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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

AFTERNOON SESSION - VOLUME II

Pages 104 through 233

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

DATE: **RECEIVED** Thursday, January 14, 1993
Division of Records & Reporting

TIME: **JAN 27** 1993 Reconvened at 1:00 p.m.
Adjourned at 4:00 p.m.

Florida Public Service Commission
PLACE: FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE
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P R O C E E D I N G S

(Reconvened at 1:00 p.m.)

(Transcript follows in sequence from Volume I.)

CHAIRMAN DEASON: We'll come to order. We'll begin with Rule 039.

MR. HILL: 039, Commissioner, we're just trying to clarify and distinguish between a name change and a transfer. And we're doing this now -- and make sure they realize they do have to file an application for a name change.

CHAIRMAN DEASON: Okay. Any comments? Questions? 060?

MR. HILL: 060, we're merely pointing out to the resellers that they do have to adhere to the requirements of examination and testing of meters. And we're dropping some language on the landlord/tenant that we really have found that most of those articles don't say the specific words we're looking for, even though they accomplish the same thing. So it's just cleanup, basically.

CHAIRMAN DEASON: Comments, questions? 090?

MR. HILL: 090, we're just putting in here for abandonment some information that we would like and that we would like to see in the notice.

We're doing one thing that I have to bring to

1 your attention. The Commission voted this, but they
2 did it only at one time. And we've put in the rule
3 that a governmental agency that becomes a receiver will
4 be exempt from the Commission as far as our regulation.
5 This Commission has only done that one time; but from
6 the discussion at that particular item at agenda, I
7 felt compelled to put this in the rule.

8 CHAIRMAN DEASON: Now, the discussion that
9 was done one time and, as I recall the discussion of
10 the issue, there was concern about whether a
11 municipality serving outside of its boundaries should
12 be exempted from the regulation. That was the concern
13 of the Commission; is that correct?

14 MR. HILL: Yes.

15 MR. SCHIEFELBEIN: I have a question on that.
16 This was discussed at one of the early workshops, and I
17 got my answer, but maybe I'll get a better answer
18 today.

19 In the event that -- under what is laid out
20 there, in the event that the government receiver were
21 to obtain an exemption, the certificates would be
22 canceled. The government agency is acting as receiver
23 in a temporary capacity; and as often times as not,
24 they would want to, one would think, unload that system
25 eventually, perhaps back to private hands, at which

1 point you would have the need for an all new original
2 certificate, since the prior certificates would have
3 been canceled -- which is a heck of a lot of
4 bureaucracy regulation and so forth to go through.
5 While under a normal situation, you wouldn't have a
6 problem where someone operated it temporarily as a
7 receiver, it returned to private, permanent hands, and
8 you would resume under the previous certificate,
9 perhaps involving just a transfer.

10 I don't know if you want to inject that much
11 regulation on someone buying from a government receiver
12 or not. The answer I got last time was, "That's
13 exactly what we think ought to be done," but I think
14 you ought to be aware that you're doing that if you do
15 cancel the certificates.

16 MR. HILL: Mr. Chairman, there has been some
17 time between those workshops, and now, and perhaps I
18 have mellowed a little, and I could handle a
19 grandfather certificate.

20 COMMISSIONER LAUREDO: A what?

21 MR. HILL: A grandfather certificate
22 application. We'll go ahead and grandfather them back
23 in and give them certificates; and then at some point
24 down the road when they come in, the Commission can go
25 ahead and take a look at everything.

1 CHAIRMAN DEASON: Well, let me express a
2 concern. Under the grandfather certificate process,
3 does the Commission have the latitude to look at the
4 financial viability of the utility which is requesting
5 the grandfather certificate?

6 MR. FEIL: Commissioner, I think what Mr. Hill
7 is suggesting is that we do something akin to a
8 grandfather certificate.

9 MR. HILL: Yes, I --

10 CHAIRMAN DEASON: As I understand, part of
11 Staff's rationale for this is that we want to at least
12 give an incentive or make it easy for a municipal agency
13 or city to acquire a water or wastewater facility. And I
14 can understand the need for that.

15 MR. HILL: Yes.

16 CHAIRMAN DEASON: Of course, the other side
17 of that coin is there is concern about customers being
18 served by an entity to which they have -- with no
19 regulation, and that they have no say-so as far as the
20 entity is concerned.

21 MR. HILL: Yes.

22 CHAIRMAN DEASON: But I can understand the
23 need for having a city acquire a system.

24 MR. HILL: Yes.

25 CHAIRMAN DEASON: But if the city then is

1 going to relinquish that and not take full control and
2 keep it on a long-term basis, seems to me that we have
3 to take into consideration whether the acquiring entity
4 is going to be financially viable. We may be going
5 from a worse situation than we had to start with.

6 MR. HILL: That's true. And a grandfather
7 would really not allow you that opportunity. A
8 grandfather recognizes that the utility currently
9 exists and they have certain rates and charges in place
10 and we grandfather all of that in.

11 CHAIRMAN DEASON: Okay. It seems to me, then,
12 your previous answer to Mr. Schiefelbein may be correct,
13 that that's something we would want to take a look at.

14 MR. HILL: Yes.

15 MR. SCHIEFELBEIN: Well, there may be a middle
16 ground there. As opposed to requiring somebody to start
17 all over again with an original certificate, which is the
18 most extensive review you have, as being one extreme, the
19 other extreme being a grandfather where there is no
20 review, you might handle it akin to a transfer, which does
21 give you full authority to consider the financial
22 viability and the ability of the purchaser without
23 requiring a reinventing of every wheel of the tariff
24 justification for the entire utility. I think there is a
25 middle ground there.

1 MR. FEIL: Well, part of the problem there
2 would be, again, if the governmental entity increases
3 the rates and charges during the period it's exempt,
4 the question then becomes what rates and charges does
5 the new buyer get? And under a transfer situation,
6 they would grandfather in the governmental entities.
7 And with a grandfather, if you consider it as a strict
8 grandfather, it would be, again, the rates and charges
9 that the governmental entity was charging.

10 So no matter what, you're still going to find
11 yourself in a quandary over what rates the buyer will
12 have to pay after he buys from a governmental entity.

13 COMMISSIONER LAUREDO: May I ask you a
14 question? Your concern goes on the step that seems to
15 be beyond this step, which is the transfer from the
16 government entity as the receiver to a private
17 developer.

18 Is there another rule that takes care of
19 that? Because it's a timely problem. We already had
20 at least one case I can remember, and you'll see more,
21 I believe, with the world's largest landowner now is
22 the RTC. And we want to be able to -- we shouldn't
23 stand in the way to facilitate a return to private
24 sector and get government out of messing up an already
25 bad situation and make it worse. And we should be part

1 of the solution.

2 So it's something that may be just a window
3 of time where it would be relevant, maybe two or three
4 years, and after that it wouldn't be such a big
5 problem. But I don't see where that is addressed in
6 this. This is merely the abandonment and not the
7 subsequent act of selling to private; and maybe that's
8 something that can be included in there, but I
9 certainly think there should be utmost flexibility to
10 facilitate the transfer back to private sector.

11 MR. HILL: Yes. One thing that comes to mind
12 is 25-30.034 is sort of an in-between where you have
13 utilities that are currently in existence and charging
14 ahead. 034 really goes to those utilities that we
15 suddenly find. They're not grandfathers; they're not
16 original certificates. They've been out there
17 operating and, through a customer complaint or
18 whatever, we suddenly found that there's a utility that
19 has been in existence for a while. And it may well be
20 that 034 would take care of all the concerns. It's not
21 an original certificate with that burden; at the same
22 time, it allows the Commission the opportunity the look
23 at the utility and see if they should be in operation
24 the way they are proposing.

25 COMMISSIONER LAUREDO: I am most concerned --

1 and it was reflected in the case in Ocala, that I
2 remember, that I did not participate because of I
3 disqualified myself -- with the arrogant style of the
4 RTC in taking over and kind of calling forth the super
5 sovereignty rights they have. Those I like to be very
6 strong on.

7 MR. HILL: Yes.

8 COMMISSIONER LAUREDO: I like to have
9 flexibility on the inside of it; that is, when it goes
10 from them to the private sector.

11 MR. HILL: Yes.

12 COMMISSIONER LAUREDO: Have you had many of
13 these, or --

14 MR. HILL: No.

15 COMMISSIONER LAUREDO: That is the only one I
16 can recall.

17 MR. HILL: We know of one maybe in 15 years
18 where it's actually come in. What we're talking about
19 here is the city or county becoming a receiver and then
20 it suddenly coming back from them into private
21 industry, as opposed to the RTC, you know, taking a
22 private industry, running it for a while and selling it
23 to someone else. We know of one in 15 years that has
24 actually come from a city or county and turned into an
25 IOU. So it's not something we've seen a lot of in the

1 past.

2 COMMISSIONER LAUREDO: Yeah. But it would be
3 more relevant, it seems to me, in the times we're
4 living to have my example than your example. I think
5 you will see probably, hopefully not, more RTC
6 repossessions that may include utilities.

7 MR. HILL: Yes. And we have purposely stayed
8 away from the RTC question because that is something
9 that the Commission is concerned about. And this is --
10 I certainly would not come to the Commission and say,
11 "The RTC has taken over someone, and they are a
12 governmental entity and, therefore, should be exempt."
13 That would not be my recommendation at all. So we have
14 purposefully tried to stay away from the RTC with this
15 and deal only with the abandonments that we have dealt
16 with historically.

17 COMMISSIONER LAUREDO: Okay.

18 CHAIRMAN DEASON: What normally happens when
19 a municipality becomes a receiver for a system? What
20 normal course of history follows after that?

21 MR. HILL: Normally, the city goes ahead, or
22 the county, and eventually owns the system.

23 CHAIRMAN DEASON: That's what normally
24 happens?

25 MR. HILL: That's what normally happens.

1 CHAIRMAN DEASON: That's what my
2 understanding is.

3 MR. HILL: Yes.

4 CHAIRMAN DEASON: During the time that is
5 being managed by a receiver, i.e., the city, is that
6 receiver in that situation free to set rates at
7 whatever level they see fit?

8 MR. HILL: The city or county would be free,
9 because they are exempt from our jurisdiction, to do
10 what they chose to do. A receiver that's not a
11 governmental entity is not exempt and then they have to
12 operate under our requirements. They would have to
13 file with us for rate relief and that sort of thing.

14 Again, the Commission has only voted once to
15 do it. There were some reservations at the time. Our
16 including this in the rule was simply to try to
17 encourage cities or counties to become receivers to the
18 extent that they could see -- and that really that was
19 kind of our hope. If they can see themselves getting
20 out there and eventually serving that territory, go
21 ahead and move in, you're not constrained by the
22 Commission and their regulatory burden; and go ahead
23 and own and operate it as a receiver and, hopefully,
24 eventually as the owner.

25 CHAIRMAN DEASON: That's what we're trying to

1 encourage.

2 MR. HILL: Yes, sir.

3 CHAIRMAN DEASON: Okay. And I can see the
4 need for that. It is troublesome, you know, to
5 realize, though, that you're relinquishing jurisdiction
6 and you're basically putting those customers at the
7 mercy of the municipality. But I guess you have to
8 have a little bit of faith that the municipality is
9 going to treat those customers fairly.

10 MR. HILL: And, again, you know, recognizing
11 that the county, should they desire, could go ahead and
12 take jurisdiction and this agency would relinquish
13 jurisdiction anyway.

14 MR. SCHIEFELBEIN: Commissioner, I think that
15 -- excuse me, did I cut you off?

16 I think that if a government entity is acting
17 as a receiver, I think so long as they're acting in
18 that capacity, their rate-setting ability is subject to
19 the circuit court judge's review. I don't know if
20 Staff has had different experiences from that, but I
21 think that would apply for the most part in any sort of
22 a receivership under the abandonment statute.

23 UNIDENTIFIED SPEAKER: That probably would be
24 true.

25 CHAIRMAN DEASON: So you're saying there is

1 some oversight?

2 MR. SCHIEFELBEIN: Well, it varies a great
3 deal. I have only been involved in any aspect in only
4 a few; and those that I've seen, there is a great
5 variation as to how much responsibility the judge may
6 take, how much he'll get involved in informing himself
7 and making an informed decision. They certainly have
8 the power to do so and their motivation sometimes vary.
9 And that's private or public receiver.

10 CHAIRMAN DEASON: Any other comments or
11 questions? Chuck, do you feel comfortable, then, with
12 going forward with what's there?

13 MR. HILL: Yes, sir. And I will -- it may
14 well be that the 034 is the route to go. It allows the
15 Commission the latitude but it doesn't require the
16 utility the full-blown original certificate.

17 CHAIRMAN DEASON: Well, I've expressed my
18 concern is that I don't want to have a situation where
19 there's a need for a receiver, the city comes in as
20 receiver, and then they want to relinquish that and
21 have another investor-owned utility take over those
22 operations, and that investor-owned utility is no more
23 financially viable than the one that went into
24 receivership to begin with.

25 MR. HILL: Yes.

1 CHAIRMAN DEASON: so we need some type of
2 oversight in that process. Okay. I'm sorry. Go
3 ahead?

4 MR. HILL: 110.

5 CHAIRMAN DEASON: Yeah, 110.

6 MR. HILL: 110, I need to point this out to
7 you, as well. I believe it's a simple rule. What
8 we're trying to do is expand what we have in Tim's
9 division in AFAD, where a utility has to reimburse us
10 if we have to travel out of state to look at their
11 records.

12 We're doing it a little bit differently; and
13 that is, we're expanding it, first of all, for any
14 trips we have to make out of state, not just for
15 audits. But we're also saying that it's the increase
16 in cost. And it seems pretty easy to me.

17 I guess the question is how would you
18 determine the increase in cost? We know from the
19 Commission directory in Records and Reporting what
20 their business address is here in the state. We can
21 determine exactly what it would cost to go there and
22 exactly what it would cost to go to where their records
23 are, and the difference can be reimbursed by the
24 utility; and those we put in the rule would not be
25 allowed in rate case expense.

1 CHAIRMAN DEASON: Isn't that contrary to what
2 we just discussed the other day in our legislative
3 package?

4 MR. HILL: It's only to the extent that for a
5 narrow area in the auditors traveling out of state you
6 have said yes, you're paying the expense. This is
7 different than that, I don't know that it's contrary.

8 COMMISSIONER CLARK: This is in addition to
9 it. My concern is if we should do it for water and
10 sewer, we should do it for the other ones.

11 I personally feel, is there a statute or a
12 part in the rule book that deals with sort of
13 Commissionwide procedure with respect to audits and
14 things like this that this would more properly go in?

15 What I'm saying this may be a good idea. If
16 it's a good idea for water and sewer, it's a good idea
17 for the other utilities; and this type of rule, I
18 think, should be one across-the-board. And if it's
19 across-the-board, then my question is: Do we have the
20 same rule in every substantive chapter with respect to
21 telephones and electric, or do we do one rule?

22 MR. HILL: The answer is no. We have a rule
23 that covers Tim's shop, the auditors in that function.

24 COMMISSIONER CLARK: Okay.

25 MR. HILL: This particular rule is covering

1 if I have to send rate analysts, accountants or
2 engineers out of state, then I want reimbursed for that
3 increase in costs, not just because you're going for an
4 audit. If we have to send them up there for a look at
5 their books and records for whatever reason, then I --

6 COMMISSIONER CLARK: Should the same
7 rationale apply in telephones?

8 MR. HILL: I believe that it should, but
9 that's just my personal opinion.

10 COMMISSIONER LAUREDO: Commissioner Clark,
11 will you stop being rational and orderly? That will
12 destroy the whole logic of regulation.

13 COMMISSIONER CLARK: Mr. Talbott, did you
14 want to say something?

15 MR. TALBOTT: I would say in theory that
16 Chuck is right. It's the incremental cost that they
17 really ought to pay, so that the other utilities that
18 pay the same assessment fees aren't subsidizing them
19 because of a business decision they made to keep their
20 books and records out of the state. We didn't pursue
21 that in the other industries, we didn't pursue that in
22 the legislative package because it's hard to quantify.
23 Chuck seems to maybe have a difference of opinion that
24 he wouldn't have difficulty quantifying it. You know,
25 that's a --

1 COMMISSIONER CLARK: The ultimate cost-causer
2 theory, right?

3 MR. TALBOTT: Right.

4 CHAIRMAN DEASON: How much detail --

5 MR. TALBOTT: The theory is right. It ought
6 to only be the incremental cost, because that's basis
7 for wanting that authority is you don't want --
8 everyone pays the same assessment fee and it isn't fair
9 for one utility's costs to be a lot higher due to a
10 business decision they have made. They ought to have
11 to pay that incremental difference.

12 CHAIRMAN DEASON: How much detail are we
13 going to go into? Are you going to say, "Look at the
14 analyst's time, additional travel time, as opposed to
15 just the additional airline ticket cost"?

16 MR. HILL: Travel, motel and meals,
17 straightforward.

18 COMMISSIONER CLARK: But you can continue to
19 extend that argument to the notion of "Well, if it
20 takes us more time to deal with these little -- because
21 of their business decision to remain little or remain
22 small, they are more difficult for us to regulate. We
23 spend and inordinate amount of time as opposed to those
24 that are better run."

25 I mean, you could take this to extreme, and

1 I'm not sure that we shouldn't just deal with the audit
2 only at this point.

3 MR. HILL: I guess my difficulty with that
4 would be, again, we barely cover costs in this
5 industry. And the way we've set this up is the utility
6 may not recover that cost from the customers. That
7 utility has to eat that increment. As opposed to the
8 way it's set up now in Tim's rule, I mean, that's a
9 rate case expense and they're going to recover it from
10 the customers.

11 So, again, you know, I don't want to have to
12 send somebody up there and back and not be able to
13 recover my costs because we've confined it to the
14 auditors, because now I'm spending more money to
15 regulate this utility and I'm barely covering my cost
16 anyway.

17 COMMISSIONER CLARK: How often does this
18 happen?

19 MR. HILL: Two or three times a year.

20 COMMISSIONER CLARK: And, see, I think the
21 number of times it happens, say, in telephones has got
22 to be greater than that. I mean, I'm not sure if two
23 or three times a year justifies this kind of thing.

24 MR. HILL: I understand, again, our revenues
25 exceed our costs by \$400,000; and in this industry,

1 we're close, and so every dollar --

2 COMMISSIONER CLARK: I know.

3 MR. HILL: But, again, whatever your pleasure
4 is. I did this because -- in fact, I've done it in the
5 past. And I've told utilities, "You owe me money
6 because I'm sending Staff out of town," and they've
7 paid. They've said, "I don't know where you're getting
8 the authority to do that, Chuck, but we don't want to
9 be sticks in the mud, so we'll go ahead and reimburse
10 you." And, in fact, it's really Tim's shop that gets
11 reimbursed for audits.

12 But again, whatever your pleasure is. I
13 don't mean to cause trouble with it, it just certainly
14 seemed a good idea at the time.

15 MR. SHREVE: Commissioner, here again, that
16 cost goes beyond just the Staff of the Public Service
17 Commission. If we're in a rate case and the company
18 has made a business decision to keep those records out
19 of the state, in our case, we're not paid, our expenses
20 are not paid by the ratepayer but by the taxpayers out
21 of the general fund.

22 So basically, they make a business decision,
23 then it's costing the State of Florida and our office
24 to do that. So the same rationale goes: if they're
25 going to be allowed to make this business decision,

1 then I think they should cover the costs incurred when
2 we have to take action to go out of the state rather
3 than having the benefit of those records here.

4 COMMISSIONER LAUREDO: I think there seems to
5 be an agreement on that point. I think where we lost
6 the discussion was Commissioner Clark's question I
7 thought arose out of, "Why are we not consistent across
8 the other industries," not arguing the merits of it. I
9 guess the answer is, "That's the way the shop is run."

10 MR. SHREVE: And it does go a lot more --
11 water and sewer may just be -- well, I think it's
12 probably in our case, where we're doing discovery, more
13 than just two or three times a year.

14 COMMISSIONER CLARK: I was thinking it's more
15 of a problem in the telephones.

16 MR. SHREVE: It is. In telephones we're out
17 a great deal. The electricians aren't nearly that much of
18 a problem.

19 COMMISSIONER CLARK: The telephones are the
20 problem.

21 MR. SHREVE: Right.

22 COMMISSIONER CLARK: To that extent, I think
23 we ought to leave the rule -- one of two things. I
24 think we ought to take it out and try and pursue the
25 legislation, or do it just for the audit across-the-board.

1 And then we should look at it in a separate docket having
2 to have applicability across industry. And I can tell you
3 it's not high on my agenda.

4 COMMISSIONER LAUREDO: Isn't there an implied
5 obligation? Does it have to be codified in a rule? I
6 mean, isn't it a normal business procedure that if that
7 happens, they reimburse you? I mean, do we have to
8 legislate every action?

9 MR. SHREVE: Particularly if you --

10 COMMISSIONER LAUREDO: Have we had experience
11 where they say, "No, we have the records and let's let
12 them, we're not going to pay you for getting them"?
13 It seems to me if that ever happens, it should come up
14 before this Commission. It violates something, it's
15 not a rule. It violates the common sense of the
16 relationship between the regulator and the regulated.
17 And I just see, again, my common sense tells me we
18 don't need a rule, but maybe we do. Maybe that's --

19 COMMISSIONER CLARK: Well, I think the fact
20 that you're asking the question, it seems to me that we
21 need to look at the way the situation is now and how is
22 it handled and is there a better way to handle it?

23 I mean, what Chuck is suggesting is that they
24 not be allowed -- that incremental costs be something
25 that is not going to be included in the cost of

1 service. It has some appeal to me, but I really want
2 to think about it a little bit more. There could be a
3 situation, for instance, with the telephone companies
4 where it's cheaper to go to Atlanta than it is to
5 Miami; and some of us would rather go to Atlanta than
6 Miami, I mean, under certain conditions. (Laughter)

7 COMMISSIONER LAUREDO: Wait a minute.

8 MR. SHREVE: Kansas City this time of year
9 isn't so hot.

10 COMMISSIONER CLARK: You're right. But I think
11 that bears exploration in a sort of generic way.

12 MR. SHREVE: Perhaps we could set something
13 up so that if there is a cost incurred because the
14 company makes a decision to keep their business records
15 out of the state that we could come to the Commission
16 and say, "Okay, we've incurred this cost. We would
17 have incurred so much if we went to Miami or Atlanta,
18 but we went to Kansas City." We go to Chicago,
19 Detroit, Minneapolis; and if we can come in and justify
20 that to the Commission and --

21 COMMISSIONER CLARK: It's a bigger problem
22 than --

23 MR. SHREVE: -- anyone, anyone, well, depends
24 on the parties. But if you can justify the fact that
25 you have incurred that cost because of a decision made

1 for their convenience, then it could be reimbursed
2 outside of the rate case.

3 COMMISSIONER CLARK: And one of the things that
4 I get concerned about is the cost of sort of making them
5 pay the incremental amount, all the administration and
6 stuff like that, it may not be worth it.

7 MR. TALBOTT: Yeah. In fact, generally
8 speaking, there's two ways the state commissions are
9 funded. One of the ways is the way we operate except
10 we have this one little exception. And that is
11 everybody pays a uniform, you know, assessment fee of
12 some type that goes into the trust fund; and then, as
13 we expend the money, it's taken out of the trust fund.

14 There are some states that, in fact, bill
15 each individual utility they regulate their actual cost
16 of regulation. And they tell me it's an accountant's
17 nightmare, you know, in trying to calculate what that
18 is, but that's the way they're set up to be funded.
19 Each utility has --

20 COMMISSIONER CLARK: That is the logical
21 extension of what Chuck has suggested.

22 MR. TALBOTT: Yeah. What we have done is we
23 use the other. It's a lot simpler, everybody pays this
24 same fee. We had this one exception for the audits.
25 And the reason it is just for audits is I pushed it

1 when I was Accounting Director and all, you know, we
2 were responsible for the audit.

3 COMMISSIONER CLARK: Well, typically you
4 would stay up there for an audit longer than other
5 situations, right? I mean, --

6 MR. TALBOTT: Conceivably so. I know of one
7 instance where we tried to collect the money; we
8 weren't really auditing, it was a deposition. And I
9 think both we sought reimbursement both for Shreve and
10 for us and --

11 MR. SHREVE: You must have gotten the money.
12 (Laughter)

13 MR. TALBOTT: No. Our attorneys ended up
14 saying we really didn't have the authority to do that,
15 the rules said for audits and that wasn't an audit. So
16 we didn't pursue it. We billed them and then, you
17 know, we never -- they refused to pay and we never did
18 pursue it.

19 COMMISSIONER CLARK: Yeah. And even if you
20 billed them, didn't they pass that on in the cost of
21 service?

22 MR. TALBOTT: Yes.

23 CHAIRMAN DEASON: What exactly are we
24 proposing in the legislative packet? I know it has to
25 do with auditors.

1 MR. TALBOTT: We have a rule, and we're
2 simply proposing statutory authority that makes it
3 clear we have authority to have that rule.

4 CHAIRMAN DEASON: So then would we have the
5 authority to propose this rule? Because this goes
6 beyond auditors.

7 MR. TALBOTT: That's a very good question.
8 There is a question whether we have the authority to
9 require the utilities to pay the out-of-state costs
10 from the audit when the financing scheme is set up that
11 they pay a flat utility assessment fee, you know. Some
12 people argue, "We've already paid that, that's supposed
13 to cover all of our costs. You're double dipping."

14 CHAIRMAN DEASON: Okay.

15 MR. SHREVE: Commissioner, I think one thing
16 you can do. I think you clearly have the authority to
17 have them keep their books and records in the state of
18 Florida. So just make it voluntarily on their part
19 that if they want to keep them out of the state they're
20 going to pick up the costs and expenses.

21 COMMISSIONER CLARK: Isn't that how we did it?

22 MR. SHREVE: I've never had any utility
23 volunteer to have us come in -- or pay our expenses.

24 COMMISSIONER CLARK: No. But I think the way
25 we -- because we have the ability to prescribe the way

1 they keep their books and records, one of the items or
2 the criteria is that you will keep it in state; if you
3 choose to keep it out of state, then you're going to
4 pay the incremental cost. And one of the other reasons
5 for having the statute is to make it clear that there
6 is no gift-giving going on here by the reimbursement.

7 MR. TALBOTT: Well, be sure you understand
8 just because the cost of us going out of state to do
9 the audit would be included in the cost of service
10 would not necessarily mean the rates would be higher.
11 Because a lot of times the reason the business decision
12 is made to keep the books and records there is that
13 it's more efficient and it costs less, so that one
14 offsets the other.

15 MR. HILL: Mr. Chairman, I would just have to
16 add that since the thrust of this is to cut costs and
17 streamline and that, if it's going to end up being an
18 issue as to what the costs were and that and then be an
19 issue in every case, I would just assume just strike
20 this whole rule from there and move on.

21 CHAIRMAN DEASON: I don't object to that.

22 COMMISSIONER CLARK: Mr. Chairman, that would
23 be my preference, because I think there is more to be
24 considered than just water and sewer.

25 COMMISSIONER LAUREDO: But then we're not

1 going to have the opportunity to have a new form.
2 We're going to have a form they call a differential,
3 out-of-state differential form with a mathematical
4 formula and everything else.

5 COMMISSIONER CLARK: And you want that, huh?

6 COMMISSIONER LAUREDO: Oh, yeah, sure. I
7 think we need another form.

8 COMMISSIONER CLARK: It's consistent with
9 your --

10 COMMISSIONER LAUREDO: You already have that
11 prepared, don't you?

12 MR. HILL: Pretty much.

13 COMMISSIONER LAUREDO: I don't know. I think
14 it's --

15 MR. HILL: I'll just drop 110 out of it.

16 CHAIRMAN DEASON: Let's put it this way: Come
17 March 5th, if we look at this again, if this is not here,
18 this is one Commissioner that won't be disappointed.

19 MR. HILL: Great. (Laughter)

20 COMMISSIONER LAUREDO: On a serious note, if
21 it happens -- and since you do cross-industry
22 supervision, I assume that -- I happen to think that
23 there is an implied responsibility doing business in
24 Florida, keeping the records in Florida; and normally
25 reasonable men work these things out without need for a

1 rule. If it ever becomes a problem, I think you are
2 suggesting just bring it up to our attention and we can
3 deal with it. In other words, we don't want it to be
4 used as a tool to make our jobs more difficult, I'm
5 sure nobody wants to do that.

6 CHAIRMAN DEASON: Okay. 111?

7 MR. HILL: 111 is just clarifying that an
8 exemption has to be approved by the Commission.

9 CHAIRMAN DEASON: Comments? Questions? 117?

10 MR. HILL: 117 is just trying to get
11 consistency with the accounting for pension plans.

12 CHAIRMAN DEASON: Comments? 135?

13 MR. HILL: 135, we are adding the
14 requirements that utilities keep Chapters 25-9 and
15 25-22 of the rules and Chapter 367 of the statutes.
16 There were some comments on this, the rule says current
17 copies of these. The industry was concerned as to how
18 they were going to get current copies.

19 It seems pretty straightforward. In my mind,
20 the Commission ought to mail them to them. I mean, we
21 maintain them, we have them, we may as well just send
22 them copies. Our long-run goal here is -- all of these
23 tariffs that we have, and there are thousands in this
24 industry, duplicate language that are in these rules
25 and statutes. And our long-run goal is we're going to

1 pull all that stuff out of the tariff so the tariff
2 ends up being a list of rates and charges. And they
3 can look at the statutes and the rules right there, and
4 the rates and charges, and overall it will be more
5 simplified, we hope.

6 CHAIRMAN DEASON: Comments?

7 MR. SCHIEFELBEIN: Yes. Commissioners, the
8 Waterworks Association opposes this requirement. We
9 would like to know what's done, what's required of
10 telephone, electric, and other regulated industries. I
11 don't know the answer to that.

12 COMMISSIONER CLARK: Do you want us to do
13 your research?

14 MR. SCHIEFELBEIN: No. I will be glad to
15 report back to you on that. But I would suspect that
16 this proposal is specific to water and sewer. I would
17 suggest that a water and sewer utility office is not a
18 public library, and I don't think we should have the
19 obligation of making available all of these
20 information, all these documents, current statutes,
21 current rules; it's overkill.

22 Certainly, we can have something where these
23 are made available on request to customers from the
24 Commission. I have a hard enough time myself keeping
25 track of what's current and what's not -- particularly

1 in rulemaking, obviously, not in statutes. And I think
2 it's a bit much, particularly in dealing with the
3 smaller utilities, to expect to be kept current on
4 that.

5 There is no obligation written in the rule
6 that the Commission will provide those. And I really
7 think that we're getting -- it's very well-intended, it
8 does have a positive effect, but I think it's a little
9 overkill.

10 Also, the requirement, I believe you retained
11 the requirement of system maps?

12 MR. HILL: Yes.

13 MR. SCHIEFELBEIN: There might be differences
14 of opinion on this in the industry, but system maps are
15 different things to different people. And what some
16 utilities consider system maps are themselves not even
17 kept in utility offices, they're more apt to be kept at
18 utility plant treatment sites and so forth. And it's
19 not something that could be -- if you're dealing with a
20 fairly involved system -- it's not very practical to
21 make those available to people. It's not something you
22 want to have available in a library setting when
23 perhaps you'll need them for your own purposes.

24 But, I think that this is sort of, just as
25 with the notice requirements, I think absent some

1 showing of peculiarity to the water and sewer industry,
2 we should be treated on a par with other regulated
3 industries.

4 COMMISSIONER LAUREDO: Well, let me ask you
5 because it's perplexing to me. You and him are
6 articulating the same rationale and philosophy but
7 going in different directions. Supposedly to simplify
8 regulatory ambiance, and you're saying that this will
9 complicate it, and he's saying this will simplify it.

10 COMMISSIONER BEARD: Where you stand depends
11 on where you sit.

12 COMMISSIONER LAUREDO: If your underlying --
13 I mean, do you have a comment about that? Or are you
14 just -- it's just like on the notice, you have a
15 problem with the inconsistency between the industries,
16 which is kind of a generic objection you have? But I
17 mean, are we moving in this direction of simplifying
18 bookkeeping and recordkeeping with this rule proposal
19 or are we not?

20 MR. SCHIEFELBEIN: Overall or with this
21 particular rule?

22 COMMISSIONER LAUREDO: Yeah. Just for your
23 industry.

24 MR. SCHIEFELBEIN: With this particular rule?

25 COMMISSIONER LAUREDO: Right.

1 MR. SCHIEFELBEIN: I don't see --

2 COMMISSIONER LAUREDO: Well, he says, "Our
3 goal here is to strip duplicate language from tariffs
4 in reference to appropriate rule. We believe this will
5 be easier for utilities to maintain a simplified
6 tariff."

7 I mean, that's exactly what I thought you
8 wanted to do except you say that this rule does the
9 opposite.

10 MR. SCHIEFELBEIN: I do think it does the
11 opposite, requiring us to be essentially a public
12 library on utility regulation. I think -- it's not to
13 overdo it, I mean, this is not something that will
14 bring us to our knees or anything like that. But I do
15 think it's overdone.

16 Certainly, a utility's tariff and certain
17 basic information about the utility should be available
18 at utility offices during normal business hours; but
19 not every pertinent rule, statute and map imaginable, I
20 don't think that that's necessary.

21 CHAIRMAN DEASON: Mr. Hill, let me ask you a
22 question. How do you, if this rule were to be adopted, --

23 MR. HILL: Yes.

24 CHAIRMAN DEASON: -- how do you plan to
25 implement that and assist the utilities in compliance?

1 Or is this just their responsibility to get all this
2 information and make it available?

3 MR. HILL: No. I would mail to every utility we
4 have on our directory a current copy of everything that's
5 required that we have and I would be happy to supply it.
6 Chapter 367, we already require them to keep Rule 25-30,
7 we're only adding two additional rules and they're very
8 small. We maintain, Appeals maintains, the current rule
9 on disk. I would send that to every utility out there. I
10 would concede maybe the maps are a little onerous.

11 But again, I mean, we're talking about this
12 agency supplying this to the utility so that it's
13 current -- and we're already requiring them to keep
14 25-30 in their office. And all we're asking is, "Add a
15 couple more rules, add the statute;" and then, over
16 time, let's begin to work on these tariffs and glean
17 this duplicative language out of the tariffs.

18 And I would point out it's interesting that
19 the industry, you know, doesn't want to do things that
20 aren't done in the other industries, but yet they're
21 quick to point out to us how this industry is different
22 from the others and things should be done differently.

23 So the fact that this requirement is not
24 maybe in the telephone or electric industries, this
25 industry is different. The people out there know the

1 owners of these companies. Most of them bought their
2 homes from the owner of the company. They didn't buy
3 it from the President of Southern Bell. And they do
4 walk in the business office and they want to see the
5 rules and regulations that govern this utility. I
6 don't know of anybody that walks into Sam Walden's
7 office or Centel's central office and say, you know, "I
8 want to see what governs your utility."

9 So I think this industry is different to the
10 extent that we're asking them to be.

11 CHAIRMAN DEASON: Any other comments?

12 MR. SCHIEFELBEIN: The only thing I have not
13 mentioned also regarding this is the requirement now to
14 have, as proposed, to have all current developer
15 agreements. And certainly with some of your larger
16 multisystem utilities, you're talking about an awful
17 lot of agreements, many of which might not have any
18 bearing on that particular system or that particular
19 region of the system. And the rule doesn't address
20 that. It's, I think, a requirement to have all
21 developer agreements available in every office of the
22 utility for public inspection is really overkill.

23 CHAIRMAN DEASON: Mr. Hill, how strong are
24 you on the developer agreements and the maps?

25 MR. HILL: I realize for some utilities they

1 have thousands of developer agreements and that may be
2 a burden. We are really only asking that they keep it
3 at one main business location in this state, not all
4 their office locations.

5 Again, you know, I'm willing to listen to
6 reason as far as developer agreements and system maps.
7 But as far as the rules and regulations that govern the
8 operations of the utility, those really need to be
9 there available for the customer.

10 COMMISSIONER LAUREDO: In other words, in
11 summary, you're saying, "I'll package it, I'll mail it
12 to you, all I want you to do is put it on your
13 bookcase," and they're saying that's too burdensome?

14 MR. HILL: Yes, sir.

15 CHAIRMAN DEASON: Mr. Shreve -- I'm sorry.
16 Go ahead.

17 COMMISSIONER LAUREDO: Is that a fair
18 summary? They're saying, "I'll send it to you, I think
19 it serves a public purpose, we are a very
20 people-intensive industry, witness our public hearings.
21 You don't have anything to do; I'll send it to you;
22 just put it somewhere in your office."

23 And you're saying that's too much.

24 MR. SCHIEFELBEIN: Well, the rule, with all
25 respect, sir, the rule doesn't say that.

1 COMMISSIONER LAUREDO: Well, we have amended
2 the rule a little bit by these discussions today.

3 MR. SCHIEFELBEIN: We think that would be a
4 great help as far as the requirements for rules and
5 statutes if the burden were put on the Commission to
6 get to it the utilities, then, certainly, we can make
7 it available.

8 CHAIRMAN DEASON: Mr. Shreve.

9 MR. SHREVE: Mr. Chairman, I agree with Mr. Hill
10 on this. And one thing I don't understand, Mr.
11 Schiefelbein said they're going to keep it at every one of
12 their utilities and offices. The way I read it, it says
13 "at its main in-state business office." That doesn't mean
14 that Southern States has to have it in 150 or 200 places.
15 It's got the one place in Apopka.

16 There's nothing in here that I see that a
17 regulated utility shouldn't have and be familiar with
18 and aware of anyway. And why shouldn't it be available
19 to the customers? And if they're worried about keeping
20 the current developer agreements, where else are they
21 going to keep them but their main in-state office? I
22 would be surprised if any utility came in and said, "We
23 shouldn't have it there."

24 COMMISSIONER BEARD: Where do they maintain
25 their developer agreements?

1 MR. SCHIEFELBEIN: I'm sure the practice
2 varies, sir.

3 MR. HILL: And I'm sure --

4 COMMISSIONER BEARD: They do maintain
5 developer agreements, don't they? They sign them and
6 throw them away?

7 MR. SCHIEFELBEIN: Certainly -- no, sir. I
8 believe they do retain them.

9 COMMISSIONER BEARD: They maintain maps of
10 their systems?

11 MR. SCHIEFELBEIN: Yes, sir. Perhaps not at
12 their office, perhaps at their treatment plant if it's
13 a system map.

14 MR. HILL: Commissioner, the maps, I
15 certainly concede that the maps would be a burden. I
16 have seen them all over at the plant sites and various
17 places.

18 COMMISSIONER LAUREDO: Chuck, isn't the
19 bottom line, to cut through this, you're amending your
20 recommendation by saying the maps you understand, the
21 developer agreement, you will have it -- it's
22 reasonable and prudent to have it in some office in the
23 state of Florida, otherwise what the heck are you doing
24 doing business in Florida? In one office, not all of
25 them.

1 And rules, we want them in all the operating
2 units.

3 MR. HILL: Just the one office.

4 COMMISSIONER LAUREDO: Just the one central
5 office?

6 MR. HILL: Just the one office.

7 COMMISSIONER LAUREDO: So what are we talking
8 about here? Counselor, I don't --

9 MR. SCHIEFELBEIN: Well, we're making slow
10 progress as far as fine-tuning the rule.

11 CHAIRMAN DEASON: Okay. I think we've
12 fine-tuned this rule.

13 MR. SCHIEFELBEIN: Thank you.

14 CHAIRMAN DEASON: Let's go to 255.

15 MR. HILL: 255 you're familiar with because
16 you looked at some legislation and decided that you
17 weren't about to send that across the street unless DER
18 and the Water Management Districts wanted to jointly
19 support it.

20 COMMISSIONER CLARK: So you're going to take
21 that out?

22 MR. HILL: Well, it's still a good idea; but
23 if you'd like to take it out, you can bet it won't be
24 here the next time you look at it.

25 COMMISSIONER CLARK: I don't think it should

1 be in there.

2 MR. HILL: Great.

3 COMMISSIONER CLARK: Just for the reason that
4 I think their point about it being statewide and
5 something we should approach from the standpoint is the
6 right way to go.

7 MR. HILL: Absolutely.

8 320 is, if you all remember, it's the St. George
9 Island fix, Gene Brown. It just says that if somebody
10 comes in and does something they're not supposed to and
11 the problem is fixed by the time they get there and
12 they've paid whatever fees, you can't turn them off. We
13 had a problem on St. George Island with this and this is
14 just the Gene Brown fix.

15 COMMISSIONER BEARD: Especially when you
16 happen to take a few days off with your family and you
17 get the call and you're local. (Laughter)

18 CHAIRMAN DEASON: Is this going to be called
19 the Tom Beard rule?

20 MR. HILL: It ought to be. He was on the island
21 at the time, and I think everybody was calling him.

22 COMMISSIONER CLARK: All I can think of is if
23 you think this is going to fix it, I think you may be
24 mistaken. (Laughter)

25 MR. HILL: I'm hoping it will fix that one

1 problem.

2 COMMISSIONER BEARD: I want to amend this
3 rule to say that anybody that's on site their number
4 will not be given out. (Laughter)

5 Just kidding.

6 CHAIRMAN DEASON: 335.

7 MR. HILL: We're trying to clean up 335 a
8 little bit, and then we're throwing in something that I
9 have to make you aware of. Even though it is Commission
10 practice and policy, we are for the first time putting in
11 the rule that if a utility does not have a vacation rate,
12 they will bill the base facility charge regardless of
13 whether there's any usage; that that is the minimum charge
14 you bill your current customer.

15 CHAIRMAN DEASON: Comments? Questions? 360?

16 MR. HILL: 360 is just codifying Commission
17 policy with respect to refunds. It specifies that a
18 Motion for Reconsideration temporarily stays a refund
19 and that any unclaimed refunds will become CIAC.

20 COMMISSIONER CLARK: I have one question.
21 Don't we have a general rule on refunds? Because
22 that's the rule, as I recall.

23 MR. FEIL: A general rule?

24 COMMISSIONER CLARK: Yeah.

25 MR. FEIL: 25-33.60 is the only one that I'm

1 familiar with.

2 COMMISSIONER CLARK: No. There's a general
3 rule having to do with refunds by utilities.

4 MR. LOWE: Commissioner, I believe that they
5 were all processed together, but they are all in each
6 of the separate industry's rule sections. The refund
7 rules were all adopted at the same time, but they were
8 each put into each industry's separate rule package.

9 COMMISSIONER CLARK: All right. With respect
10 to the temporary stay upon a Motion for
11 Reconsideration, the bottom line is shouldn't we be
12 addressing all of the refunds? I realize the notion
13 that refunds unclaimed would go to CIAC may be peculiar
14 to water and sewer, but I would like you to look at the
15 other rules for the other industries to make sure that
16 they shouldn't also be changed. I mean --

17 MR. FEIL: With regards to the Motion for
18 Reconsideration, you mean?

19 COMMISSIONER CLARK: Yeah. On this one, it
20 doesn't bother me if we go ahead and get this done, but
21 we need to get the other ones done if that's what we
22 want to do.

23 MR. HILL: And I would like, you know, I
24 apologize to Mr. Jenkins and Mr. D'Haeseleer to the extent
25 that they're going to end up with some work to do out of

1 this. That was not my intent. We've been on this about
2 six years and put this package together and --

3 COMMISSIONER CLARK: No, I don't -- it doesn't
4 come across to me that way to me. It's just that you've
5 come across some things that happen and that you want to
6 fix and they may be a good fix for the others.

7 COMMISSIONER BEARD: Chuck, don't ever, ever,
8 ever apologize to Mr. Jenkins or Mr. D'Haeseleer. Big
9 boo-boo.

10 CHAIRMAN DEASON: 430?

11 MR. SELF: Excuse me, Mr. Chairman.

12 CHAIRMAN DEASON: Yes.

13 MR. SELF: Just one suggestion on Page 95,
14 Line 11, where it says "Motion for Refund." I don't
15 know if this helps, but you may want to say "a timely
16 Motion for Reconsideration."

17 COMMISSIONER CLARK: I have no objection to
18 that.

19 MR. SELF: Just to be clear.

20 MR. FEIL: That sounds fine.

21 CHAIRMAN DEASON: Okay. Moving right along.

22 MR. HILL: 430. We have an option here. The
23 first 430 that you see basically codifies what we're
24 doing right now. It cleans it up a little bit. We've
25 moved the requirement for prefiled direct testimony to

1 another section and we're adding current Commission
2 practice with extent to the extension of filing the
3 MFRs.

4 We have given you an option because at one
5 time I heard that you were considering a rule on test
6 year approval for the other industries that was
7 something akin maybe to notification. And so we
8 drafted up the alternative that is basically just,
9 "Fine, we'll notify you that we're going to file."

10 That's not what we recommend at all. We are
11 recommending the test year approval that we have in
12 place today that has been in place since 1975 with the
13 modifications.

14 COMMISSIONER BEARD: I think your position is
15 very prudent.

16 COMMISSIONER LAUREDO: Chuck, I'm perplexed
17 by your continuing reference of the need to codify
18 common Commission practice. Why do you feel compelled
19 to do that?

20 MR. HILL: That's a law now. I know that Ms.
21 Moore and Mr. Feil could explain exactly what the law
22 is and when it was passed and what it said. But my lay
23 understanding of it is that if this Commission has a
24 policy, it's got to be in a rule. You cannot have a
25 nonrule policy. And these are things that we do, we do

1 it every day, we do it every case, you vote it every
2 rate case. And so we're trying to now put it in a rule
3 as opposed to saying, "Well, this is our policy," and
4 some party saying, "You can't have nonrule policy," and
5 us getting in trouble.

6 COMMISSIONER LAUREDO: Okay.

7 MR. HILL: And that's my layman's explanation
8 of it.

9 COMMISSIONER LAUREDO: That's a good one.

10 CHAIRMAN DEASON: In Paragraph 2 of the
11 proposed rule, there's a provision there that the
12 Division Director can grant extensions as long as --
13 for the filing of the MFRs, as long as the
14 representative nature of the test year is not
15 jeopardized.

16 MR. HILL: Yes, sir.

17 CHAIRMAN DEASON: I don't have a problem with
18 that as long as it is understood that needs to be
19 cleared through the Chairman's office.

20 MR. HILL: Yes.

21 CHAIRMAN DEASON: Because we're setting these
22 schedules, and if there is certainly going to be a
23 delay in the filing of the MFRs, we need to know how
24 that is going to affect the other scheduled cases as
25 well.

1 COMMISSIONER LAUREDO: When he gets elected
2 Chairman, he wants to take away some of your power.

3 (Simultaneous conversation)

4 COMMISSIONER BEARD: What happens is, when
5 you get elected Chairman, you have to start sweating
6 the calendar. It changes your perspective on life.

7 CHAIRMAN DEASON: I had my first CASR meeting
8 with Nanette Wednesday, yesterday, and it's not an easy
9 undertaking. (Laughter)

10 MR. HILL: I understand, and I do apologize.
11 I try to get with every Chairman coming in go over,
12 "Okay. This is what we've done in the past. Would you
13 want to continue it?" I've put it in a rule because
14 that's the way it's been.

15 CHAIRMAN DEASON: I have no problem with
16 what's in the rule as long as you understand, and I'm
17 sure you do, that anytime that you agree to extend the
18 filing of the MFRs, that has to be coordinated through
19 Nanette and the Chairman.

20 MR. HILL: Absolutely. Absolutely.

21 MR. SHREVE: Now, am I reading this right
22 that there will no longer be approval of the test year
23 by the Commission, it will be a notification by the
24 company, so they make the total decision?

25 COMMISSIONER CLARK: I think you're right.

1 MR. SHREVE: This has been an argument about
2 whether or not all along.

3 COMMISSIONER CLARK: Yes. Jack, I have to
4 say I looked and thought, "Is this the right way to
5 go?" But I think we've taken the position that a test
6 year approval is not an agency action which Public
7 Counsel is allowed to take issue with because it's part
8 of the full case and it's part of whether or not it's
9 representative. And you can't look at -- take an
10 appeal of sort of an interim decision.

11 And I have thought that maybe we ought to
12 make the practice more in line with that theory and
13 give it to the Director. And if he has any problems
14 with it, he can warn them in advance that "I as the
15 Director have problems with this test year."

16 I think you have the opportunity to do that,
17 to warn them and say that, "We're going to make this an
18 issue in the rate case," and then it really does become
19 an issue in the rate case.

20 CHAIRMAN DEASON: Let me get some
21 clarification here.

22 Staff, you're recommending not the
23 alternative but the primary, which does require an
24 approval of the test year?

25 MR. HILL: Absolutely. We are recommending

1 that the rule that is in existence today that requires
2 approval by the Chairman stay in existence.

3 CHAIRMAN DEASON: That's what my
4 understanding was. So to answer your question, Mr.
5 Shreve, there would be an approval process.

6 MR. SHREVE: And I would assume that if there
7 is an approval and that affects the rights of parties,
8 we could start moving in the direction of having some
9 type of input on that approval. Because sometimes the
10 test year approval, nine out of ten times maybe it
11 doesn't make any difference, but the test year as we
12 got in the arguments over the earlier cases can make a
13 big difference. And as to, really, whether it's
14 representative. If the Chairman felt it was not
15 representative, then I don't think it should be
16 approved, and I think we should have the opportunity to
17 be heard.

18 CHAIRMAN DEASON: Well, let me share a
19 thought.

20 It seems to me the Chairman's approval or
21 disapproval of a test year is merely more of an
22 administrative function than it is affecting the
23 substantial rights of parties, in that if a party feels
24 like a test year is approved that is not
25 representative, that becomes an issue in the rate

1 proceeding. And then it's up to the utility who
2 requested that test year to justify and prove to the
3 Commission that it is, indeed, representative; and if
4 it is not, then I assume their case is in jeopardy.
5 And that's where the substantial interests and rights
6 of the parties come into play.

7 But I, as Chairman, don't want to see me
8 sitting up there as the Hearing Officer taking evidence
9 on whether the requested test year is representative or
10 not.

11 MR. SHREVE: All right. Then would there be
12 any decision made as to whether or not the requested
13 test year would be used or not? I guess, so,
14 basically, we're talking about the utility making that
15 determination and routinely approved by the Chairman.

16 CHAIRMAN DEASON: Well, I think if for some
17 reason the Commission were to feel the test year is
18 just on its face is not representative and for some
19 reason Staff points out something and says, "Look, we
20 just can't even work with this for these reasons," I
21 think the Chairman probably should have the ability to
22 tell the utility that we don't think this is
23 representative and not approve it.

24 I still think that they are free to file that
25 case using that test year regardless, or to changing

1 it. And even if they do change it, there is still
2 going to be an issue in the case as to whether that
3 test year is representative or not.

4 Now, I would be seeking some guidance from
5 Mr. Feil and, Susan, maybe you could help me out a
6 little bit, but I think that's the way the process
7 should work.

8 COMMISSIONER CLARK: That's the way it works
9 now.

10 MR. FEIL: I believe that that's exactly what
11 the Commission stated in the United, Florida Power and
12 GDU orders where all of this came up. Basically that
13 it's a preliminary decision; if any of the parties
14 think it should be an issue at the hearing, they can
15 raise it through the hearing process; and that it
16 serves an administrative goal.

17 And I would suggest that one of reasons the
18 rule has the Chairman approving it is because of the
19 calendar. I suppose that if we had some sort of test
20 year approval process whereby the Division Director did
21 it, I suppose that's viable. But one of the reasons I
22 suggest that the Chairman has control over approval of
23 test years is because the Chairman is in charge of the
24 calendar.

25 CHAIRMAN DEASON: And when the Chairman makes

1 the determination that this is a representative test
2 year for filing purposes, it does not mean that it's
3 representative to base rates on. You can file your
4 case based upon this test year; but if the parties have
5 a problem with that, it's an issue, and it will be
6 litigated and the Commission will have to vote on it
7 and determine whether it is or is not representative.

8 MR. SHREVE: Litigated in the case.

9 CHAIRMAN DEASON: In the case.

10 MR. SHREVE: I understand and I think you're
11 right. I think that's the way it has been handled.

12 I think as a practical matter that really
13 does not give sufficient due process to any parties
14 that want to attack the test year; because you're in
15 the case, you're going all the way through, you've
16 spent all the money, and that's what you're arguing
17 about.

18 They're put in a test year; we're in a
19 position of having to overcome that test year or fight
20 that test year when, in fact, we feel a different test
21 year would be the appropriate one.

22 I think you're right, I think that's the way
23 it's been handled. But if you go back to the early
24 '80s and before they ever started moving into the
25 projected test year, at that point the Commission did

1 not allow projected test years; they were only allowing
2 historical test years.

3 We took that to the Supreme Court and lost.
4 And they said that the Commission could allow projected
5 test years. So it hasn't always been that way; and I
6 think we did probably at least get a determination in
7 these last few cases that we've thought out and tried
8 to do something on -- (Simultaneous conversation)

9 So I think you're right, I think that's the
10 way it is, but I disagree with the process.

11 COMMISSIONER CLARK: Okay. I think Terry's
12 question is, are you suggesting that it ought to be
13 that as Chairman if he decides the test year, you ought
14 to have an opportunity to put on evidence before him as
15 to why this test year isn't appropriate before we ever
16 get to the whole case?

17 MR. SHREVE: And I know that might become
18 cumbersome if it went too far, if there were a lot of
19 them. But I think in this last round of cases, we were
20 able to show -- we felt we were able to show that those
21 test years just were not appropriate. And if that's
22 the case, I hate to go through a whole rate case with
23 that being one issue in it.

24 I understand what you're saying, it could
25 become cumbersome. But it seems to me that really the

1 test year, if I can determine the test year, I have a
2 great deal of control over the case that really
3 determines the outcome, whether historical or
4 projected.

5 COMMISSIONER LAUREDO: Okay. What would be
6 your estimate of the scenario that she just outlined,
7 where in essence the Chairman would sit as a Hearing
8 Officer to hear evidence on the test year decision?
9 What is that, a day, two days? Just pick from last
10 year.

11 MR. SHREVE: Oh, you mean how much time it
12 would take?

13 COMMISSIONER LAUREDO: Yeah.

14 MR. SHREVE: Oh, I think you're talking a few
15 hours, really. I think you're almost talking about
16 some very basic evidence, if any at all, and argument.
17 But I think the position has been taken by the
18 Commission that really was a determination to be made
19 by the utility. We haven't -- there really haven't
20 been that many arguments about it.

21 COMMISSIONER LAUREDO: Let's assume, though,
22 you have that right now and you go before the Chairman
23 and you spend a day. I'm going to add a few hours to
24 your projection, I think two or three hours. This was
25 supposed to be an hour-and-a-half meeting. And then he

1 still rules for the utility test year. Then what? Do
2 you waive your rights to then go into his previous
3 statement about the fact that it becomes part of --

4 MR. SHREVE: I think what --

5 COMMISSIONER LAUREDO: In other words, you're
6 going to have two shots at it by the way you propose it.

7 MR. SHREVE: Well, I don't know that we would
8 have another shot at knocking the case out because of
9 the test year. I think we would certainly show -- come
10 in and try and show that another test year was more
11 appropriate and that the determination based on those
12 facts that we show in that additional test year is what
13 should be used.

14 I guess I would prefer to have a
15 determination made on the test year. If we win, then
16 we've saved the rate case. On that.

17 Say, we were right and we didn't have the
18 opportunity to show that we were right and win at that
19 point before you ever have the case. If you go through
20 and you have an inappropriate test year, and at the
21 time of the hearing the final decision is made that it
22 was an inappropriate test year, then it's all wasted.
23 And I am really not -- I don't know how many times we
24 would be able to show that. I think in the telephone
25 cases it was more realistic, those two that we argued

1 out before.

2 (Simultaneous conversation)

3 CHAIRMAN DEASON: Let me say this: I think
4 that this rule is basically for administrative reasons
5 and does not affect the substantial interests of the
6 parties. It's possible, I would think, and I'm not an
7 attorney, but it would be possible that if the Chairman
8 were to approve a test year and that a party felt like
9 that it was not representative, before the case were
10 filed, that you could file an objection and the
11 Prehearing Officer or whoever, perhaps, could have some
12 type of short hearing on whether to even file the case
13 on that.

14 MR. SHREVE: I think that --

15 MR. FEIL: Mr. Chairman, I --

16 CHAIRMAN DEASON: I just don't want to get
17 the Chairman's administrative functions tied into
18 litigation and due process rights that are going to be
19 taken care of during the due course of the case.

20 MR. SHREVE: I understand that.

21 MR. FEIL: Mr. Chairman, I'm sorry if I was
22 interrupting, but there is a provision in the existing
23 rule that allows a party to request full Commission
24 review of the Chairman's test year approval decision.
25 And, indeed, that was the context of what came up in

1 the recent GDU case. Now, It seems to me it would be
2 at that point in time where OPC or any other parties
3 would aver any sort of evidence which would --

4 COMMISSIONER LAUREDO: And that would be on a
5 stand-alone basis; that would be the only issue
6 discussed.

7 MR. FEIL: That is correct, and that would be
8 in the context of a motion hearing or an agenda item.

9 CHAIRMAN DEASON: Okay.

10 MR. SHREVE: And I think that's correct. The
11 only problem we had -- we did do that and we had a
12 hearing on that, but the determination was made that
13 the Commission didn't have any control over that. That
14 that was a decision made by the --

15 (Simultaneous conversation)

16 MR. HILL: Mr. Chairman, this has been in
17 since 1975 and we really, I don't think, have had a
18 whole lot of problems in this particular industry. And
19 if we have and if it's going to result in a whole lot
20 of expense, then I guess I'd have to modify my
21 recommendation and just delete the whole rule.

22 MR. TALBOTT: Mr. Chairman, I apologize if
23 you talked about it while I was gone, but I had to
24 leave the room for a minute. But I just feel obligated
25 to be sure you all remember that it hasn't been too

1 long ago that we switched what we do for all the other
2 utilities that we regulate and went to this alternative
3 to where we really don't approve the test period. The
4 utilities simply come in and notify us that they're
5 going to file using a particular test period. Anyone
6 that has problems with that, it becomes an issue in the
7 case.

8 MR. HILL: And the existing rule has worked
9 well for this industry because -- I mean, we have to
10 work a lot with some of these small companies as to,
11 you know, that would not be a representative test. I
12 mean, we could potentially got an awful lot of trash
13 filed.

14 Again, this rule has been in place a long
15 time; it seems to work well for this industry. I don't
16 know of a whole lot of times when Mr. Shreve has had a
17 lot of difficulty with the test year in this industry.

18 MR. FEIL: In the GDU case, if I may, Mr.
19 Chairman, what the Commission said is that the things
20 pointed out by the City of North Port -- the City of
21 North Port claimed these things rendered the test year
22 unrepresentative. The Commission said that the things
23 pointed out are going to occur virtually in any other
24 kind of rate case and there are always going to be
25 things where pro forma adjustments have to be made,

1 where anomalies are, and you're going to have to alter
2 the figures. The Commission said that those things did
3 not render the test year unrepresentative, when it
4 reviewed the Chairman's test year decision.

5 CHAIRMAN DEASON: We probably need to give
6 the Staff some direction as to whether we want test
7 year approval process or test year consideration
8 process to be as it is in other industries or are we
9 comfortable with basically doing it as we have been
10 doing it for this industry, realizing that there may be
11 some differences between this industry and others?

12 COMMISSIONER BEARD: Well, contrary to what
13 some believe, there are some differences between this
14 industry and others in the sheer numbers and some of
15 the hand-holding that has to take place with small
16 operations. And if it ain't broke, don't fix it.

17 COMMISSIONER LAUREDO: Well, I thought that
18 the overall process here is that we were going to --
19 this is our first look at this, Mr. Chairman.

20 COMMISSIONER BEARD: Yes.

21 COMMISSIONER LAUREDO: And I don't think,
22 unless it's something that you have a clear consensus,
23 I would like to think this through. Just leave it
24 there and we can catch it and make, you know --

25 COMMISSIONER CLARK: Okay.

1 CHAIRMAN DEASON: But obviously come March
2 we're going to have to vote the rule and choose one or
3 the other one we propose.

4 COMMISSIONER LAUREDO: Right. Well, there's
5 some that we have been able to take out, but some of
6 these are, you know, it gives us an opportunity to
7 think about it.

8 CHAIRMAN DEASON: Well, maybe Staff can look
9 at the other industries and find out if -- get some
10 specific examples of why you feel this industry is
11 different and why the current methodology would be
12 better than conforming it to the others.

13 MR. HILL: Yes, sir.

14 MR. SHREVE: Commissioner, I understand
15 exactly where you're coming from on this, and it could
16 conceivably become cumbersome. But I did want to
17 express our concerns on this as we do see this as an
18 important -- I hate to say -- issue in the case.

19 CHAIRMAN DEASON: I understand.

20 COMMISSIONER JOHNSON: Important what?

21 CHAIRMAN DEASON: Issue in the case. It's
22 what I've been saying all along, it's an issue in the
23 case.

24 Okay. I think that the next rule is a rather
25 comprehensive one, and it may be in order to take a

1 short break at this time. So we'll take ten minutes
2 and come back and take up 432.

3 (Brief recess.)

4 - - - - -

5 CHAIRMAN DEASON: Okay. We'll get started
6 again. I think we're going to begin with 432.

7 MR. HILL: Yes, sir. 432, what I've tried to
8 do here -- and nobody likes this, Mr. Chairman. And,
9 in fact, my recommendation would be that you just not
10 even allow anybody to talk. (Laughter)

11 MR. SHREVE: I can understand why he says that.

12 MR. HILL: I'm serious. What I've tried to
13 do in 432 and some of the following rules is to take
14 all of the issues in a rate case and put them in a
15 rule. And 432 happens to represent the engineering
16 issues.

17 If we didn't go to hearing for anything else,
18 we'd go to hearing on 432. There is not a doubt in my
19 mind. I have recommended some things in here that go
20 against current Commission policy. I have tried to
21 come up with some formulas; and even though I was told
22 at workshops, you know, that we can't do it, we won't
23 do it, I sort of laughed at everybody and said, "I'm
24 going to do it whether you want to do it or not." And
25 I really don't think anybody embraces this rule or any

1 part of it, but I think it's something that we need to
2 do if we're going to make any progress.

3 Briefly, I've tried to take all the
4 engineering issues beginning margin reserve, and I have
5 said we're just going to eliminate margin reserve as an
6 issue altogether. And I have taken the plant and
7 broken it into three categories; and I've said for
8 treatment, storage and treatment, just a flat 20%,
9 period. That's margin reserve. I don't want to hear
10 about it, 20%.

11 For what I would call the transmission mains
12 -- and they're called off-site, even though in my mind
13 they ought to be on-site because they're on the utility
14 property, but they're off-site in transmission -- I
15 said, "They're 100% used and useful, no margin will
16 apply."

17 And then for the distribution/collection
18 systems out there, I've said a straight 20%, period.
19 Current Commission practice is we take information, and
20 we do trending, and we try to fit as best we can the
21 growth, and we look at it, and we will allow a margin
22 up to 20%. I don't know when we've ever not given a
23 margin; and so, in my mind, the margin reserve, we'll
24 just do those things and go on about our business.

25 And if you don't mind, I'll just briefly hit

1 all of these and then you all can laugh or fire me or
2 whatever it is you want to do.

3 COMMISSIONER CLARK: Steam is coming out of
4 Jack Shreve's ears. (Laughter)

5 MR. SHREVE: I think Mr. Hill was saying that I
6 could make that choice of whether to laugh or fire him.
7 (Laughter)

8 MR. HILL: Not at all. Not at all.
9 (Laughter)

10 Because and no matter -- I'm going to make a
11 lot of people mad with these. And a lot of people
12 won't understand, and lot of people will hate them.
13 But when all is said and done, if we adopt something
14 along these lines, anything, we will save so much, it
15 won't really matter whether I'm here or not.

16 Fire flow, what I've done with fire flow is
17 said, "We will allow fire flow, you ought to have fire
18 flow." And, in fact, I don't care if the utility has
19 the capacity to provide fire flow, we're going to
20 calculate it in there anyway; and what I've thrown in
21 is that the Commission will go ahead and can order the
22 company to add capacity if they need it to provide fire
23 flow and may withhold that portion of the rates until
24 that capacity is in place. So, again, just trying to
25 eliminate fire flow altogether as an issue.

1 For unaccounted-for water, unaccounted-for
2 water Commission practice and policy is we will allow
3 reasonable unaccounted-for water; 10% to 20% has been
4 found reasonable over the years. I kind of sat down
5 and said, "Well, gee, you know, where there's 10% the
6 Commission typically gives, I don't know that we've
7 ever not, and then allowing a little bit for some other
8 areas, 12.5%." And I've just said, "We'll give you
9 12.5% unaccounted-for -- we will allow that as being
10 reasonable, and let's not even make it an issue, let's
11 go on."

12 Infiltration and inflow, the Commission has
13 recognized that in the past. We tend to combine the
14 two when, in fact, they are two different things.
15 Infiltration is water coming in through holes in the
16 pipes and inflow is really run-off from groundwater.

17 And what I've done on there, because the
18 Commission practice and policy is we'll allow 10% to
19 20% as being reasonable, what I've done there is said,
20 "We'll allow 10% on inflow and we will use the Practice
21 No. 9, Water Environmental Federation Manual, to
22 develop the standards for infiltration." We will allow
23 that amount, that amount that is in that manual as far
24 as proper design amounts. And again, let's just
25 eliminate that as an issue.

1 For used and useful, I've been told that it
2 is just impossible to come up with a formula, a set of
3 formulas, that can be applied because things vary so
4 much. I'm never one to really accept what I'm told,
5 and I think we've got a pretty good set of formulas
6 that will apply no matter who you are.

7 There were some comments by the Florida
8 Waterworks Association to streamline it a little bit
9 more, and I've recommended that we go ahead and adopt
10 those. I did recommend in here that we adopt the users
11 manual, and I've backed off of that. I don't want to
12 adopt that manual by reference. We'll try to use it
13 and see later if we need to adopt it by reference.

14 What I've done in the used and useful
15 formulas is this: Where right now we typically have
16 two plant categories, or possibly three, we've broken
17 them down into many categories. Treatment plant;
18 again, the off-site transmission; the on-site. And
19 what I've tried to do in there is, again, I've said
20 that the transmission lines are 100% used and used,
21 there's no margin, they're just 100%.

22 My reasoning for that, again, is incentives
23 and what's right. The treatment plant is built for a
24 particular capacity. We want that built to correct
25 size. Those transmission lines are sized to match that

1 capacity.

2 We can go in and do a used and useful on it,
3 and the signal we're sending out is "Gee, you could
4 have put in a smaller pipe and you'd have got 100%.
5 And then come back and dig it up, and put in a little
6 bit bigger one. And then come back and dig that up and
7 put in a little bit bigger one." No matter how many
8 customers you add, or distribution systems. So I've
9 just said, "Let's not even talk about the transmission
10 lines, they're 100% used and useful."

11 For the distribution and collection systems,
12 I've got a little thing in here that basically says for
13 nondeveloper related utilities, not related to a
14 developer at all, distribution/collection system is
15 just 100% used and useful. We're not going to mess
16 with all of this counting this, and counting that, and
17 figuring it. Because they're not in the business of
18 selling homes and lots, they're in the business of
19 providing service.

20 But for those that are developer related,
21 then we have a formula. And that formula uses the
22 concept of a fill-in lot, and right now that's at 25%.
23 And that is if you get 25% of an isolated line that has
24 service or has had service available in the past, then
25 that's 100% used and useful.

1 Granted, if you have a loop and you have two
2 customers up here and two down here, you had to put
3 that line in. You may say, "Well, what if those four
4 customers are all down here at the bottom?" Well, the
5 Commission may not like a 25% fill-in theory, you may
6 want something more like 35, 45, 55, or 95, I don't
7 know, but I think the concept is good. At some point
8 you had to have that line there to serve those people
9 on that distribution system even though you are a
10 developer.

11 And then there's a category that's "Other
12 Water and Wastewater Facilities." That includes things
13 like emergency generators and, again, off-site lift
14 stations, and that. I've just said those ought to be
15 100% used and useful.

16 Again, this is probably the most controversial
17 section you're going to run into, I believe. But I think
18 the formulas are good. I don't know that anybody is going
19 to sit here today and go over the formulas and understand
20 everything that's in the formula and why is this in, why
21 that; and I really think that, if nothing else, this
22 section will end up at hearing and should be at hearing so
23 that you that are making the decisions can make a
24 decision, "Is this formula correct? Is it something we
25 want to do?"

1 But I think we've done the right thing, And I
2 think we need to do exactly this for all of these
3 engineering issues.

4 And, again, I'm asking you to do some things
5 you've not done before. Just eliminate them as issues
6 and allow a certain amount as being correct -- 20% on
7 the margin, 12.5% on unaccounted-for water, 10% plus
8 the manual allowance for infiltration and inflow.

9 I'm not sure that's something you want to do.
10 But I know from my experience that these issues
11 constitute a chunk of rate case expense; and if we
12 could get utilities in this industry to use this and
13 not hire engineers to put on testimony and all that, I
14 think we're going to save a bundle.

15 CHAIRMAN DEASON: Okay, thank you. I want to
16 caution the parties again, I don't want to cut anybody
17 off, but realize that these issues are going to be
18 addressed thoroughly in hearing and we don't want to
19 have the hearing today. Just with that one word of
20 caution, Mr. Schiefelbein?

21 MR. SCHIEFELBEIN: Commissioners, we've been
22 participating in this process, the Association has, for
23 the better part of a year. Our position has been from
24 Day One and continues to be that the calculation of
25 used and useful cannot be reduced down to a simple

1 formula. The way that the rule is written is that, in
2 lieu of alternative proposals made by a utility, these
3 so-called default formulas shall apply.

4 Now, I don't think -- so long as the
5 utilities can continue to have the option of putting on
6 a different presentation than are presented in these
7 default formulas, then I think we would not have as
8 strong an opposition to it. But we were told early on
9 in the process that there were going to be default
10 formulas whether we liked it or not. And given that --
11 and in a very friendly way, I would say. (Laughter)

12 And given that, we have certainly given a lot
13 of input as to what the default formulas might look at.
14 But I would say that the priority of the Association is
15 to make it clear and to retain the option of a utility
16 to come forward with its own case independent of these
17 formulas and to prove it itself. And beyond that, I
18 think we would be getting into a lot of the minutia
19 here and we would look forward to that hearing to take
20 our best shot.

21 COMMISSIONER CLARK: Are they also amenable
22 to the notion that if they don't approve their case, no
23 rate case expense for that issue?

24 MR. SCHIEFELBEIN: That's certainly not
25 something that's ever been brought up in these

1 proceedings.

2 COMMISSIONER CLARK: Well, it seems to me we
3 do that on the leverage formula. You're welcome to
4 come in and prove your case; if you fail to prove your
5 case, you've just spent money for nothing that under
6 prudent management you would have stayed with what was
7 the default.

8 MR. SCHIEFELBEIN: Well, that's certainly
9 something I can certainly communicate back to my client
10 as far as if that is where the rules will be headed,
11 but that's a new concept here for us.

12 CHAIRMAN DEASON: Mr. Shreve?

13 MR. SHREVE: I will be very brief. You
14 mentioned rate case expense, and I think that's one
15 thing that has been totally ignored here. A lot of
16 these rules, the reason for them is to expedite things
17 and save rate case expense, which is something we argue
18 about all the time. But there is almost every time
19 you're saving rate case expense, it's at the customer's
20 expense in the rate case; almost every time throughout
21 these rules.

22 There should be a marked effort to try and do
23 something to control rate case expense and get a handle
24 on it, because it has just gotten totally out of hand.
25 If you go back and take a look at it historically, you

1 have some rate case expense now that is almost
2 impossible to justify and somebody should take a look
3 at it.

4 Beyond that, these rules -- and I won't even
5 try to go into all of the used and useful concepts
6 here. But there are things in here going the other
7 direction that we have won from you that now are being
8 codified in a rule that we won't even have an
9 opportunity to bring up.

10 Imputation of CIAC in margin reserve. Margin
11 reserve is something that you should definitely sit
12 down and take a look at before you vote anything out.

13 Now, I'm going to be magnanimous. Mr. Hill
14 has offered in several situations to pull certain
15 rules. I'm going to offer to pull this one. And I,
16 really, I think you had better give some real serious
17 thought before you vote this out. And Mr. Schiefelbein
18 makes me nervous when he goes the same direction; but
19 otherwise, really, I think the primary thing that
20 should be considered that is not in these rules is rate
21 case expense, which is the biggest problem at this
22 Commission today.

23 Thank you.

24 CHAIRMAN DEASON: Let me ask you a question.
25 Do you see anything in this area, and I call this the

1 "engineering area" for lack of a better term, do you
2 see anything in here which would be proper to put into
3 a rule which would have the effect of being fair to the
4 stockholders and the ratepayers and would save rate
5 case expense?

6 MR. SHREVE: Commissioner, there might be.
7 But what I heard was almost every one of the
8 determinations putting everything in at 100% in the
9 used and useful categories. I mean, that was the
10 number that kept coming at you time and time again.
11 There may be some ways to put some things in here that
12 would be down the middle or cut both ways, but I don't
13 see this as doing it.

14 COMMISSIONER CLARK: Jack, can I ask -- would
15 you do something and look at that and see if you think
16 there's any way to, as you say, make it work both ways
17 or cut down the middle? Because when you talk about
18 rate case expense, I think what Mr. Hill is trying to
19 say is what drives up rate case expense is the debate
20 over some of these issues and people needing to put on
21 experts to prove or disprove them.

22 MR. SHREVE: And you raised a good point
23 about the return on equity.

24 COMMISSIONER CLARK: Uh-huh.

25 MR. SHREVE: I mean, that was one of the

1 areas that was done and everybody has their shot in the
2 rule and that was to try and hold down rate case
3 expense.

4 COMMISSIONER CLARK: That's right.

5 MR. SHREVE: I don't disagree that taking in
6 the issues and having to try them in the rate case does
7 contribute to rate case expense. But when you're going
8 to eliminate rate case expense and expedite issues, you
9 don't always cut it at the expense of the customer.

10 And I'll be glad to look at the individual
11 ones. There may be some, frankly, as Mr. Schiefelbein
12 says, maybe there's some things here that should be
13 taken in in every case. But, by the same token, maybe
14 there are some areas that we could reach some type of
15 agreement on that shouldn't be in the rate case. But
16 this is a decision being made for you out of the
17 context of a rate case.

18 COMMISSIONER CLARK: I'll tell you what, the
19 working capital, I thought, you know, what goes around
20 comes around. Remember when we had a rule that said
21 1/8th of, what is it, operation and maintenance
22 expenses would be, and then we decided we'd go to the
23 balance sheet approach and we had to argue that in the
24 court? And now we're going to go back to it.

25 MR. SHREVE: Yeah. We won that and finally

1 got it moved to the balance sheet approach. Then they
2 started slowly going to shift -- there started being a
3 shift back the other way after we had won. And maybe
4 in certain situations with the smaller utilities, okay.

5 COMMISSIONER CLARK: But the cost of doing
6 that balance sheet was just not worth it.

7 (Simultaneous conversation.)

8 CHAIRMAN DEASON: We're talking about a
9 different rule. Let's wait and talk about that when
10 the time comes.

11 MR. SHREVE: Right. On this one, I think the
12 margin of reserve is something that you should really
13 give consideration to. I know we've lost it almost
14 every time; but in this rule, we've even lost what
15 little win we had from you. And the margin reserve is
16 really nothing more than placing an additional cost on
17 the present ratepayer to benefit the future ratepayer
18 coming in, future customer, people coming in. But I
19 think there's a lot to this.

20 CHAIRMAN DEASON: Mr. Self?

21 MR. SELF: Let me allow Mr. Morse on my left
22 just to say something briefly and then I have two what
23 appear to be internal inconsistencies I'd just like to
24 mention.

25 MR. MORSE: Thank you.

1 Commissioners, my name is Gary Morse
2 representing Southern States Utilities. I'm an
3 engineer.

4 I've spent numerous hours with Mr. Hill and
5 Mr. Schiefelbein at the workshops, and I would just
6 like to say that there's a lot of effort that I can see
7 that went into this by Mr. Hill and his staff. And
8 certainly the merits will be taken up at hearings of
9 this. But what I would like to say is I think this
10 goes quite a long way to resolving a lot of the
11 questions and a lot of the rate case time that comes up
12 at hearings discussing this particular issue. And with
13 that, I'll let Floyd take over.

14 MR. SELF: Let me just mention two things
15 which are not for discussion but I think we've found
16 may be inconsistencies or are simply not right.

17 On Page 106, at the bottom of 105 and 106 is
18 Paragraph 4, it appears that to be consistent with the
19 later margin reserve language probably on Line 4 it
20 should say, "existing customer base and the margin
21 reserve."

22 MR. HILL: I'd certainly look at that.
23 I will look.

24 MR. SELF: And the other question was on Page
25 120, Line 10, a little formula that's there for

1 effluent disposal facilities. When it talks about the
2 "firm reliable capacity," whether that should be the
3 "permitted capacity."

4 MR. HILL: That doesn't sound right, but I'll
5 check it.

6 MR. SELF: And the same on Line 7.

7 MR. SEIDMAN: Say it again?

8 MR. SELF: On Page 120, Line 7 and Lines 10,
9 where it says "firm reliable capacity," whether that
10 should be the "permitted capacity." Thank you.

11 MR. SCHIEFELBEIN: No, no. Commissioners,
12 "firm reliable capacity" is a defined term which
13 appears on Page 121 beginning on Line 22, and they're
14 not synonymous with "permitted capacity."

15 CHAIRMAN DEASON: Okay. Staff, I guess you
16 can take a look at that.

17 MR. HILL: We will look at that.

18 And Mr. Chairman, I will say that we begged
19 everybody at the workshops for their help and input on
20 developing this. Mr. Shreve had representatives at all
21 the workshops and I do appreciate whatever input that
22 we got.

23 This Commission studied rate case expense,
24 what caused it, what we could do, had a generic
25 investigation. Certainly we're concerned about rate

1 case expense, we have spent years studying it and trying
2 to find out what caused it, and this is an effort to
3 eliminate some issues to reduce it.

4 CHAIRMAN DEASON: Commissioners, what's your
5 pleasure?

6 COMMISSIONER CLARK: I'm ready to go on to
7 the next rule.

8 CHAIRMAN DEASON: Okay. We're just going to
9 leave it as is. We'll take it up March 5th; because
10 we're not proposing it today, and we'll just leave it
11 at that.

12 Let me just express some concern that we may
13 be, when it comes to used and useful, we may be in an
14 area that, even though we would like to try to put it
15 under some type of generic formula basis, it may not be
16 possible. And to the extent that we can and the
17 parties feel like it's fair and reasonable and that
18 it's going to eliminate a lot of time and expense, I
19 think it's a worthy goal to try to accomplish; I'm just
20 not convinced that we're there yet. And maybe we can
21 explore that more at the hearing when we got there.

22 MR. HILL: 433 is the same attempt for the
23 accounting and rate issues. We tried to identify the
24 quality of service, exactly what the Commission would
25 use in determining the quality of service, what the

1 standards would be.

2 In working capital, we've put several options
3 in. Option 1 codifies current Commission practice that
4 we will use the formula approach.

5 Option 2 requires Class A and Bs to use the
6 balance sheet and allows Class Cs to use the formula
7 approach.

8 Option 3 requires utilities with multiple
9 systems and combined annual revenues of \$750,000 or
10 more to use the balance sheet and everybody else to use
11 the formula approach.

12 And Option 4 basically allows the utilities
13 to use whatever method they believe is correct.

14 We support the current Commission practice of
15 the formula approach, which would be Option 1.

16 We also have included in here, I guess we can
17 come back and discuss that, codifying current
18 Commission practice on the averaging method to be used
19 as far as the simple average. On CIAC, we have two
20 options in there also. The one that I'm recommending
21 is that we not impute CIAC on the margin. I just
22 disagree with that on a professional basis. The
23 alternative to that codifies current Commission
24 practice and does impute CIAC on the margin.

25 And there are some other minor things with

1 income taxes and how they're handled, that they won't
2 be allowed for utilities that don't pay them. And
3 that, again, just codifying current Commission practice
4 in the issues that come before us.

5 CHAIRMAN DEASON: Okay. What about the debit
6 deferred taxes?

7 MR. LOWE: We have attempted in the debit
8 deferred taxes to do what we have in the water and
9 sewer industry been doing, what you, the Commissioners,
10 have been voting on. So it is our attempt to do
11 Commission practice and that's basically all this is.

12 I don't think anybody likes what we do. Most
13 of the industry concerns have been that we are hitting
14 them twice with used and useful on both sides of the
15 equation. But it seems to me the source of these funds
16 is all coming from one direction, out of the tax
17 return. It's all based on the tax return. If you net
18 the two together, you've got a leftover balance.

19 Our recommendation is that you put the -- if
20 it's a net credit balance, it goes in the capital
21 structure as a cost of money. And if it happens to
22 come out to be a debit -- which in our industry
23 probably, if there are any large amounts of CIAC
24 collected in any particular year, will be a debit
25 balance -- that it will be on the balance sheet as an

1 asset and be stuck in the rate base and the utility
2 will be allowed to earn a return on it.

3 Our practice has been with respect to the
4 used and useful, we've applied used and useful to it as
5 we would to anything else on a case-by-case basis. We
6 apply used and useful to CIAC on a case-by-case basis.
7 So, I don't see any difference in the application of
8 the used and useful concept to the deferred taxes than
9 any other item that we apply used and useful to.

10 CHAIRMAN DEASON: Okay. Comments?

11 MR. SCHIEFELBEIN: Commissioners, the Waterworks
12 Association has a variety of positions on different
13 subparts of this. I think there are certainly issues
14 contained within this rule that we would like to see
15 addressed at hearing. One would be our concern as far as
16 debit deferred taxes and so forth, but perhaps it might
17 not be the time to dwell on it now.

18 COMMISSIONER CLARK: I'll tell you what. One
19 of the things I need you to do, Bill, is, you know,
20 when I try to read something like that, I get confused
21 with debits, credits, debit deferred taxes, and things
22 like that. I need to, once again, have you all come
23 explain what you're doing and the rationale behind it
24 so I'm prepared to understand where the areas of debate
25 are.

1 Jack, do you share the comment that this area
2 is one that needs to go to hearing? This area of this
3 rule?

4 MR. SHREVE: Yes.

5 COMMISSIONER CLARK: This is sort of a major
6 rule, right?

7 MR. SHREVE: Right.

8 COMMISSIONER CLARK: Okay.

9 CHAIRMAN DEASON: Mr. Self? Okay.

10 The only question I have is that I think
11 we're all in agreement that these are going to be the
12 subject of discussion at the hearing. But at some
13 point, we're going to have to propose a rule. We're
14 not going to be proposing it today, we probably will be
15 doing that on March the 5th. And we can't propose a
16 rule with alternatives in it. I mean, we're going to
17 have to pick one of the alternatives. So at some
18 point, we're going to have to give that direction to
19 Staff.

20 And I'm not saying we need to do it today,
21 but we are going to have to grasp that at some point
22 and make that decision for the purposes of proposing a
23 rule. Then, obviously, we're still free, when we
24 propose a certain alternative, come hearing we can
25 choose a different alternative or even an alternative

1 the Staff didn't even originally propose.

2 Am I understanding the procedure correctly?

3 MS. MOORE: That's correct, as long as
4 there's some basis in the record for a different option
5 if you come up with one.

6 CHAIRMAN DEASON: Okay. Commissioners, then,
7 is it your pleasure that we just -- I mean, we've had
8 the discussion here. We understand what the issues
9 are, maybe not all the intricacies of the issues, but
10 we understand what they are. Do we want to go ahead
11 and proceed, and come the 5th of March we'll make a
12 decision on alternatives? Very well.

13 COMMISSIONER CLARK: Why can't we propose
14 alternatives?

15 MS. MOORE: Well, I suppose if there were no
16 comments filed and no requests for hearing --

17 COMMISSIONER CLARK: But if we propose an
18 alternative and say we are going to hearing --

19 MS. MOORE: Yeah.

20 COMMISSIONER CLARK: -- and as a result of
21 that hearing, we're going to choose one or the other,
22 people are on notice that these are the things that we
23 are considering and they can't, you know, they've got
24 to be there if they want to protect their interests.
25 I mean, I sort of think it's even amusing to talk about

1 nobody asking for a hearing.

2 MS. MOORE: Right. Right. But that's always
3 a possibility, I suppose. Why don't I check into that,
4 and on March 5th find out what JAPC would think about it.

5 COMMISSIONER CLARK: Okay. The reason I ask
6 is I have a feeling I've seen it before, but I don't
7 know.

8 MR. SHREVE: Commissioner, are you talking in
9 terms of trying to set things up so that the parts of
10 this that might not be challenged you wouldn't have to
11 take into the hearing, rather than have a challenge to
12 the entire rule package?

13 COMMISSIONER CLARK: I'm not there yet. I
14 mean, I'm inclined to just go forward; and if they're
15 not challenged, we'll adopt those. If they are
16 challenged, we'll deal with them. I guess, Jack, to be
17 honest, I'm at the position that I feel that I probably
18 have to go to hearing to get a better feeling for just
19 how controversial these things are.

20 MR. SHREVE: Well, if there were --

21 COMMISSIONER CLARK: And at that point, we
22 may adopt some and leave others, withdraw them and go
23 think about them again and then do them.

24 MR. SHREVE: Well, if there were some that
25 you felt should not be there, then I think you don't

1 need to propose them at all.

2 COMMISSIONER CLARK: Yeah.

3 CHAIRMAN DEASON: I guess, Mr. Shreve, your
4 point is that -- for example, on the previous item we
5 discussed, used and useful. If the Commission were so
6 inclined to make a determination that this is just not
7 something that can be reduced to a rule, it is
8 something that is going to have to be discussed on a
9 case-by-case basis, then you would strongly suggest,
10 obviously, that we just not propose anything and,
11 therefore, the parties are not in a position of having
12 to litigate pros and cons one way or the other.

13 MR. SHREVE: And you would be in the position
14 of not having --

15 THE REPORTER: Would you turn on your
16 microphone, Mr. Shreve, please?

17 MR. SHREVE: Excuse me. I'm sorry.

18 That's exactly right. If it's something --
19 if this section goes to a hearing, and there is a
20 feeling on the part of the Commission that it really
21 should not be a rule in the first place, then I would
22 think it would be a total waste. Because you know
23 we're all going to put whatever efforts we can into
24 maintaining our positions on this. And there may be
25 some areas of this that you just may not need to face

1 or may not need to come up with a rule or a change.

2 MR. HILL: Maybe. You've got to face these.
3 I mean, it's that simple. We've got to get them in a
4 rule or you've got to decide it can't be in a rule, but
5 I don't see any way that you're not going to have to
6 face these issues.

7 MR. SHREVE: No, you don't have to get them
8 in a rule. Some of these issues are taken up in rate
9 cases and some of these issues are issues we have won
10 that you're trying to put in a rule. You don't have to
11 put them in a rule.

12 CHAIRMAN DEASON: I think what he's saying is
13 that at some point the Commission is going to have to
14 determine that, yes, this is something that can be in a
15 rule. Then we have to say, "Well, what form of a rule
16 do we want?" Or we have to make the decision, "No,
17 this is something that can't be in a rule, we're just
18 going to have to litigate it on a case-by-case basis."

19 (Simultaneous conversation.)

20 MR. HILL: That is what I said.

21 CHAIRMAN DEASON: Okay.

22 MR. SCHIEFELBEIN: If I might interject a
23 comment on that, though?

24 Currently, in more cases than not, the
25 Commission is approving their own home-grown default

1 formulas that Staff are using, and applying these. And
2 implicit in what we consider to be very simplistic
3 formulas, there are a lot of policy judgments. And if
4 you are going to follow the old simplistic, if you
5 accept my term, "default formulas," I think you need a
6 rule with those in it.

7 As I understand it, the statute indicates
8 that this Commission, any agency, if it has arrived at
9 a point where its policies are fixed or predictable,
10 they must be in rule form; and if that's not done, I
11 believe that private parties who are injured by the
12 agency's failure to adopt a rule and to put that party
13 on notice as to where something would go would give
14 that party a opportunity to actually recover damages
15 against the agency.

16 So perhaps there should never be any default
17 formula, anyone's default formulas. But if it is going to
18 be your policy to follow any particular kind, I think that
19 needs to be subjected to the light of rulemaking to see if
20 those policies really can hold water.

21 CHAIRMAN DEASON: I think we're under an
22 obligation, as I understand it, by statutes to do what
23 you just said, and I would think we would try to follow
24 the statutes.

25 So we're just going to leave all the

1 different proposals as are. And we'll, come the 5th of
2 March, we'll choose one; or if we have the option of
3 proposing more than one, we'll look at that alternative
4 then.

5 MR. HILL: Right. 434 is just AFPI. We're
6 trying to get into a rule the filing requirements and
7 the applicability of that. We do it now, and it's just
8 codifying what we're doing.

9 CHAIRMAN DEASON: Comments? Questions? 435?

10 MR. HILL: 435, that's my brain child. It
11 just seems to me -- and what this does is it requires a
12 utility that has multiple systems to file all systems
13 if they're seeking rate relief. And there's been some
14 misunderstanding.

15 I'm not saying that if a utility that has 200
16 systems, and one of those systems is underearning, that
17 they're going to file information for all 200 systems
18 to seek rate relief for that one system. What I'm
19 saying is you can't even file that; unless you are
20 underearning as a total company, you can't file. We
21 don't want to see you; stay away; don't nickel and dime
22 us to death with all these little systems. But if
23 you're underearning as a total company, and you file
24 for rate relief, then you file us everything you've
25 got.

1 I don't know that anybody likes this, either.
2 But what I have to say is I believe that we will
3 demonstrate from the current Southern States rate case
4 that is before us now -- and, certainly, we have
5 information from the past Southern States rate case --
6 when we look at rate case expense on a per-customer and
7 a per-system basis, it's the cheapest rate case we've
8 processed in this industry in years. So I believe
9 there are savings here. And it's something I think we
10 need to look into very hard.

11 There is an alternative offered for this, and
12 that says, "Fine, if you don't want to go that route, then
13 you utilities out there that have multiple systems, you
14 file with us once a year."

15 We will have a proceeding before the Commission
16 and the Commission will determine the appropriate level of
17 all the joint and common costs of that utility, the
18 appropriate allocation factors to the various systems, and
19 the appropriate allocations to those systems. And then
20 should that utility decide to file individual systems then
21 for that next 12-month period, then we've already handled
22 all of those issues that relate to the joint and common
23 cost, the allocation factors and the allocations
24 themselves.

25 COMMISSIONER CLARK: Let me ask -- I want to

1 ask a specific question. I would like the parties to
2 comment on the alternative rule, the one that deals
3 with the joint and common costs. Does Florida
4 Waterworks take issue with that?

5 MR. SCHIEFELBEIN: Florida Waterworks
6 Association does not have a firm position on either the
7 alternate or the primary.

8 COMMISSIONER CLARK: Okay.

9 MR. SCHIEFELBEIN: However, I'll wait my turn
10 again, but I've been asked by one company, Florida
11 Cities Water Company, to indicate -- they were here
12 earlier and they have left -- to indicate that they are
13 very strongly against, certainly, the primary --

14 COMMISSIONER CLARK: Okay.

15 MR. SCHIEFELBEIN: -- unless there's going to
16 be some effort to get towards uniform rates, they
17 believe that this proposal will drive up rate case
18 expense. And they would hope to have the opportunity
19 to push that at hearing.

20 COMMISSIONER CLARK: You certainly could have
21 that --

22 MR. SCHIEFELBEIN: As far as the alternate, I
23 don't think that has been given any real consideration
24 yet.

25 COMMISSIONER CLARK: Jack?

1 MR. SHREVE: I would like to give some more
2 thought to the whole thing. I think, here again, like
3 the Southern States case, I'm not at all sure that,
4 regardless of whether there is any rate case expense
5 savings or not, justice was done in the case as far as
6 the procedures.

7 On the alternate, I'm not sure I understand
8 it totally, but it looks to me like what we're talking
9 about doing is gathering information and making some
10 determinations for an entire system so that you're not
11 faced with that in a rate case. And I've been for that
12 for some time.

13 (Simultaneous conversation.)

14 COMMISSIONER CLARK: Okay. That certainly
15 seems to me to be a step. You don't want to do that
16 every rate case.

17 MR. SHREVE: That's right.

18 COMMISSIONER CLARK: You ought to do it one
19 time and you sort of peg that allocation factor and you
20 go forward. To me, that's like an index thing.

21 MR. SHREVE: That's right.

22 Then once you get that information, you don't
23 have to gather it in every case, if it's an individual
24 case or all coming in at once; because there's certain
25 things that are going to be litigated in every case but

1 it's all the same thing. That might very well be a
2 good answer there.

3 COMMISSIONER CLARK: It's a start, certainly.

4 MR. SHREVE: I think so.

5 COMMISSIONER CLARK: To some extent, Chuck, I
6 have to be honest, I feel like we're making a decision
7 on policy before we have a lot of experience; and
8 that's why I think the alternative appeals to me,
9 certainly, more.

10 MR. SHREVE: That alternative could -- and we
11 talked about this a long time ago after that first rate
12 case. If you're going to start getting the
13 information, you'll save a lot of rate case expense
14 there because your individual rate cases will be
15 narrowed down a great deal.

16 COMMISSIONER CLARK: I think so, too.

17 CHAIRMAN DEASON: Let me ask a question. Do
18 we at any time look at the overall profitability, or
19 lack thereof, of a multisystem company?

20 MR. HILL: We have not to this date.

21 CHAIRMAN DEASON: So by the procedure that
22 we're following, we're allowing companies to seek rate
23 increases in those systems which need it. There may be
24 other systems where they don't need any rate increases,
25 maybe even overearning.

1 MR. HILL: Absolutely.

2 CHAIRMAN DEASON: And so there's no balancing
3 of those two.

4 MR. HILL: No.

5 CHAIRMAN DEASON: And that's what this rule
6 would accomplish.

7 MR. HILL: I believe so, yes. I understand
8 the complexity. You know, we've got -- we've now got
9 the second Southern States -- I understand the
10 complexity involved and the Staff involved. But the
11 truth of the matter is we have as much if not more
12 Staff on this than we've ever put on a Southern Bell
13 rate case or a TECO or anything else. And I think we
14 do an ample job, and I think we are experiencing
15 tremendous savings.

16 I mean, the Commission experienced tremendous
17 savings in the handling of both of these so far, and
18 we'll see at the conclusion of the second one.

19 I understand the caution, and I believe we
20 should be cautious in our proceedings. We've now had
21 two, soon one will be finished and that will conclude
22 two. And I don't know what we'll learn from that
23 second, but I suspect that the results will be exactly
24 like the first, and that on an individual customer
25 basis or a per-system basis, rate case expense will be

1 lower than it ever has been.

2 MR. SHREVE: Commissioner, I certainly hope
3 we have the same result in the second as we did in the
4 first and it's dismissed. (Laughter)

5 MR. SELF: I object to that. (Laughter)

6 MR. SHREVE: One of the biggest problems you
7 run into -- and I don't know, we don't have the staff.
8 As a matter of fact, you talk about the number of
9 people going on a Southern Bell case, we normally have
10 the same people handle the Southern Bell case as handle
11 the other cases, too.

12 But your time restrictions when you're faced
13 with a utility that you're having to take 127 different
14 cases in at one time, now, maybe this alternative would
15 get you prepared for that type of thing. But you do
16 the work ahead of time and you have it all set up, get
17 the cooperation of the company or mandate the
18 cooperation of the company and get that in there, it
19 might work. There are some very real problems from a
20 due process standpoint in handling the number of cases
21 that we've been faced with within one case.

22 CHAIRMAN DEASON: Well, this may be an
23 extreme example, but, I mean, at some point we're going
24 to face the question: Would we rather have 127 separate
25 rate cases spread over five years or one rate case that

1 has 127 systems done once every five years?

2 MR. SHREVE: I think you're right. There may
3 be a balance in there because -- and I don't know the
4 answer. I really don't.

5 CHAIRMAN DEASON: I don't, either.

6 MR. SHREVE: But I do know that at some point
7 you get yourself in the position of not being able to
8 do the total job and take a look at all of those
9 individuals systems. And there were very many that
10 came out in this case that needed individual attention
11 because of what had happened and things that you don't
12 even find out except from the customers themselves.

13 And that's where, when you're hit with the
14 time restraints that we were, we were still under the
15 eight-month time frame, the company takes as much as
16 time it wants -- and one of the things I'll throw out
17 here. We're talking time restraints and Southern
18 States. I think one thing we're all complaining about
19 the time constraints, but then we give 30 days to file
20 testimony. That does nothing but cut into our time.

21 The company can get their case ready and
22 prepared and filed all at one time. I just think we
23 ought to do away with that and that will solve part of
24 the problem, a very small part of the problem, right
25 there.

1 CHAIRMAN DEASON: Can we move along?

2 MR. HILL: 436, we're trying to codify -- we
3 asked for this information now, and we do these things.
4 This is the area where we moved the prefiled direct
5 testimony. We have it 30 days after the Minimum Filing
6 Requirements. The fact of the matter is we have found
7 that requiring prefiled testimony with the filing up
8 front doesn't get us anything. What it gets us is, "We
9 are good guys, this is our information."

10 We haven't determined what the issues are at
11 that point and the testimony really isn't worth a lot.
12 So we're trying to codify what we're doing as well as
13 move the testimony to where we've had a opportunity to
14 try to have a pre-pre or a pre-pre-pre and identify
15 what some of the issues are.

16 MR. SHREVE: Then start the filing date after
17 the prefiled testimony comes in and don't cut 30 days
18 off the eight months, because that's essentially what
19 you're doing. The company is in total control there
20 and why give them the extra 30 days?

21 CHAIRMAN DEASON: How do we do that in other
22 industries?

23 MR. SHREVE: Well, for one thing you just go
24 -- most of them go ahead and file it with their MFRs.
25 I don't know how, I guess I haven't really noticed. I

1 know in the last few cases, though, it's been almost
2 routine that they file their MFRs and then they file
3 their testimony 30 days later.

4 And with the company being in total control
5 of their filing date and their information and
6 everything, there is absolutely no reason that they
7 can't go ahead and file their testimony up front when
8 they file their MFRs. They know their case, they're
9 not waiting on our discovery to file their testimony.
10 All that's going to have to come afterwards.

11 I don't see any benefit to the Staff or to
12 the customers to cut into the time that's allocated to
13 the Public Service Commission to handle the case.

14 MR. SCHIEFELBEIN: May I respond?

15 CHAIRMAN DEASON: Yes, please.

16 MR. SCHIEFELBEIN: I think the problem here,
17 there may be a few problems, but I know that one of the
18 problems here is that often your attempt to meet MFRs
19 is unsuccessful. And you get into a situation where
20 you submit your MFRs and testimony sponsoring them.
21 You are notified of deficiencies. Hopefully, you cure
22 the deficiencies on your first go-around, even though
23 that's not always the case, which requires you to
24 change your testimony. And really it's, I think, it's
25 a better process and one that you've all been following

1 a lot more lately.

2 Let's get the official filing date
3 established; let's know what the MFR data being
4 sponsored is before we get into the testimony game. So
5 it does cut down on some expense in having to
6 continually revise your basic sponsoring testimony
7 doing it this way.

8 MR. SHREVE: If they wanted to do it that
9 way, get the MFRs and the testimony in and then do the
10 official filing date, because that cuts into our time,
11 not theirs. They can go ahead and accomplish the same
12 thing without cutting part of the eight months out.

13 CHAIRMAN DEASON: Mr. Self?

14 MR. SELF: I was going to say from my
15 experience, especially in the telephone area, that what
16 I've seen in doing water and sewer stuff is often you
17 end up where you're not even sure what the issues are.
18 Sometimes it's some months after the documents have
19 been filed, and it seems to make more sense to
20 determine the issues before anyone files any testimony.
21 So I'd offer that --

22 CHAIRMAN DEASON: Let me ask the question:
23 Isn't that one of the reasons you have rebuttal
24 testimony? Don't you have the ability to file rebuttal
25 testimony which, after the issues get more refined in

1 the intervenors testimony, then you can pinpoint your
2 responses and address those in rebuttal?

3 MR. SELF: I would agree with that. But you
4 may be spending time on preparing direct testimony for
5 things that really no one has a problem with and are
6 not an issue; and if that's the case, why spend that
7 time and money to present that testimony?

8 MR. SHREVE: I'll go along with that. If Mr.
9 Self feels that you're spending three or four months
10 there, then we'll go ahead and start the time running
11 at the end of that time. As long as we're not cut
12 into. We're the one that have to come out with the
13 discovery, get the information from the company, go
14 through the motions to compel. They're sitting there
15 with all of the information, we have to get it.

16 You're right, there is rebuttal testimony
17 filed after, then you have the issues conference to
18 identify it. There may be some problems but it doesn't
19 have to be at the expense of the time allocated to the
20 Commission and to us to process the case.

21 MR. HILL: Whatever your pleasure is. The
22 fact of the matter is I certainly don't even read the
23 testimony in the first 30 days, I'm looking at all the
24 numbers and I believe all our Staff is. The fact of
25 the matter is if there are changes in the MFRs, then

1 they have to refile their testimony, it costs more
2 money. The testimony that comes in when the case comes
3 in isn't worth anything. But whatever your pleasure
4 is. (Laughter)

5 MR. SHREVE: Can we go ahead and set it up have
6 the testimony as part of the MFRs and at the time the
7 testimony and the MFRs are straight start the time
8 running?

9 MR. FEIL: I don't think we have the
10 statutory authority to mess with the official filing
11 date, because it's the statute that says the official
12 filing date is the date the MFRs are met. I don't
13 think that you can alter the official date of filing or
14 the start of the statutory clock. The only thing that
15 you can alter, I think, is the filing of testimony.

16 COMMISSIONER CLARK: Let me ask a question:
17 You're suggesting that it be filed within 30 days of
18 meeting the Minimum Filing Requirements. How are they
19 going to be any better informed as to what the issues are?

20 MR. HILL: They will be informed in that they
21 will already know -- in fact, chances are we've already
22 had some type of pre-pre-pre meeting to talk about
23 their filing and invited all the parties of record to
24 come. I wouldn't want there to be any secret meetings.

25 MR. SHREVE: What meeting is this?

1 (Laughter)

2 MR. HILL: And, in fact, they've had an
3 opportunity to -- you know, if their MFRs are deficient
4 or incorrect, there's a material error, then they would
5 have to refile that testimony.

6 COMMISSIONER CLARK: Yeah. See, I'm familiar
7 with what is done in telephones and to some extent you
8 can argue that it really doesn't accomplish anything,
9 but I think it does sort of orient people to what the
10 utility thinks the issues are with respect to where are
11 their costs increasing; and it sets the tone.

12 I'm not being -- prefiled testimony always
13 has been a struggle for me to deal with because on the
14 one hand it's more like discovery, and it's really not
15 in the record until that fellow comes on, or that lady
16 comes on, and puts the testimony on. And that came up
17 in an argument in the Centel case.

18 You know, there's nothing in this case, with
19 respect -- the Centel case is over, right, it's
20 settled?

21 There's nothing in this case about the
22 merger. Now, and really at that point there's no
23 testimony for us because it hasn't been sworn, and so I
24 look at it more as sort of a discovery tool. And to
25 the extent it sort of puts everyone on notice as to

1 what the utility thinks the issues are, it's helpful.

2 And then the rebuttal testimony when they
3 begin to refine the issues, they can be dealt with in
4 the rebuttal testimony.

5 You know, you can leave it in and, you know --

6 MR. HILL: We're really indifferent. I mean,
7 it doesn't really matter to us.

8 MR. SHREVE: Isn't the testimony required in
9 the MFRs?

10 MR. HILL: I don't believe so.

11 COMMISSIONER CLARK: No. I think, Jack,
12 that's the situation where you assume the practice once
13 in one industry is in the others.

14 MR. SHREVE: Okay. Then, why couldn't the
15 testimony be required in the MFRs? So that then at the
16 time the testimony is filed, after they've had the time
17 to straighten out their MFRs or whatever, that's when
18 the time starts to run.

19 COMMISSIONER CLARK: My view would be the
20 testimony is filed with the MFRs. I mean, that does --
21 I'm just not persuaded that that's going to help.

22 CHAIRMAN DEASON: That it's going to help to
23 have a 30-day delay?

24 COMMISSIONER CLARK: Right.

25 CHAIRMAN DEASON: Well, I know that we're

1 going to readdress all of these things on the 5th of
2 March, but my inclination at this point is to agree
3 with Commission Clark, I don't see where we accomplish
4 a lot by having testimony delayed for 30 days.

5 Now I understand the arguments that if the
6 MFRs are deficient, well, then the prefiled testimony
7 is going to have to be changed. But at the same time,
8 we always make corrections, modifications to prefiled
9 testimony. Unless there are just substantial,
10 substantial errors and problems with the MFRs, what
11 minor changes there are can be just from the errata
12 sheet. I don't think it's going to change the very
13 basis of the case.

14 If the MFRs are so deficient it's going to
15 change the very basis of the case, perhaps everything
16 needs to be started over again and -- which we're going
17 to have to do anyway, I suppose. So, I'm just not yet
18 convinced the 30 days are needed.

19 MR. HILL: And again, it's minor. When they
20 change testimony, even on the minor ones, the
21 difficulty on our part is you hire an engineer and so
22 you've got to pay him \$150 an hour to say, "Well, these
23 numbers are really this." And you pay an attorney \$150
24 dollars an hour to file it. So you've run up \$300 or
25 \$400, which isn't a lot of money but it can be.

1 Again, we're looking to save nickels and
2 dimes. I realize it's not a lot of money, no big deal,
3 and it's not something that we really care a whole lot
4 about anyway.

5 COMMISSIONER CLARK: Are you taking back the
6 testimony is not worth anything anyway?

7 MR. HILL: No. It's not worth anything, it
8 really isn't.

9 MR. SCHIEFELBEIN: I think it's rare,
10 Commissioners, that in the water and sewer industries
11 that you see utilities in their direct testimony
12 getting into any depth, or any kind of focus as to what
13 the issues are going to be. Because you don't know --

14 COMMISSIONER CLARK: Well, I can tell you
15 they ought to. From my standpoint, when they file
16 their rate case they ought to be able to tell us what
17 is driving this rate case. And that better be in their
18 direct testimony.

19 MR. SCHIEFELBEIN: What is? I'm sorry.

20 COMMISSIONER CLARK: What is driving the need
21 to be in here for a rate increase? And that better be
22 in their direct testimony; if it's not, they're not
23 doing that their job.

24 CHAIRMAN DEASON: But I do agree that you
25 cannot envision what the other issues may be that are

1 raised by the intervenors. That's what you have in
2 rebuttal testimony.

3 MR. SHREVE: That's a really good point.
4 Because if the Commissioners -- if the company is not
5 carrying their burden in that initial testimony -- I've
6 seen situations where if we decide not to file anything
7 and they file just some ghost testimony, then they
8 don't carry their burden, they should be booted out of
9 there. If they don't file meaningful testimony in the
10 first place, they are, if we raise something else, then
11 given an opportunity to come back with rebuttal. But
12 if we don't raise anything else, then they shouldn't be
13 given the opportunity to bring it up and testify or
14 anything at that point.

15 COMMISSIONER CLARK: And I understand, well --

16 MR. SCHIEFELBEIN: I think, Commissioners,
17 that these proceedings are built backwards, and I
18 always have felt that way, and I've been on a couple of
19 different sides of the table. I mean, and I don't know
20 the answer. And we're not going to accomplish it today
21 and we're not going to accomplish it with these rules.
22 But, just from my own experience, it seems like we do a
23 lot of paperwork and then identify the issues.

24 And looking at this in a nonpartisan way, I
25 can imagine how difficult it is with the time clocks

1 going and so forth with Mr. Shreve, as far as trying to
2 get that with 100 other cases or 200 other cases,
3 trying to figure out a narrow -- zero in on what the
4 issues are.

5 But it seems like really there shouldn't be
6 any requirement of any meaningful testimony until
7 you've had, perhaps, the audit completed, until there's
8 been some opportunity for discovery. And I think that
9 nine times out of ten, until you get to the point where
10 you know pretty much what the disputed issues are
11 really going to be, testimony is not generally going to
12 be too helpful. That doesn't solve our problem, but.

13 More often in these water and sewer cases you
14 find out specifically what the issues are perhaps 30
15 days before the hearing. And there may be rebuttal
16 testimony due within a matter of a week or so after
17 that prehearing, that is very common; and that just,
18 like I say, I think that's building it a little bit
19 backwards.

20 CHAIRMAN DEASON: I know this is not in the
21 rule proposal, but under our normal procedures do we
22 schedule these cases such that there's a reasonable
23 amount of time for the utilities to have to file
24 rebuttal testimony?

25 MR. HILL: Yes.

1 CHAIRMAN DEASON: And it could be that if
2 their direct testimony is required earlier that we're
3 going to have more time in the schedule to perhaps give
4 them more time on rebuttal? That's not going to be
5 possible?

6 MR. HILL: No, sir.

7 CHAIRMAN DEASON: Why is that, could you
8 tell me?

9 MR. HILL: We have a template for a rate case
10 -- you know, the steps in a rate case, and when they
11 need to be done, so many days between this and that.
12 And then we've got to go down and put that on the
13 Commission's calendar. And you've got some critical
14 dates, certain agendas that then take a few dates here
15 and a few days there. And things roll around, and 30
16 days on the front isn't going to change any more time
17 as far as rebuttal. Now, rebuttal --

18 CHAIRMAN DEASON: How is requiring the
19 testimony to be filed concurrently with the MFRs, how
20 is that going to help in scheduling? It's not going to
21 affect scheduling at all, it just helps the intervenors
22 to have that testimony earlier so they can go ahead and
23 determine what discovery they need to file and things
24 of that nature?

25 MR. HILL: That's my understanding.

1 CHAIRMAN DEASON: Okay. 437?

2 MR. HILL: 437 is just us wanting to get some
3 more information. We get it now under discovery, and
4 to make sure the utilities know that when they file
5 stuff with us they've got to use the base facility
6 charge and usage rate structure.

7 CHAIRMAN DEASON: Comments? 4385?

8 MR. HILL: That's just requiring that the
9 utility file tariff sheets when they file for a rate
10 increase.

11 CHAIRMAN DEASON: Comments? 441?

12 MR. HILL: 441 and 4415, we're really
13 deleting 441 and replacing it with 4415. It's doing
14 the same thing. It's information that needs to be
15 filed with this Commission when a plant is being added
16 or required improvements are made because of a
17 governmental agency or authority. We have certain
18 information that we want filed and we're just deleting
19 one rule and replacing it with another.

20 CHAIRMAN DEASON: Comments? 443?

21 MR. HILL: 443 is again just current
22 information that we're asking for trying to get in the
23 rule.

24 CHAIRMAN DEASON: Is there a question here
25 concerning the filing of prefiled testimony, when that

1 would be required?

2 MR. HILL: No, sir.

3 CHAIRMAN DEASON: Okay. 455?

4 MR. HILL: 455, we're trying to clarify a few
5 things in the existing Staff-assisted rate case rule,
6 letting the companies know up front that if there's not
7 a reduction in rates that they cannot protest; and,
8 more importantly, laying out the role of the Staff if a
9 Staff-assisted rate case is protested, the role of the
10 utility, what is expected of them.

11 This is codification of Commission practice,
12 but we've stumbled a few times and there's only been a
13 few steps -- this is rate cases that have been
14 protested -- and the Commission asked us to go ahead and
15 get that in the rule so everybody knows up front the roles
16 of the Staff, the utility, et cetera. And that's what
17 we're trying to do here.

18 CHAIRMAN DEASON: Comments?

19 MR. SEIDMAN: Commissioner --

20 CHAIRMAN DEASON: I'm sorry, go ahead.

21 MR. SEIDMAN: Just a couple. With regard to
22 the opportunities under the Staff-assisted rate case
23 and the fact that a utility may request it and may be
24 turned down either for timing -- usually for, say,
25 timing purposes because the Commission has too much of

1 a load and can't take it -- we think there ought to be
2 some provision in there that says that if the utility then
3 goes and proceeds with a regular rate case that it's not
4 prejudiced with regard to rate case expense on that.

5 Also, I think there ought to be a provision
6 in there that the Staff preparing a Staff-assisted rate
7 case is required to use the same or meet the same
8 requirements as required for a Class C in its MFRs.
9 Because the Staff is in a position there that it's
10 performing this service for the utility, presumably
11 because it does not have the expertise or cannot gain
12 the expertise in preparing that case; yet, it's still
13 going to be held to the same standards if that case
14 goes past PAA and has to go to hearing.

15 CHAIRMAN DEASON: Let me see if I -- you're
16 saying we should require our Staff to basically prepare
17 MFRs for the utility consistent with those required for
18 a Class C utility?

19 MR. SEIDMAN: That's correct.

20 CHAIRMAN DEASON: So that if in case the
21 Utility wants to not abide by the Staff assistance
22 procedure and to file a file-and-suspend rate case,
23 they've got the MFRs done for them?

24 MR. SEIDMAN: No.

25 CHAIRMAN DEASON: Okay. I'm missing

1 something, can you go back and clarify?

2 MR. SEIDMAN: Yes. Because under the
3 Staff-assisted rate case, if that case is protested by
4 another party, then the utility is held to the same
5 standard to support its case in a hearing. And therefore,
6 the MFRs should be prepared in the same manner and in the
7 same standards as they would be if they had been done by a
8 utility under Class C requirement.

9 CHAIRMAN DEASON: Staff, do you have any
10 comment?

11 MR. HILL: That's a misunderstanding. What
12 we asked and what we require of the utility is that
13 they provide support for the underlying data used by
14 the Staff in their Staff analysis. The Staff is going
15 to go ahead and get on there and provide testimony to
16 the analysis that they did. But we are requiring the
17 utility, to the extent that the Staff used information
18 provided by the utility, we're telling the utility,
19 "You will put on a witness to provide support for that
20 information you gave us to use." That's all that we
21 require of them.

22 MR. SEIDMAN: Is the format for that the --
23 what's being presented that's going to be presented to
24 the Commission is in the same way that any other
25 utility case is, so they can follow it in the same

1 manner? Or is there going to be a different format for
2 this?

3 In other words, when we prepare a case for a
4 regular utility, we're putting together the MFRs and a
5 package of the A, B, C, whatever, schedules.

6 MR. HILL: No.

7 MR. SEIDMAN: What is the Commissioners going
8 to see when they see one under this?

9 MR. HILL: They see whatever exhibits that
10 the utility has that support the information they have
11 given Staff.

12 MR. SEIDMAN: So it's a simplified?

13 MR. HILL: Oh, absolutely. It's not MFRs or
14 anything like that at all.

15 COMMISSIONER CLARK: Well, maybe you can get
16 together and clarify that.

17 MR. SHAFER: Commissioners, if I may, the
18 most recent experience of a Staff-assisted case going
19 to hearing was the Sandy Creek case, which Mr.
20 Schiefelbein represented the utility in that case, so
21 he's familiar with some of the details. But in that
22 particular case the Staff put on a Staff witness to, as
23 Mr. Hill indicated, support the original PAA that was
24 done in that case. And to the extent that the utility
25 differed in some of the positions that the Staff had

1 taken in the original PAA, they supported those
2 changes.

3 The changes in the rule were designed to make
4 it more clear what the obligation of the utility was in
5 those cases, but certainly it's not the same type of
6 standard that we would expect in a file-and-suspend
7 case because we have the PAA as a basis. And what I
8 would expect that the utility would do, as Mr. Hill
9 indicated, is simply put a witness on that would verify
10 that the information that the Staff used as the basis
11 for that analysis was the best information available at
12 the time.

13 If they had some difference of opinion in the
14 original Staff recommendation, then they would be
15 obligated to support that difference; and that would be
16 what we would be trying to accomplish.

17 CHAIRMAN DEASON: Mr. Shreve?

18 MR. SHREVE: It almost sounds to me like
19 we're saying the same thing, but we've never said the
20 same thing in the past on this issue. I was going to
21 use the Sandy Creek over in Panama City example myself.
22 I think the Staff-assisted rate case is probably one of
23 the best things that the Public Service Commission does
24 in an effort to save rate case expenses in very small
25 systems. But I think there is a breakdown. If it gets

1 to the point that the customers want to request a
2 hearing, that's where your breakdown is. Because, as
3 in the Sandy Creek case, I think the customers had
4 every right to request a hearing. But then, because --
5 and even some Commissioners, not here, said, "Yes,
6 there are problems with this case and we should go to
7 hearing and I guess you are going to request that."
8 And they were encouraged to request that hearing.

9 They did that. They did it. Then we came in
10 and said, "Okay, we will help you with your protest,
11 we'll go in and help with the case and put the case
12 on."

13 Each customer's bill in that case was raised,
14 I think it was, around \$8 or \$9 per customer per month
15 because they went to a hearing.

16 Now what I think should happen, if the work
17 is already done by the Staff -- and maybe this is what
18 we're saying here. Let the Staff put on the Staff's
19 case, not the company's case but the Staff's case; no
20 additional rate case expense; and let the company
21 verify the information that comes in, not have the
22 burden of putting on the whole case.

23 If the company were to decide they wanted to
24 differ with the Staff on an issue or two issues, come
25 in and put that case on; but I don't think you're

1 talking about that much of a problem. Then you would
2 not have the type of rate case expense that we had in
3 that.

4 Until that Sandy Creek case, we had settled
5 every single Staff-assisted water and sewer case that
6 was protested, because I think the companies probably
7 thought they might get hit with some rate case expense
8 themselves. In other words, you weren't going to take
9 a system with 100 customers and put \$50,000 or \$60,000
10 on them in rate case expense.

11 We haven't done much in the way of settling
12 since that case. But I really think that's were your
13 Staff-assisted rate cases break down.

14 Now, if the Staff can come in and put on the
15 Staff case that they recommended, which they've already
16 prepared; the company can put on any case if they
17 disagree with that; we can come in and put on the case
18 for the customers, then you've really eliminated rate
19 case expense and carried it all the way through.

20 Right now, I've seen the big breakdown is
21 when the customers want to go to hearing, then they're
22 really at risk and it's used like a hammer over their
23 head to keep them from doing it.

24 MR. SCHIEFELBEIN: May I respond?

25 CHAIRMAN DEASON: Yes.

1 MR. SCHIEFELBEIN: Thank you. And I'll be
2 very brief.

3 First of all, I'd like to agree very
4 sincerely that the Staff Assistance Program that you
5 all conduct here is one of the best that you do for
6 water and sewer utilities. And 99 times out of 100 the
7 system does work, without a lot of the actors we see,
8 including myself, in some of the other cases.

9 However, a small utility often finds itself
10 at the mercy of aggressive intervenors in a case like
11 that where, for example, in Sandy Creek, the number of
12 interrogatories, the numbers of requests for
13 production, the breadth of those discovery efforts by
14 the intervenors, all very legitimate requests in
15 themselves, was enormous.

16 That utility, faced with a stack of subpoenas
17 and requests for production and interrogatories like
18 this, chose to retain counsel, chose to retain
19 consultants in the face of a situation where Staff had
20 never defended a Staff-assisted rate case before a
21 hearing and we didn't know just how far they would go.

22 So, I mean, there's the one positive thing
23 I'd like to say, that the rate case expenses is a
24 mutually caused thing on that.

25 I like to just throw out the idea that

1 possibly these kinds of scenarios might be the kind of
2 controversies that might properly involve arbitration.

3 COMMISSIONER CLARK: Just before you said
4 that, I was thinking the same thing, maybe we need to
5 try mediation. But I don't know who would do that.

6 MR. SCHIEFELBEIN: I can tell you right now
7 from the bottom of my heart, we did everything we could
8 in that case to keep rate case expense under control.
9 And rate case expense was -- the end result of it was
10 very disproportionate to what we were fighting over,
11 through no malevolence or malintent or greed or
12 anything like that.

13 But these things can, with intervenors
14 pursuing perhaps very legitimate requests, utilities
15 very legitimately depending themselves, things do get
16 out of control. And we can't carry over the usual fun
17 and games that we do with these little utilities
18 because, basically, you have to destroy the utility to
19 save it, to coin a phrase.

20 But arbitration, something like that, binding
21 mediation, I think that there's probably a lot to be
22 gained by that. And dispense with a lot of formalities
23 and free-ranging discovery that you normally would
24 have.

25 MR. SHREVE: I think --

1 CHAIRMAN DEASON: Mr. Cresse?

2 MR. SHREVE: Oh, I'm sorry.

3 MR. CRESSE: Commissioner, I think that if
4 you attempt to mediate and use the Prehearing Officer
5 for these small rate cases before it gets all involved,
6 you'll find that that's reasonably successful. The
7 Commission has the tool to appoint just one
8 Commissioner as a Hearing Officer if they choose to do
9 so. This may be an ideal situation when you might want
10 to do that.

11 I remember -- of course, everybody knows that
12 person has to recommend to the full Commission. But it
13 has a soothing effect on the parties when the Hearing
14 Officer is a Commissioner and he says, "Well, I think
15 you all need to kind of split that about half-and-half
16 there. And absent any other information -- and you all
17 have had the opportunity to present all you want to
18 present, haven't you?"

19 And they say, "Yeah."

20 "So, absent any other information, that's
21 what I'm going to recommend to the full Commission."
22 It seems to be therapeutic to the parties.

23 COMMISSIONER CLARK: I think that's what
24 binding arbitration is.

25 MR. CRESSE: Well, it's not binding. You've

1 just kind of told them up front what it is you're going
2 to recommend, and they're going to take their chances
3 if they go further. And I've never seen that
4 particular process fail.

5 COMMISSIONER CLARK: I think that's a good
6 suggestion.

7 MR. SHREVE: I don't disagree with that. I
8 think there may be some way to go on that.

9 But with what we're dealing with right now
10 and this rule and the situation that we have, I don't
11 really disagree with what Mr. Schiefelbein says but I
12 might add a little bit to it.

13 We also backed off on discovery to try to
14 hold things down at that point. I guess the point I'm
15 making is that I think we should back off and not be
16 going through to the company for that information if
17 there is something we can get some cooperation and
18 maybe even work it out on an informal bases. I would
19 even be willing to put the whole case on in-house to
20 hold things down. But the company should have the
21 burden of putting on the whole case.

22 And I have heard utilities come in and say
23 that, if the Staff has already done the work, if there
24 are certain issues you want to take issue with, even
25 the President can come in and argue that particular

1 issue.

2 In that case, to go a little further with the
3 details of it, the rate base was established out of a
4 report filed, an annual report filed by the company.
5 The customers knew there had been a bankruptcy
6 situation and they violently disagreed with that whole
7 situation. To back up the Staff, the company then went
8 out and did a cost of service study and hired several
9 witnesses to do that and back up that.

10 So there was a lot going on in that case for
11 that size thing, but the customers in that situation,
12 when that was the way the rate base was determined, had
13 every right to have a hearing.

14 What I'm saying is I think we should do
15 something -- the Staff has already done the work. And
16 I can't say that the company is in such bad shape when
17 it's really the Staff recommendation and the PAA that
18 comes from the Staff recommendation that we are taking
19 on. I think that's not a bad position to be in for the
20 company anyway. And then the Staff is going to make
21 the final recommendation. So the customers feel that
22 they really aren't even starting off even anyway.

23 So I think if the Staff would come in, put on
24 the case for the Staff, not the company. Let the
25 company pick any issues they want to take up, but let

1 us put it on as cheaply as we can, and as informally as
2 we can, and hold this whole thing down.

3 So you move on to some type of arbitration of
4 handling it in some other way, and most of the times it
5 has worked. But if you have that hammer hanging over
6 the customer's head that they are going to have to pay
7 that much -- and I advise a lot of them not to go in,
8 even though they do have some issues that could be
9 taken up, because we could win the issues and still
10 lose. And up to that point, the system leaves --

11 COMMISSIONER CLARK: I think we ought to look
12 at some of those suggestions with respect to this. And
13 I can say that I think there's been an effort on both
14 parts where there's these small utilities to keep rate
15 case expense down. The fact of the matter is you have
16 some expense and you do have to look at some issues.

17 So I think the notion of having the
18 Prehearing Officer as, if not binding arbitration, it
19 certainly is persuasive when someone on the Commission
20 says, you know, "This is what I'm going to recommend,"
21 people sort of get a little more serious as to what
22 they might bargain with.

23 MR. SHREVE: It might even be that even
24 beyond that, you might just set up one of the
25 Commissioners as an arbitrator separate from the

1 Prehearing Officer and have a little bit of a different
2 side procedure going on so that you could have that
3 Commission in there. I'm not sure exactly how you
4 could have the Prehearing Officer make that type of
5 recommendation without going through --

6 MR. CRESSE: No. I think -- I'm suggesting I
7 want to stay within the total confines of the law,
8 because I know Mr. Shreve is a lawyer. I'm not. But I
9 think if you appoint one Commissioner, as you can under
10 the law on those Staff-assisted rate cases that
11 somebody had the audacity not to agree with the Staff
12 on, that that person then by law is the recommending
13 person to the entire Commission. And I don't know that
14 you've got the statutory authority to create one of the
15 Commissioners to be an arbitrator, but you certainly
16 have the statutory authority to say that Commissioner
17 is going to go over there at that hearing and they're
18 going to come back and make a recommendation to the
19 full Commission.

20 And Commissioners, I never saw it fail. You
21 know, I don't know why it works, but I've never seen it
22 fail.

23 MR. SHREVE: Maybe I misunderstood what --
24 (Simultaneous conversation.)

25 COMMISSIONER CLARK: I think you're basically

1 talking about the same concept. Maybe you all can get
2 together and work out the mechanics.

3 MR. CRESSE: Oh, no. I'm not talking about
4 going to a hearing, I'm talking about going to a meeting.

5 COMMISSIONER CLARK: Which is your informal
6 hearing.

7 MR. SHREVE: And I've seen in the past Mr.
8 Cresse's persuasion and --

9 MR. SCHIEFELBEIN: It might very well work.

10 MR. SELF: If it's any help, we would offer
11 to lease out Mr. Cresse as an arbitrator. (Laughter)

12 COMMISSIONER CLARK: I don't think that would
13 help.

14 MR. CRESSE: Lawyers have stepped across the
15 line.

16 CHAIRMAN DEASON: I want to recap a little
17 bit. What I'm hearing is that the procedure works 99
18 out of 100 times. Nobody really has any fault with the
19 procedure when there's not a protest. Even when there
20 is a protest, most of the times it gets worked out; but
21 there's a few cases where it doesn't.

22 The rule as proposed by Staff, are there
23 problems with it, or does it just need to go a step
24 further and perhaps include some type of a procedure
25 which would create some type of arbitration, or at

1 least have a single Commissioner as a person to kind of
2 mediate and then make a recommendation to the full
3 committee?

4 MR. HILL: That is my understanding.

5 CHAIRMAN DEASON: So Staff is just going to
6 go and take a look at that and perhaps add that in to
7 what you already have?

8 MR. HILL: Yes, sir.

9 MR. SHREVE: And for the Staff to put on the
10 case that they have come up with? Maybe that's what
11 you're already talking about.

12 COMMISSIONER DEASON: That's in the rule,
13 isn't it?

14 MR. HILL: That's already in the rule right now.

15 MR. SHREVE: Okay. But you've always
16 objected to doing that before.

17 MR. HILL: Not in the past 12 months, anyway.

18 COMMISSIONER CLARK: Jack, there are some
19 pitfalls to that suggestion. I mean, pitfalls from the
20 standpoint -- let me just be frank. We're always
21 accused of leaning too heavily towards the utilities,
22 and that's putting it nicely as to what we have been
23 accused of. And it just seems to me, to the extent we
24 start putting on their case, that's one more item
25 they're going to point to and say, "Here is where you

1 do it." So there's that concern.

2 MR. SHREVE: Okay. I understand that. And
3 that has been the objection all along. But the Staff
4 has already done the work, they're already put the time
5 in, they've come out with the recommendation, that's
6 the PAA that came out.

7 COMMISSIONER CLARK: I certainly think if we
8 have your support this is the way to go, I feel more
9 comfortable.

10 MR. SHREVE: I think the Staff should be
11 willing to put on a case to support their case, not the
12 company; and I think that should be may clear. It's
13 not. If the company has something further that they
14 want to present, I think that's fine and they should be
15 the ones to bear that burden. But in doing it this
16 way, you wouldn't have the type situation that we came
17 up with in Sandy Creek.

18 COMMISSIONER CLARK: Yeah. I think there are
19 some good suggestions there.

20 MR. HILL: And just what is in this rule, and
21 the only thing that we have added, you know, the Staff
22 will put on witnesses to present testimony on the
23 analysis they have done in coming up with the PAA, and
24 the utility will provide whatever witness to support
25 the underlying information used by the Staff. I mean,

1 that's what this rule says. And we will look further
2 and see if we can arbitrate.

3 MR. SHAFER: And to that end if I may just
4 add one comment, and that is I think that what Mr.
5 Cresse said has merit. And I think that because in
6 practicality we do that very thing, you know, we call
7 it a prehearing or a pre-prehearing, but frequently or
8 in every case in the Staff-assisted cases, we attempt
9 to get the parties together at some point in front of
10 the Prehearing Officer; and many, many times that has
11 been the impetus for a settlement so that we didn't
12 have to go to hearing.

13 And if what we need to do is to specify that
14 in the rule, I suppose we can do that. It's just
15 something that we do as a matter of course in those
16 cases, so --

17 CHAIRMAN DEASON: Well, the process has
18 worked before. I remember some of the telephone
19 overearnings cases Commissioner Gunter sat in as, I
20 don't know what the term would be, but in the
21 negotiations process to facilitate negotiations. And
22 often times a settlement was reached, and that was
23 presented to the full Commission and it normally was
24 approved. So, there's probably some precedent for
25 doing something along those lines, but it was never in

1 a rule before.

2 MR. HILL: We will look into that.

3 CHAIRMAN DEASON: Do we feel like we can
4 conclude here shortly or do we need to take a break?

5 MR. HILL: No. I think it's not going to
6 take us long.

7 COMMISSIONER CLARK: How about this? Can we
8 skip with your eloquent explanation of the rules and just
9 ask if there are any other questions on what remains?

10 MR. HILL: Absolutely.

11 CHAIRMAN DEASON: I don't have a problem with
12 that because I don't have any more questions on any of
13 the others. Are there any comments to Staff's proposal
14 on the remaining rules? Any comments from the parties
15 to Staff's remaining rules? We're breaking precedent
16 here and we're not going rule by rule, we're going to
17 try to wrap this up.

18 MR. SELF: We don't have any more.

19 MR. SCHIEFELBEIN: We have a great many
20 concerns about the definitions employed in the rule
21 package. However, -- well, as I understand it, there's
22 another rule package circulating around that we'd like
23 to call "Phase II" which will get into that. But I did
24 want to mention that the definitions, we think, are
25 somewhat archaic that are in this draft and out of sync

1 and we look forward to Phase II.

2 We've made quite a few proposals on those
3 which I'll spare you today.

4 MR. HILL: I would like to live through Phase
5 I and Phase II of these rules.

6 MR. SCHIEFELBEIN: Yes, me, too.

7 The only other comment I feel compelled to
8 make is that on 570 -- well, 570 isn't even here.

9 MR. HILL: No. (Laughter)

10 MR. SCHIEFELBEIN: And we want it there. If
11 I may ask Staff, is 570 planned to be repealed or
12 retained?

13 MR. HILL: We took your comments from the
14 workshop and decided to leave it the way it was.

15 MR. SCHIEFELBEIN: I have no further comment.

16 CHAIRMAN DEASON: Mr. Shreve, do you have any
17 further comments on any of the remainder of the
18 proposals?

19 MR. SHREVE: I don't think so.

20 CHAIRMAN DEASON: Even 456, you don't have
21 any comments on that one? I'm not inviting you to
22 comment, it just seems that you may have comments on
23 that one.

24 MS. MOORE: Mr. Chairman, 456, just to
25 correct a cite because it may cause people confusion

1 between now and March 5th in reading it, Page 159 of
2 the rule, Line 3, that should refer to Rule 30.455.

3 CHAIRMAN DEASON: If there are no more
4 comments, then we need to deal with Issue 3. And I
5 assume Issue 3 is no, we're not adopting these rules,
6 we're not even proposing these rules yet and --

7 MR. SHREVE: Commissioner, we have some real
8 concerns about it, but I don't see any reason to go
9 into the details of it at this point.

10 CHAIRMAN DEASON: Very well. So on Issue 3
11 we are not proposing these rules. We will do that at
12 the March 5th Special Agenda for this purposes.

13 Before we close, I would like to make one
14 request that the parties cooperate in this. We've
15 spent a lot of time here today, and we've accomplished
16 a lot that is not actually proposed in the rules. When
17 we come back on the 5th, I think it would be very
18 advantageous to at least one Commissioner, probably all
19 five, if we could have a designation by Staff and
20 perhaps concurrence by the parties that there are
21 certain rules where there is not an issue with, and we
22 can kind of almost treat that kind of like a consent
23 agenda and go ahead and get those out of the way so we
24 can concentrate on those where we know there are going
25 to be problems. I think that will facilitate matters.

1 So to the extent we can accomplish that, I'd like to
2 see that.

3 MR. HILL: Great.

4 CHAIRMAN DEASON: Anything else before the
5 Commissioners? Hearing none.

6 (Thereupon, hearing adjourned at 4:00 p.m.)

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

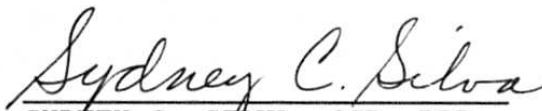
4 I, SYDNEY C. SILVA, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Special Agenda
7 hearing in this cause, Docket No. 911082-WS, was heard by
8 the Florida Public Service Commission at the time and
9 place herein stated; it is further

10 CERTIFIED that I reported in shorthand the said
11 proceedings; that the same has been transcribed under my
12 direct supervision, and that this transcript, consisting
13 of 232 pages, constitutes a true and accurate
14 transcription of my notes of said proceedings; it is
15 further

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

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 at Tallahassee, Leon County, Florida, this 27th day of
21 January, A.D., 1993.

22 
23 SYDNEY C. SILVA, CSR, RPR
24 Official Commission Reporter
25 FPSC Bureau of Reporting
Telephone No. (904) 488-5981