this reason, you know, when we originally filed this motion
20 before the final rate information came in, we asked to have
21 these rates for the R.V. Resort not put into effect until
22 December because in December that's when you've got everybody
23 coming back, all the snowbirds and their RVs are coming on in,
24 and all their annual residents have their leases renewed, as I
25 understand it, you can make these adjustments. You can start

1 charging. You're going to have some revenues for it. I think
2 that under the circumstances reconsideration of the interim
3 rates and this relief would be appropriate.

4 I'm not timing myself. I'm going to move on to the
5 next issue.

6 COMMISSIONER JABER: May I interrupt, Mr. Chairman,
7 recognizing that it will affect the time?

8 CHAIRMAN BAEZ: Go ahead, Commissioner.

9 COMMISSIONER JABER: Staff, remind me, I'm trying to
10 put this case in context of my memory. This is the one that I
11 asked when it came before us in the past about a customer
12 meeting. Recognizing the unique nature of this case and the
13 time period between interim and final rates, I asked you all to
14 work on expediting the customer meeting process. Was that in
15 fact done?

16 MS. MERCHANT: We've just set the customer meeting
17 date today as of August 24th.

18 COMMISSIONER JABER: You just did that today?

19 MS. MERCHANT: We normally have the customer meeting
20 at about 60 days after the case has been filed, between 60 and
21 70 days. So it is earlier than we would normally have it. But
22 we wanted to make sure that we had the final requested rates in
23 before we set it up, and because of noticing and those
24 requirements, we had to have it at least at a month or so. So
25 that was the best time.

1 COMMISSIONER JABER: We need to back up. I asked you
2 when this came to agenda the first time, so help me understand.
3 But you didn't establish the date until today, but that's I
4 think what I heard you just say, is that that's still before
5 the normal 60-day process.

6 MS. MERCHANT: That's correct.

7 COMMISSIONER JABER: Okay. So the customers, just to
8 finish the thought, with regard to notice of interim rates, if
9 you hadn't had the customer meeting, the customers would not
10 have known about the increase due to interim.

11 MS. MERCHANT: The timing in a proposed agency action
12 rate case, the timing for customer notice is 50 to 60 days.
13 Most companies do the initial customer notice with the notice
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1 because they're going from flat rates to measured rates, so we
2 wanted to make sure that they knew what the rates were going to
3 be.

4 COMMISSIONER JABER: You didn't bring that to my
5 attention when I asked you to work on a customer meeting, did
6 you?

7 MS. MERCHANT: I honestly don't recall the
8 conversation.

9 COMMISSIONER JABER: Mr. Chairman, I'm holding things
10 up. I'm sorry about that.

11 CHAIRMAN BAEZ: Mr. Cowdery.

12 MR. WILLIS: Commissioners, could I bring up just --

13 CHAIRMAN BAEZ: Go ahead, Mr. Willis.

14 MR. WILLIS: Could I just bring up one thing? We
15 were concerned with the customer meeting, too, and we did
16 contact the homeowner's association for that very reason. We
17 wanted them to know the filing had been made. So the contact
18 was made. I just wanted you to know that.

19 COMMISSIONER JABER: But the filing as it related to
20 interim was made, Mr. Willis, and this was so unique -- now,
21 you know, my colleagues my not agree with me, but I
22 specifically pointed out that this was so unique that we needed
23 to bring customers into the loop earlier rather than later. I
24 am pleased that the customer meeting schedule has been
25 established today, the day that you bring it back to agenda.

1 That might be coincidental, it might not be.

2 CHAIRMAN BAEZ: Ms. Cowdery.

3 MS. COWDERY: Okay. I'm going to move on to Issue
4 4, which was our motion for emergency rate relief. The issue
5 here is, in the Commission's order it states, These interim
6 rates shall be implemented for service rendered on or after the
7 stamped approval date on the tariff sheets pursuant to the rule
8 cited provided customers have received notice, provided that
9 customers have received notice. And in this case the customers
10 did not receive notice until as late as February 16th.

11 The argument being made in this case by staff and
12 also by Labrador Utilities is that this doesn't really mean
13 received notice. It reminds me of an earlier case you had
14 today where you mentioned the word doesn't mean -- it's being
15 argued the word doesn't mean what it really means. There is
16 another rule, 25-22.0407, which talks about providing notice.
17 That's not what the order says. The order says, "receiving
18 notice."

19 I would also point out that the rule cited,
20 25-22.0407, that's the rule for notice of public information
21 for general rate increase requests by water and wastewater
22 utilities. And this is the normal procedure which is followed
23 when you don't have the bifurcated interim and then final
24 rates. The very last section is clearly gearing itself toward
25 rates, final rates that are being set. And if you read through

1 that, you see it sets out the whole procedure. It's not
2 talking about interim rates. Also, you look at the specific
3 authority for the rule, and the specific authority for the rule
4 cites to 367.081, among other things. It doesn't cite to
5 367.082, which is the interim rate rule. Rather, it is the
6 25-30.475 rule, which is cited in the order, in which staff
7 agrees the language appears to require receipt of notice by
8 customers prior to implementation of interim rates.

9 So this is sort of another example of customers
10 relying on the Commission and the staff to tell them what's
11 going on. And they're looking at an order and it tells them
12 that the interim rates shall be implemented, you know,
13 providing customers have received notice. And now we have a
14 recommendation that tells them, well, that really means, you
15 know, you can mail it out the same day. And I would say that
16 if you've got rule language and the Commission is using that
17 language, that's the language that needs to be interpreted, not
18 looking at a different rule that really applies to something
19 different. Of course, the Commission has the discretion to use
20 that rule. They have the discretion to do different things
21 having to do with customer notices that aren't included in the
22 rule requirements, but when you use a specific requirement in
23 the order, that's the language that I would maintain ought to
24 be followed. The relief we requested is to give a credit for
25 those seven or so days where the customers hadn't received

1 notice pursuant to the order of the Commission.

2 The other request that I'm going to continue to make,
3 even though I realize the frustration of having set interim
4 rates when you end up with a particular rate that really is an
5 unjust rate, is to suspend that particular rate for the R.V.
6 Resort until December. The only other option I can see is to
7 deny on reconsideration the entire interim rate request because
8 sufficient information was not submitted to the Commission to
9 allow them to set fair and just rates. So I will leave that
10 for discussion, but at this point I would stick with the let's
11 suspend the one rate which is clearly not a reasonable rate.
12 Thank you.

13 CHAIRMAN BAEZ: Thank you, Ms. Cowdery.
14 Mr. Friedman.

15 MR. FRIEDMAN: Thank you, Commissioners. Martin
16 Friedman, law firm of Rose, Sundstrom & Bentley. We represent
17 Labrador Utilities.

18 Let me first start with, I think, the crucial issue
19 and that is the fact that the Commission is even considering or
20 reconsidering a motion or an order on interim rates. I don't
21 know if I've ever seen that in the past. I've certainly always
22 been told the 30 years or so I've been doing this that the
23 interim rate orders are there, and you don't get a
24 reconsideration. And so you can make sure that even
25 considering a motion for reconsideration of this case, that

1 that may come back to haunt you because these rules go both
2 ways. If customers are able to file motions for
3 reconsideration of interim rates, the utility is too. And I
4 think you're creating a dangerous precedent, something, like I
5 say, I have not seen in my 30 years of practicing here where
6 you ask for a reconsideration of interim rates. And --

7 COMMISSIONER JABER: Mr. Friedman, on that point, if
8 I could interrupt you, remind me what the appropriate recourse
9 is. I think it's that there is sort of a quasi-appeal that
10 gets entertained in an expedited fashion, but I don't know
11 where I get that from. I don't know if that's a reference in
12 the interim statute.

13 MR. FRIEDMAN: Interim rates are all subject to
14 refund. If you messed up, then, you know, there's no harm, no
15 foul. If you messed up on the customers -- for the benefit of
16 the customers, the utility loses that money forever. But if
17 you --

18 COMMISSIONER JABER: That's not what I -- maybe
19 Mr. Melson could help me with this before we go forward. It
20 seems to me that there was a remedy for disputing interim
21 rates, and I tend to agree with Mr. Friedman, it's not a motion
22 for reconsideration, Mr. Melson. What is it? Isn't there a
23 quick --

24 MR. MELSON: You're testing the limits of my
25 knowledge. My recollection is that the courts have said the

1 interim rate is quick and dirty, and they don't review them.
2 So I don't believe there's an appellate remedy.

3 MR. FRIEDMAN: That's my recollection, too, with what
4 Mr. Melson said, and in my 30 years of doing this, I've never
5 seen a reconsideration of an interim rate order. So I think
6 you're creating a dangerous precedent even allowing oral
7 argument or even hearing argument on reconsideration of interim
8 rate order. And, like I say, it may come back to haunt you.

9 The other arguments that Ms. Cowdery made here, this
10 is a unique case which set itself up for the unique way in
11 which it was filed. I mean, if it were the utility's druthers,
12 it would have just filed this full case last year, filed it as
13 a flat rate case, and it would have been easy, quick and dirty.
14 But realizing the Commission's preference for having metered
15 rates, and in fact, there's some reference in an order, a prior
16 order for the prior owner of this utility talking about going
17 to metered rates, that the utility agreed to do that. We could
18 have gone flat rates. And the problem really was the
19 consumption data, is that the prior owner didn't have the
20 consumption data with which to do a billing analysis and to set
21 rates. And so what we agreed to do is to stop the bleeding
22 because everybody understood this company was losing tons of
23 money. At \$10 dollars -- you can imagine at \$10 a lot for all
24 the water and sewer you want, or 20, I forget exactly what it
25 was, but, you know, they're losing money. So to stop the

1 bleeding, we went with an interim rate based upon a flat rate
2 understanding that we'd have consumption and we'd file the full
3 MFRs this year, which we just did, and then you'll set the
4 rates based on a metered rate. But the fact that it was filed
5 like that was really to accommodate a long-standing Commission
6 policy and also so that the customers would have some control
7 over their bills by having metered rates.

8 Now, Ms. Cowdery's comment about emergency order
9 based upon the fact that the manner in which the R.V. park
10 bills its customers should have some impact on what the utility
11 can charge of that customer. And as I have pointed out in my
12 response to the R.V. park's motion is that that's no different
13 than any other customer, particularly apartments. Apartment
14 buildings have leases that are typically annually just like the
15 R.V. park does. If the -- that particular type of customer did
16 not have the foresight to include in its lease the contingency
17 for these type of matters, then it's a business risk that every
18 business is running, that your utilities charge may go up
19 whether it's water and sewer, whether it's electricity or
20 whether it's something else, and you're stuck with that
21 contract that you entered into with your tenant. And that's
22 the same here. There's really no difference. And so I don't
23 think there's a basis for an emergency -- any type of emergency
24 action.

25 So we agree with the staff's recommendation on those

1 issues. The one that we don't agree with is the granting of an
2 intervention. This is a PAA process. And by its nature, it's
3 intended to be a quick and efficient manner in which to get to
4 a PAA order. And at that point, when the PAA order is entered,
5 that is when interested parties, including the utility who
6 disagrees with the PAA order, have an opportunity to ask for a
7 hearing.

8 What happens when you allow entities to intervene in
9 the PAA process before the order is entered is that it changes
10 the whole dynamics of the case. All of a sudden now you have
11 an intervenor who has all of the rights of a party, including
12 interrogatories, requests for production, depositions and other
13 types of discovery, and that changes the quick, efficient
14 determination of the rates to get to a PAA order. Now, all of
15 a sudden, particularly on the issue, something near and dear to
16 my heart on the rate case expense issue, all of a sudden you
17 estimate a rate case expense based upon what you understand the
18 typical process by the Commission staff in analyzing these
19 things, and all of a sudden you add another party and the rate
20 case expense dynamics can change drastically. And so I -- and
21 although I noticed that the staff pointed out in some gas case
22 they allowed somebody to intervene, I don't know the exact
23 circumstances of that, why they did or what was maybe something
24 unique in that gas case that may have justified doing that.
25 I'm suggesting that that's a bad policy to make in the water

1 and sewer industry because I think it's contrary to trying to
2 come up with a PAA order in a fast and efficient method. And
3 so in conclusion, let me address the noticing part.

4 There is some conflicting rules on the noticing.
5 Frankly, I think it's almost impossible, as the staff pointed
6 out, to have any notice deadline that requires actual receipt
7 by the customer. It just doesn't work. What is intended to be
8 is that there is notices given by the utility. And in this
9 case the utility gave the notice, put the notices in the mail
10 on the date that the tariff sheets were approved. Otherwise,
11 you do run into the chicken or the egg thing. The tariff sheet
12 can't be approved until the notice is given. How do we know
13 exactly when people are going to get notices? I mean, it
14 really is a quagmire that just -- you go in a circle and you
15 can't get to the right answer. What if they approve the tariff
16 sheet and we send the notice out and the notice is a day early
17 or a day late? Then the tariff is wrong. And so the only
18 practical way to deal with that quagmire is what we did, which
19 is the notice is sent out on the same day that the tariff sheet
20 is approved.

21 The purpose of the notice of an increase like this is
22 so that the customers know there's an increase, and in theory,
23 they can change their consumption habits in order to have some
24 actual effect on their bill. They can decide to not wash
25 clothes three days a week. They can decide to take shorter

1 showers or not turn on the irrigation systems. They can do all
2 those sort of things. I would suggest to you in this case that
3 even if it was wrong, the notices were not accurate, it's a no
4 harm, no foul because this is a flat rate billing. There's
5 absolutely -- even if we were seven days late, as Ms. Cowdery
6 suggests, which I suggest to you is wrong, there is no foul.
7 There is absolutely nothing that that customer could do to
8 affect that flat rate. It's going to be whatever it is whether
9 they wash their clothes seven days a week or one way a week.
10 The intent is to make sure that we get notice to customers in a
11 timely manner. **The utility did that as pointed out by the**
12 **staff.**

13 There are apparently two conflicting provisions in
14 the rules. I would suggest to you that the requirement is that
15 the utility give notice, give notice when the tariff sheet is
16 approved and not that it be received because it's impractical
17 to determine when somebody is going to receive a notice when
18 people live all over the country these days when they have
19 property in Florida. So I would concur in the staff's
20 recommendation on all the issues except the intervention, and I
21 would respectfully request that the Commission deny the
22 intervention as being premature. Thank you.

23 CHAIRMAN BAEZ: Ms. Cowdery, you had reserved a
24 little bit of time to comment on the intervention.

25 MS. COWDERY: Okay. There is no prohibition in the

1 rules for a motion for reconsideration of interim rates. When
2 I first approached this problem, I was thinking along the same
3 lines as you are. And there's a district court case, and I
4 believe what it was was that the -- as Mr. Melson indicated,
5 that the interim rates are not appealable to the DCA, that you
6 have to wait until you get through the whole case. I think
7 that's what the status is. So there is --

8 COMMISSIONER JABER: So let's follow that. And I did
9 look up the statute. There is a reference to an expedited
10 hearing. I'm not sure, Mr. Melson, if it applies to this.
11 Maybe you could take a look at it, too. It's 367.082(3).

12 But, Ms. Cowdery, if we entered an order denying or
13 granting reconsideration, that order is then appealable to, in
14 the case of water, the First District Court of Appeal; correct?

15 MS. COWDERY: Unless there's a prohibition on
16 reconsideration going to DCA, which I don't know of.

17 COMMISSIONER JABER: So if an order issues, it would
18 be appealable to the District Court of Appeal. That puts you
19 or Mr. Friedman in the posture of appealing a decision on
20 interim, which I thought you couldn't do.

21 MS. COWDERY: Yeah, well, I think that you can appeal
22 interim decisions.

23 COMMISSIONER JABER: Well, in the --

24 MS. COWDERY: But I think you can reconsider your own
25 order based on mistakes. I think you can do that.

1 COMMISSIONER JABER: But that's not what we have in
2 front of us; right? We have your motion for reconsideration.

3 MS. COWDERY: Right.

4 COMMISSIONER JABER: Okay. Let me ask you this
5 because I really need to understand in an effort to figure how
6 to vote on that issue. The language that attaches to the order
7 on interim cites to Citizens vs. Mayo which states that an
8 order on interim rates is not final or reviewable until a final
9 order is issued.

10 MS. COWDERY: In the DCA --

11 COMMISSIONER JABER: And I think traditionally that
12 may be why this Commission has not, I don't believe,
13 entertained a motion for reconsideration on an order affecting
14 interim rates, but we don't have that analysis in front of us,
15 Mr. Melson, so I'm at a loss.

16 MR. MELSON: A couple of points. I understand that
17 apparently the Commission has done reconsideration of interim
18 rates before that happened in the last Progress case, I've been
19 informed. With regard to the 60 days, 367.082(2) requires the
20 Commission to take action on interim rates within 60 days.
21 What Sub 3 says is if you believe a mini hearing is necessary,
22 that hearing would be held on an expedited basis within the
23 same 60 days.

24 COMMISSIONER JABER: The statutes that governed the
25 motion for reconsideration that was filed in Progress are the

1 same as the statute in water on interim rates, and does Citizen
2 vs. Mayo govern in the electric industry as well?

3 MR. MELSON: I have not looked at Chapter 366 to see
4 if the interim statute is the same. My recollection is that it
5 is substantially the same. The rule that one cannot appeal
6 interim rates, I believe, applies across all the industries.
7 And I would suggest to you that whether you entertained a
8 motion for reconsideration or not would not change the
9 nonappealability. Whether it was your original interim rate
10 order or the interim rate order on reconsideration, it would
11 seem to me that on either case that is an interim interlocutory
12 order and goes up for appeal only at the conclusion of the
13 case.

14 COMMISSIONER JABER: So even an order on
15 reconsideration wouldn't be governed by that jurisdictional 30
16 days to appeal?

17 MR. MELSON: That would be my understanding, yes,
18 ma'am.

19 COMMISSIONER JABER: Upon what do you base that
20 understanding?

21 MR. MELSON: That it is essentially a modification of
22 an interim rate order, and interim rate orders, period, are not
23 appealable, not separately appealable. They can be appealed
24 only at the end of the case, and as a practical matter, at the
25 end of the case there's no effective relief that can be given.

1 COMMISSIONER JABER: Ms. Cowdery, I interrupted you.

2 MS. COWDERY: I'm sorry. I think that it is up to
3 the Commission based on the law of whether or not
4 reconsideration is appropriate to determine whether or not you
5 want to reconsider or not. In this case I don't think we're
6 looking at -- because of this, we keep saying it's a unique
7 case. Basically what only makes it unique is that the company
8 was allowed to file for interim rates eight months before it
9 filed for its final rates. If there's a dangerous precedent,
10 perhaps that is it. Perhaps the appropriate thing to have done
11 in retrospect, at least from my point of view, would have been
12 for the utility to get its consumption data together, and then
13 have filed its rate case as a normal utility company who have,
14 you know, under those circumstances and asked for interim rates
15 and final rates at the same time, and then all your time
16 periods kick in as far as customer notice and everything like
17 that.

18 In this case we've ended up with a very high rate for
19 this customer that does not look like you get the normal kind
20 of refund available. And they have got all those extra months
21 of collecting this money. The company, Utilities, Inc., talks
22 about losing tons of money. This is a fairly small utility
23 company. To them I don't think this is really tons of money
24 that they're talking about. So this was an option that they
25 chose, was this unusual procedure. And then to turn it around

1 and say, well, we can't set this dangerous precedent by looking
2 at reconsideration, I don't think that's appropriate. I think
3 in any case the Commission determines, you know, was there a
4 mistake of fact, was there a mistake of law, do we reconsider
5 on this basis. And we're just saying there's a mistake of fact
6 that if this knowledge was with staff at the time, that this
7 rate structure wouldn't have been set up, that it does not look
8 like the customers have that refund availability to them, that
9 they're going to end up eating that cost because they look at
10 the total -- staff is going to look at the total revenues under
11 interim rate basis and not look at consumption.

12 Regarding the conflicting rules raised for Issue 4 on
13 the emergency rate request, I don't think the rules are
14 conflicting. And I think what you've got to look at, another
15 thing for setting precedent is, what does the Commission order
16 say? The Commission order says that the notice is to be
17 received, and the Commission has that ability to make that
18 holding. There's not a quagmire involved in allowing the
19 customers to receive notice pursuant to the order. Just
20 because the stamped approval date is February 10th doesn't mean
21 that you put the rates in effect on February 10th. We have
22 many instances with the smaller utilities I deal with, you get
23 the stamped approval date, and you do your planning and you can
24 get your notice out, you can choose to have your rates put into
25 effect on the first billing date of the next cycle, which is

1 very common so that you don't end up having to prorate. There
2 is no need to have to have your rates put into effect on the
3 stamped approval date. So there is that.

4 One other point I'd like to address is the fact
5 that~~s~~ -- or that Labrador Utilities is stating that what the
6 utility is charging the customer under a rental agreement is no
7 different than an apartment complex or any other business, and
8 I would take issue with that. We've got an incredibly seasonal
9 R.V. Resort. You go down to 11 customers, 11 residents for six
10 months out of the year out of 274. **Apartment complexes do not**
11 run into that. This is just another case if the customers had
12 been involved and if this information had been in front of
13 staff, I think a different kind of rate structure would have
14 been set up. Thank you.

15 CHAIRMAN BAEZ: Thank you, Ms. Cowdery. Commissioner
16 Deason, you had questions.

17 COMMISSIONER DEASON: Yes. Ms. Cowdery, I take it by
18 your argument that it's your position that the Commission made
19 an error by not establishing interim rates based upon usage; is
20 that correct?

21 MS. COWDERY: That would have been an alternative.

22 COMMISSIONER DEASON: Okay. What's the other
23 alternative?

24 MS. COWDERY: My initial filing was just based on the
25 fact that without getting a rate consultant involved for this

1 client, the initial filing was based on the fact that the
2 interim rate was simply too high under the circumstances. And
3 I think the filing of the final rates which show a gallonage
4 and a usage, I sort of -- I guess I am evolving into the
5 appropriate way would have been to set up a rate
6 structure different than what was --

7 COMMISSIONER DEASON: That leads to my ultimate
8 question, is how could the Commission have done that without
9 the usage data?

10 MS. COWDERY: Well, I think at this point it would
11 have been better to have gotten that data. I don't know if
12 there are other rate solutions available to the utility, which
13 is why I guess I'm hedging on this. I don't know if there are
14 any other available options.

15 But our point is if this information had been brought
16 to staff, they could have found a way to set rates that were
17 more fair and equitable for this client. And it may have been
18 that Forest Lake Estates Co-Op R.V. Resort, the only way to do
19 it would have been with the metered usage rate. I don't know
20 if there is another option available.

21 CHAIRMAN BAEZ: Commissioner Davidson.

22 COMMISSIONER DAVIDSON: For staff. Is it correct
23 that there was an eight-month delay between the petition for
24 interim rates and the petition for final rates?

25 MR. KEATING: Yes. I believe the interim rate filing

1 was made at the end of October, and the final rate filing was
2 made at the end of June, so eight months.

3 COMMISSIONER DAVIDSON: Why such a delay?

4 MS. MERCHANT: The utility, they put meters in place
5 in November of 2002. And when we did the test year approval
6 letter, we needed 12 months of data to be able to set final
7 rates. So we needed a full calendar year, and that was the
8 year 2003. And the company requested the amount of time until
9 June 30th to compile their MFRs for the final case.

10 COMMISSIONER DAVIDSON: What is the typical space of
11 time between a petition for interim rates and a petition for
12 final rates? Are those typically filed simultaneously or is
13 there -- General Counsel is nodding his head yes.

14 MS. MERCHANT: Normally they are at the same time.
15 Occasionally the utility will waive consideration of interim
16 rates when they file them both at the same time, and in some
17 cases there have been errors in interim rate calculations, so
18 they have waived the 60-day time clock for interim.

19 COMMISSIONER DAVIDSON: It just seems like a very
20 lengthy period of time between petitions. Is there anything
21 that would limit a utility in sort of the time frame? I mean,
22 as a general matter, could a utility file July 2004 for interim
23 rates, and then just hold off until July 2005 for final rates,
24 a final rate petition?

25 MR. KEATING: Commissioner, to answer your question,

1 in this case what happened is the utility received approval for
2 an interim test year ended at a certain period of time and a
3 final test year end at a certain period of time. So at the
4 outset, when we established interim rates we knew there was a
5 deadline for the utility to come back in to make its permanent
6 rate filing to file its MFRs. I think the utility would be
7 limited by whatever test years were approved. The utility has
8 to go through the process of getting test year approval before
9 this rate proceeding started.

10 COMMISSIONER DAVIDSON: And a second question related
11 to the refund. The interim rates have now been set at some --
12 in excess of \$7,000 a month according to the statement made.
13 Final rates will be somewhere in the range of \$4,000 a month.
14 Provisions, I'm assuming, are in place so that each and every
15 excess penny collected during the interim period will, in fact,
16 be refunded to the customer. We heard concerns about the
17 amounts may not be refunded. Can you address those concerns?

18 MS. MERCHANT: The way that we calculate whether or
19 not an interim refund will be made is at the conclusion of the
20 case. And what we do is we compare the interim revenue
21 requirement to the final revenue requirement, and we
22 calculate -- it's called an interim period revenue requirement.

23 COMMISSIONER DAVIDSON: Well, other than rate case
24 expense, I can't imagine that the interim revenue requirement
25 would be higher than the final revenue requirement.

1 MS. MERCHANT: Sometimes it's lower. But the problem
2 is, is that we don't go on per customer basis because
3 especially in this case we have a flat rate -- a rate structure
4 change.

5 COMMISSIONER DAVIDSON: Well, how is staff going to
6 sort of address the refund issues sort of at that high level
7 methodologically if, in fact, it's correct that interim rates
8 are \$7,100 a month? Just assume those numbers. I don't know
9 whether they're accurate. But interim rates are at 7,100 a
10 month for this customer and final rates will be at \$4,000 a
11 month. It doesn't take rocket science to say that the rough
12 amount of your refund, knocking out sort of rate case expense
13 and all that, the cost of this proceeding, should be 3,100 a
14 month. How will you all get to that number?

15 MS. MERCHANT: It's my understanding that we can't go
16 on a per customer basis. We have to look at the company as a
17 whole. I know that we had this issue in the Southern States
18 rate case. We had 157 systems. And we looked at the total
19 company revenue requirement compared to the interim revenue
20 requirement, and we couldn't go on a per system basis or a per
21 customer basis.

22 COMMISSIONER DAVIDSON: Are we not raising these
23 rates on the basis of this customer? We looked at the company
24 as a whole. It's not a customer specific rate increase; it's
25 across the board?

1 MS. MERCHANT: That's correct, it was across the
2 board. We looked at the percentage increase that we needed to
3 raise total revenues, and we raised all rates that were in
4 effect by that same percent.

5 COMMISSIONER DAVIDSON: Okay. So then let's talk
6 about the entire -- well, is this customer bearing a
7 proportional share of the rate increase or a disproportionate
8 share of the rate increase?

9 MS. MERCHANT: I can't tell you that at this point
10 because we hadn't looked at what the consumption is, because
11 once we get to the final case, it might be in those months of
12 October through March that they use a large amount of water and
13 wastewater, and right now they're being billed on a flat rate
14 basis. At the end they're going to be billed on a measured
15 consumption basis, so it might be on an annual basis. They
16 might be close, they might not. I can't even guess what that
17 would be because I hadn't had the consumption yet.

18 COMMISSIONER DAVIDSON: If the evidence demonstrates
19 at the end of the analysis that this customer has borne a
20 disproportionate share of an excessive interim rate which is to
21 be refunded, will this customer receive a disproportionate
22 share of the refund sort of to make it equal vis-a-vis the
23 other customers who would not have borne a disproportionate
24 share? And it may not be the case. It may be that other
25 customers bore the disproportionate share. But my question

1 goes to will there be parity between the burden imposed by the
2 interim rate increase and the refund?

3 MS. MERCHANT: The answer I would like to give you
4 was I would hope that there would be, but I don't believe that
5 we can because we can't go back and backbill the people that
6 underpay for the same reason that we're not going to be able to
7 lower the people that overpaid.

8 COMMISSIONER DAVIDSON: Well, you're not backbilling.
9 They would just get a smaller refund. The refund, I would
10 think, would be borne amongst the customers and according to
11 some proportion of their burden of an excessive interim rate
increase. It doesn't seem like a hard sort of proposition to
put into numbers.

14 MS. MERCHANT: It's a bigger issue in this case
15 because we are going from flat rates to measured rates. But on
16 every single rate case you have a slight rate structure change.
17 You could have a change between general service and residential
18 flat base charge to gallonage charge, and we just can't go in
19 on every single customer and say, you should have paid \$15 and
20 you only paid \$10, so now you owe \$5 more for every month, and
21 the other customer paid \$25 and should have only paid \$10. So
22 it would be a monumental exercise.

23 And the Commission in the past has not changed rate
24 structure on interim rate setting. And in the same way that we
25 don't change rate structure when we calculate interim rate

1 increases, we don't go back on a per customer basis in the
2 final and divvy it up on a per customer basis. And I hope that
3 I'm answering your question.

4 COMMISSIONER JABER: Mr. Chairman, I was going to
5 jump in, but I think, Commissioner Bradley, you had a question.

6 CHAIRMAN BAEZ: Yes, Commissioner Bradley had a
7 question.

8 COMMISSIONER BRADLEY: Thank you, Mr. Chairman. I
9 have a few questions of staff. How many customers live in the
10 general service territory?

11 MS. MERCHANT: We have 894 lots in the mobile home
12 park, and 274 lots in the R.V. Resort and that was in 2002.

13 COMMISSIONER BRADLEY: Okay. 890 lots.

14 MS. MERCHANT: The 894 lots in the mobile home park
15 are individually metered -- well, now they are. But they
16 are -- they have -- today, they have meters on each mobile
17 home. The R.V. park is a master meter customer, and they have
18 274 lots and they pay one flat charge for every lot that they
19 have.

20 COMMISSIONER BRADLEY: What percentage of the
21 customers then would be seasonal?

22 MS. MERCHANT: I think a large majority of them are
23 seasonal. According to Ms. Cowdery, a substantial portion of
24 the R.V. park is, but I'm not sure what the answer is for the
25 mobile home community.

1 COMMISSIONER BRADLEY: Does anyone know?

2 MS. MERCHANT: We don't have the exact number.

3 COMMISSIONER BRADLEY: Okay. Well, just in general.

4 MS. MERCHANT: It's Pasco County.

5 COMMISSIONER BRADLEY: Okay. So is it your
6 understanding maybe that the customers in the mobile home park
7 are also seasonal?

8 MS. MERCHANT: Yes, sir, I believe that a large --
9 we've heard from a lot of customers already, and we've talked
10 to a lot of them. And they are concerned -- we got an e-mail
11 just this weekend about a woman who's concerned about measured
12 consumption rates being put in place for final. So it's a
13 common concern that we're hearing about the flat rates.

14 COMMISSIONER BRADLEY: Okay. Let me ask it another
15 way then. Does anyone know how many of the customers are
16 permanent customers who live year-round in the mobile home park
17 as well as in the R.V. park?

18 MR. KEATING: I think all we know is what we've been
19 told by Forest Lake is that 11 of the R.V. Resort customers are
20 permanent residents on an annual basis. We don't know what
21 number of the mobile home park residents are there on an annual
22 permanent basis.

23 COMMISSIONER BRADLEY: Let me ask one last question.
24 How in the past have we dealt with this particular situation?
25 And what I'm asking about is the situation where customers

1 lon't reside year-round but are receiving service from a
2 utility. How in the past have we dealt with that for billing
3 and for rate increase purposes?

4 MS. MERCHANT: There are large numbers of seasonal
5 customers in the state of the Florida, and it's a very common
6 argument that we have. Most -- I would say 98 percent of the
7 water and wastewater utilities that we regulate have measured
8 consumption, so those customers pay the base facility charge
9 whether they're gone or they're there, and then the additional
10 to their bill is based on consumption each month. So during
11 the summer months when they're not here, they pay the base
12 charge, the flat fee. When they come back in October, they
13 start paying the gallonage charge. Some people disagree with
14 that, but that's a very standard practice and that's how the
15 utility recovers their fixed costs throughout the year.

16 COMMISSIONER BRADLEY: Is that practice in play in
17 this instance?

18 MS. MERCHANT: In this utility it's not. They have a
19 flat rate right now. It was a very low flat rate in the prior
20 rates. The flat rates that they had before for the water and
21 sewer service combined were \$15 for all the water and
22 wastewater that they could have. That was for the mobile home
23 park, and for the R.V. park it was \$10. And it's now gone for
24 the R.V. park, Ms. Cowdery's, it's now gone to \$26 a month.

25 COMMISSIONER BRADLEY: In the instance where this

1 rate scenario has existed in the past, how has staff
2 transitioned -- or what method has staff used in order to
3 transition the utility from the situation you just described to
4 one that's more fair and equitable? And I would assume
5 that's -- it seems to me that's where staff is going.

6 MS. MERCHANT: That's correct, we do want to go to
7 measured consumption. I would say it's very rare that we have
8 flat water rates. It's been more common that we've had flat
9 wastewater rates. I can think of a company down in Key West
10 that had flat wastewater rates up until last year. Extremely
11 rare for water. I don't know that I've ever had an interim
12 case before that I've dealt with. I know that if a company
13 came in, even if they filed interim test year at the same time
14 they filed their test year, if this company had done that, we
15 still would have had to set interim rates based on flat rates.
16 We don't change rate structure in interim rates. But it's very
17 rare that you would have this type of situation, not only to
18 have interim considered separately, but to have flat rates at
19 an interim increase.

20 COMMISSIONER BRADLEY: And one last question. This
21 question goes to the utility as well as the customer
22 representative. What would you all suggest -- which method
23 would you all suggest -- or which points of compromise are
24 there that we might use to resolve your issues? Have you all
25 had the opportunity to talk and maybe come up with something

1 that would be workable for both of you?

2 MR. FRIEDMAN: Commissioner Bradley, I mean, the way
3 this case was handled, although everybody talks about it being
4 unique, the only unique thing about it was the fact that we
5 were trying to accomplish something that we believe the staff
6 and the Commission wanted to accomplish, which is to go to
7 metered rates.

8 If it were up to the utility, last year when it filed
9 its interim case based on flat rates, it would have filed its
10 final rates based on flat rates, too. We don't care. We get
11 the same revenue requirement whether it's done on metered rates
12 or not. We thought we were doing something to accommodate the
13 customers by giving them some control over their meter, over
14 their meter readings, and what they're charged for utility
15 service. We thought we were following the Commission
16 precedents, and in fact, that's what the test year approval
17 letter says.

18 Commissioner Bradley, I don't think there is a,
19 quote, compromise because there is nothing to compromise. This
20 case was done just like you always do them. We filed an
21 interim rate request. We were entitled to "X" number of
22 dollars. They put it through a percentage increase just like
23 they always do. The problem is, is that you have customers
24 that were paying \$15 a month for all the water and sewer they
25 want, or this one customer is paying \$10 a month for all the

1 water and sewer they want, and they're going to have sticker
2 shock. They're going to have sticker shock at \$15. I mean,
3 there's no doubt about it. And so when it goes -- they should
4 have been saying -- instead of saying, wow, our rates doubled,
5 they should have said, man, we made out like a bandit for the
6 last eight years.

7 MS. COWDERY: May I comment? What was accomplished
8 by this unique situation was to allow the utility to have an
9 extra number of months of collecting interim rates that it
10 wouldn't otherwise have had. We have no objection to paying
11 base facility charges and meters. We are not saying -- do you
12 have a --

13 CHAIRMAN BAEZ: No, no. Go ahead.

14 MS. COWDERY: We are not saying that, oh, these rates
15 are horrible. You know, we never expected to have some kind of
16 a rate increase. That's never been maintained. What we're
17 saying is the interim rates were not set appropriately.

18 COMMISSIONER BRADLEY: Exactly, and that goes to the
19 crux of my question.

20 MR. FRIEDMAN: Commissioner Bradley, that's the
21 problem. When counsel says they weren't done correctly, that's
22 wrong, that's wrong. We don't have to wait to get metered
23 rates. She says, wow, we got these rates eight months earlier
24 than we should have. That's just wrong. We could have gotten
25 these same rates by filing this thing as a flat rate rate case,

1 over, end of story, nothing unusual about it, it's over and
2 done with. But that's not what the staff wanted. We don't
3 believe that's what the Commission wants. And so we tried to
4 fashion a remedy for an unusual situation and that was let's do
5 it on an interim basis like we always do, just increase the
6 existing rate structure by a percentage. And then once we have
7 a year's worth of consumption information, which we didn't have
8 last year -- we didn't have that when we filed for interim
9 rates. We didn't have 12 months' worth of data. That's what
10 we were sitting around treading water waiting on was 12 months'
11 worth of data. And I'll tell you again, we didn't care. We
12 did it as an accommodation. I like flat rates better myself.

13 COMMISSIONER JABER: Mr. Chairman.

14 CHAIRMAN BAEZ: Commissioner Jaber.

15 COMMISSIONER JABER: I think both parties have tried
16 to help us put this pack in perspective, and if I may, through
17 a series of questions, I think I could be ready to make a
18 motion if that would be your pleasure.

19 Ms. Merchant, you started to explain to Commissioner
20 Davidson, and I think again to Commissioner Bradley, the notion
21 that we don't look at rate structure, at least you don't change
22 rate structure through interim rates, and if I could put words
23 in your mouth, but understand this is -- I want you to take an
24 opportunity to explain and bring us back to why we don't do
25 that, which I think is because of the statutory framework

1 involving interim rates. So is it correct that with
2 establishing interim rates you take a look at the test year
3 that's been proposed by the company and you make adjustments to
4 consider out-of-period adjustments; is that correct?

5 MS. MERCHANT: Correct.

6 COMMISSIONER JABER: And those --

7 MS. MERCHANT: Well, we make corrections of errors.
8 We remove pro forma adjustments, and we make adjustments
9 consistent with those made in the last rate proceeding.

10 COMMISSIONER JABER: You make adjustments consistent
11 with those made in the last rate proceeding. And because you
12 do that, sometimes it's not as simple as saying, final revenue
13 requirement minus interim revenue requirement will equal what
14 we perceive to be a common sense amount, which 7,000 minus
15 4,000 should from a sensible standpoint be 3,000, but in fact,
16 it really just depends on what those adjustments that are
17 consistent with the last rate case are. Is that a correct
18 statement?

19 In other words, when you're calculating interim
20 rates, you are making adjustments consistent with the last rate
21 case, but when you look at the petition for final rates, you
22 are perhaps putting back some of those things you took out in
23 interim; is that correct?

24 MS. MERCHANT: It's a little bit more complicated
25 than that. When you calculate interim rates, you are bound by

1 the interim statute. You have a set of requirements that you
2 have to comply with. When you calculate the final rate, that's
3 rather straightforward. Everything is prudent; they have
4 supported everything; you've got that number. When you're
5 determining whether or not to make a refund --

6 COMMISSIONER JABER: Let me stop you there. You just
7 made the point I've been trying to get you to articulate. The
8 interim statute -- the interim rate calculation is strictly
9 governed by the interim statute, isn't it?

10 MS. MERCHANT: That's correct.

11 COMMISSIONER JABER: But when you start looking at a
12 case from the standpoint of calculating what the final rate
13 should be, there's a lot more discretion, isn't there?

14 MS. MERCHANT: Correct.

15 COMMISSIONER JABER: Okay. Now, is it a fair
16 statement to make that the interim rate calculation made in
17 this case was consistent with how you calculate interim rates
18 in water and wastewater?

19 MS. MERCHANT: It was consistent with what we do in
20 water and wastewater, yes.

21 COMMISSIONER JABER: Now, let me switch gears on you
22 and talk about the notice. And I say that, Mr. Chairman, I am
23 completely comfortable with how interim rates were calculated
24 in this case.

25 I want to come back to the notice issue. Is there

1 anything short of a refund to address the fact that the
2 customers did not receive notice prior to the interim rates
3 being implemented?

4 MS. MERCHANT: They got --- let me see if I can answer
5 your question this way. They are billed in advance. It's a
6 flat rate billed in advance. So when they got their bill, they
7 have not paid it yet. The notice came with the bill, and it
8 was consistent with the tariff that was approved by staff, and
9 the notice was approved by staff. But they got the bill and
10 the notice on the same date, and they had so many days to pay
11 it, and that was for service in advance. So I would argue that
12 when they got that bill, they got the notice, and they hadn't
13 incurred service yet. So there really would not need to be a
14 refund for the timing of the notice.

15 COMMISSIONER JABER: Okay. And then finally, is it
16 also fair to say that even if we would have required some
17 additional noticing or even if a customer meeting was had, that
18 you're bound by the interim statute, and the calculation of the
19 interim rate falls out of the formula established in the
20 interim statute?

21 MS. MERCHANT: That's correct, unless we had had a
22 mini hearing which I don't believe that we've ever done. That
23 would be the only time that you can deviate from that formula
24 for interim is when you hold a mini hearing.

25 CHAIRMAN BAEZ: Commissioner Deason.

1 COMMISSIONER DEASON: Mr. Chairman, I'd like to make
2 a motion.

3 CHAIRMAN BAEZ: Okay.

4 COMMISSIONER DEASON: I move approval of staff's
5 recommendation on all issues.

6 COMMISSIONER JABER: Second.

7 COMMISSIONER DAVIDSON: Third.

8 CHAIRMAN BAEZ: All those in favor say, "aye."

9 (Simultaneous affirmative vote.)

10 CHAIRMAN BAEZ: Thank you all.

11 MR. FRIEDMAN: Thank you.

12 MS. COWDERY: Thank you.

13 MR. HILL: Mr. Chairman.

14 CHAIRMAN BAEZ: Yes, sir.

15 MR. HILL: We never did answer Commissioner Davidson,
16 and it's been a while but the answer to your question is yes.

17 CHAIRMAN BAEZ: Which question? Because since it has
18 been a while --

19 MR. HILL: He asked if there wasn't an equitable way
20 to distribute the refund, and the answer is yes. Unless we are
21 prohibited by law and if there is a refund amount, **there is an**
22 equitable way to refund the money to those that paid and we
23 will do that.

24 CHAIRMAN BAEZ: Thank you, Mr. Hill.

25 COMMISSIONER JABER: Since we're in the spirit of

1 answering Commissioner questions, Mr. Melson, it's not burning
2 like a list of priorities for me, but would you circulate a
3 memo that reminds us for interim rates what the legal recourse
4 is. Nagging at me, Rick, I don't know why this keeps nagging
5 at ~~it~~ me, but if you could just do a very short research on
6 whether reconsideration motions have been entertained in
7 interim and what the outcome was, I'd appreciate it.

8 MR. MELSON: Will do.

9 CHAIRMAN BAEZ: Thank you, staff. Thank you to the
10 parties. This agenda conference is adjourned. Internal
11 Affairs, Commissioners, at 3:30. All right. We're adjourned.

12 (Agenda Item Number 10 concluded.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON) CERTIFICATE OF REPORTER

I, TRICIA DeMARTE, RPR, Official Commission Reporter,
do hereby certify that the foregoing proceeding was heard at
the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically
reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
transcript constitutes a true transcription of my notes of said
proceedings.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
connected with the action, nor am I financially interested in
the action.

DATED THIS 12th DAY OF JULY, 2004.

Tricia DeMarte
TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736