

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In The Matter of	)	Docket No. 911082-WS
Proposed Revision and Adoption	)	
of Water and Wastewater Rules.	)	
	)	

PROCEEDINGS:                    SPECIAL AGENDA

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

DATE:                                Friday, March 5, 1993

TIME:                                Commenced at 11:15 a.m.

PLACE:                                FPSC Hearing Room 106  
    Fletcher Building  
    101 East Gaines Street  
    Tallahassee, Florida

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1 ALSO PARTICIPATING:

2 CHARLES H. HILL, Director, Florida Public Service  
3 Commission, Division of Water and Wastewater.

4 GREG SHAFER, Florida Public Service Commission,  
5 Division of Water and Wastewater.

6 FRANK SEIDMAN, Management and Regulatory  
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## PROCEEDINGS

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CHAIRMAN DEASON: Call the hearing to order.  
Counselor, will you read the notice please?

MR. FEIL: Commissioner, since this is a special agenda, I don't believe there is a requirement that we read the notice.

CHAIRMAN DEASON: Oh, this is special agenda?

MR. FEIL: Yes, Mr. Chairman.

CHAIRMAN DEASON: Well, has this been noticed for participation by the parties?

MS. MOORE: I'm sorry, I didn't --

CHAIRMAN DEASON: Has this special agenda been noticed so the parties can participate?

MS. MOORE: Yes, they may.

CHAIRMAN DEASON: What I would propose that we do is, in viewing the recommendation, I notice that Staff has made some changes, or in the alternative, given some additional explanation as to why Staff believes that no additional changes are necessary. I think it might be helpful if we could get a summary of -- from Staff where changes have been made -- where changes were declined to be made, and then we can go ahead.

MR. FEIL: Well, Mr. Chairman, as to the first issue which pertains to the two noticing rules, the only changes there are as follows: The first is to the size

1 of the publication notice. Commissioners indicated at  
2 the last special agenda that they would prefer to see a  
3 display-sized ad rather than a legal ad. We've changed  
4 that in the rule.

5 The other request made by the Commissioners at  
6 special agenda did not result in any changes. Those were  
7 requests for information regarding noticing problems that  
8 may have occurred in the other industries. And there's a  
9 discussion on those subjects on Page 6 of the  
10 recommendation. But there are no changes to the  
11 substance of the rules as a result of that.

12 CHAIRMAN DEASON: And this all relates to Issue 1,  
13 is that correct?

14 MR. FEIL: Yes, Mr. Chairman.

15 CHAIRMAN DEASON: Parties have comments as it  
16 relates to Issue 1? Mr. Schiefelbein?

17 MR. FEIL: There were a few minor changes in the  
18 body of the noticing rules, it's been called to my  
19 attention, but they were minor, and basically  
20 clarification of no real impact.

21 MR. SCHIEFELBEIN: On behalf of Florida Waterworks  
22 Association, we would not have any further comments on  
23 the notice rule.

24 CHAIRMAN DEASON: Mr. Mann?

25 MR. MANN: Mr. Chairman, we have no comments to make

1 on those particular rules at this time.

2 CHAIRMAN DEASON: Mr. Cresse?

3 MR. CRESSE: Mr. Chairman, Mr. Self had to go to the  
4 clerk's office and I just came down to chat with him a  
5 minute. So --

6 MR. SHREVE: Get Mr. Cresse to turn his mike off.

7 MR. CRESSE: -- if I can delay and fall back until  
8 Mr. Self gets back, I'd like to delay and fall back.

9 CHAIRMAN DEASON: Commissioners, questions as it  
10 relates to Issue 1?

11 I had one question on Page 3 of the recommendation,  
12 the last full paragraph, there's a reference to 15 days  
13 and a reference of 30 days. And my question is why are  
14 we changing that?

15 MR. FEIL: Well, Commissioner, my thinking there was  
16 that with the 15 days, there's other time built into that  
17 because the CASR that is referred to in the 15 days would  
18 have to be mailed, and there's mailing time for there,  
19 that brings it up to 20 days. And in addition, 30 days  
20 was, I believe, coordinated with 30 days I chose for some  
21 other noticing provisions. So the 30-day requirement for  
22 that particular noticing aspect was selected because,  
23 number one, it coincided with another noticing  
24 requirement; and number two, it was an approximation of  
25 the 15 days plus mailing time, plus any other days that

1 may intervene that would extend that period.

2 CHAIRMAN DEASON: So we're really not extending the  
3 time that much, it's just it clarifies how the time is  
4 determined and that it's -- we're not changing it that  
5 much from previous procedure?

6 MR. FEIL: That is correct, we're not changing it so  
7 much as to make a difference, I think.

8 COMMISSIONER CLARK: I move Staff on Item 1.

9 COMMISSIONER JOHNSON: Second.

10 MR. SHREVE: Maybe I'm not clear on this, since  
11 you've raised this. This is -- originally it had called  
12 for 30 days from the official filing date and now it  
13 calls 15 days after the case has been scheduled to be  
14 mailed to the utility?

15 MR. FEIL: No, sir, just the opposite. Right now,  
16 as it exists in the current rules, it's 15 days from the  
17 CASR. As stated in the proposed rules it will be 30 days  
18 from the official date of filing.

19 MR. SHREVE: Okay.

20 CHAIRMAN DEASON: They have a different starting  
21 point.

22 MR. SHREVE: Right, because we have had some real  
23 problems with customers at times not even getting notice  
24 up until the time of the hearing, but this would pin it  
25 down so they would have within a time frame.

1           CHAIRMAN DEASON: I believe this would address that  
2           problem.

3           MR. SHREVE: Good. Thank you.

4           CHAIRMAN DEASON: We have a motion and second to  
5           approve Staff's recommendation on Issue 1. All in favor  
6           say aye. Aye. Opposed, nay. Issue 1 is approved for  
7           proposal and we will proceed to Issue 2.

8           Let me ask Staff, would it be best to go rule by  
9           rule or to handle issue 2 in total?

10          MR. HILL: I think that may well -- Mr. Chairman, we  
11          had about 14 or 15 rules that we went back and made some  
12          changes to or did not. If we can get those 14 or 15 in a  
13          row, we can just do it rule by rule, whichever your  
14          pleasure is.

15          CHAIRMAN DEASON: Well, unless the Commissioners  
16          object, I suggest we go rule by rule.

17          MR. HILL: The first is 020 and those were fees, and  
18          we agreed at the last agenda to add a definition of ERC;  
19          that has been done.

20          CHAIRMAN DEASON: Any comments on the 020?

21          MR. HILL: 025 is the official filing date. I  
22          believe we're just codifying current Commission practice,  
23          and that's identical to the last special agenda.

24          CHAIRMAN DEASON: Let me ask you this: Do you think  
25          it would -- if Staff has offered no additional comments,



1 I think that we can just delete those unless parties feel  
2 like they need to make additional comments on those.  
3 Let's just take those where you've found it necessary to  
4 offer additional comments from the last hearing.

5 MR. SCHIEFELBEIN: Excuse me, should we interrupt  
6 when one of those sections is about to be passed, or you  
7 want to hold those off --

8 CHAIRMAN DEASON: We're not voting on anything at  
9 this point. We're just discussion, but if we pass by one  
10 you want to discuss, or make additional comments on, just  
11 interrupt us, let us know and we'll hear from you.

12 MR. SHREVE: Commissioner, so I do understand now,  
13 this is the proposed rule and there will be a hearing  
14 available to us before the hearing examiner, then the  
15 recommendation coming back, so we can -- we don't  
16 necessarily need to recover anything at this point that  
17 we've covered in the past?

18 CHAIRMAN DEASON: That's correct.

19 COMMISSIONER CLARK: I believe it's before the  
20 Commission, not just a hearing examiner.

21 MS. MOORE: Full Commission hearing.

22 MR. SHREVE: Later.

23 CHAIRMAN DEASON: I believe the hearing dates are in  
24 May, as I recall.

25 MR. HILL: The next rule then, Mr. Chairman, would

1           032 on Page 12 of the recommendation. We were asked to  
2           verify that we did indeed need 12 copies, and that is  
3           correct. We did check with Mr. Tribble, Records and  
4           Reporting, and that number is required.

5           And we were asked to look into whether we could  
6           maybe get this information on diskette. We don't believe  
7           that would be practical. The electronic filing has  
8           worked extremely well for rate cases where we get a large  
9           amount of data and load that into Lotus type  
10          spreadsheets. We do not do that with this information  
11          and we think it would just add time and cost to require  
12          it on the diskette.

13          CHAIRMAN DEASON: Any comments on 032?

14          MR. HILL: On 036 we were asked to verify that the  
15          customers being annexed were indeed noticed, and, yes,  
16          they are.

17          CHAIRMAN DEASON: Comments on 036?

18          MR. SCHIEFELBEIN: No, sir, but when it's  
19          appropriate, I would like to go back to 033.

20          CHAIRMAN DEASON: Okay, let's do that right now  
21          then.

22          MR. SCHIEFELBEIN: All right. Thank you.  
23          Commissioners, we had made this comment previously. I  
24          won't belabor it, but on Page 33, subsection T, of  
25          course, is the rule pertaining to applications for

1 original certificates. The same requirement appears in  
2 some of the other types of applications. It requires,  
3 among other things, an explanation of the manner and  
4 amount of funding from all those who will provide it,  
5 which shall include their financial statements and copies  
6 of any financial agreements. And then there's an out  
7 clause if you hold less than 10 percent ownership.

8 Our comments on this, going back at least until  
9 April of last year, has been that this rule would seem,  
10 as it's written, to require financial statements, that  
11 financial statements exist and have been prepared, and  
12 sometimes that is not the case. And our preference, as  
13 far as the wording of this, would be to retain the  
14 disjunctive, the "or," to indicate that the explanation  
15 of the funding shall include financial statements or  
16 copies of any financial agreements. I don't think that  
17 financial statements -- we would like to have that as an  
18 alternative requirement. Financial statements themselves  
19 often don't tell you very much, they don't indicate the  
20 degree of support that may or may not be forthcoming from  
21 that individual or company to the utility operation.  
22 They're not a terribly -- they can be not a terribly  
23 informal document, while financial agreements, I would  
24 think, would be very appropo.

25 COMMISSIONER CLARK: Are you suggesting we shouldn't

1 include -- what you seem to be saying is you need  
2 financial agreements, not the financial statements?

3 MR. SCHIEFELBEIN: Correct. I have no problem with  
4 keeping the alternative, though, if a company wants to  
5 file financial statements and want to use it to show some  
6 degree of relevance to the utility operation, that's  
7 great. But I don't think it should be an all  
8 inclusive --

9 CHAIRMAN DEASON: I believe what Staff is trying to  
10 get at here, if there are financial statements and  
11 financial agreements, Staff wants to review both, and not  
12 just give the Company the alternative to provide one or  
13 the other. And it seems to me if there is a situation  
14 where financial statements don't exist, well, then, I  
15 would assume that the applicant would be faced with a  
16 situation of trying to obtain a waiver of the rules since  
17 they don't exist. Does that present a problem?

18 MR. SCHIEFELBEIN: Well, I think it's another reason  
19 not to require them, particularly in view of the fact  
20 that they may not have any bearing. An entity that is  
21 involved in many hundreds of different business  
22 activities, their financial statement may have absolutely  
23 no bearing on the degree of support or the lack of  
24 support that they'll be devoting to that utility. So I  
25 don't think it's a terribly relevant document.

1 CHAIRMAN DEASON: Staff, do you have comments?

2 MR. HILL: I'm just not willing to budge at this  
3 point, Mr. Chairman. I mean, there may be some validity  
4 to that argument, but we're trying desperately to make  
5 sure that we don't get people in that can't financially  
6 run a utility. There may well be some validity to that,  
7 but I'd like to hear more about it in a hearing.

8 CHAIRMAN DEASON: Any other comments on 033?

9 MR. SCHIEFELBEIN: If I may, on 037, which is the  
10 transfer application, we would have have the same comment  
11 for the same requirement.

12 CHAIRMAN DEASON: That concerning --

13 MR. SCHIEFELBEIN: Precisely the same language.

14 CHAIRMAN DEASON: All right. Thank you. Any other  
15 comments on 033?

16 MR. HILL: 037 would be the next one where --  
17 Mr. Shreve, OPC suggested that we require the seller ---  
18 or the buyer to obtain the seller's tax returns, and we  
19 just don't believe that that's going to give any  
20 additional protection. We already require the buyer to  
21 obtain it, or explain in detail the steps taken to get  
22 the records for the Commission to set rate base. The  
23 Commission has the latitude, if they believe that the  
24 appropriate steps were not taken, or that the records are  
25 insufficient, to use an original cost study, impute CIAC

1 or set rate base at zero. We just do not believe that  
2 there's any additional protection gained.

3 And we can see in a situation, a marginal situation,  
4 where a utility owner is ready to walk anyway, this  
5 requirement may make them abandon it. Maybe not. But we  
6 just don't see where there's any additional protection.

7 CHAIRMAN DEASON: Okay, comments on 037?  
8 Mr. Shreve?

9 MR. SHREVE: Mr. Chairman, I just think you need to  
10 have the ability to get returns from a -- you have the  
11 purchaser before you; you may not even have the seller  
12 where you can get any information, really, out of them.  
13 And if you just go ahead and just have the seller give  
14 permission to obtain the income tax returns, there's no  
15 reason you shouldn't have them. I don't see how that  
16 would be burdensome to anybody. It would actually  
17 relieve them of part of that burden. Mr. Hill's answer  
18 is the original cost study, which has caused the  
19 customers a great deal of problems, where you come in and  
20 used original cost study in lieu of the purchase price  
21 and in lieu of the books and records of the company. I  
22 just think you need to have available as much information  
23 as you can get.

24 CHAIRMAN DEASON: Any other comments on 037?

25 MS. MOORE: Commissioners, it's just as burdensome

1 for the seller to authorize the buyer to get the tax  
2 returns as it is to obtain them himself. And I've  
3 checked on the numbers of forms and consent required to  
4 get the IRS to release them to the buyer.

5 MR. SHREVE: Then if you will get the tax returns  
6 and not provide them with a way out, that's okay, but if  
7 you're saying because the buyer couldn't get them, you're  
8 not going to have the require -- the seller require them,  
9 but don't give them a way out. That's what I'm saying.  
10 Don't accept the fact that the seller now has not given  
11 the buyer the tax returns. It's not that cumbersome to  
12 have permission to get them from the IRS. All I'm saying  
13 is, if you get the tax returns, that's okay. But don't  
14 come in here and say, "We're not going to get the tax  
15 returns, we're going to get something else." And those  
16 do impact on many of our arguments concerning how the  
17 lots were expensed in the first place.

18 CHAIRMAN DEASON: Further questions, Commissioners?

19 MR. HILL: 038 would be the next rule, and the  
20 question came up there as the possibility as to whether  
21 maybe the Commission should have more than one policy  
22 with respect to acquisition and acquisition adjustments,  
23 maybe one for small companies that need to be purchased  
24 and another for larger. We certainly think that those  
25 all have merit and that they should be discussed at

1 hearing. We have not amended the rule. In addition,  
2 there was a question as to whether 0371 applied to this  
3 particular rule. We have verified that it does.

4 Mr. Shreve had suggested that the Commission require  
5 an affidavit by the buyer of the condition of the plant.  
6 We do not believe the Commission has the legal authority  
7 to require that particular affidavit.

8 And the Commission also raised the question as to  
9 why we might not be able to pursue implementing  
10 reasonable rates at the time of transfer of purchase on a  
11 case-by-case basis, and the statutes clearly say that the  
12 Commissions can use other than rate base regulation only  
13 pursuant to rule.

14 COMMISSIONER CLARK: As I read your bottom line, we  
15 still need to look at this rule, and I would agree with  
16 that.

17 CHAIRMAN DEASON: Further comments on 038?

18 MR. HILL: 090 would--

19 CHAIRMAN DEASON: Let me ask one question before we  
20 leave 038.

21 MR. HILL: Yes, sir.

22 CHAIRMAN DEASON: It's my understanding that there  
23 is at least one, and maybe more than one, bills in the  
24 legislature dealing with the area of acquisition  
25 adjustments. If we adopt a rule and there is a statute



1           which is adopted which is contrary to the rule, then we  
2           have to amend the rule?

3           MR. HILL: Yes, sir. I wouldn't see that  
4           happening. My guess is that the session will end and we  
5           will know what the law says prior to us even getting to  
6           hearing on this. And should we have a new law in place,  
7           we would want to amend this rule to put that law into  
8           effect, or drop it all together, if the law is short and  
9           sweet.

10          CHAIRMAN DEASON: Okay. 090?

11          MR. HILL: Yes, sir, in 090, Staff was asked to  
12          verify as to what filing would happen -- the particular  
13          circumstance where we found an abandoned utility to be  
14          exempt because the receiver was a city or county  
15          governmental entity, and then at some later date, excuse  
16          me, that utility became regulated by the Commission  
17          again, what sort of filing would take place. There has  
18          been one that we know of in the past 15 years and that  
19          was indeed handled under the 034, which is what we  
20          discussed at the last special agenda. So we believe that  
21          the filing requirements under 034 will get for the  
22          Commission all the information they need to test the  
23          rates to see that they are reasonable, yet, it will not  
24          be the information that the industry had expressed  
25          concern that would be required in an original

1 certificate.

2 CHAIRMAN DEASON: Comments on 090?

3 MR. HILL: The next would be 135, Mr. Chairman.

4 MR. SCHIEFELBEIN: If I might interrupt, or get in  
5 line to go next, on 110.

6 MR. HILL: I apologize. That was dropped at the  
7 Commission's direction, at the bottom of the page, and I  
8 missed it.

9 MR. SCHIEFELBEIN: Okay, just wanted to make sure.  
10 Thank you.

11 MR. HILL: I believe that 135 would be next.

12 CHAIRMAN DEASON: Yes.

13 MR. HILL: We agreed at the last agenda,  
14 Mr. Chairman, to take out the requirement for the system  
15 and territory maps and to clarify that the rules and  
16 statutes would be provided by the Commission. We've made  
17 that change. There was a little glitch in our word  
18 processing, and the territory and system maps are still  
19 in there, but, believe me, they're not. We did take them  
20 out.

21 CHAIRMAN DEASON: Comments on 135? Okay, 255?

22 MR. HILL: 255 is the next, and we were directed at  
23 the last agenda to remove the requirement for individual  
24 meeting consistent with the vote on legislation and it  
25 really properly being with DER and water management

1 districts.

2 CHAIRMAN DEASON: Comments on 255? Okay. 360.

3 MR. HILL: We were asked to look at the other  
4 industries --

5 MR. FEIL: Commissioners, we were asked to look  
6 whether or not the other industries had difficulties  
7 regarding timing of refunds, if there was a motion for  
8 reconsideration filed. We have included in the body of  
9 the recommendation our analysis on that, and the bottom  
10 line is that there haven't been a great number of refunds  
11 in the other industries, only one within the last three  
12 or four years that that could be recollectd. And there  
13 wasn't a problem with the timing. But Staff maintains  
14 that an automatic stay, if there is a motion for  
15 reconsideration, is necessary, simply because of the time  
16 required to process the motion for reconsideration and  
17 the problem with coordinating the refund in the billing  
18 cycles.

19 CHAIRMAN DEASON: Comments on 360? 430?

20 MR. HILL: 430, Staff was directed to add the  
21 requirement for prefiled direct testimony with the MFRs.  
22 We have done that. We were also asked as to why maybe  
23 this industry should be treated differently. I guess the  
24 simple answer is perhaps this industry is not as  
25 sophisticated as the other industries. This rule was

1        adopted in 1975. It was six years later before the  
2        telephone industry adopted a rule on test years. E and G  
3        never did until just recently. We have found it to be  
4        beneficial because, quite frankly, a lot of utilities  
5        pick a test year that is inappropriate. And we  
6        eliminated some problems with this rule, so we think the  
7        current rule that's been in place since '75 should stay.

8                CHAIRMAN DEASON: Comments on 430? 432?

9                MR. HILL: On 432, we merely dropped the manual that  
10       we originally had referenced in there. It may be  
11       appropriate at some later date, but right now we feel  
12       more comfortable leaving it out of the rule.

13               CHAIRMAN DEASON: Comments on 432? I assume that  
14       this is a rule that will be looked at in detail at the  
15       hearing?

16               MR. HILL: Yes, sir.

17               MR. SEIDMAN: Can I go back to 430 for a minute?  
18       I'm not quite sure I see where the change was made that  
19       you discussed in your --

20               MS. MOORE: It was made in Rule 25-30.436.

21               MR. HILL: I apologize. We moved a lot of the  
22       requirements for prefiled testimony in that to 436. In  
23       fact, we're just getting ready to hit that.

24               CHAIRMAN DEASON: Comments on 432, used and useful?

25               MR. SHREVE: Commissioner, I'll be brief. We just

1 have a real problem with the way this is handled, and the  
2 margin of reserve, and then further over, the CIAC and  
3 the margin of reserve, and we'll be glad to go into that  
4 in the later discussions on it rather than going into  
5 detail on it at this point. I think we're talking about  
6 a more lengthy argument on this, and this is one of the  
7 changes that would -- at least on the imputation of CIAC,  
8 over a little later, that does have to do with margin of  
9 reserve, is actually a change in Commission policy.

10 CHAIRMAN DEASON: I think that everyone is aware  
11 that this is probably the -- one of the most complex,  
12 complicated areas of this rule, and I would anticipate  
13 that it would receive a great deal of attention at the  
14 hearing. Questions, Commissioners, on the used and  
15 useful?

16 MR. HILL: 436, I believe, would be the next one,  
17 Mr. Chairman, and that is we were asked not only to put  
18 in the prefiled direct testimony, but to check with the  
19 other industries for consistency. And indeed, prefiled  
20 direct testimony is dealt with in the petition in the  
21 other industries, and we've made that change in 436.

22 CHAIRMAN DEASON: Comments on 436?

23 Next rule, I believe is 455?

24 MR. HILL: Yes, sir, in 455 there was a lengthy  
25 discussion about the role of the utility and the Staff,

1 and there was the suggestion for arbitration. We have  
2 not modified the rule. We do believe that the rule, as  
3 recommended, covers in detail the role of the utility in  
4 the event a Staff-assisted rate case is protested, the  
5 role of the Staff. And in fact we believe that the only  
6 thing it doesn't cover is arbitration. And arbitration  
7 may well be an excellent vehicle, not just in this part  
8 of this rule or this industry, but maybe even in other  
9 industries as well. I do think we need to take a good  
10 look at whether we can do that legally. It has merit and  
11 I think we should pursue the idea, but we've not changed  
12 this rule from the last agenda.

13 CHAIRMAN DEASON: Comments on 455?

14 MS. MOORE: One minor change to that rule on Lines 9  
15 and 10. It now says "a utility that requests Staff  
16 assistance waives its right to appeal and agrees to  
17 accept the final rates." That ought to be changed to  
18 "waives its right to protest by agreeing to accept."

19 CHAIRMAN DEASON: So we are suggesting that change  
20 be made?

21 MS. MOORE: Yes. And there was one more change on  
22 443, subsection 1 lists -- references some other rules.  
23 We need to insert -- I'm sorry, on Page 141, Line 5, 141  
24 of the rules, we need to insert 25-30.4385. That's a new  
25 rule that was left out.

1 CHAIRMAN DEASON: This was on Page 141, Line 5?

2 MS. MOORE: Line 5.

3 CHAIRMAN DEASON: You need to insert which rule?

4 MS. MOORE: 30.4385.

5 CHAIRMAN DEASON: Further comments on 455, Staff  
6 assistance?

7 MR. HILL: The last one then, Mr. Chairman, is 465,  
8 private fire protection. Mr. Dewar raised some  
9 interesting concepts at the last agenda, and the  
10 Commission wanted to explore that in hearings. We have  
11 since then, of course, gotten in a fair amount of  
12 discussion on that and raised the question as to whether  
13 there is savings, and it's certainly something that needs  
14 to be explored here at hearing. We would not change the  
15 rule as written.

16 CHAIRMAN DEASON: Comments on 465?

17 MR. SCHIEFELBEIN: Yes, sir, on behalf of Florida  
18 Cities Water Company, just to briefly indicate for the  
19 record, that we are opposed to the proposal put to the  
20 Commission by the Florida Fire Sprinkler Association. We  
21 have submitted comments in the last couple days on that,  
22 and if this is to be addressed at hearing, we would  
23 expect to provide some expertise to the Commission to  
24 address it.

25 CHAIRMAN DEASON: Further comments? Are there any

1           comments or questions on any of the rules that we passed  
2           over? Those rules were -- Staff did not provide any  
3           changes or any additional explanation.

4           Let me ask one question on 456. On Page 35 of the  
5           recommendation, the first full paragraph, you state that  
6           "The rule states that the Commission will vote on the  
7           PAA recommendation within 90 days of the official filing  
8           date." And I assume that the 90 days is there as an  
9           inducement to get utilities to utilize this procedure  
10          because it requires the Commission to act on an  
11          expeditious basis, is that correct?

12          MR. HILL: That's correct.

13          CHAIRMAN DEASON: Is Staff comfortable with being  
14          able to make -- to process these cases on a 90-day time  
15          frame?

16          MR. SHAFER: Yes, sir, the Staff assistance group  
17          spent a lot of time trying to develop some SOPs to work  
18          with this rule before we ever got the rule to a stage  
19          that it was ready to be proposed. So we believe that we  
20          can work within those confines.

21          CHAIRMAN DEASON: The comparison of expenses and  
22          revenues, that would be the basis for rate relief? There  
23          would not be a calculation of rate base and a return on  
24          rate base, is that correct?

25          MR. SHAFER: That's correct. And we left that



1 language purposely somewhat ambiguous, given that we  
2 don't have any real world experience through that process  
3 to work with. So -- or to be, you know, anymore precise  
4 than that at this point. We may discover some things  
5 along the way that we're very uncomfortable with in terms  
6 of tightening up the language at this point. So  
7 "comparison" is somewhat of an ambiguous word and should  
8 not be interpreted to mean that that is -- we're going to  
9 look at one thing and look at the other, and whatever the  
10 difference is, that's going to be the full adjustment.  
11 We want to have some track record to go on before we  
12 tighten that language up anymore than that at this  
13 point.

14 CHAIRMAN BEARD: Public Counsel supports 456?

15 MR. SHREVE: Public Counsel is thinking that whole  
16 procedure through. I want to think about it and hear  
17 some more conversation on it because I think the Staff-  
18 assisted rate case is one of the better things the  
19 Commission does. I think there are some real problems  
20 with it that can be solved.

21 As far as the rate setting being more automatic,  
22 even though there is a 50 percent limitation, 50 percent  
23 is a pretty high rate increase. So I'm certainly not  
24 endorsing it. We intend to look at it. I'm sure we'll  
25 have comments on it.

1           COMMISSIONER BEARD: The only time I don't find 50  
2 percent too high is when it's my salary increase, but  
3 other than that, I agree.

4           MR. SHREVE: All right, sir.

5           CHAIRMAN DEASON: Commissioners, do I have a motion  
6 on Issue 2?

7           COMMISSIONER CLARK: Yes, I move Staff on Issue 2.  
8 There are still some things I want to look at, so this is  
9 to not be interpreted as we should file these rules  
10 without going to hearing. We'll go to hearing on these.  
11 I want some information, but I'm comfortable with those  
12 we've got.

13           CHAIRMAN DEASON: And your motion contemplates the  
14 changes recommended by Staff on 443 and 455? Those were  
15 the -- I think some technical corrections.

16           MS. JOHNSON: Second.

17           CHAIRMAN DEASON: We have a motion and a second to  
18 propose the rules as recommended, realizing that Staff  
19 has made some technical modifications to Rule 443 and  
20 455. All in favor, say aye. Aye.

21           COMMISSIONER CLARK: Aye.

22           CHAIRMAN DEASON: Opposed nay?  
23 Issue 2 is approved as modified.

24           MR. SCHIEFELBEIN: Commissioners, if I may, not to  
25 be a thorn in your side, but there are, in some of the

1 rules, or at least in one of them, a number of options  
2 there are given on various approaches and --

3 COMMISSIONER CLARK: We're going to notice those  
4 options. Can't we do that?

5 CHAIRMAN DEASON: Well, one of the options was the  
6 test year approval in Rule 430. In fact there was an  
7 alternative rule. Staff's recommendation is to -- I  
8 guess there's a primary, and it would be the vote of the  
9 Commission, as I interpreted the motion and the vote, to  
10 actually propose the primary on test year approval.

11 MR. HILL: And we did want to clarify, I guess, that  
12 we have a recommendation for all of the options, and I  
13 guess I had assumed, erroneously maybe, that you had  
14 moved whatever the primary recommendation --

15 CHAIRMAN DEASON: Right, and one of the others that  
16 come to mind is working capital, I think there's more  
17 than one option, but you do identify one of those as  
18 being your recommendation?

19 MR. HILL: Yes, sir.

20 COMMISSIONER CLARK: I will go with the primary  
21 recommendation then, but it seems to me that those --  
22 every option is still available because we're going to  
23 hearing. And --

24 CHAIRMAN DEASON: I agree with that.

25 MR. SCHIEFFLBEIN: I appreciate the clarification.

1           MR. SHREVE: And I guess my feelings about the rule  
2 that you're putting out here, we have some severe  
3 criticism of parts of it, and I'm accepting, more or  
4 less, what Commissioner Clark said, and I think where  
5 Commissioner Deason is going is that --

6           COMMISSIONER CLARK: I'll clear it up on my vote in  
7 3.

8           MR. SHREVE: But there are -- for instance, on the  
9 imputation of CIAC and margin of reserve, that's a clear  
10 change in your Commission policy away from the customer's  
11 interest. So what I'm doing is accepting this as a vote  
12 by the Commission that is putting these rules out with  
13 the clear understanding that you don't even necessarily  
14 endorse wholly what is in there.

15          COMMISSIONER CLARK: Yes, that is correct.

16          MR. SHREVE: And then we'll have the full option to  
17 discuss those.

18          CHAIRMAN DEASON: I think that's correct. This is  
19 -- this action is proposing these rules and the -- there  
20 will be a hearing. I think we'll address that in Issue  
21 3, and that all of these issues will receive further  
22 expiration at that point.

23          MR. SHREVE: And I would think even my portraying  
24 rules to the customers, that I would feel that this  
25 Commission is not necessarily taking the position that

1 these are the rules that they will, anywhere close to  
2 necessarily, impose.

3 CHAIRMAN DEASON: I think that's a fair statement.

4 COMMISSIONER CLARK: And in keeping with that  
5 statement, I would move to deny Staff on Issue 3, that we  
6 will go to hearing and we will have a subsequent vote on  
7 actually moving to adopt the rules.

8 COMMISSIONER JOHNSON: Second.

9 CHAIRMAN DEASON: Been moved and seconded that we  
10 deny Staff on Issue 3 and that go to straight to  
11 hearing. All in favor, say aye. Aye.

12 COMMISSIONER CLARK: Aye.

13 COMMISSIONER JOHNSON: Aye.

14 CHAIRMAN DEASON: Opposed, nay. Anything further at  
15 this point?

16 MR. SCHIEFELBEIN: Yes, Mr. Chairman. Now that  
17 you've made those decisions, I'm wondering what insight I  
18 might be able to get today as to what sort of a  
19 proceeding is ahead of us. Is it my understanding that  
20 all of these rules are going to hearing regardless of  
21 whether a comment or request for hearing is received  
22 within the time frame after notice?

23 COMMISSIONER CLARK: That was the vote on Issue 3,  
24 that we would go to hearing.

25 MS. MOORE: Except for the noticing rules, that

1 issue was framed, but if there are no requests for  
2 hearing or comments on those two rules -- those three  
3 rules --

4 CHAIRMAN DEASON: That was in Issue 1, correct?

5 MS. MOORE: Right.

6 CHAIRMAN DEASON: It's my understanding that there  
7 really was not any controversy involved in Issue 1, and  
8 that it would be appropriate to adopt those, assuming  
9 there is no protest filed.

10 COMMISSIONER CLARK: Yes, and that way if the  
11 parties do have some concerns, if it's protested, it goes  
12 to the same hearing.

13 MR. HILL: Mr. Chairman, it was suggested at the  
14 last agenda, and perhaps a way to get at what  
15 Mr. Shiefelbein is alluding to, I believe Commissioner  
16 Clark suggested at the last agenda that if there are  
17 rules in Issue 2 that the parties don't have any problem  
18 with, they might want to submit that to the Commission,  
19 and if, I guess for lack of a better word, maybe we can  
20 stipulate that those need not be addressed at hearing, or  
21 maybe could move along with Issue 1. What comes to mind  
22 is maybe is the fee schedule, and I'm not suggesting  
23 someone doesn't have a problem with that.

24 CHAIRMAN DEASON: Has there been a prehearing  
25 officer assigned to this, or since it's a rule, is that

1 handled differently?

2 MS. MOORE: Let's see, Commissioner Clark is the  
3 prehearing officer.

4 CHAIRMAN DEASON: How appropriate.

5 CHAIRMAN BEARD: There is a God.

6 COMMISSIONER CLARK: He's been quite vengeful these  
7 days.

8 CHAIRMAN DEASON: I would think that there  
9 potentially are rules that are being proposed that are  
10 not going to be particularly controversial, and that  
11 there could be a stipulation approved at the prehearing  
12 conference basically eliminating those rules so that we  
13 will have sufficient time to concentrate on those rules  
14 which we do need to explore in greater detail.

15 COMMISSIONER CLARK: I would think that it would be  
16 helpful for parties to state which rules that they don't  
17 have any further comment to and don't protest, and then  
18 give a list of those rules that they want to present  
19 comment on at the rule hearing. And that will just allow  
20 -- I think if we have that ahead of time, then instead of  
21 going through rule by rule, we'll just go to the first  
22 rule and then we'll have sort of a list of the parties  
23 who will be interested in speaking.

24 CHAIRMAN BEARD: I think perhaps you may want to do  
25 one more thing, just on the outside chance the

1 Commissioner has a problem with the rule, everybody else  
2 is happy as fudge, okay, we might want to take it upon  
3 ourselves if we've got any pet peeves that we want to  
4 discuss, just so that everybody comes in thinking, well,  
5 this one is history and all of a sudden Commissioner  
6 says, well, no, it's not. For example, there's going to  
7 be discussion on 456, okay? Now, I don't know if the  
8 parties are going to raise it or not, but I am. I am not  
9 sure in my mind where I am on it yet, so if nothing else,  
10 there's going to be discussion. That's my only point.

11 MR. HILL: Yes, sir, we would want that discussed at  
12 hearing as well. Any of the new ideas, the changes in  
13 policy, Staff would -- Staff really wants those heard.

14 CHAIRMAN DEASON: Mr. Schiefelbein?

15 MR. SCHIEFELBEIN: I think this all sounds great. I  
16 would just, for what it's worth, ask that -- the hearing  
17 set for this is about 90 days off, and I would ask that  
18 by the time we get a notice of rulemaking out and by the  
19 time the parties file their comments, and if any requests  
20 for hearing, a lot of that period of time will have been  
21 washed away. And I would ask that any kind of prehearing  
22 conference to try to narrow the scope of this be done as  
23 early as possible.

24 COMMISSIONER CLARK: I don't envision having a  
25 prehearing conference on this. This is rulemaking. You



1 just come, you belly up to the bar and make your  
2 comments. Nothing is prefiled or anything like that.  
3 You come in and make your comments and you present your  
4 argument as to why or why not.

5 MR. SCHIEFELBEIN: I guess I misunderstood the  
6 earlier comments then of Chairman Deason. I thought that  
7 there was going to be some organized attempt before the  
8 prehearing officer to attempt to narrow the scope of  
9 this, if possible, which I think is very possible.

10 COMMISSIONER CLARK: All I was looking for was sort  
11 of a listing of those things that may not be  
12 controversial, so we can maybe take them up at the  
13 beginning of the hearing and find out nobody has comments  
14 and get to the real issues.

15 MR. SHREVE: What you're doing is really eliminating  
16 issues rather than having preparation for argument.

17 COMMISSIONER CLARK: But with the understanding that  
18 every Commissioner has the opportunity to ask on every  
19 one of these rules.

20 CHAIRMAN DEASON: And I think that the prehearing  
21 officer, when those filings are made, if it's  
22 appropriate, might could issue a procedural order  
23 identifying those particular rules which no one has  
24 protested and just put everyone on notice as to what  
25 areas we're going to concentrate on.

1           COMMISSIONER CLARK: Mr. Chairman, just by way of  
2 clarification, in the conservation rules we sort of did  
3 do a brief procedural rule, but that was without a  
4 prehearing conference.

5           MS. MOORE: Procedural order?

6           COMMISSIONER CLARK: Yes.

7           MR. SHREVE: Of course in this, as in any other,  
8 even if there were, say, a prehearing conference, the  
9 Commissioners are never prevented from raising any issue,  
10 even if it's stipulated away or agreed to or whatever.  
11 Even if everybody else agrees to it, you have the  
12 opportunity to raise an issue at anytime, even during the  
13 hearing.

14          CHAIRMAN DEASON: Any other questions as to where we  
15 are and how we're going to proceed?

16          MR. SELF: Mr. Chairman, just so I understand, with  
17 respect to Commissioner Clark's motion on Issue 3, the  
18 Issue 2 rules will be set by the Commission for hearing,  
19 so it will not be necessary for us to file advance  
20 comments or requests for hearing, is that correct?

21          COMMISSIONER CLARK: My motion was to go directly to  
22 hearing, but I think it wouldn't -- I would encourage  
23 every party to file something indicating those rules that  
24 they will wish to address at the hearing.

25          MR. SELF: Thank you.

1 MR. SCHIEFELBEIN: Is that by a set period of time,  
2 or at this point to be determined?

3 COMMISSIONER CLARK: Is there anything --

4 MS. MOORE: No, not that I can think of, other than  
5 the 21-day comment period, if we ask them just to follow  
6 that.

7 CHAIRMAN BEARD: How hard is it going to be to sit  
8 down -- this is the first time y'all have looked at this  
9 thing, right? And you have a pretty good idea of the  
10 ones you got a hot button on, and the ones you frankly  
11 don't give a damn on. Take you what, an hour to write  
12 down the rule numbers and say, "Here they are, Chuck."  
13 An hour is a little tight maybe, but --

14 MR. SCHIEFELBEIN: Commissioner, I wasn't opposing  
15 the request. I was just trying to determine when it was  
16 due.

17 COMMISSIONER BEARD: I know. I'm trying to get to  
18 something like that. 21 days, if it takes 21 days to  
19 figure out which ones you've got a hot button on, then  
20 I've missed the boat on this thing.

21 COMMISSIONER CLARK: Under the rulemaking they have  
22 21 days to ask for hearing. So let's make it 21 days.

23 MS. MOORE: From the date of publication.

24 CHAIRMAN BEARD: Okay.

25 COMMISSIONER CLARK: They have a right to request a

1 hearing and file comments under the law.

2 CHAIRMAN BEARD: I understand that. We're talking  
3 about cleanup work here. Okay, we're talking about  
4 cleanup work to get the crap out of the way. 21 days is  
5 real good for the controversial stuff, but I'm talking  
6 about 21 minutes on the noncontroversial stuff.

7 CHAIRMAN DEASON: Can't we use the 21 days to not  
8 only identify but actually file comments or whatever? I  
9 think that's what the 21 days normally envisions, is that  
10 correct?

11 MS. MOORE: Yes.

12 CHAIRMAN DEASON: What we would be doing in the 21-  
13 day period would be identifying those rules which present  
14 a problem and presenting comments as to why those rules  
15 present a problem. Is that correct? Is that what is  
16 normally done in a rule proceeding?

17 MS. MOORE: That's what it's normally for, yes. I  
18 think that's the deadline.

19 MR. SELF: Mr. Chairman, if you're setting the rules  
20 for hearing on your own motion, then normally you would  
21 not file comments or requests for hearing.

22 CHAIRMAN DEASON: I think we basically would be  
23 treating the comments -- we're not going to have prefiled  
24 testimony. And the way I look at it, it would be, in  
25 essence, like prefiled testimony. All the parties will

1 know what rules are being contested by whom and for what  
2 reason. So everybody will be better informed and then  
3 we'll be better able to inform the Commissioners as to  
4 what the problems, pros and cons, are, so that we can  
5 hopefully make a better decision.

6 Is there a problem with that procedure? Because if  
7 there is, we need to get it clarified now.

8 MR. SHREVE: What I thought we were talking about at  
9 first was just eliminating some issues, which is where I  
10 thought you were going, and I would suggest you set a  
11 date 30 days before the hearing and everybody can tell  
12 what issues they are not interested in commenting on and  
13 then you would be able to eliminate those, with the  
14 exception of where --

15 CHAIRMAN DEASON: I'm going to make a suggestion.  
16 Staff, get with the prehearing officer, discuss all this  
17 and come out with a procedural order.

18 COMMISSIONER CLARK: We'll do it.

19 CHAIRMAN DEASON: And I'm sure that procedural order  
20 will give everyone ample time and that everyone's due  
21 process will be protected. Is that fair enough?

22 MR. SHREVE: Fair enough. The big problem is this  
23 is a very extensive writing, and unlike the utilities, we  
24 only want to limit them to just one of them and one of  
25 us, but we just don't have the time to spend on it. But

1 I think eliminating issues is a good idea.

2 CHAIRMAN DEASON: Anything further? This special  
3 agenda is adjourned. Thank you all.

4 (Hearing adjourned at 12 o'clock p.m.)  
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