

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
:
:
Proposed Revision and Adoption : DOCKET NO. 911082-WS
of Water and Wastewater Rules. :

MORNING SESSION - VOLUME I

Pages 1 through 103

PROCEEDINGS: SPECIAL AGENDA

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

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Tallahassee, Florida 32399

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P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

CHAIRMAN DEASON: Come to order, please.

I believe that we're here today for a special agenda concerning water and wastewater rules. Is that correct?

MR. FEIL: That is correct.

CHAIRMAN DEASON: Okay. I assume that it's not necessary to read a notice? Not necessary. I didn't think it would be either. I think, though, to help facilitate the discussion we're going to have today, it would be beneficial for everyone, including the court reporter, to take appearances from those persons who are going to be making comments as we proceed through these rules. We'll do that at this time.

MR. SCHIEFELBEIN: Good morning, I'm Wayne Schiefelbein, Gatlin, Woods, Carlson and Cowdery, appearing on behalf of the Florida Waterworks Association.

MR. SEIDMAN: Frank Seidman with Management and Regulatory Consultants, appearing in behalf of the Florida Waterworks Association.

MR. SELF: Good morning. I'm Floyd Self of the Messer, Vickers law firm, appearing on behalf of

1 Southern States Utilities. Also with me will be Mr.
2 Joe Cresse of our firm and Mr. Gary Morse from SSU, who
3 should be arriving shortly.

4 MR. MANN: Good morning. Jack Shreve and
5 Rick Mann from the Office of Public Counsel,
6 representing the Citizens of the state.

7 MR. DEWAR: Good morning. I'm Buddy Dewar
8 representing the Florida Fire Sprinkler Association and
9 the Florida Fire Service Community.

10 MR. FEIL: On behalf of Commission Staff is
11 Christiana Moore and Matthew Feil. Also with Staff are
12 Mr. Chuck Hill, Marshall Willis, Greg Shafer, Suzanne
13 Summerlin and a host of others.

14 CHAIRMAN DEASON: A cast of thousands, right?
15 Okay. Ms. Moore, how do you propose we proceed at this
16 point?

17 MS. MOORE: I suggest perhaps that Mr. Feil
18 briefly introduce the rules regarding noticing; and
19 perhaps Mr. Hill briefly introduce the rules, the rest
20 of the rules, the water and wastewater package; and
21 then we get comments from the parties.

22 CHAIRMAN DEASON: Okay. What I think we're
23 going to do, obviously we have our package. The
24 Commissioners had an opportunity to look at that. What
25 I would -- instead of having a major brief

1 introduction, sometimes those brief introductions
2 become not so brief, that we get right into the meat of
3 the matter. We'll go ahead with Issue 1, which I
4 understand is going to go handled by Mr. Feil, and
5 we'll address that; and then get we'll get into Issue
6 2, which is the bulk of the rule proposals.

7 Just one word of caution as we proceed. And
8 that is that this is the first crack, so to speak, that
9 the Commissioners themselves have had at these rules.
10 This is not a hearing. This is not the place where
11 we're going to hear all of the evidence that we're
12 going to hear later on. There have been three days of
13 hearings set aside, so there's going to be ample time
14 to go into as much detail as the parties wish. That is
15 not the purpose for what we're here today for.

16 But at the same time we are interested in
17 what the parties have to say, and we may propose these
18 rules in some form today and then again we may not. We
19 do have another day set aside in March, I believe,
20 March the 5th, to actually propose the rules if the
21 Commissioners feel like that additional time is
22 necessary for further Staff revisions or modifications
23 or explanations or things of that nature.

24 So at this point, we're working on the luxury
25 of ample time. At the same time, we need to be mindful

1 of the fact that today is not the hearing. So with
2 that, we'll go ahead and address Issue 1. Matt?

3 MR. FEIL: Thank you, Mr. Chairman. I'll be
4 brief. Basically what Staff is trying to do in
5 changing the noticing rules is accomplish two things.

6 The first thing was to tailor the noticing
7 rules a little closer to what we've experienced in the
8 water and wastewater rate cases.

9 The second thing that we were trying to do is
10 to tighten up some of the language so that it was a
11 little clearer when noticing had to be completed by.
12 For instance, under the current rule, there is a
13 requirement that the synopsis be mailed -- or, excuse
14 me, that the synopsis be filed by the utility 15 days
15 after the time schedule for the case has been mailed to
16 the utility.

17 One of the things we did there is just say
18 that the synopsis had to be taken care of within X
19 number of days from the official date of filing. So,
20 in other words, rather than have soft times in the
21 rule, as I think there are in the current rule, what
22 with mailing and time schedule, things of that nature,
23 to just set it at a fixed date. Basically, that's all.

24 COMMISSIONER CLARK: I looked through the
25 noticing requirements, and I have to say with respect

1 to OPC vehemently opposing proposed Subsection 7,
2 reducing the required newspaper notice from a display
3 advertisement to a legal notice, I have to say I agree
4 with Public Counsel on that. I think these are, for
5 whatever reason, very well-attended hearings. And
6 people want to know about these hearings and they want
7 to attend them. And I don't know, how many of you read
8 legal notices?

9 COMMISSIONER BEARD: Well, let me, just to
10 make it so you all can start --

11 COMMISSIONER CLARK: I don't think anyone does.

12 COMMISSIONER LAUREDO: I do every day.

13 COMMISSIONER CLARK: What are you in the
14 market for? (Laughter)

15 COMMISSIONER BEARD: So that you all can
16 understand and begin counting, there's two people that
17 have a problem with that.

18 COMMISSIONER CLARK: I think the expense -- I'm
19 not sure what the added expense is, but I definitely think
20 it should be other than a legal notice.

21 COMMISSIONER BEARD: Well, if we want to look
22 at cutting expenses, we might look someplace else. But
23 I think making sure people know that the meeting
24 occurs, we're continually criticized, I don't think
25 I've ever been to a meeting we weren't criticized for

1 where we held it, what time of day we held it and that
2 we didn't hold enough of them. We'll never overcome
3 that and I appreciate that.

4 COMMISSIONER JOHNSON: Let me ask a question on
5 the same issue. I understand what we're trying to do in
6 terms of cost savings, and it might be helpful, if it can
7 be done, to determine how much of a cost savings it would
8 be and then to do somewhat of a balancing test. If I
9 understand, there's already one notice that goes out with
10 the mailing under these circumstances, so that each
11 customer will receive a notice?

12 MR. FEIL: Yes.

13 COMMISSIONER JOHNSON: And this is an additional
14 notice?

15 MR. FEIL: Yes, ma'am.

16 COMMISSIONER JOHNSON: Have we had questions
17 or has it come to your attention that there has been a
18 problem with people receiving notice, or has it been
19 seen as somewhat repetitious?

20 MR. FEIL: My experience has been that
21 customers haven't complained about getting hearing
22 notices, but perhaps the utilities would have a
23 different experience than that. I don't recall
24 specifically any customers coming to the hearing
25 saying, "I didn't get notice." It may have happened,

1 but I don't recall it.

2 COMMISSIONER BEARD: I have --

3 COMMISSIONER JOHNSON: What's the size of the
4 notice that is now displayed, do we know the
5 measurements and where it is located?

6 MR. FEIL: If it is a display item, I'm
7 guessing that it would be somewhere in the nature of 3
8 X 5, three inches by five inches. And I suppose it
9 could appear anywhere within the newspaper if it's a
10 display ad.

11 CHAIRMAN DEASON: Perhaps we could get some
12 input from the parties concerning the entire proposal
13 in Issue 1.

14 MR. SCHIEFELBEIN: Thank you, Commissioners.
15 On behalf of the Florida Waterworks Association, I
16 can't say that we have any vehement -- a position at
17 all on the question of having a display ad or not. I
18 think that, overall, we have entirely too much
19 repetition in the notice process.

20 The rule that Staff is proposing is a modest
21 streamlining of that in the ways other than the display
22 ad issue. It's certainly an improvement. We don't
23 have too many substantive comments on it, but we're
24 certainly not vehemently against having a display ad.

25 But I would reiterate -- and I'm not aware of

1 any problems, either -- that each individual customer
2 is given individualized notice, typically mailed to
3 him, a couple of weeks in advance of that hearing
4 giving the exact time, location and so forth.

5 I don't know if you want me to get into any
6 collateral questions regarding the notice rule in
7 general at this point?

8 CHAIRMAN DEASON: Yes, go ahead. All the
9 concerns you have with the subject matter of Issue 1,
10 go ahead and address at this point.

11 MR. SCHIEFELBEIN: All right. It's certainly
12 not a life-or-death issue, either, but I don't know for
13 this particular question why water and sewer utilities
14 should be treated differently than other regulated
15 utilities. There is language in the rule all through
16 it requiring that for customers with out-of-town
17 addresses, these addresses will be used; and the
18 language is a little loose.

19 I think that probably something like that
20 language has been used by the Commission for a while
21 now in procedural orders, but I don't know why we have
22 to get into that in the rule as far as using
23 out-of-town customers' addresses or not. I don't think
24 that water and sewer have anything unique to it apart
25 from other industries.

1 Other than that, I don't think we need to
2 belabor it. It is a modest reduction in the notice
3 requirements. There's a little bit more time built in
4 to get things done, which it can be pretty hectic with
5 the requirement that Staff approve each of these
6 notices. And I'd say the rule is welcome in that
7 aspect that it gives us a couple more weeks here and
8 there to get these things in order.

9 Thank you.

10 MR. CRESSE: Commissioner, Southern States
11 has no strong feeling one way or the other, whether you
12 use a legal ad or whether you use a display ad. The
13 question is, really, what is the difference in the
14 cost? As you know, this cost will be passed on to the
15 ratepayers. But we have no strong feeling one way or
16 the other about it; whatever your desire is, we'll be
17 perfectly happy with that.

18 COMMISSIONER BEARD: I've got to tell you, if
19 you're looking at the cost difference between a
20 standard notice and the legal description in the total
21 cost of a rate case, we're talking micro bucks. And I
22 don't read legal notices. Quite frankly, I don't read
23 bill stuffers. But I do see big things in newspapers
24 that stick because my simple little brain just sees
25 things like that.

1 MR. CRESSE: Commissioner, we think the most
2 significant notice is the one that's mailed directly to
3 the customer. Probably not -- I would not read one in
4 the newspaper, whether it was a display or whether it
5 was a legal ad, at all. It probably wouldn't catch my
6 attention, I try to avoid reading all the advertisements
7 the best I can anyway.

8 COMMISSIONER BEARD: Well, I try to avoid
9 reading the newspaper, but the sports page and the
10 comics always catch me.

11 COMMISSIONER BEARD: Now, that sounds like
12 it. We'll put it in the middle of the comics.

13 (Laughter)

14 CHAIRMAN DEASON: Mr. Shreve?

15 MR. SHREVE: Thank you, Mr. Chairman.

16 I agree with what you said earlier about
17 making extensive comments here, and I hadn't
18 necessarily planned on saying much.

19 But since you asked the question, "Was there
20 problems with the notice," yes, there are in many, many
21 hearings. The latest one I can remember was Lehigh
22 Acres when almost 100% of the customers at the hearing
23 got up and said they did not receive the notice that
24 was required by rule. We run into that in case after
25 case.

1 Now, why don't you put something in the rules
2 that say if the utility does not follow the Commission
3 rules, then their case is going to be dismissed. And
4 we don't go up to the hearing with the customers not
5 even knowing that it happened.

6 One reason that there's a difference here in
7 this and major cases is you don't have a Florida Power
8 and Light case sneak in without getting major publicity
9 but you may very well having a lower utility that has
10 100 customers come by -- so you go ahead and you have
11 extensive requirements so those people will know
12 there's a case going on.

13 The Commission rules have been there to make
14 sure that the customers were notified, and time after
15 time we have run into situations where there was real
16 questions raised about notification.

17 There should also be an affidavit by the
18 company that they did, in fact, make the mailing to the
19 customers. We don't do that. As a matter of fact,
20 there's not even a copy of the notice with an affidavit
21 or any type of verification that the notice was
22 actually sent to the customers in the Commission file.
23 The Commission should have that information to at least
24 know when and where that notice was sent.

25 I think there's some real problems in this area.

1 CHAIRMAN DEASON: Okay.

2 COMMISSIONER JOHNSON: Can I ask --

3 CHAIRMAN DEASON: Mr. Dewar, the reason
4 you're here today, I assume, is probably for a very
5 narrow focus?

6 MR. DEWAR: That's correct.

7 CHAIRMAN DEASON: So when we get to a point
8 where you want to make a comment, just come right in
9 and say so; but otherwise, we'll probably be
10 concentrating on this end of the table. I don't want
11 you to feel like we're ignoring you.

12 MR. DEWAR: No. That's all right.

13 CHAIRMAN DEASON: Okay. Staff, do you have
14 any further comments?

15 MR. FEIL: Commissioner, one of the reasons
16 we have this rule with regard to the display ad is we
17 thought it would be a good way to save \$50 or \$100 for
18 the customers, or whatever the cost difference was.

19 With regards to Mr. Shreve's comments about a
20 provision for dismissal in the event that noticing
21 isn't met, I have a little bit of a problem with that
22 because it's mandating that you do that, and you may in
23 certain instances want to exercise discretion with
24 regards to a noticing problem depending on what the
25 situation is.

1 **CHAIRMAN DEASON:** Let me interrupt you for a
2 second. Do you think that if there were a case where
3 the Commission felt like the notice requirements were
4 not met and that it was of such a nature that it
5 questioned whether the case should even go forward, do
6 you think we have the authority to dismiss the case?

7 **MR. FEIL:** I think you have the authority to
8 dismiss the case; but depending on what the violation
9 is, a continuance of some sort or another would be more
10 appropriate.

11 The other thing which Mr. Shreve mentioned
12 which is something that probably wouldn't be a bad idea
13 is with regards to verification that notice was sent
14 out, perhaps we could structure some sort of filing
15 requirement so that the utilities file with the
16 Commission a proof of notice. I know that quite a few
17 of them do that already voluntarily.

18 With regards to Mr. Schiefelbein's comments
19 on the out-of-town addresses, that's basically just a
20 security blanket. I'm sure, as some of you
21 Commissioners know, frequently you go to areas where
22 there are seasonal customers; and that provision is
23 just there to make sure that the utilities mail the
24 notices to Vermont or wherever the people are so that
25 when they come home, they don't find themselves with a

1 rate increase and completely unaware of it.

2 COMMISSIONER JOHNSON: Mr. Chairman, I had a
3 question for Mr. Shreve?

4 MR. SHREVE: Yes, ma'am.

5 COMMISSIONER JOHNSON: I guess what we're
6 doing here is a balancing act.

7 MR. SHREVE: Right.

8 COMMISSIONER JOHNSON: Whether the cost
9 outweighs the benefit of the notice. And what I think
10 I'm hearing from you is that, in this instance, it will
11 be a situation where the notice is more important and
12 to reduce that cost would lessen the notice that you
13 already probably feel isn't sufficient.

14 MR. SHREVE: Commissioner, you're exactly
15 right.

16 Rate case expense is probably the number one
17 problem that we have in this whole area. There is no
18 problem any larger. It's used like a hammer over the
19 head of the customers to keep them, most times, from
20 opposing or involving themselves. It is used in every
21 decision that is made by a customer group as to whether
22 or not they intervene and participate in the hearing.

23 If the customers don't receive notice, they
24 have no way to even know what is going on. And that
25 happens many, many times. I think what the Commission

1 might want to take a look at is how many times there
2 have been expressed problems with notice? I can
3 remember one very large company where we went to a
4 hearing and the customers were still receiving the
5 notice the week of the hearing. This is the final
6 hearing we're going up to.

7 Now, I cannot think -- and I've made quite a
8 few motions to dismiss a case because of that. If the
9 customers don't have any notice, they don't contact us,
10 we don't know there's any interest, you don't receive
11 comments with your Consumer Affairs Division. The
12 case is not started as far as they're concerned.

13 I cannot think of one single situation where
14 there has been any type of activity where the customers
15 have received any consideration because they didn't get
16 a notice. In fact, and I'll be glad to be corrected on
17 that, but I can think of quite a few cases where it has
18 been raised and no situation where anything has been
19 done about it.

20 **CHAIRMAN DEASON:** Let me ask a question,
21 Mr. Shreve.

22 **MR. SHREVE:** Yes, sir.

23 **CHAIRMAN DEASON:** I understand the problems
24 with notice and your concern about that. But if we
25 were to assume that the requirements that are in

1 Staff's proposal here, that if they are met by the
2 utility and that we do have the display advertising in
3 the newspaper, do you feel then that notice would be
4 adequate?

5 MR. SHREVE: I think it probably would. I
6 think there is no real reason to allow a company a
7 great deal of time to give the customers notice because
8 they have all the information and have had as many
9 months as they wanted to prepare their case. They have
10 all the information, there's no question about that.

11 I think the legal notice is good. I don't
12 know that I put that much faith in it because I don't
13 know how many people really see it. But I think in
14 this situation, as Commissioner Beard said, we're
15 talking about a nit in rate case expenses. Where we
16 really get into the rate case expenses is the
17 accounting and lawyers.

18 CHAIRMAN DEASON: Commissioners, any further
19 questions? I guess at this point I need to ask a
20 question of the Commissioners. Do you want to address,
21 make it a decision on each issue? Or just continue
22 through today and we'll make a decision as to whether
23 we want to try to make modifications to this rule and
24 propose it today? Or if we want to wait until March
25 5th and get further input from Staff before we propose

1 the rule?

2 COMMISSIONER CLARK: Is March 5th the next
3 agenda day?

4 CHAIRMAN DEASON: No. It is a special agenda
5 set aside specifically to consider this rule again; in
6 case we're not comfortable proposing it today, we can
7 wait and propose it on March the 5th.

8 COMMISSIONER CLARK: It would be my
9 preference to try to get it done today, if we can, to
10 propose it today. And there may be things that -- for
11 instance, with respect to Subsection 6, where the Staff
12 says the Commission may want to consider the necessity
13 of a separate notice for the technical hearing -- I'm
14 in the position of wanting more information on it, but
15 I'm comfortable with going forward with the Staff's
16 recommendation on this point.

17 With respect to the newspaper notice, I can
18 tell you now I want to go back to the display ad and I
19 would like it proposed in that way.

20 I mean, I've read through, I haven't read the
21 rules word-for-word, but I've certainly read --

22 CHAIRMAN DEASON: Let me ask a question at
23 this point maybe kind of as an example.

24 If, for example, and I don't know what the
25 Commission's feeling is. But, if, for example, the

1 Commission were inclined to accept Mr. Shreve's
2 suggestion that there be some type of requirement in
3 the rule that the company file an affidavit basically
4 saying, "Here's what we did with the notice and the
5 rule has been met," and this sort of thing, if we
6 wanted to include that, would Staff need additional
7 time to actually prepare that language and bring that
8 back to the Commission, for example, at March 5th, and
9 have us propose that? Or do we have the latitude at
10 this point just directing Staff to include something
11 like that and going ahead and proposing the rule?

12 Because I'm afraid, this is just an example,
13 but later on when we get into some of the other things
14 there is probably going to be some situations where the
15 Commission may direct Staff to change language or come
16 up with a different concept and there may be a time
17 that before we actually propose a rule that the
18 Commission needs to look at that revised language.

19 MS. MOORE: I would be much more comfortable
20 with coming back on March 5th with the revised language
21 after we've worked through these other ones and see
22 what changes we have. There are affidavits required of
23 notice in other rules and at this point I'm not certain
24 that we're talking about something different.

25 CHAIRMAN DEASON: Okay.

1 COMMISSIONER JOHNSON: Mr. Chairman?

2 CHAIRMAN DEASON: Yes.

3 COMMISSIONER JOHNSON: My personal view would
4 be also to wait. Because there may be quite a few
5 issues that I might want to continue the dialogue with
6 Public Counsel or Staff before we finalize anything,
7 and I would hate to have to move it today when I wasn't
8 certain as to what I really wanted to have moved.

9 CHAIRMAN DEASON: Okay.

10 MR. SCHIEFELBEIN: Commissioners, may I make
11 a comment on that?

12 CHAIRMAN DEASON: Mr. Shreve, I think
13 Mr. Schiefelbein wants to comment. Mr. Shreve, you go
14 first and, Mr. Schiefelbein, we'll hear from you.

15 MR. SCHIEFELBEIN: I hope that other parties
16 will be involved in this dialogue. And I would say
17 that, in response to some of the remarks here, I don't
18 understand why the water and sewer industry needs to be
19 saddled with a more onerous notice rule than other
20 industries. I mean, that hasn't been made clear to me
21 or I haven't even heard anyone suggest that there's a
22 reason for that.

23 And in response to Mr. Shreve saying that he
24 has never seen any adverse action taken by the
25 Commission for failure to notice, I remind him of one

1 case offhand called Sailfish Point where an entire case
2 was thrown out on a defect -- an alleged defect in
3 noticing.

4 I know that I've had cases at hearing which
5 have been the subject of motions to dismiss because the
6 librarian the day before the hearing has decided she
7 never got the synopsis of a rate case. And it was only
8 through her good graces in recollecting in time for the
9 hearing that she had, in fact, lost it, that the rate
10 case was not dismissed.

11 I think that we've got, you know, an easy
12 target here as far as coming up with a -- we, of
13 course, could require individual notices, return
14 receipt requested, to every customer out there. This
15 is overkill. There is nothing unique to water and
16 sewer that requires an overkill approach over
17 telephone, electric, gas and so forth.

18 CHAIRMAN DEASON: Okay. Mr. Shreve, wrap it
19 up and then we're going to move on.

20 MR. SHREVE: Yes, sir.

21 Mr. Schiefelbein may be right about Sailfish
22 Point. We were the ones that filed the motion to
23 dismiss the case. I'm not sure it was just totally
24 involved with just notice, and we'll be glad to check
25 that out. If so, that's the way it should be.

1 The problem we've had in the past is the
2 companies -- not all the companies and not every case,
3 but the companies that did not follow the Commission
4 rules, and that has happened as far as the notice is
5 concerned. I don't see any reason to belabor that.
6 There certainly is reason to assure the customers of
7 receiving notice and I think there is a difference
8 between the water and sewer cases and a Florida Power
9 and Light or Southern Bell case. I think everyone is
10 familiar with that and understands it.

11 MR. SCHIEFELBEIN: It sounds to me like an
12 enforcement question of your existing rule rather than
13 a reason to come up with an exceedingly more complex
14 rule.

15 CHAIRMAN DEASON: Okay. Commissioners, what
16 do you propose that we do with Issue 1? I have a
17 suggestion is that I would be interested in Staff
18 looking to see if there are requirements in other
19 industries concerning some type of an affidavit. If
20 there is, I just would like Staff to look to see if it
21 would make sense to apply that in these rules? Not to
22 say I want that, I just want Staff to look at that and
23 see if we are being consistent. And I think we've had
24 a suggestion from at least two Commissioners that we
25 retain the requirement for display advertising in the

1 newspapers.

2 So perhaps what we can do is give Staff some
3 broad direction and have them come back, but I'm just
4 open to suggestions at this point.

5 COMMISSIONER BEARD: I don't have a problem
6 with that. You know, if the Staff wants to take what
7 is currently on paper and bring it back to us, they can
8 do that, you know. I can tell you that I ain't going
9 to vote for it. Period.

10 COMMISSIONER CLARK: I can tell you I'm not
11 going to vote for changing to a legal notice.

12 CHAIRMAN DEASON: Well, you know, I'm not
13 opposed, if the Commission feels comfortable, we can go
14 ahead and have a motion and vote on that one aspect and
15 go ahead and give that direction to Staff. If Staff --
16 I mean, if the Commission feels comfortable handling
17 some of these issues in a definitive manner today, I'm
18 certainly not opposed to doing that. But I think it's
19 almost inevitable that there's going to be some issues
20 where we're probably going to request Staff to come
21 back and we're probably going to have to address some
22 things on March 5. If there's ways around that, I
23 would like to pursue that; but I think that there's
24 probably going to be some things that we're going to
25 have to come back with.

1 COMMISSIONER BEARD: Well, I don't know that
2 we need to vote on it.

3 CHAIRMAN DEASON: Just give Staff direction?

4 COMMISSIONER BEARD: I've given what little
5 bit of direction I'm going to give. Okay. If it's too
6 subtle, let me know, I'll --

7 COMMISSIONER CLARK: Well, I think he's
8 looking for the third subtle person.

9 CHAIRMAN DEASON: Right. And if it's
10 appropriate for the Chairman -- and I don't know the
11 process so much, maybe the Commissioner to my right can
12 me; but if you need a third vote to tell you to do
13 something, you've got three votes. You can leave the
14 display advertising requirement in the rule.

15 MR. FEIL: Thank you. We'll look into filing
16 the proof of noticing with regards to the other
17 industries and attempt to draft something.

18 CHAIRMAN DEASON: That's something you can
19 address when we come back later.

20 COMMISSIONER BEARD: I think that we need to,
21 in that March hearing, I think we need to address the
22 differences between the industries and why. So that if
23 it's the feeling that all the industries ought to be
24 moving in that direction, Mr. Talbott, perhaps that
25 then gets into your bailiwick as opposed to Chuck

1 trying to take over notice requirements for electric
2 and telephone.

3 MR. HILL: Though I would be happy to.

4 COMMISSIONER BEARD: I'm sure. But I would
5 like to have a little bit of thought on that at that
6 hearing, I think it would be helpful.

7 MR. CRESSE: Mr. Chairman, we're at the point
8 now, as I understand it, where you're determining what
9 rules you want to propose. Have you already decided
10 that you're going to go to a public hearing on your
11 proposed rules, or are you going to let the parties ask
12 for a hearing after you adopt your proposed rules? It
13 seems to me what I'm hearing is that you have decided
14 to adopt proposed rules and also to set them for public
15 hearing without request of any party that's affected.

16 CHAIRMAN DEASON: Well, that's really the
17 question of Issue 3. And I know Staff's recommendation
18 is to propose the rules and not go to hearing unless
19 one is requested. But I feel like that the Commission,
20 I don't know, but we're probably going to -- I know we
21 had the time set aside for the hearing and that we
22 anticipate that there's going to be a hearing and --

23 MR. CRESSE: I don't have any problem, but it
24 can have a long-term effect on the length of this
25 hearing. If you're going to go to hearing anyway,

1 then, you know, we --

2 COMMISSIONER CLARK: Yeah, so why bother now?

3 MR. CRESSE: If we know that now, we can keep
4 our comments very brief today if we know we're going to
5 go to hearing anyway.

6 COMMISSIONER LAUREDO: Well, I was going to
7 suggest that. I understood the process that today
8 would, in fact, be a very short meeting in light of the
9 hearing, and I'm seeing it getting a little bit --

10 MR. CRESSE: That's fine with us. If you're
11 going to hearing, we can be very succinct and very
12 brief and probably longer at the hearing.

13 COMMISSIONER CLARK: I see this as, you know,
14 some of these things I think we might be able to
15 resolve and it sort of is a prelude and an indication
16 to us of where the problem areas are going to be so we
17 can look more carefully and consider those more
18 carefully in the meantime. I guess "ponder" them is --

19 MS. MOORE: Commissioners?

20 COMMISSIONER CLARK: To that extent I think
21 -- I don't want to use a lot of time, but I do want to
22 have comment on problem areas.

23 CHAIRMAN DEASON: If there are some things
24 here that can be corrected here today, I think we're
25 looking for those things. But I think that everybody

1 pretty much realizes that there's going to be a
2 hearing. And I think, Mr. Shreve, it was your
3 understanding as well that we're -- I mean, you said
4 early on that you felt like your comments were going to
5 be brief because you felt like there was going to be a
6 hearing later.

7 MR. SHREVE: I think there probably will be a
8 hearing if the Commission votes out these rules. I
9 don't know that that's necessarily a foregone fact. I
10 don't know that these is your set of rules. Now, the
11 Staff is recommending that you propose these; and,
12 frankly, I would hope that the Commissioners themselves
13 know and understand what they're voting out. Because
14 the way I see it, once you vote these out, you are
15 proposing them.

16 I know we'll have other hearings and have an
17 opportunity to argue about that, but I think these
18 would be yours. And there are changes in here that are
19 changing past Commission policy and votes of the
20 Commission, and I just see this as being yours.

21 I would almost like to see you break some of
22 these rules out and not have such a massive undertaking
23 so that when you have a hearing, you're having ten or
24 12 hours discussing so many different things when, in
25 fact, there are some very important issues here that

1 you might want to pin down and have discussion -- for
2 instance, the notice. This is an important issue,
3 although probably not the thing that's going to have
4 most of the discussion.

5 I don't know why we have to have such a
6 massive undertaking when you could take the problems
7 that might exist or things that we disagree on and
8 agree about them so you thoroughly understand them.
9 There are some things in here that it would take a
10 while to explain to you the differences that have been
11 explained to you by Staff.

12 CHAIRMAN DEASON: And I understand that,
13 Mr. Shreve. But this has been an extremely long-term
14 project; there has been a lot of work gone into this;
15 and, obviously, some of the proposals are going to be
16 very controversial. That's why we have at this point
17 set aside three days of hearings, and it may take every
18 hour of those three days, and if it does, so be it.

19 But I, as one Commissioner, am inclined to go
20 ahead and go forward with this. Rules are, in my
21 approach to it and my feeling, they're dynamic. They
22 can change. And once -- even after a rule is adopted,
23 you know, there's no harm in someone requesting that
24 that rule be changed, and we can take a look at it. So
25 these rules are always ever-evolving; and if we make a

1 mistake and we need to take another look at something,
2 we can always do that down the road.

3 MR. SHREVE: Yes, sir. I have proposed quite
4 a few changes in the past.

5 COMMISSIONER BEARD: It was my understanding
6 and intent not to vote anything out today; but that
7 where we could give a little bit of guidance on some
8 stuff and maybe clean that up to move forward, then we
9 could really focus on what I think would be more
10 controversial issues in the hearing and spend the time
11 necessary to do that.

12 CHAIRMAN DEASON: Well, I think we pretty
13 much know where we are and where we hope to get.

14 Does Staff need any more direction on Issue 1?
15 Or does Staff -- I mean, do the Commissioners have any
16 more comments or requests concerning Issue 1? Okay.
17 Hearing none, I think we can move on into Issue 2.

18 Chuck, you are going to be handling the rules
19 in Issue 2, is that correct?

20 MR. HILL: That's correct.

21 CHAIRMAN DEASON: What I propose to do is, I
22 discussed this with Chuck this morning, and we
23 discussed various alternatives of how we could proceed.

24 Realizing that today is not the hearing and
25 that we are here just for quick comments and if there

1 are some problems that could be corrected today, we're
2 welcome to hear those, what I propose to do is to go
3 issue by issue. And don't feel compelled to make a
4 comment on every issue just because we're going to go
5 issue by issue. There are some rules here which should
6 not be that controversial, and I realize there are some
7 that are going to be very controversial.

8 But what we're going to do, unless -- we're
9 going to start out going rule by rule. If that gets
10 cumbersome, we may try a different approach if we start
11 getting bogged down.

12 So, Chuck, I'm going to ask you to take it
13 rule by rule; make a brief statement as to what the
14 purpose of the rule modification proposal is; and then
15 if parties feel compelled to make a brief comment, we
16 hear from each party on that rule.

17 MR. HILL: Yes, sir.

18 020 are the fee schedules. They're currently
19 based only on capacity, and we're recommending that
20 they be based on capacity as well as complexity of the
21 case, and we've doubled the cap of the fee amount
22 pursuant to statute.

23 CHAIRMAN DEASON: Comments?

24 MR. SCHIEFELBEIN: Yes. Commissioners, the
25 one question I have on the fees, I believe that they

1 are expressed in the terms of the number of ERCs, and
2 for purposes of that rule, perhaps we should define
3 what an ERC is.

4 CHAIRMAN DEASON: Let me ask Staff. Is there
5 a definition of ERC in any of our rules?

6 MR. HILL: I believe there is.

7 CHAIRMAN DEASON: If so, would that apply to
8 this rule? Or does the definition have to be in each
9 rule?

10 MR. HILL: Currently, a lot of our rules
11 have definitions within them. And, in fact, we have a
12 Phase II of these rules that are doing other things as
13 well as taking every definition in all of 25-30 and
14 putting them in one place. We do have definitions of
15 ERCs; should we need one for this fee schedule, we'll
16 certainly add it.

17 MR. SCHIEFELBEIN: There are no definitions
18 that would pertain. The other definitions, I believe,
19 in themselves say, "This is limited to this sub part or
20 this section of the rules," which would not include the
21 fee schedules.

22 MR. HILL: We can take care of that.

23 MR. SCHIEFELBEIN: Okay.

24 CHAIRMAN DEASON: Does that conclude your
25 comments, Mr. Schiefelbein?

1 MR. SCHIEFELBEIN: We suggest that an ERC be
2 defined as 350 gallons per day absent -- for fee
3 setting purposes, absent some other compelling reason.

4 CHAIRMAN DEASON: Staff, you're going to take a
5 look at that? Okay. Mr. Mann? Mr. Shreve? Mr. Self?
6 Okay. Next rule?

7 Commissioners, now, if you have any questions,
8 just come right in. We're going to try to go through
9 these as fast as we can.

10 MR. HILL: 025 is Official Filing Date. We
11 thought that (2) of this particular rule made
12 everything real clear. Evidently it didn't, so we're
13 trying once again just to clarify current Commission
14 practice.

15 CHAIRMAN DEASON: Any comments?

16 MR. HILL: 030 is Notice of Application. And
17 we're trying to save money here. We currently have --
18 it used to be a full-time equivalent position trying to
19 maintain a database of a four-mile radius of utilities,
20 and we've probably gotten that down to three-quarters
21 of an FTE.

22 And all we're saying is there's a better way
23 to skin the cat. Rather than trying to maintain a
24 database and give somebody a list of utilities within
25 four miles of where this is, we're just saying, "Forget

1 that, we maintain a list here at the Commission of
2 utilities within the county." And we're saying, "Just
3 send the notice to all those utilities in the county,
4 get the list from the Commission." And we're, of
5 course, including the cities and the counties, and the
6 Water Management Districts and DER and that.

7 COMMISSIONER CLARK: So that's a greater
8 noticing?

9 MR. HILL: Yes. But it's at regular mail
10 rather than certified, and --

11 COMMISSIONER CLARK: And you don't have to
12 keep a separate database.

13 MR. HILL: That's true.

14 COMMISSIONER CLARK: Okay.

15 CHAIRMAN DEASON: Comments? Okay? Chuck?

16 MR. HILL: 032 is just clarifying that you've
17 got to file an application for a name change. And
18 should the Commission go with the acquisition of a
19 small company, then we have added that in there, as
20 well. Just clarifying when applications are to be
21 filed, reducing the number from 15 to 12.

22 COMMISSIONER CLARK: I had a question on that
23 with respect to using the electronic media. Could we
24 reduce it even more some way by using --

25 MR. HILL: Possibly.

1 COMMISSIONER CLARK: -- putting it on a
2 system somewhere?

3 MR. HILL: Possibly.

4 CHAIRMAN DEASON: Next rule?

5 MR. HILL: The next rule is 033. And what
6 we're doing here is just asking for some more
7 information from the utilities and requiring a few
8 things. One, we want some information on funding. We
9 really want to know who's providing the funding of the
10 utility? How is this being done? And requiring that
11 the utilities use the Uniform System of Accounts, the
12 base facility rate structure, the leverage formula if
13 no other method is supported by the utility. It's an
14 attempt to just make sure we have a viable utility from
15 the outset.

16 CHAIRMAN DEASON: Are we going to get
17 information on financial viability from this rule or
18 not?

19 MR. HILL: Yes, sir.

20 CHAIRMAN DEASON: Okay. Mr. Schiefelbein?

21 MR. SCHIEFELBEIN: Thanks.

22 Not to belabor it, we do have certain fine
23 points of distinction with Staff on this issue. Among
24 other things, we have proposed that, in lieu of
25 financial statements, the utility be required to

1 provide any agreements for funding the utility. As an
2 alternative to financial statements, which in
3 themselves tell you nothing as far as what might be
4 dedicated to utility operation, Staff has taken our
5 proposal and made it both the original financial
6 statements and the agreements for funding. And I think
7 that we end up with a lot of unnecessary bureaucracy as
8 far as protecting confidentiality of information that
9 perhaps doesn't tell you a whole bunch when you have it
10 anyway. And I think this is one example of that.

11 We also have communicated to Staff that we
12 think that the rule regarding the ownership or
13 long-term assurance of having the treatment plant site
14 be broadened to include such ideas as having a written
15 easement for that property. Not tying to it a 99-year
16 lease, which sort of sets the standard -- that's the
17 example given in the rule -- but just indicating a
18 long-term lease satisfactory to the Commission.

19 We also very briefly object to highlighting
20 effluent reuse spray irrigation as a means of effluent
21 disposal. We don't think that in a standard
22 application for this sort of certificate you should
23 have to go into any great detail on that. It may not
24 be applicable. If Staff wants information subsequent
25 to the application, that can be provided.

1 That's all I've got.

2 CHAIRMAN DEASON: Let me ask a question. I
3 understand there's detailed information being requested
4 concerning spray irrigation disposal?

5 MR. HILL: "Reuse," Commissioner. In fact,
6 we've gotten more general. It used to say "spray
7 irrigation" and we're just -- again, the thrust in this
8 state is try to conserve and to do everything we can.
9 And we just want to know up front what this utility has
10 in mind as far as reuse, if anything.

11 CHAIRMAN DEASON: There's no requirement to
12 have reuse, you just want the information up front.

13 MR. HILL: We just want the information.

14 MR. SEIDMAN: Commissioner, the proposed rule
15 is to explain why you are not using reuse. And it
16 seems that since this is a DER judgment as to whether
17 or not a utility has to use reuse or some other method
18 of disposal, that unless the Commission is going to do
19 something with that information, it's just some
20 additional work. And in explanation, it's not going to
21 impact on the Commission's decision regarding the
22 certification.

23 CHAIRMAN DEASON: What do you propose to use
24 the information for, Chuck?

25 MR. HILL: We may well come to the

1 Commission say, "No. In the area they're in, they're
2 not planning to do anything in the way of reuse and
3 they should." I mean, I don't want anybody to think
4 that we're going to put this in there and not do
5 anything. We may well come to the Commission and ask
6 you to do something about it. Set a rate, if nothing
7 else, or require the utility to do something in the way
8 of reuse.

9 CHAIRMAN DEASON: Mr. Mann? Mr. Shreve? Mr.
10 Self? Commissioners, any questions?

11 MR. SEIDMAN: Commissioner, could I ask for
12 clarification on that? Maybe I'm wrong, but can the
13 Commission turn down a utility that is not using reuse
14 if the DER has said that it is acceptable for whatever
15 reason?

16 CHAIRMAN DEASON: That's a good question. Do
17 we have the authority to do that?

18 MR. FEIL: I don't know whether or not we
19 have the authority to do it, but I doubt very much that
20 we would do it.

21 MR. HILL: I suspect that we would. Again,
22 this is an original certificate. The fact of the
23 matter, before they can build, they've got to get a
24 certificate. So we try to work with DER, and I do
25 believe that we would work together with them. But the

1 utility is not going to exist until this agency gives
2 them a certificate.

3 CHAIRMAN DEASON: Could there be a situation
4 where this agency denied the certificate and the
5 question never even comes to DER, and if they had the
6 proposal before them, DER may have approved it, and
7 we're perhaps stepping across the jurisdictional line
8 by preventing DER ever having the question placed
9 before them?

10 MR. HILL: I don't believe so. Utilities
11 will go to DER concurrent with their application with
12 us. And most times they go to DER first and are told,
13 "You have to file over there because we won't issue you
14 a permit until a certain time." So I do not believe
15 that that could happen.

16 COMMISSIONER BEARD: Well, let me help. I
17 want the information. And when I see the certificates,
18 I want to know what the plans are.

19 I've had enough of the old days, okay, where
20 you get utilities after they're built out and all the
21 things, all the horror stories, and I want some
22 up-front knowledge when we get them. And it could be
23 conditioned, the certificate could be conditioned, from
24 my opinion; and from an economic standpoint, we can
25 find the ways to suggest that. Now, whether the

1 certificate itself would be not issued, I don't know.
2 But there certainly could be conditions placed and rate
3 base issues considered as a result of that.

4 CHAIRMAN DEASON: Well, let me echo those
5 sentiments to a degree.

6 I understand the public interest aspect of
7 the reuse question, but my main focus is on the
8 financial viability. I think that in the past for
9 whatever reasons there perhaps have been companies that
10 have been certificated that in retrospect -- and I know
11 that hindsight is 20/20 -- that should not have been
12 certificated. And that perhaps some of the problems
13 that we're trying to address with some of the smaller
14 utilities or the utilities which have had a history of
15 poor service, that if we perhaps had more stringent
16 requirements on the front end, that we would not have
17 had some of the problems later on.

18 And, of course, that's water under the bridge
19 now. And I'm just looking from a going-forward
20 perspective. And if there are some things we can do
21 concerning financial viability and a professional
22 management and a determination to provide adequate
23 service and be in the utility business in the long
24 term, if there's some information and requirements that
25 we can impose, I think that's certainly something that

1 we need to do.

2 I understand that Staff realizes that is a
3 problem and that is part of the motivation for some of
4 these changes.

5 MR. HILL: Yes, sir.

6 CHAIRMAN DEASON: So that's just kind of an
7 echo to an extent of what Commissioner Beard has been
8 saying.

9 Any other comments? (Pause) 034?

10 MR. HILL: 034, we're basically just
11 codifying current Commission practice. We're adding
12 two new criteria that basically we ask anyway as we go
13 through the process.

14 CHAIRMAN DEASON: Mr. Schiefelbein?

15 MR. SCHIEFELBEIN: Our only comment would be
16 to restate our problem with the original certificate.
17 In fact, for all types of certificate applications,
18 we've asked that the allowable forms of ownership or
19 leasehold situations or easements, that that situation
20 for treatment plant sites be broadened; and that would
21 apply to all types of applications and not just be
22 limited to warranty deed or 99-year leases as currently
23 written.

24 CHAIRMAN DEASON: I think we understand that,
25 and I think that's something that can probably be

1 fleshed out to a greater extent at the hearing.

2 MR. SCHIEFELBEIN: It reoccurs but you won't
3 hear from me again today on it.

4 MR. HILL: And I guess, since we won't hear
5 from him again, I should let you know that I do believe
6 that we compromised. I mean, at one point we were
7 asking for anybody providing funding and we backed off
8 of that and said, "Fine, if you're providing 10% or
9 more, or greater than 10% funding of the utility, then
10 we want this information." And on the lease
11 arrangement, again, we did tell the industry, "Thanks.
12 Take a hike." The 99-year lease in there is given as
13 an example. We're not attempting to tie the
14 Commission's hands with respect to what it would cost
15 to appropriate lease facilities for the treatment
16 plant. So we understand, we've heard those comments,
17 and we made some compromises in this rule.

18 MR. FEIL: Commissioner, to make it clear,
19 that is a filing requirement. It does not in any way
20 address what the Commission would or would not accept.

21 CHAIRMAN DEASON: I understand. 035?

22 MR. HILL: 035, again, is codifying current
23 Commission practice; information that we've asked for
24 anyway, and we may as well get it in the rule.

25 CHAIRMAN DEASON: Okay. 036?

1 MR. HILL: 036, we're doing a couple of
2 things. We're trying to clarify when an amendment
3 application is required; but more importantly, what
4 we're doing in here is an automatic extension. When
5 you've got a small territory of a maximum up to 25
6 people and there is no other source around, then if
7 there is no objection, we want to just go ahead and
8 grant that extension automatically.

9 COMMISSIONER CLARK: Let me ask a question.
10 Do you have -- I was curious as to, and I
11 should have gone to the rule to look at under what
12 circumstances an automatic extension will be allowed.
13 And I'll go look at that to make sure that I'm
14 comfortable with that.

15 But you have a deletion of the requirement
16 that the applicant attempt to identify potential
17 servers in the territory. That gives me some concern
18 that, you know, if there's somebody out there that is
19 in a better position to serve those people, I'd like to
20 know about it. And how is that sort of concern
21 addressed?

22 MR. HILL: That's addressed because I would
23 like to think we know more than they about these
24 surrounding utilities. And we're asking someone who is
25 going to extend in there, "Tell us who you think might

1 serve." And that's a subjective thing.

2 We maintain a list of all the utilities, and
3 we certainly can look and see if there are any other
4 utilities close by. Everybody is getting notice; so if
5 there's some utility that would like to serve, they can
6 come in and say, "No, it doesn't meet this criteria,
7 and we would like to serve it as well."

8 COMMISSIONER CLARK: All right. Instead of
9 the utility making -- you know, it's like an
10 application, you really don't know so you put down "not
11 applicable" or something. Evidently, without doing a
12 lot of work, they really don't know.

13 MR. HILL: That's true.

14 COMMISSIONER CLARK: You're in a better
15 position to know. And the way you find out if there
16 are people out there is your familiarity with the
17 territory and the fact that you will send notice to
18 every utility in the county. And if they're in the
19 position to do it, certainly they'll speak up.

20 MR. HILL: Yes. And the Water Management
21 District and the DER and the city and the county, and
22 so I believe we're getting ample notice to everyone
23 that this is happening.

24 COMMISSIONER CLARK: I guess my guess is
25 we're not really getting any information by this

1 requirement. Okay.

2 MR. HILL: That's true.

3 MR. SHREVE: Commissioner, I'm not real clear
4 on that, and we can't really get into all of it.

5 What are the notice requirements for
6 customers in the area that they're asking to serve?

7 COMMISSIONER CLARK: You're asking about the
8 people who will be served that they've applied? I
9 don't know.

10 MR. SHREVE: Yes. You have one case before
11 you right now in Mount Dora where there is an
12 opposition to the extension of the utility that already
13 has a fairly large area. And I think in a lot of these
14 cases the customers have a great deal of interest in
15 this.

16 COMMISSIONER CLARK: Yeah. And I'm not sure
17 the statute even requires notice to potential
18 customers.

19 MR. SHREVE: Or the rules at this point. I
20 think a great many times they may not even know that
21 there's a hearing going on during that period of time.
22 It may have happened down at that one in --

23 COMMISSIONER CLARK: They may want to start
24 their own utility, right?

25 MR. SHREVE: Sure. Or they may want to be

1 served by a municipality or a county rather than the
2 utility that might be coming in.

3 COMMISSIONER CLARK: We've never done that,
4 have we?

5 MR. SHREVE: I don't think there's any
6 requirement for the notice.

7 COMMISSIONER CLARK: Okay.

8 CHAIRMAN DEASON: But there are no existing
9 customers; is that correct? I mean, there may be
10 potential customers who have interest and who own land
11 in an area and may be planning on building a house
12 there and have an interest in who the utility --

13 MR. SHREVE: Let me understand that.

14 I would think if you are moving into an area,
15 there may very well be existing customers in that area
16 but there's no existing utility serving them, and the
17 utility is asking to come into there.

18 CHAIRMAN DEASON: Okay. There are people
19 maybe residing there who have their, perhaps, their own
20 well or their own septic tank, things of that nature.
21 I understand your concern.

22 MR. HILL: It certainly wasn't our intent not
23 to notice the 25 people whose wells went bad. We'll
24 look into that.

25 CHAIRMAN DEASON: 037?

1 MR. HILL: 037, again, is clarifying when
2 applications are to be filed. And we're getting some
3 statements as to what -- if books and records are not
4 available, we want to know exactly what steps were
5 taken by the applicant to gain those.

6 COMMISSIONER CLARK: In a transfer, you're
7 requiring information to be given by the buyer to the
8 seller?

9 MR. HILL: Yes, obtained by the seller,
10 whether he can get it from the buyer or not. And if
11 not, we want to know exactly what steps were taken to
12 obtain those.

13 The problem we're trying to solve here is
14 where people claim there are no books and records. And
15 then we end up asking through discovery or at hearing,
16 or whatever, "What did you do to find those records?
17 Did you try to find those past tax returns?"

18 And so we're just saying up front, "Tell us
19 exactly what steps you went through to obtain these
20 books and records and tax reports." If we don't have
21 the information to set rate base, then why don't we?
22 What steps did we take to find this? Are they really
23 not there?

24 COMMISSIONER CLARK: Okay.

25 CHAIRMAN DEASON: Any comments? Mr. Shreve?

1 MR. SHREVE: I think this should be tightened
2 up. There should be very little excuse for a purchaser
3 not at least getting permission from the seller for
4 them to go get the tax returns from the Federal
5 Government even if they don't have it. And they could
6 accomplish that by getting permission rather than
7 giving a statement as to why they didn't give them to
8 them.

9 I think this area is one of the real
10 problems. We've run into some situations where the
11 whole case has been set up on a situation where there
12 were no past books and records, then at the hearing you
13 come in and you find out they have all the books and
14 records.

15 I just think there should be some penalties
16 if the books and records -- or they should be
17 available. And I just think the whole thing should be
18 tightened up with some penalties if they are not
19 provided, particularly when they are available.

20 CHAIRMAN DEASON: You mention penalties.
21 Doesn't the Commission have some generic authority
22 whenever a rule is violated to impose a penalty?

23 MR. SHREVE: I think you would have some
24 there, but I know of some situations where we've had a
25 case, we've gone in and the whole case has been set up

1 -- the one down in Pasco County, I don't believe any of
2 you were sitting on that. We went through the whole
3 case and then the company president admitted on the
4 stand that he had the books and records. But the whole
5 case was there.

6 CHAIRMAN DEASON: Any other comments?

7 MR. HILL: We also need to point out,
8 because it ties into the next rule, 0371, in that we
9 are also requiring -- and this is a new requirement --
10 that the buyer send us a statement as to the condition
11 of the plant, Notice of Violations from DER, Water
12 Management District. We've not gotten that in the
13 past, and this is a new thing. And it does tie into
14 0371 and 038.

15 0371 is just an attempt on our part to
16 codify, pretty close, current Commission practices on
17 acquisition adjustments. We've thrown in one little
18 kicker, and that ties to the 037; and that is we have
19 added in this rule that the Commission will consider
20 condition of plant.

21 One of the problems in the past, the
22 Commission's policy on acquisition adjustment is that a
23 transfer, change in ownership, does not change rate
24 base. Absent extenuating circumstances, if you buy at
25 above or below rate base, we're not going to make an

1 adjustment. The question has come up in the past as to
2 well, maybe the plant has been run down. If it has to
3 be completely replaced, then customers are paying twice
4 for what they should only pay once.

5 We think that's valid, and we think that the
6 Commission should look at the condition of the plant,
7 and possibly our value of rate base is incorrect. And
8 so at the time of transfer, let's get that information,
9 let's look. If the plant is run down, if it is in
10 terrible condition, then maybe this agency needs to
11 look at rate base and see if we are mistaken and it
12 should be revalued.

13 Other than that statement in the rule, 0371
14 merely attempts to codify current Commission policy
15 that acquisition adjustments can be made and the
16 parties are welcome to come in and request them.

17 CHAIRMAN DEASON: I think we were on 037, but
18 as a logical extension of that discussion, I think
19 we've moved into 0371 and 038. And so we will go
20 ahead, unless there are further comments specifically
21 on 037, I don't think there are, we'll go right on into
22 0371 and 038.

23 And I think you've kind of already introduced
24 that. If you want to make further comments, go ahead.

25 MR. HILL: Yes. I apologize. 0371 is our

1 attempt to codify current Commission practice with
2 respect to acquisition adjustments.

3 COMMISSIONER CLARK: Let me ask a question.

4 You have a conjunctive in the sentence in the
5 last -- in the introductory paragraph, attempted to
6 provide a new mechanism encouraging the acquisition of
7 small systems by larger utilities. What is that
8 mechanism?

9 MR. HILL: That is 038. I'm sorry, that's
10 in 038, which just follows 0371. In 038, what we're
11 doing is we're trying to provide a quick-take option
12 for a Class A or B utility to purchase a small Class C
13 utility. And, in fact, the definition we have for a
14 small utility matches a Class C.

15 And what this option says is that a Class A
16 or B utility meeting all of these requirements may come
17 in, ask for a transfer, and at the same time a limited
18 proceeding, and place into effect subject to Commission
19 approval a reasonable rate.

20 COMMISSIONER CLARK: Is this the thing, get
21 it done in 90 days?

22 MR. HILL: Yes. Get it done immediately;
23 put rates in subject to refund, temporary; and then at
24 the end of the year, we will look at financials and
25 make a determination as to whether those are reasonable

1 rates and should continue.

2 COMMISSIONER CLARK: One thing that occurred
3 to me is why do we limit it to A and B acquiring it?
4 What about a C that wants to acquire another C, a
5 well-run C that wants to --

6 MR. HILL: And that's Mr. Todd of the Florida
7 Waterworks Association and Sunray Utility brought that
8 up. It is a very well-run Class C utility.

9 The only reason is because I can't write the
10 rule to allow Bob Todd to buy another Class C but keep
11 Fawcett away from doing it. You remember Mr. Fawcett,
12 over south of Jacksonville, who had three or four
13 systems, just ran them into the ground. And at the
14 time we got rid of him, Commissioner Herndon said he
15 should never be allowed to own another utility in this
16 state ever again in his life.

17 And so to just throw in a Class C, we could
18 end up with a Fawcett trying to do this type of thing.
19 And what I am suggesting that the Commission do is
20 let's try and see if this would even work with an A and
21 B. And if there's some success because the Waterworks
22 Association says "Nice try, but you're not doing
23 anything," if it does work, then let's see if we can
24 write a rule that would allow a well-run Class C
25 utility to use this option as well.

1 I just haven't figured out how to write that
2 rule yet.

3 COMMISSIONER CLARK: The other question I had
4 with respect to the acquisition adjustment, you know, I
5 understand the philosophy behind that, but it still
6 gives me a lot of trouble when you allow a return on
7 investment that's not actually made.

8 Have we ever looked into splitting the
9 savings? I mean, it seems -- or looking at capping the
10 amount of adjustment you can get?

11 MR. HILL: We've looked at that,
12 Commissioner. And whatever your pleasure is, we'd be
13 happy to do because, quite frankly, I wish this weren't
14 ever an issue again.

15 And I guess it comes down to maybe you should
16 have two or three acquisition adjustment policies.
17 Maybe there ought to be one for when it's a system
18 that's going into abandonment and receivership or when
19 it's a poor Class C versus when it's something else.

20 Because you've got -- the Commission has
21 attempted to encourage the purchase of these
22 mom-and-pops, let's get rid of these little nonviable
23 things and get them bought up. And so we have
24 attempted to maintain a two-edged sword that will give
25 rate base -- and you can make your arguments whether

1 there should be a negative or positive acquisition
2 adjustment -- in a minor attempt to encourage that type
3 of thing.

4 The facts are that over the past few years
5 whether there should be an acquisition adjustment has
6 been made an issue at the time of transfer. Sometimes
7 it's been handled in the transfer and we've gone to
8 hearing. More recently, we've decided to defer that
9 particular issue until the next rate proceeding. But
10 what has happened is those utilities that were active
11 in buying up the smaller, troublesome systems, they
12 basically have stopped anyway because of all the
13 trouble in buying them and getting compensatory rates
14 and acquisition adjustments. So I'm not sure at this
15 point that there is anybody out there willing to buy
16 even if you want to encourage.

17 COMMISSIONER CLARK: Well, but as I
18 understand, part of the thrust of this rules is to sort
19 of get that started again if it's a good idea, in
20 situations where it's a good idea. So to that extent I
21 think we need to address the acquisition adjustment.
22 And I, for one, would like you to look at -- I would
23 like you to follow up on your own suggestion with
24 respect to those types of acquisitions where you would
25 want to, that you need somebody to come in and take

1 these over, in which case you might want to give the
2 full adjustment. I would like you to look at
3 incentives, a sharing of they don't get the full
4 amount, they'll get some percentage of it.

5 Also, I think -- there was one other thing,
6 now. It's just escaped me.

7 CHAIRMAN DEASON: Let me make an observation.

8 I certainly understand the need for well-run,
9 well-managed utilities who comply with Commission
10 requirements and DER requirements to acquire those
11 companies who do not have such a good track record.
12 There's certainly need for that. And I can understand
13 how the acquisition adjustment policy can be an
14 incentive.

15 But I think there's two problems with that,
16 and we need to make sure -- we don't need to rely on
17 this as the incentive, in my opinion, because there's
18 going to be situations when there may be a terribly run
19 utility and, for whatever reason, that owner is not
20 going to sell below book value. And so there is no
21 incentive whatsoever in that situation for a well-run
22 utility to acquire; because no matter how hard they
23 negotiate, they're not going to be able to buy it below
24 book value.

25 So in those situations we don't have any

1 incentive. And maybe we need negative incentives to
2 put pressure on the owner if he's not complying and
3 impose penalties and things and maybe he will
4 reconsider and get out of the utility business. But
5 that's a whole different question, not the subject for
6 these rules.

7 And there may be times when, even when a
8 utility is willing to sell below book value, that
9 that's not even enough incentive. And the utility is
10 in such bad shape, and the customers are not getting
11 the service they need and require, and there may be a
12 need when there needs to be more of an incentive of
13 some sort. And I don't know what it would be.

14 I think we're putting blinders on if we just
15 say that our negative -- I mean our acquisition
16 adjustment policy is an incentive to utilities to
17 acquire these other utilities. It is in some
18 situations, but it doesn't address the whole situation.
19 And so to me that is a concern. And I don't know what
20 the answer is.

21 This is an age-old problem in this industry.
22 And I'm not so sure that acquisition adjustment is the
23 answer. It certainly has not been the answer in the
24 past; you've just observed that it's not been the
25 answer.

1 MR. HILL: Again, I'd just as soon it never
2 be an issue. I mean, to the extent we could get a
3 policy on it and get it nailed down, that's really what
4 we're attempting to do here is just eliminate as many
5 issues as we can.

6 CHAIRMAN DEASON: Mr. Schiefelbein?

7 MR. SCHIEFELBEIN: Commissioners, the
8 Association is not taking a position in the overall
9 experimental approach advocated by Staff on this rule.
10 But I do have a question.

11 The way the 038 is written, it says this is
12 an alternative to 037. Now, 0371, "Rate Base
13 Established at Time of Transfer," has various ideas
14 contained in it, indicates it applies to essentially
15 any jurisdictional transfer.

16 My question is, would (4) of 0371 pertaining
17 to original cost documentation and so forth, would that
18 language apply to 038 transfers? And if not, we'd like
19 it to.

20 CHAIRMAN DEASON: I'm sorry. I guess I got a
21 little confused.

22 MR. SCHIEFELBEIN: I apologize for talking
23 like an insect there. But the subsection (4) of 037,
24 we would like that to apply to transfers under 038,
25 These experimental acquisitions. And it's not at all

1 clear to me, in any event, that section would apply to
2 transfers under 038.

3 MR. HILL: I appreciate Mr. Schiefelbein
4 pointing out my glitch. Yes, I would intend that to
5 apply. That's Commission practice.

6 CHAIRMAN DEASON: Okay. I have one question.

7 On Page 16 of the recommendation at the top
8 paragraph there, the bottom of that paragraph, the last
9 phrase is that, "The Commission may set rate base based
10 upon competent and substantial evidence, reconstructing
11 the original cost and CIAC."

12 MR. HILL: Yes.

13 CHAIRMAN DEASON: This is in a situation,
14 obviously, when the original cost documentation is
15 lacking or nonexistent.

16 MR. HILL: Yes, sir. That's the (4) that Mr.
17 Schiefelbein just brought up.

18 CHAIRMAN DEASON: Okay. Now, I understand
19 the word there is "may."

20 MR. HILL: Yes.

21 CHAIRMAN DEASON: And I would assume that
22 means that the Commission would have latitude to use
23 some other mechanism if it so saw fit.

24 MR. HILL: Yes, sir.

25 CHAIRMAN DEASON: Such as some type of

1 purchase price or whatever.

2 MR. HILL: Yes, sir, or zero if you chose.

3 CHAIRMAN DEASON: Okay.

4 MR. SHREVE: Commissioner, in this area, I
5 think it's another one that you're going to be dealing
6 with trying to get information and records for the
7 Commission. I think it needs to be tightened up; and
8 if any type of statement is given, there should be an
9 affidavit saying it made every effort to get the
10 information. We have way too many situations where the
11 utilities make a purchase and it is to the utility's
12 benefit not to have the records, and that happens a
13 great deal.

14 The other thing just as a caveat in this
15 whole area. And Mr. Hill and I have argued and thought
16 about this thing, and most of the people here, what you
17 both have already alluded to: There should not be a
18 situation, in my mind, and I think in most everyone's
19 mind, unless there is really some overriding reason for
20 the customers to be paying a return to a utility on
21 money they do not have invested.

22 And I'm not real sure about the outcome of
23 this rule, but it looks to me like the burden would
24 then be on the customers to try and overcome that. And
25 the logic that has always been used by the Commission

1 that, "If you don't have a negative acquisition
2 adjustment, you can't have a positive; if you don't
3 have a positive, you can't have a negative," that
4 really doesn't fit. You should take these things on an
5 individual basis and look at them. And the overriding
6 concern, unless there's some real justification, is
7 that the utility should not be allowed a return on
8 money that they do not have invested.

9 And I think this is one that you probably
10 should take a separate look at. It's been going on for
11 a long time. We have all argued it out before
12 legislators when they filed bills. There's a lot to
13 look at in this whole thing.

14 CHAIRMAN DEASON: Mr. Cresse?

15 MR. CRESSE: Unfortunately, as Mr. Shreve
16 says, this has been argued out over a long period of
17 time; to my personal knowledge, at least somewhere in
18 the neighborhood of 10 to 12 years. And he hasn't won
19 it yet, but for good and sound reasons. He hasn't won
20 it before this Commission, he has not won it before the
21 legislature.

22 What you're really looking at here is whether
23 or not and what will be the rate base of the utility
24 that is acquired by another utility. And I think the
25 thought process has been, well, basically, if we've got

1 problems with that utility, we would like to encourage
2 somebody to acquire it. If the utility maintains in
3 its current ownership, the rates will be no higher if
4 it's transferred than if it is maintained at its
5 current ownership.

6 That's the reason you have allowed the policy
7 as expressed here. And the policy is very simple. It
8 says, "In absence of extraordinary circumstances, the
9 purchase of a utility system at a premium or a discount
10 shall not affect the rate base."

11 So what you have had is the utility is
12 operating -- it may not be operating well; it may be
13 operating well; I think it becomes irrelevant. But if
14 that utility continues to operate under the same
15 ownership, the rate bases will not be affected, the
16 rates will not be affected.

17 If it's transferred, what Mr. Shreve is
18 saying is you ought not allow them to earn a rate of
19 return on anything more than what they pay for it. And
20 I think that's wrong.

21 I think basically that if the utility has
22 been operated properly, the person who owns it would
23 not sell it below rate base if they thought they had
24 the opportunity to earn a fair rate of return on it.
25 So there's a part that goes to what's in the sellers'

1 minds as well as what goes in the buyers' minds.

2 And I think the important fact is that the
3 ratepayers are not harmed under your current policy.
4 They have the potential of being better off than they
5 are if the utility is maintained by the existing
6 ownership. If they did not have the potential of being
7 better off, then that's a factor you ought to consider
8 when the transfer application is sent to you.

9 So I guess that may be -- that may not be the
10 only issue Jack and I have disagreed with for 10 or 12
11 years, but it's been at the top of the list, and we
12 still disagree with it.

13 CHAIRMAN DEASON: Mr. Cresse, let me ask you
14 a question. And you've made the point that the
15 customers will be no worse off.

16 MR. CRESSE: Yes, sir.

17 CHAIRMAN DEASON: Because the rate base stays
18 the same.

19 But what about the classic example -- and
20 this may be a shortcoming of regulation and we need to
21 point fingers at ourselves -- but what about the
22 classic example of a system which is in disrepair which
23 is not --

24 MR. CRESSE: I'm glad you mentioned that.

25 CHAIRMAN DEASON: Let me finish the question.

1 Which is not being run properly; it's not in
2 compliance with DER regulations. A professionally
3 well-run utility acquires it and knows right up front
4 that it is going to have to make substantial
5 investments not to improve the system but just to bring
6 it up to the level where it should have been performing
7 to start with if it had been managed prudently by the
8 original owner. And that's the reason why the
9 purchasing utility is able to acquire the utility at
10 below book value: because the owner knows it's in
11 disrepair; he or she does not have the capability or
12 the desire to acquire the capital to make the
13 improvements or to continue the maintenance which has
14 been neglected.

15 So if we, under current policy, if we were to
16 follow that, the acquiring utility gets the original
17 rate base but has to make substantial investments, and
18 then those investments become part of the rate base.
19 So the customer then is asked to pay a return on
20 investment above the amount which he should be if the
21 prior owner had managed it properly and had kept the
22 system well-maintained.

23 Now, that's a classic problem. What's the
24 answer to that problem?

25 MR. CRESSE: Let me first answer it right up

1 front and say I'm not sure that there's an answer to
2 all -- you can get up front an answer to all the
3 problems that you will face on transfers. But let me
4 take this specific example that you mentioned that
5 somebody has over a period of time neglected this
6 system and haven't provided adequate service.

7 The first thing you need to remember is, if
8 you're doing your job, they have not earned what would
9 be typically called a fair rate of return on that
10 system all the time they were allowing it to degrade,
11 and simply because you have to consider, and should
12 consider, quality of service in the award of rates.

13 So what's happened there is that system for a
14 long period of time -- and these systems don't degrade
15 themselves, you know, just in six months or a year --
16 for a long period of time the prior owner has neglected
17 to take care of his business and he's neglected the
18 system. He probably hasn't been earning a fair rate of
19 return for that period of time. You all haven't seen
20 him, he hasn't come in. Because if he had been in, it
21 would have come to your attention that he was doing
22 that, that he was providing bad service.

23 So the people have been served and then they
24 come along and they want to make a transfer. Well, I
25 think what's happened is that, if you were aware it,

1 you have penalized that company for not providing
2 service and the people have not really been paying the
3 full cost of service up to that date.

4 Now, when you look at one to be transferred,
5 it's perfectly all right to ask the question, "Is it in
6 good shape?" And I think that's what Mr. Hill is
7 saying, he's trying to find that out in the
8 application. And then what you have to do in that
9 situation is to evaluate whether or not you're going to
10 permit the transfer to take place. Is it in the best
11 interests of the ratepayers to permit the transfer to
12 take place? And there's no predetermined answer you
13 can give to what is essentially a subjective call.

14 I think you kind of want to get rid of a bad
15 operator because they're a pain; and not only a pain to
16 the Commission, a pain to the Staff, they are a pain to
17 the customer. You'd kind of like to get rid of them.
18 And maybe because of just the failure of people, yeah,
19 maybe they have to pay more than they would have had
20 that system been maintained right all this time. But
21 it is likely that they paid substantially less for
22 three or four years while that system was being run
23 down than they would have paid had it been maintained
24 properly.

25 I hope that answers your question.

1 MR. SEIDMAN: If I could just add to that. I
2 don't think it's necessarily given that had the
3 previous owner maintained the system properly that the
4 rates would have stayed at the level that they are when
5 the system is up for purchase. Because those repairs
6 would have resulted in costs that would have been
7 passed on to the ratepayer either in the form of
8 maintenance or additional investment. And those should
9 be costs that probably will be reflected by investment
10 or maintenance expenses of the new owner.

11 CHAIRMAN DEASON: Mr. Shreve?

12 MR. SHREVE: I see what both gentlemen are
13 saying. However, the one string that goes through
14 their entire argument is maybe they say the ratepayers
15 will be better off if, or no worse off, if the new
16 company buys it. But what they are arguing is that, if
17 there is a purchase there, there is going to be a
18 windfall to the new company and that company wants to
19 earn more than a fair return because they have asked
20 for or been granted a rate base higher than their
21 purchase price, while still being allowed to put into
22 rate base all of these improvements that are coming
23 along.

24 So regardless of the factual situation, and
25 I'm not saying that there shouldn't be a situation

1 sometimes where there should be an exception to the
2 rule. But it should be an exception. The company
3 should be here in Florida and be happy to earn a fair
4 return on their actual investment, and beyond that it
5 should be the exception.

6 We have the situation where you have a
7 run-down system and they're going to come in and put in
8 the repairs, and perhaps the company even needs some
9 incentive to purchase it. But then you have the Grand
10 Terrace system where it's brand new and Southern States
11 purchases it for around \$30,000 or \$32,000 and is given
12 a rate base of \$80,000 and there's nothing wrong, it's
13 brand-new, it's never even been used, it's been put in
14 Lake County for low-income housing.

15 So there are arguments all around. There is
16 no excuse for that. So I think the exception should be
17 and the company should have to make some type of
18 justification to show that they should be allowed to
19 earn more than a fair return on their investment.

20 CHAIRMAN DEASON: We will look into the
21 sharing and the incentive and --

22 COMMISSIONER CLARK: I remembered what it was
23 I wanted. It's just something I would like.

24 If you have the history of acquisition
25 adjustments we have granted, say in the past five

1 years, I'd like up or down how much they were and what
2 percentage rate base they were. I want to get a handle
3 on the magnitude of the dollars in relation to the
4 investment that we're talking about.

5 MR. HILL: Absolutely.

6 CHAIRMAN DEASON: Chuck, as I understand
7 where we are under this proposal, you're basically
8 recommending that we codify in the rule Commission
9 policy. But there's one slight change and that is you
10 wanted information up front concerning the state of the
11 system that is being acquired, whether it's in
12 disrepair or whether it's in compliance.

13 MR. HILL: Yes, sir.

14 CHAIRMAN DEASON: And that could be a
15 consideration --

16 MR. HILL: Yes, sir.

17 CHAIRMAN DEASON: -- in determining whether
18 an acquisition, up or down, was approved or
19 disapproved, whatever the case may be. That's a slight
20 modification --

21 MR. HILL: Yes, sir.

22 CHAIRMAN DEASON: -- based upon Commission
23 policy.

24 You're also recommending that we look at a
25 new rule which allows the implementation of

1 compensatory rates on an expedited basis.

2 MR. HILL: Yes, sir.

3 CHAIRMAN DEASON: Now, are those the two
4 basic modifications to current Commission policy that's
5 embodied in these proposals?

6 MR. HILL: Yes, sir.

7 CHAIRMAN DEASON: Okay.

8 COMMISSIONER BEARD: Well, at that point I
9 have a question. I don't know, we seem to have been
10 focusing on 71. And I have heard no comments, one, on
11 an expedited implementation of some ethereal statewide
12 average and I've heard no comments on 90-day
13 limitations in doing that. And I'm just curious, does
14 everybody think this is a great idea?

15 And my first question that comes to mind is,
16 do you all do audits in less than 90 days?

17 MR. HILL: I don't intend to do an audit,
18 Commissioner. I intend to look at some records and I
19 intend to look at an average rate established by the
20 Commission annually or a rate granted by this
21 Commission in that county and implement that on a
22 temporary basis subject to refund.

23 CHAIRMAN DEASON: And it is subject to refund
24 just for one year, and there is going to be a
25 determination made within that year period.

1 MR. HILL: Yes, sir.

2 CHAIRMAN DEASON: Commissioners, we have had
3 a request to take a break, and I think the court
4 reporter probably needs one as well.

5 We're going to take a short break and we'll
6 come back and wrap up, hopefully, very briefly, 371 and
7 038, and then move on.

8 MR. HILL: Most of the remainders are very
9 short.

10 (Brief recess.)

11 - - - - -

12 CHAIRMAN DEASON: Before we get started
13 again, I think we were on 0371 and 038, what I would
14 like to do is go ahead and finish up that discussion
15 and then we're going to make a leap over towards the
16 end, goals, and address private fire protection, Rule,
17 I think, 465. And I think that's the rule that you're
18 interested in, is it not, Mr. Dewar?

19 MR. DEWAR: That's correct.

20 CHAIRMAN DEASON: Okay. You're welcome to
21 stay with as long you like, but I'm sure that you
22 probably would jump at the opportunity to take care of
23 your business so you can get along with other business
24 you have to attend to, so, we're going to try to
25 accommodate you. Okay, let's go ahead and finish the

1 discussion we were having on 371 and 038.

2 MR. HILL: Yes, sir. And I think we're about
3 to wrap it up. We will look into whether or not the
4 acquisition adjustment policy even creates an
5 incentive; whether there should be more than one
6 policy, a sharing; and certainly a history over the
7 past five years of acquisition adjustments, dollar
8 amounts and percents of rate base.

9 And again in the 038, I'm not even sure that
10 it's a good idea but we're just -- NRI has recommended
11 this type of thing, they're doing it around the
12 country, just trying to get people to come in and give
13 them some reasonable rates. I'm not even sitting here
14 trying to say they're compensatory. And maybe that's
15 more of an incentive than anything else is to let them
16 put in a rate that is at least reasonable for a
17 particular period of time subject to refund.

18 CHAIRMAN DEASON: Commissioners, do you need
19 to give Staff any further guidance in this matter?

20 COMMISSIONER BEARD: No. I haven't heard a
21 reaction from anybody yet and I guess I'd --

22 CHAIRMAN DEASON: On the new proposal?

23 COMMISSIONER BEARD: Yeah. If nobody cares,
24 I'll go take a nap or something. I'm just curious. I
25 thought I'd hear something.

1 MR. SHREVE: Well, I think I certainly agree
2 with Mr. Hill. I'm not sure this is a good idea
3 either. (Laughter)

4 I'm not sure I even understand totally what
5 we're doing here, but I guess what you're doing is
6 saying you're going away from the grandfathering in of
7 the rates that have already been set by the Public
8 Service Commission?

9 MR. HILL: I beg your pardon? I'm sorry, I
10 didn't hear that.

11 MR. SHREVE: Okay. Are you saying here that
12 if a system that's countywide, that has their system
13 countywide with other utilities, and they purchase one,
14 then you're not going to be grandfathering the rates in
15 any more for that system but you're going to set it up
16 for countywide rates?

17 MR. HILL: Yes, sir. Which again, the
18 legislature recognized that rate base regulation is
19 just not even necessary for a Class C utility and the
20 Commission may by rule not even use rate base
21 regulation on Class C. And what we're saying is, well,
22 let's look at this utility over this 12-month period,
23 let's put in a rate -- and I don't even believe it
24 would be compensatory, but it would be more reasonable.

25 COMMISSIONER CLARK: One other thing that

1 comes to mind is this, some dilemma as to whether this
2 is a good idea on sort of a generic basis. Is it
3 possible to sort of do this, do we have the authority
4 to allow this on an individual basis and sort of see
5 how it's been working? Because I do think one of the
6 problems that is more acute in the regulation of small
7 utilities is cash flow and getting money to meet your
8 operating expenses. And if we could shorten up the
9 time or provide them with some money with a guarantee
10 of a refund, that may be a good idea. But I'm
11 wondering if we shouldn't try it first on a
12 case-by-case basis.

13 MR. SHREVE: I think you've always solved
14 that problem with interim rates, usually, if that's a
15 real problem, and that's come out in a hurry. Here
16 you're talking about giving a rate increase, which may
17 or may not be justified, for maybe 12 months to a group
18 of retirees that are certainly not going to be in a
19 position to carry that for a year like that. Which may
20 or may not be compensatory or whatever. I'm not even
21 sure exactly what kind of notice requirements, but you,
22 as a practical matter, may all of a sudden be faced
23 with a group or community that has a rate increase
24 without a hearing.

25 COMMISSIONER CLARK: That's their typical

1 compliant in a pass-through or a index is, you know,
2 these rates went into effect and there's no hearing or
3 anything. But you have to weigh that against the
4 benefits, and I'm wondering if this isn't one that we
5 ought to try on a case-by-case basis.

6 MR. HILL: I don't think you can. And I
7 guess -- let me tell you why. You know, we're having a
8 tremendous discussion as to interim rates and what are
9 they going to be based on? Now, you know, we're
10 getting filing requirements that suddenly become a rate
11 case as opposed to some quick take thing. And I think
12 what you end up -- you know, if we want to have them
13 file a rate case and all that up front, that's what
14 we're doing now. I'm just not sure that you can grant
15 interim rates outside the context of 081. That's why
16 we have this new rule.

17 COMMISSIONER CLARK: But, no, what I'm
18 suggesting in this: instead of doing a rule, if there's
19 a particular case that comes in, suggest we allow
20 reasonable rates that are equivalent to the countywide
21 rates to go into effect at that point, and then within
22 12 months look at it and make a decision on a refund or
23 no refund.

24 Is there a requirement that we do it on a
25 generic basis first? Why don't you think about it.

1 MR. SHREVE: You've done it on current rates,
2 interim rates, when you've -- (simultaneous
3 conversation) -- Pasco County and all that. The reason
4 for the pass-through and indexing is really to maybe
5 not take care of this problem totally, but if the
6 company had kept up with that all along, it would be
7 there.

8 MR. WILLIAMS: Commissioner Clark, this rule
9 actually came from -- my name is John Williams with the
10 Staff.

11 MR. HILL: Multitude of Staff.

12 MR. WILLIAMS: This rule came at the
13 direction of the Commissioners in one particular
14 transfer; and the Commissioners directed us to work
15 with the industry and Public Counsel to come up with
16 something that would encourage the larger utilities to
17 put something in place so that the utilities could
18 expect a quick turnaround on a transfer. And to -- so
19 they could expect they could get some kind of rate
20 relief.

21 And what the industry has said is they were
22 reluctant to even look into acquiring small systems
23 unless they knew that there was some assurance that
24 they would get rate relief within a reasonable time and
25 that the Commission would act on it, that it wouldn't

1 take six months to get approval for the transfer, that
2 it could be done quickly.

3 MR. SCHIEFELBEIN: Commissioners, as I
4 indicated before, Florida Waterworks Association has
5 taken no formal position on this. If I might be
6 allowed a couple of personal observations, though?

7 I think this is, at least among a certain
8 segment of the industry, this proposal is viewed as a
9 very well-intentioned and fatally flawed effort to deal
10 with the problem.

11 The problem is regulatory lag and
12 uncertainty. There is no very strong incentive out
13 there right now to acquire small troubled utilities.
14 Under this proposal, you would not know what rates you
15 will be able to keep for a period of up to two years
16 after acquiring the system. Because with the -- I can
17 very easily imagine Public Counsel and customers not
18 consenting to a rate increase after one year of
19 operational data is gathered, requiring the full
20 hearing process.

21 The process is too combative, it is too
22 controversial and uncertain. The Commission has
23 basically declined to be forthcoming with acquisition
24 adjustments. It has been relatively favorable to
25 assigning zero values to rate base investment of prior

1 owners where tax returns and so forth are not
2 available. It's basically a lawyer's delight and a
3 utility's nightmare. And for that reason I think you
4 see very little activity in that area.

5 I think Staff's intentions on this rule are
6 commendable. I don't think there's anything wrong with
7 offering it as an alternative, should people want to take
8 advantage of it; but it doesn't really deal with the
9 problems, and that's incentive over regulation and
10 uncertainty. This merely extends the window of
11 uncertainty out to two years from purchase.

12 CHAIRMAN DEASON: Are you saying that the
13 medicine is worse than the disease?

14 MR. SCHIEFELBEIN: I don't think we're
15 treating the disease.

16 CHAIRMAN DEASON: Then this doesn't really
17 address the problem, in your mind?

18 MR. SCHIEFELBEIN: I don't think so. (Pause)

19 CHAIRMAN DEASON: Well, obviously, I think
20 that this proposal is something that we can address in
21 greater detail at the hearing.

22 We've had expression by at least one
23 Commissioner that if we choose to go down this road we
24 may want to do it a little more cautiously and perhaps
25 get some case-by-case experience, and that may be a

1 good thing to do.

2 The way I was looking at Staff's
3 recommendation, I think the intent is to address this
4 problem and offer an incentive to acquire small
5 troubled companies, but what I'm hearing is that this
6 may not be an incentive at all. And if it's not, if
7 it's not going to help solve the problem, well, then,
8 I'm going to have to agree that perhaps we don't want
9 to go down that path.

10 But I think for the time being we can leave
11 this on the table and we can discuss it further at the
12 hearing, unless there's any other comments from other
13 Commissioners as to whether we need to kill it now, or
14 kill it later, or go ahead and approve it now.

15 We'll just let it ride for right now then.

16 Okay. We're going to go ahead and move over
17 to Rule 465, which is private fire protection.

18 MR. HILL: Yes, sir.

19 CHAIRMAN DEASON: Mr. Dewar, I think this is
20 the single rule that you have an interest in, is that
21 correct?

22 MR. DEWAR: That's correct, Mr. Chairman.

23 CHAIRMAN DEASON: Staff, won't you briefly
24 tell us what you're proposing here and then we hear
25 from Mr. Dewar.

1 MR. HILL: Yes. What we're doing here is
2 codifying current Commission practice and policy of
3 charging one-third of the base facility charge for
4 private fire protection.

5 CHAIRMAN DEASON: Mr. Dewar?

6 MR. DEWAR: Thank you, Mr. Chairman, for
7 allowing this issue to be discussed out of order.

8 Simply put, the property owners of buildings
9 equipped with fire sprinkler systems are paying a rate
10 generated by nonsprinkler buildings. Fire sprinklers
11 are designed in the most remote point within a
12 building, plumbed back to the street main; and based
13 upon the hydraulic calculation of that system, a
14 determination is made whether or not there is adequate
15 water or volume or pressure there. If there is not
16 adequate water, volume or pressure -- which is rarely
17 the case as far as volume, but there is problems with
18 pressure in many areas -- then the design requires fire
19 pumps or alternative water supply sources for the fire
20 sprinkler systems.

21 Fire sprinkler systems can clearly be stated
22 that they are designed based upon the existing water
23 supply at the street. Again, if the water supply that
24 is existing is inadequate, there is no demand placed
25 upon the waterworks. We're not telling the waterworks

1 purveyor that they have to put in new pumps and they
2 have to do this; the Fire Marshal tells that property
3 owner, an alternative water source or a fire pump.

4 Future inspections of that property, again,
5 if the water pressure volume is diminished to the point
6 where that system is no longer functional, the Fire
7 Marshal will tell that property owner again, fire pump,
8 alternative water source; there's no demands on the
9 waterworks companies.

10 Water conservation is a big important issue
11 with the fire sprinkler industry and the fire service
12 community. That sprinkler head overhead will consume
13 or expend 20 gallons a minute when activated. 90% of
14 all fires are controlled or extinguished by two
15 sprinkler heads or less. And in seven minutes time,
16 the Fire Department -- as an average of seven minutes
17 time, the Fire Department is at the scene and turns off
18 the water and mops up water damage, the fire is out and
19 everybody goes home. That's not true in a nonsprinkler
20 building.

21 In the report that I shared with you, I did
22 some computations based on the fire that was ongoing in
23 Jacksonville at a petroleum storage tank. And we
24 projected that 38 million gallons of water were used by
25 the fire suppression forces on that fire. That should

1 be corrected, because they did put that fire out a
2 little bit earlier, back to just a little bit over 30
3 million gallons of water.

4 What we're saying, if properties are properly
5 controlled, 90% of all fires we're using 280 gallons or
6 normally not more than 350 gallons of water versus the
7 tens of thousands of gallons of water that are used in
8 the fire suppression effort.

9 Many have seen pictures of aerial towers or
10 ladder trucks with those streams flowing water on a
11 major fire. That's 1500 gallons a minute or 90,000
12 gallons of water an hour. And I have personally been
13 in those aerial towers for three or four hours flowing
14 that amount of water, when a sprinkler system again would
15 have controlled that fire with just a minor amount of
16 water.

17 Changing hats, I also am President of the
18 Florida State Firemen's Association. And the fire
19 service community is very concerned about this issue.
20 Fire chiefs can no longer go to city commissions and
21 receive the fire apparatus and the firefighters that
22 they need to provide protection within their
23 communities. The dollar is no longer in city
24 government. It's not there.

25 The fire official has a choice: built-in fire

1 suppression, or firefighters and fire trucks. Many
2 communities have gone towards the route of requiring
3 built-in fire protection. For example, Sarasota
4 County, right now their fire protection portion of
5 their ad valorem tax there is a 50% reduction for
6 buildings that are equipped with a fire sprinkler
7 system because the county realizes the impact -- the
8 cost savings of fire sprinkler systems. But what's
9 happening is the rate being charged for that sprinkler
10 system is canceling out, if you will, any incentives
11 that are created by local government trying to control
12 growth.

13 Examples that many cities use is the ISO
14 rating system. The sister building across the street
15 to the Fletcher Building, the Larson Building, was
16 recently renovated; and during the renovation, a fire
17 sprinkler system was retrofitted. Prior to that
18 installation, the Insurance Services Organization, in
19 rating the fire suppression capabilities of the City of
20 Tallahassee, looked at that building and determined
21 that the needed fire flow was approximately 3,500
22 gallons a minute. Which equates, when you figure out
23 how much gallons a firefighter can manage in his
24 flowing water from the fire trucks and fire apparatus,
25 three fire pumpers and two ladder trucks. And the fire

1 service community's average cost of operating each one
2 of those trucks is \$500,000 a year.

3 Once that building has been equipped with a
4 fire sprinkler system, when ISO comes through the
5 community to determine the needed fire flow for fire
6 insurance ratings, they don't look at the building any
7 more. They no longer look at it because they know the
8 benefits of the fire sprinkler systems. They know that
9 there's, in essence, a minor significant water flow
10 versus tens of thousands of gallons required when a
11 building is not equipped with a fire sprinkler system.

12 The fire service community is very actively
13 pursuing fire sprinkler requirements statewide. In
14 fact, the State Fire Marshal's office and all of the
15 fire service interest groups are supporting legislation
16 this session that will require all new construction
17 three stories and above to be equipped with a fire
18 sprinkler system. We're doing it solely because we
19 know that we cannot provide the fire apparatus and the
20 firefighters to properly combat and control the fire.
21 The money is no longer there.

22 We view the rule as it's written as going
23 against our interests. We support the language that is
24 on Page 167 in Rule 465, but would like to add language
25 to that. The very last page of our report highlighted

1 the language that we'd like to add. We're not
2 disputing a charge for private fire protection loops
3 and hydrants. We understand a shopping mall like
4 Governor's Square Mall that there's fire demands as far
5 as eight-inch pipes, six-inch pipes and hydrants. We
6 understand and accept that.

7 But our concern is when they start charging,
8 in addition to that private main, sprinkler connection
9 -- sprinkler connections which significantly reduced
10 the demand on that waterworks company. We would like
11 to have that language to exclude the fire sprinkler
12 connections from the rate charge.

13 Also, this legislative session we have bills
14 that will address this issue. We feel that it's in the
15 best interest of the ratepayers to, instead of
16 consuming tens of thousands of gallons of water for
17 controlling a fire in a nonsprinkler building in lieu
18 of the 300 gallons, it's in their best interest. And
19 our thoughts and our thrust and our efforts, again, are
20 towards more mandated sprinklers and we feel that
21 that's, in essence, the proper route to go.

22 We want to save water. We want to save the
23 waterworks operational costs. We want to save lives.
24 We want to save the Fire Department operational costs.
25 And we view charging fees for water standing in that

1 sprinkler system that may not be used for five years or
2 ten years and when it is used it's 300 gallons average
3 use is not in the best interests of the ratepayers.

4 Our other legislation, we are trying to
5 establish a procedure where nonsprinkler buildings --
6 because it is the nonsprinkler buildings that is
7 creating the demand at that fire hydrant out at the
8 street, not the sprinkler buildings, it's the
9 nonsprinkler buildings -- the language that we have
10 prepared in draft will allow for charging a rate for
11 the nonsprinkler buildings. And we feel that's
12 appropriate. We feel that the people that are creating
13 the burden on the waterworks company should be paying
14 the rate and not the sprinkler contractor.

15 CHAIRMAN DEASON: Any comments from other
16 parties? Commissioners, questions?

17 MR. CRESSE: Mr. Chairman, could Mr. Hill
18 explain to us why this is included in his proposed
19 rule? I don't understand it exactly.

20 MR. HILL: I can explain exactly why it's in
21 the rules. Part of the attempt in this rule package,
22 we had a law passed last year or the year before that
23 said state agencies can't have nonrule policy. This
24 has been Commission practice for as long as I've been
25 in Water and Wastewater. And part of our process was,

1 when we go to agenda and there's an issue in front of
2 the Commission, if we pretty well know what the
3 Commission is going to do nine times out of the ten, or
4 whatever, that's policy and ought to be in a rule. And
5 that's what this is.

6 The Commission has long had this practice,
7 recognizing that there is some demand placed on the
8 utility and we ought to put some of the cost on the
9 cost causer, and so they've set the charge like
10 one-third of the base facility charge for that size meter.
11 And it's a common practice throughout the country. And
12 that's why it's in the rule package. We just want to
13 codify current Commission practice.

14 MR. CRESSE: The reason I ask, I don't think
15 we have this in our tariff, in SSU's tariff, it does
16 not exist. And because the Commission has been doing
17 it doesn't necessarily -- with all due respect, that
18 doesn't necessarily make it the right thing to do. Is
19 there any merit to the charge other than the Commission
20 has been doing it?

21 MR. HILL: I think the merit to the charge is
22 somebody has to pay for it, it's not free. So does the
23 general body pay for it? Should there be some help by
24 the buildings that are going in that are requesting
25 this private fire protection? Again, I mean, you know,

1 the utilities already provide fire protection at
2 hydrants throughout their system; this is private fire
3 protection.

4 MR. CRESSE: The base facility charge is now
5 graduated based upon the size of the line and the meter.

6 MR. HILL: Yes.

7 MR. CRESSE: And therefore, if they've got a
8 larger pipe going into the building because they want
9 greater fire protection, they're already paying for a
10 larger fee for that fire protection because the base
11 facility charge is already larger than it would be if
12 they had a smaller pipe; is that correct?

13 MR. HILL: No, sir. That's not correct.
14 They're paying for the availability of that much water
15 to go into that building regardless of what it's used
16 for. So, I mean, it's not like they got a certain size
17 pipe and a meter because they're planning to use this
18 -- I mean, that water is available to them and that's
19 why that base facility charge is there.

20 MR. CRESSE: But, if the pipe is no larger
21 with or without the sprinklers, why would you have an
22 extra fee because they put sprinklers in the building?
23 I don't understand.

24 MR. LOWE: Commissioner, or former
25 Commissioner, whatever. Mr. Cresse, it's my

1 understanding that most of these things come with a
2 separate line to the building from the main. In other
3 words, they're paying -- the line is sized to come into
4 the building for the domestic supply and there is a
5 separate line that comes in for fire service. So there
6 is extra demand placed on the water system whenever
7 it's put into use. Now, I could be wrong on that but
8 that is my understanding.

9 MR. CRESSE: In other words, there is no base
10 facilities charge at all if it's in a separate line?

11 MR. LOWE: Yes, sir.

12 MR. CRESSE: It only applies if there is a
13 separate line?

14 MR. LOWE: Yes.

15 (Simultaneous conversation.)

16 MR. CRESSE: I understand it now. I
17 understand it now because it is not quite clear that
18 this charge would only be applicable if you had a
19 special line coming in.

20 MR. SCHIEFELBEIN: However, it is my
21 understanding that the Commission has allowed private
22 fire protection service rates for lines that both
23 provide potable water and fire protection service.

24 CHAIRMAN DEASON: Let me ask for
25 clarification. You mean in a situation there's one

1 line that is used --

2 MR. SCHIEFELBEIN: Providing both.

3 CHAIRMAN DEASON: -- providing both purposes;
4 and then, in essence, there's a base facility charge of
5 1. -- well, one and one-third times what a normal
6 customer would pay who did not have a sprinkler system?

7 MR. SCHIEFELBEIN: I don't know how the math
8 quite works out. Sometimes these lines are oversized
9 for the purpose of providing both needs. And there are
10 certain methodologies that I do not think -- certainly
11 haven't been reduced to rule form. I've been just
12 learning about them the last six months myself, but
13 there are certain Staff practices in trying to convert
14 and make sure there is not an overcharge.

15 I think it's possibly incipient policy if
16 it's that far along, but I did want to point out that
17 private fire protection charges are being made by
18 utilities in the state of Florida through lines that
19 provide both services.

20 CHAIRMAN DEASON: Well, I can see in that
21 situation there may be a -- for lack of a better term
22 -- a double charge or an overcharge potentially.

23 MR. SCHIEFELBEIN: Potentially, yeah.

24 CHAIRMAN DEASON: But this rule does not
25 address that. This rule is -- or maybe it doesn't

1 clarify one way or the other whether it's for a
2 separate line that is devoted specifically for fire
3 protection as opposed to a customer who may choose just
4 to have fire protection and use one connection to the
5 utility for both potable water and for fire protection.

6 MR. HILL: And we can make that
7 clarification.

8 COMMISSIONER BEARD: Well, let me ask a
9 question. I construct a building five or ten stories
10 and there's a couple of fire hydrants outside in front.
11 I don't put any private fire protection in. What's my
12 base facility charge for fire protection?

13 MR. HILL: You don't have private fire
14 protection.

15 COMMISSIONER BEARD: I don't pay anything for
16 my fire protection.

17 MR. HILL: That's correct.

18 COMMISSIONER BEARD: I, in essence, get it
19 for free?

20 MR. HILL: You have fire protection provided
21 by the local government but you don't have private fire
22 protection because you have elected not to have that.

23 COMMISSIONER BEARD: Right. I shouldn't have
24 said "free." Perhaps, let me say that I have some help
25 from all the other customers on that system in paying

1 for my fire protection.

2 MR. HILL: Yes.

3 COMMISSIONER BEARD: Since it's built into
4 the overall rates.

5 MR. HILL: Yes.

6 COMMISSIONER BEARD: I'm subsidized. You can
7 even make that case, perhaps?

8 MR. HILL: We all subsidize each other in
9 that respect.

10 COMMISSIONER BEARD: Okay. But in this
11 instance, if I want to do something to provide
12 protection that perhaps, if you follow this logic, uses
13 far less water when it's needed, I get to pay a monthly
14 charge separate.

15 MR. HILL: If you would like extra
16 protection, yes, sir.

17 COMMISSIONER BEARD: Extra protection that
18 ultimately, if it works like it's supposed to work,
19 would cost the general body of ratepayers less money,
20 since I assume they pay for that however-many-thousands
21 of gallons are pumped out in the case of a fire. Is
22 that a fair assessment?

23 MR. HILL: No, sir. I don't believe that they
24 would pay for the gallons pumped out for the fire.
25 They're going to pay for the water that goes to their

1 meters.

2 COMMISSIONER BEARD: Well, who is going to
3 pay -- let's say we have a fire in my building, I don't
4 have fire protection. And we pump a couple hundred
5 thousand gallons through those fire hydrants to put out
6 that fire, who's going to pay for that water, treated
7 water?

8 COMMISSIONER CLARK: Is that part of the
9 unaccounted-for water, the allowance you make?

10 MR. HILL: Yes. Yes, it is.

11 COMMISSIONER CLARK: Which they do pay for in
12 the sense that we allow it to be recovered.

13 MR. HILL: We allow a certain amount to be
14 recovered. But again, a fire like that in a test year,
15 you know, we're going to look at that and say, "Well,
16 now, wait. Do you have a fire every year? And is this
17 an extraordinary circumstance, and so should we throw
18 that out?" So, I don't think so.

19 CHAIRMAN DEASON: Let me ask a question: I
20 think that the point Commissioner Beard is making is
21 that in either case there are costs being imposed on
22 the system. In one situation it's just an overall cost
23 which is just incorporated into the cost of providing
24 service and it's just paid for by all customers.

25 MR. HILL: Yes.

1 CHAIRMAN DEASON: The other is a cost which
2 is imposed by an individual customer and that customer
3 is required to pay for that. That customer is also
4 required to pay the overall costs that are being
5 imposed by the fire hydrant system and the occasional
6 use to that system.

7 MR. HILL: Yes.

8 CHAIRMAN DEASON: And the argument that is
9 being made is that, I don't know if it's right or
10 wrong, but the argument is that the person who has the
11 sprinkler system, the private fire protection, actually
12 imposes lesser costs on the system as a whole than the
13 person who from time to time may have to rely upon the
14 fire hydrant system, the public fire protection, not
15 the private.

16 COMMISSIONER BEARD: My point goes even
17 further than that. They impose less costs, and they
18 specifically incur that cost themselves when the water
19 is pumped if it is measured, as opposed to a
20 nonsprinkler building imposes a greater cost that --
21 you can flesh it out any way you want. But unless this
22 company is not going to earn a reasonable rate of
23 return, if we assume that, I'm assuming that the
24 general body of ratepayers are going to pay for that
25 water ultimately, one way or another.

1 CHAIRMAN DEASON: Haven't we already
2 established, though, that it would be unfair to place
3 this charge on the customer who just happens to have a
4 sprinkler system and that's just connected to his
5 single line from the utility and that one line is
6 providing all of the service?

7 MR. HILL: Yes.

8 CHAIRMAN DEASON: So that's not the purpose
9 of this rule? We may need to clarify that.

10 MR. HILL: Correct.

11 CHAIRMAN DEASON: The question is when there
12 is a separate connection to this system and it is
13 devoted specifically for private fire protection.

14 MR. HILL: Yes. And it may well be,
15 Commissioners, that one-third of the base facility
16 charge is not a correct rate. Again, and I believe
17 we've heard here as we have before, that there seems to
18 be no opposition to -- we realize there's cost getting
19 a main there, and you have to maintenance that, and
20 there's depreciation and there's a meter.

21 We can try to go in and detail all of those
22 costs for every individual customer and I can't help
23 believe that that's partially why the Commission has in
24 the past said, "We'll charge you one-third of the base
25 facility charge."

1 If you want to specify in the rule that we'll
2 have a flat monthly fee to cover the maintenance,
3 depreciation, et cetera, whatever expenses on
4 maintaining a line up to your building, and there will
5 be no gallonage charge should you ever use water if
6 your sprinklers kick in, we can do that. And if you
7 just want to say there will be no charge, we can do
8 that.

9 CHAIRMAN DEASON: Mr. Dewar?

10 MR. DEWAR: Yes, sir.

11 We feel that a distinction should be made
12 between the private fire protection systems, which is a
13 broad category, and fire sprinkler systems. Fire
14 protection systems include water loops, fire hydrants
15 attached to the water loops, but also standpipes that
16 go into the building. A standpipe and a host cabinet
17 in a hallway is absolutely no use in controlling that
18 fire unless someone is there to handle the hose. We
19 don't advocate that as a fire suppression item.

20 Fire sprinkler systems have proven themselves
21 a number of times. They control fires within
22 properties, and we feel that a distinction just for
23 that fire sprinkler system should be made. If you want
24 to charge fees for that standpipe system, if you want
25 to charge fees for that hydrant loop, we don't have any

1 problem with that; but we know that that fire sprinkler
2 system will control the fire and control the cost and
3 that's our objective.

4 CHAIRMAN DEASON: Well, let me express what
5 my concern is and it's a pretty simple one. The
6 implementation of it may be more difficult. It's a
7 simple one, and that is, if this particular
8 configuration of service imposes additional costs,
9 well, then, there probably should be a separate charge,
10 but only if those costs are greater than whatever is
11 embedded in the rates to start with for just general
12 fire protection.

13 And I don't know what the case is, but if
14 there is a situation where there are additional costs,
15 that this is a higher quality of service that's being
16 provided to the general customer, that there should be
17 an additional charge and it should somehow
18 approximately equate to what those additional costs
19 are.

20 And I know that from one system to another
21 those costs may vary, and that we're trying to simplify
22 things here, and I don't know if one-third is correct,
23 or one-fourth, or one-half or zero. But my desire
24 would be if there are additional costs, try to
25 reasonably quantify those and have a charge there. But

1 what I'm hearing is that there is an argument being
2 made that there are not additional costs being imposed
3 on a system as a whole by a customer who chooses this
4 type of service.

5 COMMISSIONER BEARD: Well, I think you can go
6 a further step. And perhaps in the hearing we need
7 more detailed information and testimony; because what
8 I'm hearing is not only are there not additional costs,
9 there are savings involved, on average, over a period
10 of time. Okay?

11 If this system -- let's forget the cost of
12 repairing a building that is destroyed versus not
13 destroyed. But let's just look at the number of
14 gallons pumped in an average fire where there's a
15 sprinkler system involved and where there isn't one.
16 In fact, there may be savings to the system. And if
17 there are savings, maybe we should be in something that
18 -- strictly from a water economic thing, forget the
19 social goods of not burning down buildings for a
20 moment. But if the data is there and we can provide
21 the data, then the charge certainly ought to be zero.

22 And I'll isolate on the sprinkler system,
23 because the logic is there to me as opposed to having
24 to get somebody to that hose that's in that building
25 and run that hose out. I'd get it turned on.

1 I don't know if there are savings there or
2 not. But from that standpoint alone, if we can
3 document the savings are there, then the cost should
4 certainly be zero. Perhaps there should be -- and I
5 don't know, I can't even imagine what kind of incentive
6 you would use. Maybe it ought to be a disincentive on
7 other forms. I don't know. But it's worth looking at
8 and that's something that I'd like to look at in the
9 hearing that we do.

10 Obviously, I need the appropriate data to try
11 to make that decision. But on the surface, if I
12 believe what I'm hearing, the cost goes beyond zero, it
13 goes to some negative amount in the long term on
14 average.

15 Okay. Any last comments before we break for
16 lunch?

17 MR. HEIL: Commissioner, I'm Philip Heil,
18 Vice President of Jacksonville Suburban Utilities
19 Corporation.

20 The utility does incur costs with these.
21 First of all, it is my understanding -- and I, if
22 necessary, can be corrected. But, it's my
23 understanding that today's codes require a separate
24 connection for fire protection and the domestic, so
25 that you have two connections today going into any

1 building that is sprinklered. Years ago, and I'm going
2 back quite a ways, you could do it through one
3 connection; but today's building codes and so forth do,
4 to the best of my knowledge, require two connections.

5 The utility has to monitor that connection;
6 because it is not unusual to find that over a period of
7 time, while it was originally intended and installed as
8 fire protection, somewhere along the line, a plumber or
9 alterations are made and it's possible that a
10 cross-connection can be made and water used out of the
11 fire protection system for domestic use. So the
12 utility does, through requiring what is called a
13 detector check on such devices, have to monitor that
14 device to be sure that doesn't happen.

15 You also have to be concerned with the fact
16 that it is a cross-connection, and that again has to be
17 monitored.

18 So, there are costs to the utility company
19 related to providing that service, other than the fact
20 that it may use 280 gallons or it may use 3,000, there
21 are still some basic costs involved in providing that
22 service.

23 COMMISSIONER BEARD: Have you made an --
24 obviously, you've made some effort to understand the
25 costs involved. Have you made any calculations or

1 efforts to understand the savings associated with those
2 kind of systems?

3 MR. HILL: No, sir. Not at this point we
4 haven't.

5 COMMISSIONER BEARD: And that's all I'm
6 suggesting is that if I believe anything that I've
7 heard today, there are some savings. Perhaps you ought
8 to try -- if we can't quantify them, then our hands are
9 reasonably tied under current law. But to the extent
10 that we can quantify, even if it's on average, and we
11 have reasonable statistical data to support that, we
12 ought to weigh the two against each other. That's all
13 I'm suggesting.

14 And, you know, you're in a fairly
15 metropolitan area and I suspect there's more than one
16 fire a year there. I mean, that's all I'm saying.

17 CHAIRMAN DEASON: Well, I think we've
18 identified this is an area for some clarification and
19 perhaps some additional information. I would be
20 inclined just to leave the proposal as is and then we
21 can discuss it further at the hearing.

22 COMMISSIONER BEARD: Yeah. I think we've got
23 to have some more data and I think that places some
24 burden upon you to get with Staff and show them. I
25 mean, when you quoted a number of statistics, but I

1 think we'd like to see where they came from. We've got
2 to have some defensible position and some reliability
3 on the data to be able to stand the record on it. So
4 that's my advice.

5 CHAIRMAN DEASON: Okay. I think we've
6 concluded 465. We're at the noon hour. It's my
7 intention to break for lunch. Come back at 1:00, and
8 we'll begin back with 039 I believe is the next rule.
9 See you at 1:00.

10 (Thereupon, lunch recess was taken at
11 12:00 noon.)

12 (Transcript continued in sequence in Volume II.)

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