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**BEFORE THE**  
**FLORIDA PUBLIC SERVICE COMMISSION**

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 In the Matter of :  
 :  
 : DOCKET NO. 900816-WS  
 Petition for a Rate Increase :  
 in Martin County by SAILFISH : SPECIAL AGENDA CONFERENCE  
 POINT UTILITY CORPORATION. :  
 -----

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Florida Public Service Commission

FPSC Hearing Room 106  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

Tuesday, September 3, 1991

Met pursuant to notice at 2:00 p.m.

BEFORE: COMMISSIONER BETTY EASLEY  
COMMISSIONER J. TERRY DEASON

**PARTICIPATING STAFF:**

CHUCK HILL, Director, FPSC Division of Water  
and Sewer.

MARSHALL WILLIS, ROBERT CROUCH and SALLY  
MONIZ, FPSC Division of Water and Sewer.

JANE BRAND, FPSC Division of Auditing and  
Financial Analysis.

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**ALSO PRESENT:**

**BILL TALBOTT, FPSC Executive Director/Technical**  
**MARSHA RULE, FPSC Office of General Counsel.**

**REPORTED BY:**

**CAROL C. CAUSSEUX, CSR, RPR**  
**Official Commission Reporter**

P R O C E E D I N G S

(Hearing convened at 2:05 p.m.)

COMMISSIONER EASLEY: All right, this special agenda on Sailfish Point will come to order.

MS. MONIZ: Commissioners, you have before you Staff's recommendation for Sailfish Point, request for increased water and wastewater rates in Martin County. The Utility is requesting a 184% increase in water rates and a 314% increase in wastewater rates. Staff is recommending an 81.6% increase in water rates and a 146% increase in wastewater rates.

There was a transposition error made by Staff in the recommendation on the capital structure schedule, and we have passed out a corrected copy to that. The bottom line numbers did not change.

Mr. Crouch also has another correction that he would like to make, and after that Staff is prepared to answer any questions that you may have about the recommendation.

MR. CROUCH: I passed out copies of an amended staff analysis for Issue 10, Page 27. In the final draft of that we left out some of the comments that went into the narrative for staff analysis, and that's highlighted in the amended staff analysis that you have copies of now.

1           **COMMISSIONER EASLEY:** Well, mine isn't  
2 highlighted but I can see in a hurry that it's longer  
3 than the other paragraph, it wouldn't take long.

4           **MR. CROUCH:** I had inadvertently left out  
5 Office of Public Counsel's comments on that.

6           **COMMISSIONER EASLEY:** Oh, okay, got it.

7           **COMMISSIONER DEASON:** Your recommendation  
8 stays the same?

9           **MR. CROUCH:** Yes, sir.

10           **COMMISSIONER EASLEY:** What's your pleasure,  
11 Commissioner? Do you want to go through it issue by  
12 issue?

13           **COMMISSIONER DEASON:** I would prefer to go  
14 through issue by issue. Hopefully, we can move rapidly  
15 on many of the issues, but there are several that I may  
16 have a question or two on.

17           **COMMISSIONER EASLEY:** Okay. Issue A has to  
18 do with the stipulations. Do you have any problem with  
19 that?

20           **COMMISSIONER DEASON:** No problem.

21           **COMMISSIONER EASLEY:** And Issue B is on the  
22 motion concerning the reply beef -- (Laughter) --  
23 "reply beef" may have been correct -- reply brief and  
24 the motion to strike.

25           **COMMISSIONER DEASON:** I have no problem with

1 the Staff recommendation.

2 COMMISSIONER EASLEY: All right, we'll go  
3 Staff recommendation on A and B. Issue 1.

4 COMMISSIONER DEASON: I would move Staff on  
5 Issue 1 as well.

6 COMMISSIONER EASLEY: Show Staff on Issue 1.  
7 Issue 2, contingency payments.

8 COMMISSIONER DEASON: I would move Staff on  
9 Issue 2 as well.

10 COMMISSIONER EASLEY: All right, Issue 2,  
11 Staff rec. Issue 3.

12 COMMISSIONER DEASON: Okay, I have a few  
13 questions on Issue 3.

14 COMMISSIONER EASLEY: Okay.

15 COMMISSIONER DEASON: I had a meeting with  
16 Staff in my office last Thursday and we discussed this  
17 issue at quite some length, and I don't want to rehash  
18 all of that at this time. I want to tell Staff that I  
19 appreciate them taking the time to discuss that with  
20 me, and I think Staff has done an outstanding job on  
21 this whole case.

22 On this particular issue I guess my question,  
23 and I want to start with the basic policy of the  
24 Commission and how that policy developed. I think I  
25 have an understanding of that, but if somebody can just

1 take a few minutes to kind of give a little background  
2 information on that, I would appreciate it. (Pause)  
3 Any volunteers? There's a little hesitancy there.

4 COMMISSIONER EASLEY: Well, are you all sure  
5 of what he is asking? I assume, since you had the  
6 discussion, that you know where you are going.

7 MR. WILLIS: Well, if I understand correctly,  
8 he would like a little recap of the basic policy behind  
9 costing off of a distribution system by a developer?

10 COMMISSIONER DEASON: Right, and how the  
11 Commission views that and what type of information we  
12 need to make a decision, and that decision be  
13 consistent with the law in this whole matter. It's a  
14 lot of different areas that kind of combine to make up  
15 the Commission's policy on this, and I just want to  
16 make sure that I have an understanding of our policy,  
17 and the reason for that policy. So if you would like  
18 to take a stab at it, go right ahead.

19 MR. WILLIS: Fine, I will be happy to.

20 Commissioner, our Commission has always,  
21 since I have been here, had a policy of looking at  
22 utilities that are developer-related to find out if the  
23 developer has costed off the system on their tax  
24 return. And the basic reason we looked at the tax  
25 return is to see when and at what time the customer has

1 paid for the system, because the customers are going to  
2 pay one of two ways. One, the customer is going to pay  
3 through the price of his home, if the developer can  
4 collect that price for it; if he can't, the developer  
5 is kind of hung with but that's his decision.

6 The other way is to send the investment down  
7 to the utility company, and by doing that the utility  
8 can collect through a rate of return, depreciation, or  
9 either the utility can choose to collect service  
10 availability charges and have the customer pay for the  
11 system in that manner.

12 The reason that we go to the tax returns to  
13 look for the costing off of the system is just an  
14 indicator. It's just to find out exactly what  
15 treatment that developer has elected to choose.

16 I don't know exactly how far you want me to  
17 go, but that's what we discussed the other day.

18 COMMISSIONER DEASON: So what we are trying  
19 to get at is -- well, obviously, there are costs  
20 involved and we are trying to get at how those costs  
21 have been recovered, if they have been recovered; if  
22 not, how we need to treat that for regulatory purposes.  
23 Because, obviously, there is an investment made to  
24 provide service, and those costs need to be recovered  
25 in some manner.

1 MR. WILLIS: That's correct.

2 COMMISSIONER DEASON: And we look at the  
3 income tax return of the developer as an indicator?

4 MR. WILLIS: That's right. We want to make  
5 sure the customers doesn't get hit twice. Because if  
6 we didn't, there is a likelihood that the developer  
7 might collect, try to collect for the entire system  
8 through the customer in the price of the house and then  
9 turn around and try to collect as an investor of the  
10 utility or through service availability charges, which  
11 would be wrong.

12 If there wasn't a developer-related in the  
13 picture, then you wouldn't be able to look at the cost  
14 of goods sold or to the developer to find any of that  
15 out, but that situation wouldn't exist if it was a true  
16 utility company. We do have a few of those in the  
17 state, but the majority of ours are developer-related.

18 COMMISSIONER EASLEY: In which case you would  
19 go to the utility books.

20 MR. WILLIS: That's correct. If you are a  
21 strict utility, you don't have that choice, to cost it  
22 off and then collect it through the homeowners, through  
23 their lot sales, because you are not affiliated with  
24 that type of operation.

25 COMMISSIONER DEASON: So the particular facts



1 in this case are that the income tax return of the  
2 developer was reviewed and it could not be determined  
3 that any of the costs of the utility investment was  
4 written off as cost of lot sales, is that correct?

5 MR. WILLIS: I believe they were reviewed and  
6 it was determined that it was not written off as cost  
7 of goods sold.

8 COMMISSIONER DEASON: All right. And then in  
9 Staff's opinion, absent a finding that it had been  
10 written off, then there is no reason to impute CIAC for  
11 those amounts?

12 MR. WILLIS: That's correct. We followed the  
13 investment right down to the utility company, and the  
14 investment is there being depreciated, as it was on the  
15 parent's tax return beforehand.

16 COMMISSIONER DEASON: Okay. Now, what we  
17 have, Staff is recommending an adjustment for deferred  
18 taxes, is that correct?

19 MR. WILLIS: That's is correct.

20 COMMISSIONER DEASON: Okay. Jane, do you  
21 want to take the ball now? The reason for the deferred  
22 tax adjustment is that there was accelerated  
23 depreciation taken on the developer's books?

24 MS. BRAND: That's correct.

25 COMMISSIONER DEASON: And if depreciation is

1 taken by the developer, obviously the utility, when it  
2 gets the assets from the developer, it cannot also take  
3 the depreciation on the amount that has already been  
4 taken. And to compensate for that we are having to  
5 make an adjustment to the deferred taxes?

6 MS. BRAND: Well, because they are a related  
7 party, the transfer, and accounting for the transfer,  
8 the assets are transferred from the books of the  
9 original entity to the utility with a carryover basis,  
10 which means that the net book value is carried over,  
11 the depreciation is carried over, the ITCs are carried  
12 over. And since there was accelerated depreciation  
13 taken on the tax return, the Sailfish Point Utility is  
14 going to continue the tax depreciation just the same.  
15 They just picked up where it was and continued it, they  
16 did not start over that tax depreciation.

17 Since they have picked up the tax  
18 depreciation where it left off, and everything was  
19 carried over intact, then the deferred taxes were also  
20 carried over -- should have been carried over intact.

21 Now, in fact, Sailfish Point did not record  
22 deferred taxes; however, because it was appropriate, it  
23 would have been appropriate to do so and would have  
24 been required to do so, we have calculated those  
25 deferred taxes and added them into the capital

1 structure.

2 COMMISSIONER DEASON: Okay. I think we are  
3 saying the same thing, you just said it in a little bit  
4 more detail than what I was saying. Since these are  
5 affiliated companies, the net book value is transferred  
6 over, it's just almost like one entity. As far as the  
7 IRS is concerned, it basically is the same taxable  
8 entity.

9 MS. BRAND: Basically, yes. The corporation  
10 -- the Utility continues its existence.

11 COMMISSIONER DEASON: Are you familiar with  
12 Public Counsel's position concerning the accelerated  
13 depreciation that was taken by the developer before it  
14 was transferred?

15 MS. BRAND: If I understand that correctly,  
16 what they are proposing is that, in addition to showing  
17 the deferred taxes related to that, you would also  
18 reduce rate base by the amount of the accelerated  
19 depreciation, and that I -- if I understand the  
20 proposal correctly, then I totally disagree with that.

21 COMMISSIONER DEASON: Okay. Explain to me  
22 why you disagree with that.

23 MS. BRAND: Because the recovery of the  
24 assets occurs through book depreciation. The utility  
25 rates are set based on book depreciation and the rates

1 paid by the customers are the mechanism through which  
2 the utility recovers its investment in those assets.

3           The deduction on the tax return is not the  
4 same thing as an expense on the books. The recovery  
5 occurs through the expensing on the books. The  
6 deduction of the tax return simply affects the tax  
7 expense, or the tax liability that is paid. Since they  
8 took accelerated depreciation, it doesn't actually even  
9 affect the tax expense, as such, but it affects the tax  
10 liability or merely the timing of when that liability  
11 is paid.

12           **COMMISSIONER DEASON:** Okay, now, contrast  
13 that situation where the developer writes it off  
14 against lot sales.

15           **MS. BRAND:** Okay. If it has been written off  
16 then it has been expensed on the books. And what we  
17 are looking at -- what you look at for recovery of an  
18 asset is expensing on the books. The only reason that  
19 we look at the income tax return in conjunction with  
20 that is as evidence as to whether or not they expensed  
21 that in the books because the treatment on the books  
22 and on the tax return have to be consistent. They  
23 could not show it as an asset on the books and expense  
24 it on the tax return. You can't do that.

25           **COMMISSIONER DEASON:** So what you are saying

1 is that the real test is how it was booked, and the  
2 fact that if it's for lot sales, then the two have to  
3 be consistent.

4 MS. BRAND: They have to be consistent.

5 COMMISSIONER DEASON: And you look to the tax  
6 return as proof as to how they booked it and what their  
7 intent was.

8 MS. BRAND: That's correct. That would be  
9 further evidence of whether or not they expensed it or  
10 not. And since on the tax return they did not write it  
11 off to cost of sales, then that supports the position  
12 that they did not write it off on the books, either.  
13 Therefore, they have not recovered that cost yet, and  
14 the costs, therefore, should be recovered through  
15 depreciation.

16 In setting the rates depreciation is -- the  
17 cost of an asset is recovered through depreciation on a  
18 straight-line basis. The type of tax depreciation  
19 taken has nothing to do with the recovery of the asset.

20 Like I said before, the tax depreciation only  
21 affects the tax liability or the cash flow of the tax.

22 They have a tax expense on the books that is  
23 calculated on the same basis as the depreciation on the  
24 books, and that book tax expense is what goes into the  
25 rates that are set, that are paid by the customers.

1 What they pay on the tax return is affected by the  
2 accelerated depreciation, but over time the amount paid  
3 equals the -- is the same as the tax expense.

4 COMMISSIONER DEASON: Uh-huh. Did you review  
5 the information that was provided in exhibit form,  
6 which consisted of memos and notes between various  
7 members of management as to what the contemplated tax  
8 treatment may be? I know there was a lot of discussion  
9 and assumptions as to what all that meant. Did you  
10 take a look at those memos yourself?

11 MS. BRAND: Yes, I did.

12 COMMISSIONER DEASON: What was your reaction  
13 to those, and what do you think, if there was any  
14 significance at all in those memos?

15 COMMISSIONER EASLEY: You mean as opposed to  
16 what they actually filed?

17 COMMISSIONER DEASON: Well, I'm talking  
18 about, and I think perhaps that it was Public Counsel  
19 that produced some handwritten memos that discussed  
20 various tax considerations and options. I think all of  
21 this was done back before the utility assets were  
22 transferred to the Utility Company. And I just wanted  
23 to know if you had any opinion, one way or the other,  
24 as to what those meant and whether they should have any  
25 significance in our decision today?

1 MS. BRAND: From my review of them I would  
2 say that they were a part of the decisions; that they  
3 were background for the decision that was made.  
4 However, I'm not sure that that was everything that  
5 went in. Obviously, there was some information that  
6 was not in those papers. There was more analysis than  
7 was available. Nobody seemed to know where it was.  
8 But there had to have been more analysis available for  
9 them to have come to the conclusion that they did.

10 I don't think that you can take notes of  
11 discussions where they were looking at one particular  
12 possibility and say, well, since those are the notes  
13 that we have and those are the discussions we see took  
14 place, then that's what they should have done. I don't  
15 think that's a reasonable step to take.

16 I think that whatever -- hopefully, they had  
17 a sound basis. If they looked in that much detail at  
18 the possibilities that they did have, then they made a  
19 decision, the best decision they could make at the  
20 time.

21 COMMISSIONER DEASON: Are you concerned or  
22 troubled in any way that there is information  
23 discussing these various alternatives but there was no  
24 information presented by any of the parties as to the  
25 actual decision that was made and why that decision was

1 made?

2 MS. BRAND: Well, I'm not sure that in this  
3 particular docket that it is of consequence what  
4 documentation there might be for that decision, or why  
5 they made the decision, or if, looking back, we would  
6 say it was a correct decision or not. That is my  
7 personal opinion. But I don't have any -- I did not  
8 have any desire to go back and say that they should  
9 have done it differently, and I don't think that that  
10 is an appropriate thing to do in this particular case.  
11 The decisions that were made are the decisions that  
12 were made before the utility assets were ever  
13 transferred to Sailfish Point Utility Corporation.

14 COMMISSIONER DEASON: And it would make no  
15 difference, in your mind, as to whether the accelerated  
16 depreciation taken for tax purposes would have been  
17 more or less than the tax deduction resulting from  
18 including those costs in lot sales?

19 MS. BRAND: Well, for one thing, if the  
20 entity, Sailfish Point, Inc., was a utility to begin  
21 with, then there would not even be an option of  
22 writingH them off. A utility can't write off their  
23 utility assets. And I'm not sure -- I know that  
24 Sailfish Point, Inc. was owned Mobile Land Development  
25 Corporation, and Mobile Land Development was a



1 developer. My understanding would be that Sailfish  
2 Point would have been a utility and, therefore, it  
3 would not even have had the option to begin with. Even  
4 if they had had that option, once the assets were  
5 transferred to Sailfish Point, Inc., I would have no  
6 reason to question why they weren't written off by the  
7 developer, no. It seems to me like it would be a -- if  
8 they were written off there would be no rate base, they  
9 would have nothing to transfer to a utility.

10 COMMISSIONER DEASON: Well, I think you just  
11 hit upon it; that, obviously, if they had written it  
12 off then there would not have been an investment that  
13 we would be here today trying to contemplate including  
14 in rate base and allowing a return on it.

15 MR. BRAND: My understanding is that when  
16 Sailfish Point, Inc. established the utility and  
17 operated it, before they transferred it, you know, they  
18 had taken it, they had depreciated it on the tax  
19 return, they had depreciated it on the books, they had  
20 taken investment tax credits on it. Therefore, it had  
21 to be in service as a utility company at that time.  
22 And the fact that they were operating it as a utility  
23 precluded them from writing it off. They didn't have  
24 that option.

25 COMMISSIONER DEASON: So you're thinking they

1 didn't even have the option, even though those memos  
2 discussed that option, in reality, you don't even think  
3 they had that option?

4 MS. BRAND: That's my opinion.

5 MR. WILLIS: Commissioner, I would like to  
6 point out, too, that I think it's applicable to note  
7 that in our policy, or the practice of this Commission  
8 as far as back as CIAC goes, we've never gone beyond  
9 the tax returns to look and see why a treatment was  
10 done. We have never considered that in our  
11 jurisdiction, to look at the developer and say, "Why,  
12 or why didn't you cost off treatment lines of the  
13 system?" I don't believe we have the authority to do  
14 that. That's a practice that's solely related to the  
15 development company, and that result comes down and we  
16 deal with it.

17 COMMISSIONER EASLEY: We take the utility as  
18 we find it.

19 MR. WILLIS: We take the utility as we find  
20 it, as they have done it. If they decide to cost it  
21 off then we take that treatment and we deal with it at  
22 that point. If they haven't costed it off, then we  
23 take the investment down into rate base. We have never  
24 gone beyond that.

25 COMMISSIONER DEASON: Yeah, I tend to agree

1 with you. Let me express to you what my concern is,  
2 and this is an issue that, I think, was raised by  
3 Public Counsel. It may be an appropriate issue and it  
4 may not be.

5           What they are saying is that there was  
6 accelerated depreciation taken before those assets were  
7 transferred to the Utility. They produced information  
8 that shows that a possible scenario that was considered  
9 was just including it in the price of the lots and  
10 trying to recover through the mechanism.

11           MR. WILLIS: Uuh-huh.

12           COMMISSIONER DEASON: The record is  
13 completely void of any information as to the actual  
14 decision not to include it in lot sales, and why that  
15 decision was made. And I understand your point, that  
16 that's really beyond our jurisdiction, and it may very  
17 well be.

18           But what troubles me is this lack of  
19 information and a decision made by management having  
20 the ramifications for us, as regulators, in  
21 establishing rates. And if the decision not to include  
22 it in lot sales is strictly based upon a decision by  
23 management that there would be a higher tax deduction  
24 by taking accelerated depreciation versus including it  
25 in lot sales, and they had no other consideration other

1 than what the immediate tax benefit would be, then  
2 that gives me a little bit of trouble. And what  
3 bothers me in the whole thing is that we don't have  
4 that information.

5 COMMISSIONER EASLEY: Commissioner, I'm  
6 having a little problem with it because I'm not sure,  
7 even if you had the information, that you could do  
8 anything with it.

9 MR. WILLIS: Commissioner, that is my  
10 concern.

11 COMMISSIONER EASLEY: The difficulty I've got  
12 is that if you believe the developer made a bad  
13 business decision, so what, frankly. We don't regulate  
14 them, and I don't know what we could do about it.

15 COMMISSIONER DEASON: Well, let's change it  
16 from taxes then and talk about something else. What if  
17 the developer, I don't know, the developer, his  
18 brother-in-law was in the pipe business and he paid  
19 three times the value of the pipe and that goes into  
20 his investment, and somehow that gets into regulated  
21 utility investment. And we're saying, well, he bought  
22 that pipe back when he was a developer and he paid  
23 three times as much than what it was worth and that was  
24 his decision as the developer and we don't have any  
25 jurisdiction over that, so that investment flows over

1 to the ratepayers.

2 MR. WILLIS: We do have jurisdiction over  
3 that because we always look at the prudent cost of  
4 plant in service. We've looked at it. We had a Palm  
5 Coast case where we found out that the utility had by  
6 some means overpriced some of its system. But if I  
7 could --

8 COMMISSIONER DEASON: So you are saying tax  
9 considerations are not a question of prudencyE, that's  
10 a management decision?

11 MR. WILLIS: Let me just try and draw a  
12 little simplification to it. All we're looking at here  
13 is what point in time the customers are going to pay  
14 for the system. When is the utility --

15 COMMISSIONER EASLEY: Whether they're paying  
16 more than once?

17 MR. WILLIS: Whether they are paying more  
18 than once, yes, but also --

19 COMMISSIONER EASLEY: Making sure they only  
20 pay once.

21 MR. WILLIS: Also, by doing that, we're  
22 saying when are they paying for it. They can pay for  
23 it up front when they pay for the price of their house,  
24 and it's up to the developer at that point. If he can  
25 collect the price, he can collect it; if he can't, he

1 can't. That's his choice and it's his decision. But  
2 the customers are going to pay up front, they are going  
3 to pay through service availability charges that they  
4 didn't pay up front, or they are going to pay for the  
5 normal rates through depreciation expense to recover  
6 that asset.

7 Our whole view is that they collect only  
8 once. A utility is entitled to collect once, and  
9 that's what we are trying to make sure happens, that  
10 they collect only once.

11 MS. BRAND: Commissioner, might I add that  
12 the fact that the assets were depreciated on the tax  
13 return, and also that investment tax credits were taken  
14 is, in itself, evidence that they were not expensed as  
15 cost of sales. If they were expensed as cost of sales,  
16 the Company would not have been allowed to take  
17 depreciation, tax depreciation, and claim investment  
18 tax credits on that.

19 COMMISSIONER DEASON: Okay, no argument  
20 there. I agree with you that they can't do both and  
21 the fact that they did one is an indication that they  
22 didn't do the other.

23 MS. BRAND: The only reason that I added that  
24 was because you had expressed a concern that there was  
25 no evidence in the record to support that they had not

1 written it off.

2 COMMISSIONER DEASON: No. Well, maybe I need  
3 to clarify that. There is no evidence in the record as  
4 to why they made that decision. The decision, I'm  
5 sure, was made by somebody, somewhere. I don't know  
6 whether they were sitting in a dark room by themselves  
7 or if there were a dozen people and it was documented  
8 somehow, I don't know, but there is not evidence in the  
9 record as to the basis, the reason for that decision.

10 What concerns me is that if that decision was  
11 based strictly upon what is the largest and most  
12 immediate benefit in terms of taxes, and if that  
13 decision was made on that basis alone, that gives me a  
14 little bit of trouble. And the reason is if they could  
15 have expensed it in lot sales and decided not to just  
16 because they got a higher tax benefit by taking  
17 accelerated depreciation, then that brings me to the  
18 very next question, which so many of the public  
19 witnesses testified to, and they were saying, "We've  
20 already paid for this when we bought our lots."

21 And if the developer, in essence, did recover  
22 -- and I'm not saying that he did or he didn't, I don't  
23 think that we can really prove it one way or the other,  
24 we can only look at these other factors, such as tax  
25 returns and things of that nature -- but if that was an

1 option that the developer had, and if he felt like he  
2 had already recovered those costs and he just didn't  
3 write it off in lot sales because he would get a higher  
4 immediate tax benefit by taking accelerated  
5 depreciation, well, then, is that something that we, as  
6 regulators, now need to be concerned with?

7 MR. WILLIS: Commissioners, even if --

8 MS. BRAND: Well, for one thing --

9 MR. WILLIS: Go ahead.

10 MS. BRAND: One thing is I'm not sure why  
11 accelerated depreciation would be a faster recovery  
12 than writing it off.

13 COMMISSIONER DEASON: I'm not sure that  
14 would, either; in fact, I think that you said that it  
15 wouldn't be. My concern was maybe if he had taken it  
16 in lot sales that he would have had to have written  
17 that off as the lots were sold.

18 MS. BRAND: Uh-huh, but also let me state  
19 again my opinion, that there was no choice to begin  
20 with because this was operating as a utility. And when  
21 it's operating as a utility, there is not the option of  
22 writing the assets off. It has to be depreciated.

23 MR. WILLIS: Commissioner, I really believe,  
24 too, even if we did know the exact reason behind the  
25 choice and we didn't like it, I don't think we could do



1 anything about it.

2 COMMISSIONER EASLEY: It wouldn't make any  
3 difference whatsoever.

4 MR. WILLIS: I really don't think that  
5 legally -- the lawyers can tell us, but I don't think  
6 legally we can do a thing about it.

7 COMMISSIONER EASLEY: And the other bottom  
8 line, Commissioner, and one of the reasons that I ruled  
9 the way I did in the Prehearing on the issue of  
10 ownership, is that if there is, indeed, some factor out  
11 there that goes back beyond the utility, that has to do  
12 with what they purchased in lot sales and what they  
13 didn't purchase in lot sales, they have a remedy  
14 available to them through the courts to solve that  
15 problem.

16 We have to deal with the regulatory side.  
17 The books indicated that they did not do cost of sales  
18 or cost of goods sold. Staff has gone through, and I  
19 think the record was reasonably clean as to where we  
20 stand. The difficulty I have is trying to go beyond to  
21 a point at which we have no jurisdiction. Because he  
22 is absolutely right, if you found out the exact reason  
23 why they sat in that back room and made the decision,  
24 it wouldn't make a hill of beans as far as the  
25 regulatory decision is concerned.

1           Now, in another jurisdiction, and what those  
2 homeowners can do, a different deal, maybe, I don't  
3 know, and I, frankly, don't want to know. But that was  
4 the prime reason for my ruling, that it was just  
5 getting outside of my jurisdiction big time and I  
6 didn't want any part of it.

7           COMMISSIONER DEASON: Well, let me ask  
8 another question: Is the current status of the law,  
9 and the Supreme Court decision in the Deltona case,  
10 such that absent a showing of assets being written off  
11 as cost of lot sales, there is really no option before  
12 the Commission?

13           MR. WILLIS: That's my understanding, too,  
14 being a non-lawyer.

15           COMMISSIONER DEASON: Maybe we need to ask  
16 the attorney here then.

17           MR. HILL: In Lehigh, Commissioners, Mr. Lowe  
18 and I were talking here, there have been a few of them  
19 and I think Lehigh was one of them, Deltona was  
20 another. But it has been my understanding since I have  
21 been here that our hands are tied; if you can't show  
22 it, then there's nothing else we can do about it.

23           COMMISSIONER DEASON: We may not like it, but  
24 there's nothing we can do about it.

25           MR. HILL: This is true.

1 MS. BEDELL: Staff is imminently correct.

2 COMMISSIONER DEASON: That's an "amen" from  
3 the choir, I presume. (Laughter)

4 COMMISSIONER EASLEY: I don't think that I  
5 have heard legal counsel be that succinct in a long  
6 time. Write it on the wall.

7 Okay, Commissioner, what's your pleasure on  
8 Issue 3?

9 COMMISSIONER DEASON: Well, here, again, I  
10 want to repeat what I said earlier; that is, that I  
11 think Staff has done an outstanding job, and I will  
12 move Staff recommendation reluctantly. That's not that  
13 I question their expertise, or anything of that nature,  
14 or the thoroughness of their review. It's just that I,  
15 as a regulator, would like the option of looking and  
16 going a step further. But I don't think, from all of  
17 the information that I've gotten from numerous sources,  
18 is that I basically don't have that option. And even  
19 though I feel that there maybe is a void in the record,  
20 and that gives me some personal trouble, here again all  
21 the information that I get and the expert advice is  
22 that even if I had that information, I couldn't do  
23 anything with it anyway.

24 So with all of that, I will move Staff's  
25 recommendation on Issue 3.

1                   **COMMISSIONER EASLEY:** Show Staff  
2 recommendation on Issue 3. Issue 4.

3                   By the way, while we are on the subject, this  
4 is one of the best Staff recommendations I've read  
5 since I've here. Thank you, guys.

6                   **MR. HILL:** Thank you.

7                   **COMMISSIONER EASLEY:** Issue 4, Commissioner.

8                   **COMMISSIONER DEASON:** Move Issue 4.

9                   **COMMISSIONER EASLEY:** All right, show Issue 4  
10 unanimous. Issue 5.

11                   **COMMISSIONER DEASON:** Move Issue 5.

12                   **COMMISSIONER EASLEY:** Issue 6. Steve, just  
13 show a unanimous vote unless the bomb goes up and we  
14 have a tie vote here.

15                   **MR. TRIBBLE:** All right.

16                   **COMMISSIONER EASLEY:** Issue 6.

17                   **COMMISSIONER DEASON:** I have a question on  
18 this particular issue. Is Public Counsel's position on  
19 this a deviation from Commission policy?

20                   **MR. CROUCH:** There is no really established  
21 Commission policy, shall we say, on margin reserve. It  
22 seems as how Public Counsel's position has always been  
23 no, margin reserve should not be allowed, but in the  
24 vast majority of cases, the Commission has allowed a  
25 margin reserve. We don't have an established rule

1 governing it but it seems like we have always been at  
2 odds with Public Counsel on margin reserve.

3 COMMISSIONER DEASON: And there's the  
4 question of whether you should have one at all, and  
5 then there's a question that if you make the decision  
6 that you are going to allow margin reserve, then you  
7 come to the issue of how much and how it is to be  
8 calculated.

9 MR. CROUCH: That's correct.

10 COMMISSIONER DEASON: And the Issue 6 is just  
11 a question of whether there's going to be one allowed  
12 at all?

13 MR. CROUCH: That's correct, and the Staff  
14 recommendation is that we do have.

15 COMMISSIONER DEASON: Move Staff on Issue 6.

16 COMMISSIONER EASLEY: Move Staff on Issue 6.  
17 Issue 7.

18 COMMISSIONER DEASON: I would like just a  
19 little bit more explanation of Staff's position on  
20 Issue 7.

21 MR. CROUCH: On Issue 7, in the MFRs Staff  
22 has a procedure that we usually follow in establishing  
23 margin reserve on how the utility comes in to compute  
24 their margin reserve. We ask for a five-year average.  
25 The utility did not, in their filings did not provide a

1 five-year average. They claim that they did not have  
2 the data available in order to compute the five-year  
3 average and they used a different system. And whenever  
4 they try to justify a different system, we usually make  
5 it an issue of should we accept their procedure or use  
6 the normal Staff procedure.

7 In this case we say, yes, we are going to  
8 allow -- if we allow margin reserve, should we go the  
9 way the Utility recommended, and our recommendation is  
10 no. The Utility's recommendation was not valid because  
11 they did not have a five-year average. They just tried  
12 to use a, roughly, two years of lot sales and load  
13 data, and we felt that we could come up with other  
14 information. So we computed our own margin reserve and  
15 everything in the final charts at the back there.

16 COMMISSIONER DEASON: Do you feel like the  
17 information you had is sufficient to do the  
18 calculation?

19 MR. CROUCH: Yes, sir. We were able, through  
20 interrogatories and through questions later on, to come  
21 up with information that they had not provided in their  
22 initial MFRs.

23 COMMISSIONER DEASON: And all that  
24 information is in the record?

25 MR. CROUCH: Yes, sir.

1           **COMMISSIONER DEASON:** I would move Staff on  
2 Issue 7.

3           **COMMISSIONER EASLEY:** All right. Issue 8.

4           **COMMISSIONER DEASON:** I would move Staff of  
5 Issue 8.

6           **COMMISSIONER EASLEY:** Issue 9. (Pause)

7           **COMMISSIONER DEASON:** What is the amount of  
8 unaccounted-for water in the test year and the amount  
9 that is determined to be reasonable?

10           **MR. CROUCH:** Normally, we allow 10%.

11           **COMMISSIONER DEASON:** That's the standard?

12           **MR. CROUCH:** That's just the standard. We  
13 normally allow 10% unless there are exceptional  
14 reasons. In this case, they did have some equipment  
15 that they were doing a lot of testing, and we felt that  
16 we could allow more than 10%. We recommended allowing  
17 15 in here, but they still had 5% excess to that. So  
18 we recommended that they had 5% unaccounted for that  
19 was just not justified.

20           **COMMISSIONER DEASON:** I think there was a  
21 concern expressed that there were a lot of contractor  
22 use of water, construction use of water. Do you feel  
23 confident that you have accounted for that? Obviously,  
24 that should not be included in regulated rates.

25           **MR. CROUCH:** That was what we would consider

1 in the 5%. If they can document it for flushing the  
2 pipings and for normal usage, maybe they don't have a  
3 meter on it, but they estimate that at a certain  
4 pressure, they ran this hydrant for five minutes, or  
5 whatever, if they can document this and show a  
6 systematic usage of water, we would allow that. But  
7 for contractors that come in and have the ability to  
8 tap into a main without having a contractor's meter on  
9 it, we say no, that is poor bookkeeping and we felt  
10 that, here again, that --

11 COMMISSIONER DEASON: You think that's within  
12 the 5% that you are disallowing?

13 MR. CROUCH: Yes, sir.

14 COMMISSIONER DEASON: I would move Staff.

15 COMMISSIONER EASLEY: All right. Issue 10?

16 COMMISSIONER DEASON: Move Issue 10.

17 COMMISSIONER EASLEY: Issue 11.

18 COMMISSIONER DEASON: Move Issue 11.

19 COMMISSIONER EASLEY: Issue 12, used and  
20 useful.

21 COMMISSIONER DEASON: I have a question about  
22 the redundancy issue. This is the correct issue for  
23 that, is it not, Issue 12? There is a question about  
24 redundancy being required by DER and the timing of the  
25 building of an increment to plant. Just give me your



1 understanding of that issue and the basis for your  
2 recommendation.

3 MR. CROUCH: Here, again, we have the basic  
4 position that if DER requires it, and it comes within  
5 the parameters of what DER required, then we will  
6 normally allow the utility to count that in their rate  
7 base, count that as used and useful. Many times there  
8 is a redundancy where DER has said, "We want you to put  
9 in an extra well," or "We want you to put in an extra  
10 treatment facility," because of various reasons in that  
11 area. But, here again, if DER requires it and they  
12 have not greatly exceeded what DER required, we don't  
13 want them to go in and gold-plate a facility at the  
14 same time. But if it's within the parameters of what  
15 DER required, then we will allow them to recoup that.

16 COMMISSIONER DEASON: I thought we had  
17 testimony that that redundancy requirement really was  
18 not necessary because of the timing of another unit of  
19 plant, or additional capacity to plant that was going  
20 to be built just to meet the growth in the area, and  
21 that just negated the redundancy requirement. First of  
22 all, do you recall that testimony, and what is your  
23 opinion?

24 MR. CROUCH: No, sir, I do not. I was not  
25 there at that particular hearing so I do not recall

1 that testimony. I have only gone on what I have read  
2 on this. I'm going to have to plead ignorance on that.

3 COMMISSIONER DEASON: Is there any other  
4 Staff? I think it was Public Counsel's witness who was  
5 arguing something about the redundancy requirement  
6 really was not necessary to include because the timing  
7 was such that the Company was going to build additional  
8 capacity just to meet the growth that was coming on  
9 line. It was just a fortunate situation that the  
10 timing was that way. That's the way I recall testimony.

11 COMMISSIONER EASLEY: I don't remember it, I  
12 can't help you any.

13 COMMISSIONER DEASON: Let's just temporarily  
14 pass this one.

15 MR. CROUCH: I would have to check. I can  
16 check the testimony on that and get back to you.

17 MR. WILLIS: Commissioners, if you would like  
18 to just temporarily pass this one issue, you can go on  
19 and we can check that.

20 COMMISSIONER EASLEY: I'll tell you what,  
21 we're going to take five minutes. Carol is by herself  
22 so we're going to take five minutes and take a look at  
23 it.

24 MR. WILLIS: Okay, fine.

25 (Brief recess.)

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COMMISSIONER EASLEY: All right, back on the record. Did you find what we were looking for in the record?

MR. CROUCH: I went back over the transcripts and, basically, it looks like, yes, they did meet both the redundancy and the expansion capability. They actually were able to kill two birds with one stone. DER had required them to put in some redundancy and they were able to do that and enlarge their capacity at the same time. And it appears that even Public Counsel's witness, DeMeza, did not pursue it any farther than that, you know, saying that it was wrong. He said evidently there was some correspondence with DER that he had not seen, but I don't think DER -- I mean Public Counsel -- challenged it as being incorrect. But they did, as you said, they were able to do both redundancy that DER had ordered, and they had also increased their capacity for some future growth, too.

COMMISSIONER DEASON: Okay. Does that have effect on the used and useful calculation?

MR. CROUCH: It was taken into consideration as to their overall capacity, yes, sir. We take their capacity as the denominator of our fraction and then we look at how much are they using today, add in fire

1 flow, add in margin reserve if it's for a water  
2 company, and subtract the unaccounted-for water, the  
3 excessive unaccounted-for water, and that formula  
4 during the period of time that we are talking about  
5 gives us our used and useful percentage.

6 So it would have had an effect, if they had  
7 had a lot more capacity than they needed for redundancy  
8 from the DER requirement, it would have lowered their  
9 used and useful. A lot of times they do put in more  
10 capacity than they need at the given time, and this  
11 would equate to less than 100% used and useful.

12 COMMISSIONER DEASON: But in this particular  
13 situation the fact that they were able to meet the  
14 redundancy requirement by this plant, which was going  
15 to be built anyway, that was just a fortunate situation  
16 that worked out that way?

17 MR. CROUCH: That's correct.

18 COMMISSIONER DEASON: But it has really no  
19 bottom line effect upon your recommended used and useful?

20 MR. CROUCH: No, sir.

21 COMMISSIONER DEASON: And why is that?

22 MR. CROUCH: Well, here again, since they  
23 came out 100% used and useful in the water treatment  
24 plant, and there are other designs down here that were  
25 less than 100%. We looked at the calculations, and the

1 only time we would have considered the redundancy is if  
2 DER had come in and said, "You will put in a duplicate  
3 plant. Even though you don't need it today, you have  
4 to have redundancy so put in twice as big a plant as  
5 you need."

6 Well, normally, we would look at capacity and  
7 say, "They're definitely not 100%, they are probably  
8 50% used and useful, they have got twice as much as  
9 they need." But since DER has specifically ordered  
10 them to put that in, they had no choice, they had to  
11 put it in, so we would have to give them, because of  
12 extenuating circumstances, allow that as 100% used and  
13 useful.

14 COMMISSIONER DEASON: Okay, I would move  
15 Staff recommendation.

16 COMMISSIONER EASLEY: All right. Issue 13 is  
17 a fallout.

18 MR. HILL: If I may take this opportunity,  
19 and I have to because we deal with the panel so much, I  
20 met with Richard Harvey of DER last week, since you  
21 have already voted on that particular issue. He took  
22 Howard Rhodes' place, who is now the Assistant  
23 Secretary. DER has promulgated rules that require our  
24 utilities to begin planning design work at 50%  
25 capacity, and they have to begin building plant at 80%.

1 So we're going to see this kind of thing more and more  
2 mandated by another state agency. In fact, he asked me  
3 about used and useful and their rules are in place. So  
4 this is going to come up more and more.

5 COMMISSIONER EASLEY: Okay. 13 is a fallout  
6 issue, any problems?

7 COMMISSIONER DEASON: No problems.

8 COMMISSIONER EASLEY: 14?

9 COMMISSIONER DEASON: Move Staff.

10 COMMISSIONER EASLEY: Okay. Issue 15?

11 COMMISSIONER DEASON: Move Staff.

12 COMMISSIONER EASLEY: Okay, Issue 16, the  
13 amount of working capital.

14 COMMISSIONER DEASON: I'm going to move  
15 Staff's recommendation but with the caveat that I  
16 personally believe that the balance sheet is the  
17 preferred method. But I think for this particular  
18 company, and for some other extenuating circumstances,  
19 and particularly concerning how this company's  
20 operations are financed with advances from the parent,  
21 that the end result of the formula method is not  
22 unreasonable for this company. So I would move Staff  
23 recommendation.

24 COMMISSIONER EASLEY: 17?

25 COMMISSIONER DEASON: Isn't this a calculated

1 amount as a fallout amount?

2 COMMISSIONER EASLEY: Yes.

3 COMMISSIONER DEASON: I guess we have  
4 approved all of Staff's recommendations at this point,  
5 so these numbers would be correct then.

6 MR. WILLIS: Correct.

7 COMMISSIONER EASLEY: 18, capital structure.

8 COMMISSIONER DEASON: I would move Staff's  
9 recommendation on Issue 18.

10 COMMISSIONER EASLEY: 19?

11 COMMISSIONER DEASON: I would move Staff on  
12 Issue 19, but I don't think it has any effect on the  
13 overall rate of return.

14 COMMISSIONER EASLEY: And 20.

15 COMMISSIONER DEASON: I'd move Issue 20 as well.

16 COMMISSIONER EASLEY: Okay. Issue 21?

17 COMMISSIONER DEASON: Move Staff on Issue 21.

18 COMMISSIONER EASLEY: 22?

19 COMMISSIONER DEASON: 22 as well.

20 COMMISSIONER EASLEY: Did you say, "as well"?

21 COMMISSIONER DEASON: Yes, I moved 22 as well.

22 COMMISSIONER EASLEY: Okay, and 23?

23 COMMISSIONER DEASON: 23 also.

24 COMMISSIONER EASLEY: And 24?

25 COMMISSIONER DEASON: And 24.

1 COMMISSIONER EASLEY: 25?

2 COMMISSIONER DEASON: I would move 25 and 26.

3 COMMISSIONER EASLEY: All right, and 27 is  
4 the spiral wound.

5 COMMISSIONER DEASON: Yes, Issue 27. I have  
6 already discussed this with Staff as to whether -- I  
7 guess it really is a question of whether we use three  
8 years or four years, and nobody really knows. I do  
9 think that we had testimony, though, in the record that  
10 this utility is a well-run utility, they do maintain  
11 their plant, and that there is a use of a prefiltering  
12 process which may help prolong the use of these  
13 filters.

14 Anyway we go, we are probably going to be  
15 kind of taking a guess as to the life of these  
16 membranes, but I'm going to move that we deny Staff and  
17 that we use a four-year amortization.

18 COMMISSIONER EASLEY: Well, there was some  
19 logic. I'm not going to fight you on this one, it's  
20 not worth a tie vote on it, but there was some logic to  
21 matching up the three years to at least to the warranty  
22 period since we are in a first-impression type of thing  
23 with this utility and with experience.

24 COMMISSIONER DEASON: Commissioner, if we  
25 approve Staff on every issue, it's going to go to their



1 heads, so there's got to be one that we disagree.

2 (Laughter) I'm being facetious.

3 COMMISSIONER EASLEY: The method by which you  
4 get there sometimes takes care of that. (Laughter)

5 COMMISSIONER DEASON: Here again, I just  
6 think that --

7 COMMISSIONER EASLEY: I just saw some logic  
8 in it, Commissioner. I don't have any big thing one  
9 way or the other. I feel pretty underexcited about it.

10 COMMISSIONER DEASON: I feel pretty well the  
11 same way, but since I'm the one making the motion, and  
12 since you are the Chair, I guess I will move that we  
13 deny Staff on this one and use four years.

14 COMMISSIONER EASLEY: All right. Show Staff  
15 denied, and we go to four years on spiral wound.

16 All right, Issue 28. What are we talking  
17 about, six or seven cents?

18 COMMISSIONER DEASON: I don't even know the  
19 effect, I really don't.

20 COMMISSIONER EASLEY: I don't, either. Okay.  
21 Issue 28.

22 COMMISSIONER DEASON: I move Staff.

23 COMMISSIONER EASLEY: Issue 29.

24 COMMISSIONER DEASON: Move Staff. And I move  
25 Staff on 30, 31 and 32.

1 COMMISSIONER EASLEY: All right, and 33?

2 COMMISSIONER DEASON: Move Staff on 33.

3 COMMISSIONER EASLEY: And 34?

4 MR. WILLIS: Commissioners, 33, 34 and 35 are  
5 going to have to be recalculated because you changed  
6 the figure on it.

7 COMMISSIONER EASLEY: You see what you did?

8 (Laughter) Issue 36.

9 MR. WILLIS: I'm sorry, 33 will not because  
10 it's still zero.

11 COMMISSIONER EASLEY: All right, 33 goes and  
12 34, 35 and 36 wait, or just 34 and 35?

13 MR. WILLIS: 34 and 35.

14 COMMISSIONER EASLEY: I'm sorry, 36 would  
15 wait.

16 COMMISSIONER DEASON: Marshall, you have just  
17 got that in the computer so you can just push a button,  
18 right? (Laughter)

19 MR. WILLIS: It's in the computer all right.

20 COMMISSIONER EASLEY: How long is this button  
21 going to take.

22 MS. MONIZ: Maybe an hour.

23 MR. WILLIS: An hour or less. You know, it's  
24 a fallout number and it's not that material. We can  
25 make the correction and have it.

1           **COMMISSIONER DEASON:** You won't need to bring  
2 it back to us, will you?

3           **MS. MONIZ:** The printing schedules and that  
4 will take more time.

5           **COMMISSIONER EASLEY:** All right, 37.

6           **COMMISSIONER DEASON:** That's going to change,  
7 too, but I have no problem with the recommendation, the  
8 basis for the recommendation other than those  
9 particular numbers may change.

10           **MR. WILLIS:** Yes, the particular number will  
11 change. Did you do Issue 36?

12           **COMMISSIONER EASLEY:** We did Staff on 36,  
13 didn't we, Commissioner? You didn't have any problem  
14 with 36? That's the answer to the statutory question.

15           **COMMISSIONER DEASON:** Right, I have no  
16 problem with Issue 36.

17           **COMMISSIONER EASLEY:** All right, 38. This is  
18 really --

19           **MR. WILLIS:** This is statutory reduction  
20 every four years.

21           **COMMISSIONER DEASON:** Right.

22           **COMMISSIONER EASLEY:** 39?

23           **COMMISSIONER DEASON:** Move Staff.

24           **COMMISSIONER EASLEY:** 40?

25           **COMMISSIONER DEASON:** Move Staff, and also

1 move Staff on 41 and 42.

2 COMMISSIONER EASLEY: All right, I think that  
3 about does it, doesn't it, except for the final  
4 numbers, I believe.

5 MR. WILLIS: That's correct.

6 COMMISSIONER EASLEY: All right.

7 MS. MONIZ: Thank you.

8 COMMISSIONER EASLEY: Is there anything else?

9 (Pause)

10 Could we do 34, 35 and 37, as amended, since  
11 it's not material? Then you won't have to brig it  
12 back. Any problem with that?

13 COMMISSIONER DEASON: I have no problem with  
14 that.

15 MR. WILLIS: We can do that.

16 COMMISSIONER EASLEY: Thank you very much.

17 Good job, Staff.

18 (Thereupon, hearing adjourned at 3:07 p.m.)

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1 F L O R I D A )  
2 :  
3 COUNTY OF LEON)

CERTIFICATE OF REPORTER


4 I, CAROL C. CAUSSEAU, CSR, RPR, Official  
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Special Agenda in  
7 the captioned matter, Docket No. 900816-WS, was heard by  
8 the Florida Public Service Commission commencing at the  
9 time and place therein stated; it is further

10 CERTIFIED that I reported in shorthand the  
11 proceedings held at such time and place; that the same has  
12 been transcribed under my direct supervision, and that the  
13 transcript, consisting of 44 pages, constitutes a true and  
14 accurate transcription of my notes of said proceedings; it  
15 is further

16 CERTIFIED that I am neither of counsel nor  
17 related to the parties in said cause and have no interest,  
18 financial or otherwise, in the outcome of this docket.

19 IN WITNESS WHEREOF, I have hereunto set my hand  
20 and seal at Tallahassee, Leon County, Florida, this 6th  
21 day of September, A.D., 1991.

22   
23 CAROL C. CAUSSEAU, CSR, RPR  
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