

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed Revisions to)
 Rules 25-30.020, 25-30.025,)
 25-30.030, 25-30.032, 25-30.033,)
 25-30.034, 25-30.035, 25-30.036,)
 25-30.037, 25-30.060, 25-30.110,)
 25-30.111, 25-30.135, 25-30.255,)
 25-30.320, 25-30.335, 25-30.360,)
 25-30.430, 25-30.436, 25-30.437,)
 25-30.443, 25-30.455, 25-30.515,)
 25-30.565, NEW RULES 25-22.0407,)
 25-30.0408, 25-30.0371)
 25-30.038, 25-30.039, 25-30.090,)
 25-30.117, 25-30.432 to)
 25-30.435, 25-30.4385, 25-30.4415,)
 25-30.456, 25-30.460, 25-30.465)
 25-30.470 AND 25-30.475 AND)
 REPEAL OF RULE 25-30.441 F.A.C.)
 PERTAINING TO WATER AND)
 WASTEWATER REGULATION.)

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PROCEEDINGS: HEARING

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

DATE: Tuesday, May 25, 1993

TIME: Commenced at 2:00 p.m.
 Concluded at 5:15 p.m.

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PROCEEDINGS

1
2 MR. HOFFMAN: Do you know what the accounting
3 treatment would be for the removal of a deteriorated
4 asset from rate base under this proposal in Section 1 of
5 the proposed rule?

6 MS. DANIEL: No, sir. I believe the Commission can
7 make decisions to remove assets from rate base that would
8 not necessarily be a NARUC accounting system bookkeeping
9 entry.

10 MR. HOFFMAN: Ms. Merchant, do you have any concept
11 as to how that would be treated for accounting purposes?

12 MS. MERCHANT: We were just discussing that. If it
13 were a situation where it had been run down by
14 negligence, I think you would have a prudence decision to
15 make. The Commission would have to make that decision.
16 Whether or not the actual repair should be allowed in a
17 subsequent case, or -- you would have to make some kind
18 of a determination in that situation. If it were just
19 normal wear and tear, then I think you would have a
20 situation where you would just retire it and repair it,
21 replace it. Depends on what the circumstances were.

22 MR. HOFFMAN: Let's say you had the normal wear and
23 tear; what would be the debit and credit entries to the
24 plant accounts?

25 COMMISSIONER CLARK: We already did this, didn't

1 we?

2 MS. MERCHANT: I thought we just discussed that a
3 few minutes ago.

4 MR. HOFFMAN: I'm sorry.

5 CHAIRMAN DEASON: Credit plant, debit the reserve.

6 COMMISSIONER LAUREDO: Ask the chairman, he knows.

7 MR. CRESSE: Should we direct questions to you?

8 MR. HOFFMAN: Ms. Daniel, you state in your
9 testimony that no negative acquisition adjustments have
10 been imposed by the Commission in the last five years; is
11 that correct?

12 MS. DANIEL: That's what my research revealed. Are
13 you going to tell me I missed one?

14 MR. HOFFMAN: No, I'm not.

15 MR. HOFFMAN: You also suggest on Pages 17 and 18 of
16 your testimony that most purchases at a discount arise
17 from the deteriorated condition of the utility assets
18 purchased; is that correct?

19 MS. DANIEL: In my role in our Bureau of
20 Certification, that has been my experience. I have seen
21 those systems that were purchased at a discount, and
22 generally there were -- in most cases it had something to
23 do with the deterioration of the system, often times the
24 Company, by the financial hardship of the old owner.

25 MR. HOFFMAN: To your recollection can you name of

1 one of Southern States' systems that was deteriorated or
2 poorly maintained at the time it was acquired by Southern
3 States?

4 MS. DANIEL: No, sir.

5 MR. HOFFMAN: Are you aware of any evidence of a
6 deteriorated or poorly maintained system or system assets
7 that was introduced in transfer proceedings by the Public
8 Counsel or anyone else involving Southern States'
9 acquisitions of small systems?

10 MS. DANIEL: No, sir.

11 MR. HOFFMAN: Are you aware of any evidence that was
12 introduced in Southern States' recent 127-system filing
13 where Public Counsel or anyone else raised the issue of
14 deterioration or improper maintenance of assets?

15 MS. DANIEL: No, sir.

16 MR. HOFFMAN: Well, you did state, however, in your
17 experience, that you have seen some of those situations
18 out there, correct?

19 MS. DANIEL: That's correct.

20 MR. HOFFMAN: So even if we assume that there are
21 some discounted purchases which arise from deteriorated
22 assets, wouldn't you agree that the fact that the
23 Commission has not imposed a negative acquisition
24 adjustment over the last five years indicates that the
25 Commission has not found, has not found that the

1 existence of a deteriorated or poorly maintained assets
2 justifies a negative acquisition adjustment?

3 MS. DANIEL: I don't know that if the Commission
4 were hearing a transfer case today, I don't know that if
5 that issue were truly highlighted to them, if they would
6 definitely deny the positive acquisition adjustment.

7 MR. HOFFMAN: But you would acknowledge that over
8 the last five years that: One, based on your research,
9 there have been no negative acquisition adjustments?

10 MS. DANIEL: That's correct.

11 MR. HOFFMAN: And number two, that transfers, at
12 least in your experience, some of these transfers have
13 involved what we're calling "deteriorated assets"?

14 MS. DANIEL: That's correct, and I do believe in
15 those cases where there were deteriorated assets, then
16 other situations that would have caused the Commission to
17 not grant the negative acquisition adjustment.

18 MR. HOFFMAN: Ms. Daniel, referring to that last
19 sentence of Section 1 of this proposed rule. If that
20 sentence is left in the Commission's proposed rule,
21 wouldn't you agree that transfer proceedings will now
22 involve expert witnesses who are system operators and
23 engineers because we're going to now be engaged in
24 litigation over whether an assets or plant was poorly
25 maintained or improperly maintained, or deteriorated?

1 MS. DANIEL: I suppose it could rise to that level.

2 MR. HOFFMAN: So wouldn't you agree that with the
3 inclusion of that last sentence of Section 1, if we leave
4 that in, wouldn't you expect there to be an increased
5 amount of litigation, in litigation expense, over those
6 issues in a transfer proceeding?

7 MS. DANIEL: Mr. Hoffman, I don't want to blow the
8 ramifications of that sentence out of proportion. I
9 believe that the Commission and the Commission Staff and
10 the utilities would probably tread very carefully on
11 using that section, and it would most likely be a
12 situation where the condition of the assets was obviously
13 poor. And I don't foresee that happening in every
14 transfer that walks through the door. We usually have
15 complaints on quality of service and a long history of a
16 poorly run utility when we embark on issues like that.

17 MR. HOFFMAN: How do you think -- if that sentence
18 was left in Section 1 of this proposed rule, how do you
19 think the Public Counsel would respond in the future
20 transfer proceedings?

21 MS. DANIEL: I do not know.

22 COMMISSIONER CLARK: Patti, I would like to ask you
23 a question, and I think Marshall responded in a way that
24 leads me to conclude that what we have is the way we
25 should go. It seems to me that what you're saying is

1 when there are extraordinary circumstances, we ought to
2 make an adjustment, and we do that now. We just haven't
3 found those extraordinary circumstances. I mean what
4 does --

5 MS. DANIEL: It just is a more obvious statement
6 here; you're absolutely correct, Commissioner Clark. It
7 just is more obvious and puts the buyer and the seller on
8 notice. If it would make everyone more comfortable for
9 us to take that sentence out, knowing full well that
10 we're going to possibly make those kinds of adjustments
11 to rate base, that would be acceptable.

12 COMMISSIONER CLARK: As long as I've interrupted
13 you, you say we've not allowed a negative acquisition
14 adjustment.

15 MS. DANIEL: In the last five years. I went through
16 our case management system. However, the acquisition of
17 systems is down significantly. Southern States in
18 particular has not acquired any systems in several years,
19 and that was the source of the majority of our transfers
20 at one time.

21 COMMISSIONER CLARK: I would like you to go back and
22 look for a case that had to do with the stock transfer.
23 My recollection is we did make an acquisition adjustment
24 because it was -- it appeared the transactions took place
25 to affect a tax loss for a particular individual. And we

1 made the acquisition adjustment, did we not? I'd like to
2 have that --

3 MS. DANIEL: Could that have been within, for
4 example, a Staff-assisted rate case or something and
5 not --

6 COMMISSIONER CLARK: Could have been. But I'm
7 pretty sure we found -- it was clear that what was
8 happening here was he was -- he was either getting a gain
9 or a loss. I can't remember.

10 MS. DANIEL: I've heard this conversation before.
11 And I've just got to find the staff person.

12 COMMISSIONER CLARK: Because that, to me, amounted
13 to extraordinary circumstances. Maybe he paid more for
14 it. Maybe that was -- maybe he paid less.

15 COMMISSIONER LAUREDO: May I ask Mr. Hoffman a
16 question?

17 CHAIRMAN DEASON: He's asked so many. I think it's
18 only fair to ask him one. Go ahead.

19 COMMISSIONER LAUREDO: Following on your question to
20 her that the last sentence of Section 1 may lead to more
21 controversy and therefore more rate case expense,
22 couldn't one make the case for this whole operation here
23 that if you accept the premise -- and here you, as a
24 businessmen, will have to accept it when you step into a
25 regulatory industry, you get a series of benefits and you

1 get a series of negatives that you don't get in the
2 regular marketplace. That negative is probably having to
3 put up to the whim of five individuals that you don't
4 know where they're coming from. That's almost a business
5 risk that is inherent in a utility. But wouldn't it be
6 better to, and less controversial, and therefore less
7 base for a litigation, if in fact we accepted that
8 premise and moved forward like we've been doing, rather
9 than try to codify it and now have the legal profession
10 pinpoint individual parts of the rules that your
11 interpretation thereof is in contrary to your rights, and
12 therefore, start a new cycle of appeals and basis for
13 appeals which in turn translates into higher rate cases?
14 I know I've given you a --

15 MR. HOFFMAN: You've given me a lot there,
16 Commissioner, and I think that Mr. Cresse and
17 Mr. Guestella in their comments will be addressing some
18 of their points. But let me try and focus you in on why
19 I'm asking the questions that I've been asking about this
20 sentence, and that is because Southern States believes
21 that the customers are going to be better off, that there
22 are going to be incentives provided for the purchase of
23 small, distressed systems, if there's certainty up front
24 in the proceeding and if there is not provisions in the
25 rule which in our judgment are going to drive up the

1 costs of litigation and acquisitions.

2 COMMISSIONER LAUREDO: All right, well, let me ask
3 this question: How many systems has Southern State,
4 within -- not exactly -- purchased over the last six
5 years, let's say? More or less? What was your biggest
6 -- she alluded to it. (Pause)

7 MR. ARMSTRONG: Probably -- before 1990, we probably
8 had 30 or 40 acquisitions of systems that were acquired.
9 Since 1990 we haven't been acquiring anything except for
10 the one Lehigh Utilities, Inc. acquisition.

11 COMMISSIONER LAUREDO: So let's say between '87 and
12 '90, which is within the six-year mythical period here
13 that everybody is working on these rules, you acquire 30
14 of them.

15 MR. ARMSTRONG: The number of systems probably --

16 COMMISSIONER LAUREDO: I made up 30. What's the
17 disincentive? Why do you want us -- you're doing fine
18 the way things are working. Why do you need us to make a
19 rule? I'm trying to go back to premise of why we are
20 here.

21 MR. ARMSTRONG: Commissioner, the Company
22 affirmatively stopped acquiring these systems. And the
23 reason we did that was because it became more costly to
24 litigate these transfer proceedings and have a number of
25 issues raised. And these issues that could be raised by

1 a sentence such as this would even make it more issues
2 that could be raised. We walk in to acquire a system
3 with a rate base of maybe 50,000, maybe less, 10,000, and
4 we were spending 50,000 in costs to litigate, to get
5 approval.

6 COMMISSIONER CLARK: Commissioner Lauredo, I think
7 the reason we need to get a rule at this time is we have
8 a fairly consistent policy on acquisition adjustments,
9 and the legislature says once you have a firm policy, it
10 needs to be in a rule. If you don't put it in a rule,
11 you're subject to --

12 COMMISSIONER LAUREDO: We go back to day one, what
13 is the policy and when do you want me to freeze the
14 negative? Is it when I came into the Commission, or is
15 it when Ms. Johnson came into the Commission?

16 COMMISSIONER CLARK: Unfortunately, or fortunately,
17 I think the Commission, as an entity, has a life that
18 extends beyond your and my tenure on it.

19 COMMISSIONER LAUREDO: Aren't you precluding my
20 successors and your from making modification of these
21 rules?

22 COMMISSIONER CLARK: All our rules do that.
23 Legislation does that.

24 COMMISSIONER LAUREDO: I'm trying to arrive -- even
25 without that argument, which I have a lot of problem

1 with, I'm trying to figure out -- there are two points
2 here. One is there are two fundamental philosophies
3 here, when we take away all this stuff. One is this
4 thing is good because it brings down rate case expense;
5 and two, this is good because it's going to encourage
6 good, well-run companies to come in and buy small systems
7 that are not well run. And I'm trying to get to those
8 two hard questions. And one of them is if one company,
9 who is here, has acquired 30-odd systems, or 30 systems,
10 in the period when we haven't had rules, why do they want
11 a rule? Because you made the business judgment -- you
12 have got -- you cannot run away from the unpredictability
13 of regulatory bodies, no matter what level you operate.
14 Whether it's federal level or state level. That is a
15 given, quote, "business risk" of the business you're in.
16 And you try -- and I'm saying if you show me, for
17 example, that in '87 that when this issue was -- you
18 said, "I'm not buying anymore"; your systems are
19 profitable, aren't they?

20 MR. ARMSTRONG: Commissioners, I think the point is
21 the Company did not request the rule. It's being imposed
22 on you by somebody else, that you have to codify this
23 policy into a rule. What the Company sees with this
24 sentence, though -- and the sentence is really the area
25 we have the problem with. You're taking one factor out

1 of many factors. We've had numerous reinvestigations of
2 this policy, and the Commission has said, we like this
3 policy because there's a potential benefit to customers.
4 And there are nine of them specifically listed. We have
5 shown that each one of those nine benefits have been
6 obtained by us and given -- provided back to our
7 customers. Each one of those --

8 COMMISSIONER LAUREDO: Counselor, all I'm trying to
9 find out is why do we need, not only that last sentence,
10 but any of this rule at all?

11 MR. ARMSTRONG: That's being imposed upon us, I
12 believe, upon you by --

13 COMMISSIONER LAUREDO: I don't agree with that
14 premise. You, as a business -- if I were to be outright
15 and tell you I like Southern States, I like the way
16 they're doing business, but I'm not in the business of
17 making it easier for you to do that. I'm in the business
18 of balancing your interests with the consumers'
19 interests. I'm trying to figure out the overriding need
20 for this rule to which you already have. The peoples'
21 representative doesn't want it. You seem to want part of
22 it. But it certainly hasn't stopped you from doing
23 business in the state, and it certainly hasn't stopped
24 you from doing profitable business in this state. So I'm
25 left that why do I need to go through this pain?

1 MR. ARMSTRONG: Commissioner, we like the policy.

2 MR. CRESSE: Let me suggest to you, sir, why you
3 should.

4 COMMISSIONER LAUREDO: Okay.

5 MR. CRESSE: I think what the Commission is doing,
6 basically, your basic job is simply to protect the
7 ratepayers from the utility, not to represent the
8 ratepayers, but to protect them. In doing that, in terms
9 of most of the things that you're doing, when you
10 establish policy, you ought to make it known. It ought
11 to be clear to the potential buyers of a utility the way
12 you're going to treat a transfer. You ought to make it
13 real clear, because that has a deciding factor on what
14 they're going to do. If you can eliminate some
15 uncertainty, some of the good things will continue to
16 happen. You do that by rules. So that every time a
17 Commissioner changes, or two Commissioners change, the
18 policy doesn't change, unless you want it to change, and
19 unless you go through a rulemaking.

20 When you have ad hoc decision-making, one group
21 comes up and says, yes, we approve of that, we think
22 that's in the best interest. Another panel of
23 Commissioners comes in and says, no -- same
24 circumstances -- we don't philosophically agree with
25 that. You need rules so buyers of utilities understand

1 what the policy of this Commission is.

2 COMMISSIONER LAUREDO: Show me how that has been a
3 disincentive to the Company you represent.

4 MR. CRESSE: I think the company just told you that
5 they haven't bought anything since 1990. They don't know
6 exactly what the policy is here on acquisition
7 adjustments. That's what we're debating today. And when
8 it comes my turn, I want to point out some things I
9 disagree with the Staff on. But what I'm taking to you
10 about, sir, is the need to establish clear policy so the
11 affected parties will know exactly the way the Commission
12 will look at things. I think that's important.

13 COMMISSIONER LAUREDO: I know -- let me just finish
14 this, because I know it's out of order and the chairman
15 is getting impatient with me, but I tell you, a lot of
16 the times that you devote here to set things on the
17 record, I think it's wonderful and we need to do that,
18 but if you're interested in impacting on this
19 Commissioner, you have got to get me over the hump of why
20 are we here? I do not accept in its totality the concept
21 that you simply preclude the flexibility and the judgment
22 that comes from a democratic system that has a rotation
23 not only in the Public Service Commission, but in the
24 Congress and the state legislature and all of that, by
25 freezing some policy at a -- somebody's -- somebody,

1 first of all, has to make the judgment that we want to
2 freeze it now. And the policy now is X, let's put it on
3 a rule -- follow me a minute. There is a disincentive to
4 flexibility once it's in a rule; you would say that,
5 certainly, is true. I would have to do a lot more if I
6 came in here new next year to overrule that than I would
7 a policy, wouldn't I? I mean, I could get three other
8 commissioners to agree with me, and we start anew.

9 The instability, Mr. Cresse, if you want to use that
10 word -- I happen to be a fan of democracy. Inherent in
11 this system is something you cannot get away from and
12 something that you all have to fill in through the system
13 of making a decision whether or not to acquire.

14 MR. CRESSE: I don't think, sir, that anybody is
15 saying that you can -- shouldn't be making a decision
16 based upon the facts available to you on a particular
17 issue. And the proposed rule that we're proposing does
18 not preclude you from doing that, but it says, absent
19 something unusual, which can be brought to your
20 attention, then this is what you'll do. Now, obviously,
21 in my opinion, you will not -- absent something unusual,
22 this is what you will do, and you will not, under any
23 circumstances, I don't think -- you never have -- approve
24 a transfer of utility property from one owner to another
25 owner if it's going to work to the detriment of the

1 people that you're supposed to be protecting. The
2 Commission has never done that. Nobody is asking in
3 these rules that they do it. And that's the real
4 criteria, the real upper level policy that I think this
5 Commission has established. After that, you're putting
6 some mechanics in place so the people that are out there,
7 not in Tallahassee, that see you, you know, more often
8 maybe than you want us to, will know.

9 I have told -- you said to me, now, what about a guy
10 -- you had a Cuban friend that wanted to go invest in a
11 utility. I've told people until the policy is clear,
12 don't invest in water and sewer.

13 COMMISSIONER CLARK: Why is that? Is that because
14 the regulatory risk is too great for you to count on a
15 return of your money?

16 MR. CRESSE: If you don't know for sure, if don't
17 have a reasonable expectation, you cannot fulfill your
18 fiduciary responsibility to your investors. It's a due
19 diligence check.

20 COMMISSIONER LAUREDO: If the policy is clear -- the
21 policy has to be clear at a point in time so that it can
22 follow the logic of putting it into a rule. It seems to
23 me that if that's today, here on May 26th, the policy is
24 clear that these are the things we are doing, why have a
25 rule?

1 MR. CRESSE: Well, I come back to a legal argument,
2 and my advice is to follow what you decided on 2-17-92,
3 an order which I attached to my testimony, strike out,
4 "The Commission shall also consider the condition of the
5 utility assets" because -- maybe I ought to wait -- let
6 me wait until it comes my turn to get to that. I'm
7 sorry.

8 MR. HOFFMAN: Chairman, I've only got a couple more
9 questions and then I'll be through.

10 COMMISSIONER LAUREDO: I'm sorry.

11 CHAIRMAN DEASON: Continue your questions.

12 MR. HOFFMAN: Thank you.

13 Ms. Daniel, on Page 23 of your testimony you have an
14 Exhibit PD-4, and on that exhibit, you are proposing an
15 additional revision to Section 2 of the rule in which
16 you're suggesting language which says, "In determining
17 the purchase price of a utility system, the Commission
18 may consider the prudently incurred acquisition costs"?

19 MS. DANIEL: Correct.

20 MR. HOFFMAN: Wouldn't you agree that if we leave
21 that last sentence of Section 1 of the proposed rule in,
22 if it is not stricken, wouldn't you agree that the costs
23 incurred by a purchasing utility to produce evidence that
24 utility assets, where properly maintained or not
25 deteriorated, would be prudently incurred for the

1 purposes of your revision?

2 MS. DANIEL: You're suggesting that the acquiring
3 utility would be the one putting on the burden of proof
4 as to how the previous owner had maintained the assets?

5 MR. HOFFMAN: Yes. I'm suggesting that the
6 acquiring utility would have to demonstrate that the
7 assets should remain in rate base, i.e., that it is not
8 deteriorated. Don't you think that the costs incurred in
9 that effort, during that transfer proceeding, would be
10 prudently incurred?

11 MS. DANIEL: Possibly.

12 MR. HOFFMAN: Can you think of a situation in which
13 they would not be?

14 MS. DANIEL: Again, I go back to my premise that I
15 think we're perhaps exaggerating the occurrence of the
16 use of this rule, or this portion of the rule; that there
17 would be that frequent a situation where there would be
18 sufficiently deteriorated assets that the Commission
19 would want to even consider removing them from rate
20 base. So you're trying to portray it as though in every
21 transfer we're going to hire a \$30,000 engineer and
22 expert witness to try this issue, and I just don't see it
23 happening.

24 MR. HOFFMAN: And let me just conclude by saying,
25 Ms. Daniel and Mr. Chairman, I am not trying to portray

1 that. I don't think the way the rule reads now the
2 utility would have any control over that, whether it's
3 Public Counsel or some other intervenor stepping in with
4 its intervention rights, the utility would then be left
5 with its burden of establishing that that asset ought to
6 remain in the rate base.

7 Thank you for your patience with me, Mr. Chairman.
8 That concludes my questions.

9 CHAIRMAN DEASON: Thank you. I think we're going to
10 take ten and then we'll come back. I think Mr. Guestella
11 and Mr. Cresse have a presentation to make?

12 MR. HOFFMAN: Yes, sir.

13 CHAIRMAN DEASON: We'll take that up at that time.

14 (Recess)

15 CHAIRMAN DEASON: Mr. Hoffman, I believe either
16 Mr. Cresse or Mr. Guestella was going to make a
17 presentation, is that correct?

18 MR. HOFFMAN: Mr. Chairman, we'd like to start with
19 Mr. Guestella.

20 MR. GUESTELLA: Commissioners, I guess you've
21 already heard from everyone on problems of small
22 companies and what they've created. I'm sure you've
23 lived it, and I don't need to review that as well, but I
24 guess it was Commissioner Lauredo asked why should we
25 have a policy on acquisition adjustments. And I suppose

1 your -- my first impression is you do have problems with
2 small companies, and one of your concerns is how do you
3 solve those problems? What opportunities do you have to
4 find solutions to the problems of small companies? If
5 you could somehow get the small companies to solve their
6 own problems, you probably would get some improvement,
7 but not as good an improvement as you would if you got
8 larger systems to solve the problems. And if you can
9 somehow get the small companies to solve the problems,
10 the cost of solving those problems at a low level of
11 improvement would probably be greater than and probably
12 invariably greater than what the solution would be if the
13 large utilities were able to acquire the systems and
14 solve those problems.

15 The question then becomes what policy encourages the
16 large utilities to solve the problems? You can't force
17 the large utilities to acquire the small ones. And I
18 guess that's really the bottom line. I look at the rule
19 as an opportunity for you to continue what I think has
20 been your policy, that really serves the best interest of
21 the customers. And I think it's a policy that's
22 consistent with what I see as the leadership regulators
23 around the country looking to that as one of the
24 solutions to solve the problems of small companies. And
25 it's really a matter of establishing a policy that's

1 going to encourage where you can't force the large
2 utilities to come in and solve problems, make
3 improvements better than they would otherwise be, at a
4 cost lower than it would otherwise be.

5 And just to review a little bit the process the
6 larger utilities go through, they have to spend money for
7 administrative and legal costs just to go through the
8 process of acquiring the utilities. There are some
9 examples where the cost of going through the transfer
10 proceeding may cost more than the net investment of the
11 utility they're acquiring. And I heard one example where
12 a \$10,000 rate base utility cost 30 or more thousand
13 dollars just to get the transfer approved. And the
14 large companies have gone through that kind of
15 expenditure to try to join in this process of solving
16 the problems.

17 COMMISSIONER CLARK: Can I interrupt you? Is that
18 an expenditure that is recoverable in rates?

19 MR. GUESTELLA: I don't know if it has been in the
20 past. I think it is an expenditure that is recoverable
21 if it is sought, and if it is approved.

22 COMMISSIONER CLARK: Do you know if we have ever
23 approved it?

24 MR. GUESTELLA: I don't know. The next thing the
25 utilities go through, the larger utilities, is they start

1 to solve the problems, and they have to attract capital.
2 And as I indicated before, it's probably at a lower cost,
3 and of course they do attract the capital. And then they
4 make improvements. Sometimes the improvements they make
5 are additions to plant which provide for capacity that
6 may be in excess of what's needed for immediate
7 customers. So at some point they then have to go to a
8 rate-setting process where used and useful adjustments
9 are made to the rate base net investment of the utility
10 they acquire, as well as to the capital improvements
11 which they made. So they have the risk of not earning a
12 return on all of their acquisition in any event, and with
13 used and useful adjustments being made, they've already
14 incurred costs for the acquisition. They go through the
15 typical rate case potential adjustments of inclusion or
16 not inclusion of margin of reserve, and if they get
17 margin reserve, there's an imputation of CIAC. To the
18 extent that they get AFPI, it's not certain they're going
19 collect the revenues that AFPI is intended to collect,
20 and as you know, there's a five-year limit, and as you
21 know there's a regulatory lag from the time they apply
22 for and then receive rate relief that's affecting these
23 utilities that they acquire.

24 In the meantime, I won't go through all the list of
25 the benefits that the customers have received in terms of

1 improved service, lower cost of capital, technical and
2 managerial expertise, and the long list that you've
3 recognized in your other previous decisions.

4 If those same large utilities, without an
5 acquisition policy that is encouraging them, has to deal
6 with, for example, this last sentence of the first
7 section of 30.0371, they then have to face further
8 adjustments for deteriorating plant. They view that as a
9 negative. They view that as a disincentive. They
10 certainly view negative acquisition adjustments as a
11 disincentive, and although we're going to get to used and
12 useful in July, in July we'll talk about some of the used
13 and useful default formulas which are also going to be
14 viewed as negative incentives. So I think there's a need
15 to provide a positive incentive.

16 I think you've seen a need to provide positive
17 incentives, and I think the policy is just going to
18 enable you to do something for the customers, and I
19 appreciate Commissioner Lauredo's concern that often what
20 you do is not appreciated. And that may very well be the
21 case, but nonetheless, you do what's in the best interest
22 of the customers.

23 I think we should clear up some of what I think is
24 an overemphasis on deteriorated plant. I think Marshall
25 Willis and Ms. Daniel and Trish Woods recognize that --

1 they use this term "deteriorated plant," but they really
2 couldn't point to a specific example. And when they
3 reviewed in their minds the transfers that you've
4 approved where you did not use a negative acquisition
5 adjustment, they really weren't able to pick one out. I
6 think there's a good reason for it. I think that's not
7 the predominant factor in what the larger utility is
8 acquiring. To the extent that there's deterioration of
9 assets, it's called depreciation usually. So that the
10 net investment or the rate base reflects the original
11 cost less depreciation, and to the extent that you have
12 that depreciation as a deduction, you're reflecting the
13 deteriorated condition of the property, and it's doing it
14 automatically. You don't need the last sentence in this
15 to say what the condition of the property is.

16 To the extent that the property is so deteriorated
17 that it's not useful anymore, it has no life left in it,
18 the Uniform System of Accounts requires the acquired
19 utility to book that as a retirement credit plan, debit
20 the reserve, so the asset is gone, it's retired; or the
21 new utility who is acquiring the asset also has to retire
22 the asset if it's not used anymore. You just can't use
23 one of the assets, a component of the plant that
24 automatically gets adjusted through the Uniform System of
25 Accounts. I don't think the acquisition adjustment

1 policy, as a rule, needs to redo what's already
2 automatically in place through the accounting procedures
3 prescribed by the Uniform System of Accounts.

4 I think the other proposals that would share in
5 negative acquisition adjustment costs, or say you have to
6 prove that there's no negative acquisition adjustment,
7 really should be addressed by the Commission if they're
8 going to approve the transfer. I think clearly the time
9 has come for the utilities to know that if the Commission
10 thinks that a transfer is in the best interest of the
11 customers, you do so for all the reasons which we just
12 went through. That answers the question of whether or
13 not there should be a negative acquisition adjustment. I
14 think if anything has been lacking, it's the utilities
15 haven't asked for enough in terms of positive acquisition
16 adjustments, or in terms of recovering the cost of going
17 through the process. And that concludes my statements.

18 CHAIRMAN DEASON: Thank you. Mr. Cresse?

19 MR. CRESSE: Mr. Chairman, Commissioners, Mr. Shreve
20 said he wouldn't take any longer than I did. So that's
21 kind of a commitment between he and I. If you keep time
22 on me, then you can keep time on him.

23 MR. SHREVE: And I'll keep time.

24 MR. CRESSE: He, as you know, is not a very good
25 timekeeper. The point that I want to make is that when

1 you place a transfer request, Commission always evaluates
2 that transfer on what's in the best interest of the
3 customers, and if it's not in the best interest of the
4 customers, I don't know in the years I've observed you,
5 that you've ever approved the transfer. And I think
6 that's really the overall policy which this Commission
7 needs to send out and make clear. A lot of what happens
8 after that is mechanics.

9 I think it's well to keep in mind that in most cases
10 acquisition costs are not recognized by the Commission in
11 rate setting. I think these rules address that, and I
12 think you should recognize that. I think the important
13 thing is, under the present rule, which is paragraph 2,
14 which says, "In the absence of extraordinary
15 circumstances, the purchase of a utility system at a
16 premium or a discount shall not affect the rate base
17 calculation." I think that's been the Commission policy
18 for a long period of time. And I think every transfer
19 which you've approved has passed that test. There's no
20 harm done to the ratepayers if the rate base stays the
21 same by the acquiring purchaser, as though it had not
22 been transferred.

23 There's been a lot of discussion about whether or
24 not the condition of the assets should be considered.
25 And that's the last sentence of the first paragraph. The

1 fact is that you don't know the net book value and you
2 cannot determine the net book value of any given asset on
3 the utility's books because you use composite
4 depreciation rates for water and wastewater companies.
5 I'm going to -- I'm trying to improve my language and
6 forget the word "sewer." When you use composite
7 depreciation rates, that's the mix of all of the assets
8 of the Company multiplied, typically, by five percent.
9 That includes assets that have a real useful life of five
10 years. It also includes assets that have useful lives of
11 40 years. And what you've done is you've chosen a
12 composite rate. You really can't tell from that -- you
13 can have a four-year-old automobile setting there that's
14 acquired, or pickup truck, and composite depreciation
15 rates would have that vehicle down 20 percent. And
16 there's nobody in this room that would tell that you the
17 net book value of a motor vehicle at 20 percent less than
18 cost is the appropriate value for that vehicle.

19 So one of the problems that you have when you start
20 dealing with that is determining what net book value is.
21 And I think it's almost impossible to determine. And if
22 you look at a condition of an asset that really has a
23 life of ten years, regardless of the fact that you've
24 only been allowed a five percent depreciation rate
25 applied to it, you might expect that asset to be in

1 pretty bad shape when it's transferred.

2 What's also interesting is that in the aerator
3 example, if a utility replaced that aerator in January --
4 let me just give you an example of one that was purchased
5 effective June 1st. If in January they replaced the
6 aerator, they would take the original cost of the aerator
7 as it went on the books, they would charge it against the
8 reserve for depreciation, have no impact on that book
9 value. They would then book the new acquisition, the new
10 aerator and they would start depreciating that when it
11 went into service. And come June there wouldn't be the
12 question of whether you had a deteriorated asset or not
13 because it would have been replaced in January. There
14 may not even the question be raised, probably not be
15 raised, as to whether or not it had been properly
16 maintained. You would transfer at net book value and the
17 new aerator would be in place. Now what difference does
18 it make to ratepayers whether the aerator is replaced in
19 January or whether or not it's replaced in July after
20 it's acquired by the new owner? I suggest to you it
21 makes no difference at all, except for the service
22 quality that may have taken place in the six months
23 period. And I would suggest that you strike out that
24 last sentence which says, "The Commission shall also
25 consider the condition," et cetera. And the reason that

1 I suggest that is I think if there's extraordinary
2 circumstances that should affect rate base, the door is
3 open in Paragraph 2.

4 And if Mr. Shreve or any other intervenor wants to
5 come in and say there's something extraordinary about
6 this deal, you ought not approve it, the net book value,
7 then that could be argued before the Commission.

8 It has been suggested, and I have suggested in my
9 testimony, that I think folks that are talking about
10 making adjustments to actual purchase price are reverting
11 back to a method of regulation which was discredited,
12 really, in the mid 40's, and that's fair market value.

13 At one time regulation concept was based on fair
14 market value instead of original cost. And I think the
15 Supreme Court decision in the mid 40's changed that from
16 fair market value. They used to go around and make
17 appraisals of property and provide a very low rate of
18 return and so forth in order to determine rates. Rates
19 have been set for a long period of time on original cost
20 and there will be no harm to the ratepayers as a result
21 of this -- of your current policy.

22 I attached to my recommendations, to my written
23 comments, the order that you just entered on 2-17-92
24 which set forth your policy and the reasons for it, and I
25 think those are valid.

1 And I will tell you this, I have advised clients and
2 potential clients that until the policy on acquisitions
3 is pretty clear by this Commission, that they shouldn't
4 run the risk of investing in a water and sewer company in
5 Florida. I think the utmost importance -- I cannot
6 underemphasize the importance of you adopting a fairly
7 clear policy on -- so that the industry and the people
8 that might want to get in this business can understand
9 what your policy is.

10 In closing, let me say one thing. I think what the
11 Staff's proposal and what they talked about is really
12 saying after the acquisition, if we find that the prior
13 owner was imprudent, then we're going to adjust your rate
14 base. And I think that may be appropriate to adjust the
15 rate base as long as it's owned by the prior owner.
16 Because I'm not sure it's appropriate to adjust the rate
17 base of a buyer because of the actions of a prior owner.

18 And finally, let me add one other thing. I think
19 it's also important that you set up a procedure to
20 approve transfers and to establish rate base so that the
21 people will know at one time. Many purchases in the
22 future may very well be contingent upon certain actions
23 by this Commission in approving -- it has to be
24 contingent upon approving the transfer. But I think many
25 purchases in the future will be contingent upon approving

1 the transfer and the Commission establishing rate base at
2 book value. Thank you.

3 CHAIRMAN DEASON: Thank you. Mr. Shreve?

4 MR. SCHIEFELBEIN: Excuse me, were you going to hear
5 from the Association on this or no?

6 CHAIRMAN DEASON: I intend to.

7 MR. SCHIEFELBEIN: All right.

8 CHAIRMAN DEASON: You want your opportunity now?

9 MR. SCHIEFELBEIN: It will be surprisingly
10 delightfully brief.

11 CHAIRMAN DEASON: Very well.

12 MR. SCHIEFELBEIN: Thank you. First of all, the
13 Association -- behind tab 9, the supplemental comments of
14 Frank Seidman, Pages 7 through 12, contain our comments
15 on this acquisition adjustment matter and we see no need
16 to go through those now. We fully support the comments
17 of Southern States and their various representatives
18 today on that issue and see no need to put you through it
19 twice.

20 The only question I had was that we've been talking
21 both about the acquisition adjustment policy and also
22 about Rule 25-30.0371. There are other concerns about
23 that rule that have not been talked about, and it would
24 be my suggestion that we defer commenting on those until
25 everyone has had their shot at the acquisition policy.

1 Whatever your pleasure is, we'll be glad to follow.

2 CHAIRMAN DEASON: It's been my understanding we've
3 been talking about 0371 in its entirety, and if you've
4 got comments on that, I'd suggest you go ahead and do
5 that now.

6 MR. SCHIEFELBEIN: Again, we would have nothing
7 further to add on acquisition adjustments, and
8 Mr. Seidman will give you the balance of our comments on
9 that rule. Thank you.

10 MR. SEIDMAN: Thank you, Commissioners. There's
11 only two things other than what's already been talked
12 about that I have some comments on. And one has been
13 talked about to some extent. That first one is 0371(1),
14 and my comment has to do with Public Counsel's proposed
15 modification with regard to construction work in
16 progress. I believe this has been covered to some extent
17 in conversations between the commissioners and the
18 Staff. Public Counsel had objected to the inclusion of
19 construction work in progress in establishing rate base.
20 And we, of course, are against that. I think the rule is
21 pretty clear in the way it's stated that the inclusion of
22 construction work in progress is only there for the
23 purpose of determining rate base at the time of transfer
24 because work in progress is a purchased asset, and its
25 value has to be established. There's nothing in the rule

1 that says that work in progress, because its value is
2 established at the time of transfer, is going to be
3 included for ratemaking purposes in some subsequent rate
4 case.

5 I do, however, take objection to Public Counsel's
6 premise that it is Commission practice not to include
7 work in progress in rate base because I think that,
8 indeed, work in progress has been included when the
9 Commission looks at projected test years. That's exactly
10 why we have projected test years, so we can see what type
11 of plant is going to be used in the future, and of course
12 at the time it's being considered it is work in
13 progress.

14 If the Public Counsel's wording were to be included,
15 it would exclude the Commission, in the way it's worded,
16 from ever considering work in progress in rate base. And
17 such a proposal would be contravention to the
18 Commission's authority under 367.081(2)(a) of the Florida
19 Statutes which says that the Commission shall consider
20 investment of the utility in land acquired or facilities
21 constructed, or to be constructed, in the public interest
22 in a reasonable period of time.

23 The other comment I have is with regard to section
24 0371(4), which states that the -- where the buyer
25 demonstrates it has engaged in good faith effort to

1 obtain original cost documentation and has been unable to
2 obtain the documents, the Commission may establish rate
3 base based upon competent substantial evidence.

4 Public Counsel has suggested that an incentive be
5 added to this, and that incentive is in the form of a
6 mandatory zero rate base when such an effort is not
7 demonstrated. I believe this is unnecessarily punitive.
8 It disallows rate base even when supported components of
9 rate base, if good faith effort were not made to obtain
10 such portions.

11 The rule as it's been proposed by the Commission is
12 a permissive rule. It says the Commission may establish
13 rate base upon competent evidence. It doesn't say that
14 it has to. The Commission may establish rate base
15 through cost reconstruction. Records are rarely --
16 excuse me, rarely are records supporting rate base either
17 totally available or totally unavailable. And the
18 Commission has sufficient authority and expertise to
19 weigh all of the facts, or the lack thereof, pertaining
20 to rate base. In addition, this rule, as proposed,
21 regarding establishment of rate base, does not stand
22 alone. There is a rule 03721, which requires a statement
23 by the buyer that a good faith extensive effort was made
24 to obtain the books and records and tax returns.

25 So there is some incentive on the part of the

1 purchaser to make sure that it's made a good faith effort
2 because it's going to have to make a sworn statement to
3 that effect.

4 In addition, there's rule 30.570 which gives the
5 Commission authority to impute CIAC when it is not
6 supported by competent substantial evidence. So there
7 are sufficient incentives and checks already available to
8 the Commission with regard to what decisions it wants to
9 make regarding the establishment or the substantiation of
10 rate base without going in and putting in a mandatory
11 fine in the form of a zero rate base. That concludes my
12 comment on that.

13 CHAIRMAN DEASON: Thank you. Mr. Shreve?
14 Mr. Mann?

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

16 I'll confine most all of my comments to the
17 acquisition adjustment. And I think we've probably all
18 been over it a number of times. Basically, what the
19 utility wants is the ability to earn a return and
20 depreciation on more than their actual investment.
21 That's the bottom line. There's a great deal of talk
22 about protecting the ratepayers; that the ratepayer would
23 not be any better off if the system stayed in the hands
24 of other -- of the same utility, and that probably is
25 true. However, the law requires and I think this

1 Commission should hold the utility, the purchasing
2 utility, to a fair return.

3 Commissioner Clark asked about an analysis of rate
4 case expense and how it affected -- how it was affected
5 in the Southern States case. I wonder if anybody would
6 be willing to talk about the amount of money that we're
7 talking about in Southern States as far as this purchase
8 price or what they actually have involved in it. How --
9 and we're talking about a risk coming in, and the company
10 won't make an investment. Nobody is talking about giving
11 them anything less than they actually have invested in
12 it. It's just not being done.

13 There are many systems that have been purchased for
14 one third -- I think probably even some of them have come
15 in at zero cost to Southern States. We don't have that
16 information. We don't have the information and have no
17 idea how much of a return is actually being made by the
18 Company, even though we've just completed the largest
19 single rate case and the largest single rate increase
20 that I think we've had in the water and sewer systems.

21 I think the acquisitions also run the gamut. I
22 don't think you can pin down whether it's a rundown
23 system, whether it's a new system. You have examples all
24 over the board on that. So that I think what Staff has
25 said along those lines is proper: There's no way to pin

1 it down exactly what the situation was in any given
2 case. You have an acquisition in Lake County where the
3 -- where Southern States acquired a brand new system,
4 which is low income housing. Book value, net book value
5 was 81,257; purchase price was 32,935. They received
6 both a return and depreciation on the full 81,257.

7 There are situations outside of Southern States
8 where the same type thing has happened, where you've had
9 banks come in and have a purchase price. Now generally
10 speaking, you would think the purchase price would be the
11 value of the system at any given time. I think the only
12 logic that really comes out of the argument as to why a
13 system, why a purchaser should be allowed an incentive is
14 that the utility -- and this is what's been made time and
15 again -- may not or will not come in and try and get the
16 best purchase price they can. They may be willing just
17 to back off and pay a larger amount or net book value
18 because if they do not get the full net book value, they
19 won't have the incentive to purchase those systems.

20 Perhaps there should be some type of an incentive given
21 to them, not talking about a penalty or any real risk,
22 but if you accept the fact that the utility is not going
23 to get the very best purchase price they can and try and
24 benefit the customer, if they only receive a return on
25 that investment, or actual investment on the purchase

1 price, then perhaps, as we have put in ours, maybe you
2 should go ahead and give 20 percent of the net book value
3 or purchase price, whichever is less, plus 20 percent of
4 the difference. Then they would have an incentive to go
5 ahead and purchase it low and know what it is.

6 And they're talking about wanting the rule; of
7 course they want the rule. At this point there are only
8 two Commissioners that have voted for this policy, that
9 I'm familiar with. There are policies throughout. At
10 one time the policy on -- well, matter of fact, the
11 policy on imputation of CIAC on margin of reserve is a
12 policy of the Commission right now, but that's not to be
13 put in this rule. There's been a different policy or
14 different usage in the margin of reserve calculations.
15 The working capital methods have changed over the years
16 since I think Commissioner Cresse was there. That policy
17 has changed. All I'm saying is I hope that we have an
18 opportunity to put on some cases for the new
19 Commissioners and Commissioners that may have a different
20 view of the policy that is out there.

21 Right now, if this rule passes, then you're pretty
22 well locked into giving a return on a phantom investment,
23 on an investment that the utility has not made. And the
24 burden would be shifted to the people to try and show
25 that there was some extraordinary circumstances. It

1 should be they are given a fair return on their
2 investment and allowed to justify coming up a part of the
3 way so that they can receive a type of incentive, and in
4 no case a risk or penalty of going below what they
5 actually have invested.

6 It's amazing to me, as many public hearings as we
7 have had in Southern States, and how many times it's been
8 raised and how many times the customers have talked
9 about, and nobody, even though the policy is out there,
10 is ever willing to tell anyone what the effect of the
11 votes that would give them a return on the net book
12 value, rather than their purchase price, really is. We
13 don't know what that effect is in Southern States. We
14 don't know how much of a rate increase we would have
15 actually used or needed.

16 We've gone to a statewide rate because you needed to
17 have subsidies from some systems to keep them from having
18 extremely high rates. And this was done primarily, or
19 partially, because Southern States is receiving a return
20 and depreciation on an investment they have not made.
21 But nobody has been willing to put the numbers on the
22 table. And I think it's just as important when you're
23 calculating an assessment of rate case expense or
24 salaries and effects on rates of individual customers,
25 that you're willing to face the decision you make.

1 You take FINC Hideaway, there -- and this was not a
2 Southern States' case -- the purchase price of the bank
3 was \$60,794; the book value was \$150,457. The utility
4 was given depreciation. The bank was given depreciation
5 after they foreclosed on it. Depreciation, and return on
6 the 150,000. The difference in rates per customer per
7 month, because of that adjustment, was around \$7 to \$9
8 per month, per customer. If you're going to make the
9 decision to give them that type of a return on the
10 investments that they have, then I think you should at
11 least be willing to tell the customers, this is how much
12 of your money we're going to require the customers to pay
13 to the purchasing utility and take the responsibility for
14 the decision. I think they're entitled to a fair return
15 in all situations. I think there's very little risk.
16 They have a monopoly. I just think that the customers
17 are entitled to the treatment that would show -- get them
18 down close to a fair return on their actual investment.
19 Thank you.

20 COMMISSIONER CLARK: Mr. Shreve, does anyone know if
21 we have allowed acquisition costs to be recovered in
22 rates? It seems to me that's come up before, but I don't
23 ever remember -- I don't remember precisely what
24 treatment it was given.

25 MR. SHREVE: Commissioner, I'm not sure. You may

1 recall, or what you're thinking about may be in Southern
2 States, not this case, and I'm not sure how it was
3 handled in this case, but in the last one Southern States
4 was requesting net book value even though they had
5 purchase price lower than, say, in many of the systems.
6 In that case Southern States requested a finder's fee in
7 many of those cases. They requested real estate fees,
8 and they requested a so-called Topeka fee that we never
9 did figure out exactly what it was, and that was to be
10 added to the net book value not to the purchase price.
11 That was in the case that was dismissed.

12 COMMISSIONER CLARK: I'd like to know if we've
13 allowed the cost of acquisition to be recovered.

14 MS. MERCHANT: In that first Southern States' docket
15 Staff recommended that all those costs be disallowed. Of
16 course that case the Commission did not -- I don't know
17 the exact term here. The Commission didn't make a
18 decision on that rate case. It was withdrawn or -- but
19 anyway, on the second case, the Company did not request
20 recovery of those costs. So the issue was not addressed
21 specifically by the Commission.

22 COMMISSIONER CLARK: Mr. Shreve, do you think -- if
23 we go to a system where we -- where we don't allow a
24 negative acquisition adjustment -- wait a minute. Let me
25 say that again.

1 MR. SHREVE: Yes.

2 COMMISSIONER CLARK: We give them only their
3 purchase price, not the increased book value, would it be
4 appropriate in that instance to give them the cost of
5 acquiring that utility?

6 MR. SHREVE: I think so, yes. But -- I think that's
7 probably a good approach. If they have a legitimate
8 expense in acquiring those systems and you're adding it
9 to the purchase price and maybe even after some
10 discussion, and you have a policy on it, some type of an
11 incentive but not the full net book value to the extent
12 that we're talking about, I don't think that's a bad
13 approach.

14 COMMISSIONER CLARK: What about a positive
15 acquisition adjustment?

16 MR. SHREVE: I have taken the position that in
17 certain situations -- first of all, the investment that
18 has been made by a utility is what was put there to serve
19 the customer, and that's what it routinely should be. I
20 think there are situations where the utility should have
21 the opportunity to justify a positive acquisition
22 adjustment. You have the situation over in Jacksonville
23 where in fact the utility just could not purchase that
24 system and everyone wanted them to. And I think that was
25 a fair time to give an acquisition adjustment because

1 that purchase wouldn't have taken place.

2 COMMISSIONER CLARK: And the unfortunate thing is
3 the person who comes out ahead is the person you wanted
4 to get rid of in the first place.

5 MR. SHREVE: That's right. Of course in many of
6 these systems where you're taking over a
7 developer-related system, they've, in reality, recovered
8 their cost of the system in the lot sales in the first
9 place.

10 And also been a lot of talk about the rundown
11 facilities. And I'll have to disagree with
12 Mr. Guestella, that generally speaking the rundown
13 systems are because of depreciation. I don't think that
14 really holds true at all, because in those situations, if
15 you have total depreciation, you wouldn't have it in rate
16 base in the first place. But there are examples where
17 systems have been run down because the utility owner did
18 not reinvest the money or just walked away with it. And
19 in that case if you allow a purchase price to get net
20 book value, then of course the replacement of that system
21 is also going to be placed on the ratepayer, and I think
22 that's what Staff has been talking about.

23 COMMISSIONER CLARK: What about -- somebody
24 suggested a sharing of the benefits, and it was a 20/80.
25 Was that --

1 MR. SHREVE: That was ours.

2 COMMISSIONER CLARK: -- Public Counsel? Twenty to
3 whom and 80 to whom?

4 MR. SHREVE: I think if a utility comes in and
5 purchases a system, if the purchase price would be the
6 floor, that is their investment, and I frankly think that
7 really that a utility should -- if they're assured of
8 having a fair return on their investment, I think that's
9 all they really deserve. But if you accept the fact that
10 they may not really get out and try and get the lowest
11 purchase price, then, give some type of an incentive. I
12 think if you allow the utility their purchase price,
13 their investment, plus 20 percent of the difference, then
14 I think that's more than fair. That would give them the
15 incentive to get that band as wide as they could.

16 COMMISSIONER CLARK: Finally, you touched on an
17 interesting point. It seemed to me you said nobody has
18 given the information that says what the purchase price
19 was, what the net book value was. Don't our orders
20 indicate that? It seems to me we have that information
21 when a transfer occurs.

22 MS. DANIEL: We do set the net book value through
23 rate base. Our orders don't always reflect the purchase
24 price if the Commission does not approve an acquisition
25 adjustment.

1 COMMISSIONER CLARK: I would like to see, for the
2 past five years, I'd like to know what price was paid and
3 what the net book value was allowed for -- what the rate
4 base was allowed in the transfer and the difference
5 between those two.

6 MR. SHREVE: And perhaps the additional revenue in
7 the case because of that --

8 COMMISSIONER CLARK: Excuse me?

9 MR. SHREVE: How about getting the additional
10 revenue caused in the case because that charge, that
11 rate, is being placed on the ratepayer?

12 COMMISSIONER CLARK: Can you do that? Why couldn't
13 you indicate what the -- how difficult is it to say if
14 the rate base was changed from X to Y, it would translate
15 into Z amount in the rates? Just take it the way it is
16 and assume that instead of getting net book value they
17 only get purchase price.

18 MS. DANIEL: We'll work on it.

19 CHAIRMAN DEASON: Staff is going to try to put that
20 together.

21 MS. MERCHANT: Are you bringing in the Deltona
22 purchase?

23 COMMISSIONER CLARK: Yes, I want to see them all.

24 MS. MERCHANT: That, as the utility can tell you,
25 that is reams and reams and reams of paper.

1 COMMISSIONER CLARK: Wait a minute, we don't know --

2 MS. MERCHANT: The Commission does have, from the
3 old Southern States docket, we do have the information
4 from that case. But the smaller ones I'm sure we
5 probably have a lot more readily available.

6 MS. DANIEL: We'll take a look at it.

7 MR. SHREVE: Commissioner, could I make a suggestion
8 and make it easy? Why don't you, in the Southern States
9 case, use just the Deltona purchase and the Lehigh
10 purchase?

11 COMMISSIONER CLARK: No, because I want to see it on
12 an overall basis.

13 MR. SHREVE: Great. I think that would be great.

14 COMMISSIONER LAUREDO: Let me ask you just a
15 question; maybe it's the same question that she has.
16 Would you verify the following statement and I quote --
17 and I could be misquoting you; it's been several hours:
18 "Southern States has paid more for its acquisitions in
19 Florida than it has been allowed to earn on rate base
20 after used and useful application." Is that true or
21 false? Can you --

22 MS. DANIEL: I have not made an evaluation.

23 COMMISSIONER LAUREDO: Is that going to be a big
24 thing to do?

25 MS. DANIEL: No, sir.

1 COMMISSIONER LAUREDO: That's a pretty big
2 statement.

3 CHAIRMAN DEASON: I think Mr. Armstrong made that
4 statement.

5 MR. ARMSTRONG: I made the statement.

6 COMMISSIONER LAUREDO: I know you made the
7 statement. That's why I pointed to you, that I hope I
8 wasn't misquoting you.

9 MR. ARMSTRONG: No, no, that's the statement. And
10 that was as of the last calculation which we hadn't done
11 since --

12 COMMISSIONER LAUREDO: Could you provide us with
13 that so that Staff doesn't have to do it?

14 MR. ARMSTRONG: We did it before Lehigh, and
15 certainly, I'll substantiate the statement.

16 I do have four points also. One, is there is a
17 factor here -- we have to deal with the real world when
18 we're out there acquiring systems and negotiating with
19 owners of these systems, and there is a risk involved.
20 There is a reason why we have to have this negative -- I
21 mean this lower-than-net-book purchase price. And one of
22 the reasons I identify why the owner is interested in
23 selling is because there's a potential risk of
24 enforcement action against them, and now it's kicking
25 in. DER is enforcing their rules; they are fining

1 people. They're going after the people behind the
2 corporations at this point and piercing the corporate
3 veil, so to speak. That finally is starting to make some
4 of these people move.

5 There are systems out there identified -- and I
6 concede that -- that are looking at deteriorated assets
7 and are out there for condemnation purposes, or for
8 whatever reason, other than running that utility. We
9 can't really go after those kinds of systems to go out
10 and provide those customers the benefits at this point in
11 time because they're not going to sell. But there is a
12 risk that we assume when we do negotiate that price, and
13 that is the seller is sitting there and the buyer, us,
14 across the table. There is a possibility that when we
15 buy this thing, on day 1, we're going to have a DER
16 enforcement action come down, it's going to be a consent
17 order, and we're going to be exposed to significant
18 fines. That is a risk that we assume as a matter of
19 acquiring these utilities. If we don't assume it, then
20 the price goes up. When that price goes up, it gets to a
21 certain level, it's not economical for us to buy the
22 system.

23 CHAIRMAN DEASON: Let me ask you a question on that
24 point. Do you think that when you're negotiating, the
25 fact that there potentially could be fines imposed, that

1 that is something that both you and the seller recognize
2 and are willing to negotiate a price which reflects that
3 risk that you would be absorbing?

4 MR. ARMSTRONG: I've only been with the Company for
5 two years. Let me briefly mention, too, that we have
6 opened all of our records. Any records that this company
7 had in terms of these acquisitions have been provided to
8 the auditors, the Staff and Public Counsel. I have not
9 even been able to go through all of those documents, but
10 I have seen instances where there have been references,
11 where there has been a sit-down and discussions and
12 negotiations that take a period of time. But when we're
13 talking about these small systems, many of these small
14 systems it could be a phone call and it could be a
15 standard contract because the owner really is not
16 interested in it. Either he just completed the
17 construction, or he is a developer and he's not
18 interested in running this utility, or he's nearing
19 buildout and then we all know that there have been
20 subsidies along to encourage people to buy lots in that
21 area, so they're subsidizing rates. So now they're at a
22 period of time when they don't want to be in this
23 business any longer. And perhaps those are the same
24 people that are not earning the return that they
25 otherwise could earn if they did come in for rate cases.

1 And we go in and we have to negotiate those things. But
2 there really is not too much variety, and it depends on
3 the size of the system and the abilities of that owner on
4 the other side to negotiate things and their interest in
5 the utility business at all. Sometimes it's not an issue
6 because they don't want to be in the business.

7 COMMISSIONER LAUREDO: May I ask you a question?
8 Are you finished?

9 MR. ARMSTRONG: I have three other points.
10 Certainly you can ask the question and I'll get back to
11 them.

12 COMMISSIONER LAUREDO: Mr. Cresse's testimony,
13 attached is the policy statement on acquisition
14 adjustment policy, issued on 2-17-92. Do you -- well,
15 let me read to you these lines: "Absent extraordinary
16 circumstances, the purchase of a utility system at a
17 premium or discount shall not affect rate base." And the
18 sentence starts, "Since approximately 1983." Are you
19 aware of that policy? Are you aware of it?

20 MR. ARMSTRONG: Since 1983 that had been, I
21 understand, when the Commission first established that as
22 policy.

23 COMMISSIONER CLARK: That's true. I can testify to
24 that, at least 1983.

25 COMMISSIONER LAUREDO: Right, so why do you need --

1 why are you being -- why do you need a policy, and what
2 is it that is making your Company not come in and buy
3 more systems? I mean you're either -- if this is a
4 policy and you're using it to support a point of view,
5 what more certainty do you want than that?

6 MR. ARMSTRONG: Commissioner, what has happened is
7 the policy -- the policy is there, whether it's in a rule
8 or not, the policy -- we support a rule that codifies
9 that policy. That's one thing. But number two, there
10 has been uncertainty in the past in these acquisitions
11 about what the rate --

12 COMMISSIONER LAUREDO: Let me stop you there. Is
13 there any uncertainty in your mind on this issue?

14 MR. ARMSTRONG: Well, no, there wouldn't be
15 uncertainty in that issue. But when we're talking about
16 small system acquisitions particularly, we're not talking
17 about, usually, big net plant numbers. And this is to
18 answer the question directly of Chairman Deason, we're
19 talking about \$500,000 of acquisition adjustments out of
20 a total plant in service of 150 million. That's the
21 scope of what we're talking about here. And when we have
22 an acquisition -- this small system where we can go in
23 and provide them the benefits we think we can provide
24 them, and the net plant is only \$10,000; however, as a
25 result of litigation, and the litigious character that

1 has happened in the past, when I say we acquired 30 or 40
2 systems, it wasn't without a significant cost and a
3 significant fight in those instances. We have that
4 situation where acquisition cost exceeds the net plant.

5 COMMISSIONER LAUREDO: Were any of those acquisition
6 costs embedded later on into the rate base?

7 COMMISSIONER CLARK: No.

8 MR. ARMSTRONG: I cannot recall where that has
9 occurred, where we've asked for it, because the Company
10 was placing more of an emphasis -- we want to be in this
11 business and we want to grow and we see benefits from the
12 growth for all of our customers existing.

13 COMMISSIONER LAUREDO: I'm probably a more
14 pro-business person on this Commission, so -- but, I
15 mean, you got to take it both ways. If things are as bad
16 as you're all trying to make me think it is, you wouldn't
17 be in the state of Florida. I mean, so -- and we got to
18 be fair about these things. I'm trying to figure out why
19 you think there isn't a clearly articulated policy. I
20 happen to disagree with it. I'll get to that in minute,
21 but, my God, your own testimony, one of your witnesses
22 says here's an order which says the 19 -- so what's
23 stopping you from buying more systems on this acquisition
24 rule, this rule, the 1371 we're talking about -- you'd
25 just rather have it in a rule?

1 MR. ARMSTRONG: Actually the one was that it was
2 becoming -- especially to these small systems, it was
3 becoming too expensive to go ahead through this process.
4 And basically, we were eating those costs. We were not
5 asking for recovery of those costs, and it was becoming
6 too expensive to acquire these small systems.
7 Particularly when we felt we were walking in to give them
8 all these benefits that we know we can give them, and
9 they weren't what was being recognized, but we would have
10 to -- I can't say they weren't recognized because those
11 acquisitions were approved at some point, but we had to
12 fight it out and go through much expense, deviate our
13 attention from operating the utilities that we have,
14 taking people away from those aspects.

15 COMMISSIONER CLARK: Mr. Armstrong, are you saying
16 in each case that you acquired you had to come in and
17 again prove the validity of the policy of not allowing an
18 acquisition adjustment?

19 MR. ARMSTRONG: No, no, I didn't mean to say that.
20 What I'm saying is that we had to come in and prove that
21 it would be in the public interest to have this
22 acquisition. And then when we did come in, there was
23 intervention and it became a litigious process.

24 COMMISSIONER CLARK: What was litigious about the
25 process? What were the points of issue? The acquisition

1 adjustment, right?

2 MR. ARMSTRONG: Often it was the acquisition
3 adjustment, and basically --

4 COMMISSIONER CLARK: So you have to relitigate every
5 time the validity of the policy of not allowing an
6 acquisition adjustment either way?

7 MR. ARMSTRONG: Right.

8 COMMISSIONER CLARK: If you had a rule you would
9 only have to deal with the extraordinary circumstances,
10 so you eliminate some costs.

11 MR. ARMSTRONG: That's accurate. I thought you said
12 we had to prove a negative, which was prove why we
13 shouldn't have a negative acquisition.

14 COMMISSIONER CLARK: Let me ask you another
15 question.

16 COMMISSIONER LAUREDO: Commissioner, let me
17 interrupt you a minute because, you know, did you answer
18 me contrary to what you just answered her question? I
19 thought you said that you had a clear view of what our
20 policy was in this issue and you accept that this
21 document is articulate and actually is verbatim, word for
22 word, what the rule is going to be. And it says that
23 since 1993, this has been a policy, and you said, yes.
24 Now you say no, that it's still litigious and
25 therefore --

1 MR. ARMSTRONG: I'm sorry, Commissioner, let me just
2 step back exactly where I came from.

3 COMMISSIONER LAUREDO: I'm not communicating well
4 today.

5 MR. ARMSTRONG: What I understood the question to be
6 was: Did we have to come in and prove a negative? Did
7 we have to come in and prove why there should not be a
8 negative acquisition adjustment? I wasn't saying that we
9 have to come in and have that burden of proof. But you
10 do have to fight out the issue of whether or not there
11 should be a negative acquisition adjustment. We believe
12 the burden of proof has been on Public Counsel to do
13 that.

14 COMMISSIONER LAUREDO: All I'm driving at -- let's
15 go back to basics. We have two underlying philosophies
16 here. I'll repeat myself for the tenth time. One is why
17 are we doing this? One, because supposedly it reduces
18 rate case expense; and two, because it forwards or gives
19 impetus to a philosophy of encouraging good companies
20 like yours to take over small systems. And I heard you
21 -- when I say "you," I mean you all -- saying we need
22 this rule, and I'm talking strictly about 371, because we
23 -- the way things are, it's a disincentive; I thought
24 you told me since 1990 you haven't even bought a system
25 because the uncertainty of the Commission policy, it just

1 makes it so high risk that you don't want to take that
2 risk. And I was trying to figure out whether that was
3 true or not. If there's a policy --

4 MR. ARMSTRONG: I have it now, Commissioner. I
5 have. The uncertainty is not with the policy the way
6 it's written. It's written and we understand what that
7 policy is. But what we've heard -- you've heard it and
8 you've seen it in the proposed rules now. You heard it
9 yesterday: "Buyer beware." This isn't the first time we
10 heard it. We saw the writing on the wall. We
11 participated in those proceedings, those last few
12 proceedings where we had to come in and fight out
13 acquisition adjustments. We saw the writing on the wall;
14 we heard things that gave us the cause to be very
15 concerned about how we would be treated in the future.
16 We heard yesterday -- you know, we're hearing Staff
17 people saying, "Buyer beware." We're going to look at
18 all these assets and do a -- whether this is going to
19 turn into a full-blown rate case at this point or not is
20 a good question I think.

21 But they're looking at little points. Do we look at
22 deteriorated assets? Rather than the big picture: Is it
23 in the public interest? Can we supply these nine others
24 benefits, potential benefits that you identified? Not
25 only are we meeting one or two of them; we're providing

1 all nine of those benefits.

2 COMMISSIONER LAUREDO: You see, what I'm getting at
3 -- and it seems to me if I were in your shoes, I
4 would not be for this rule, or any of these rules;
5 particularly the reputation your company has, it is much
6 easier to articulate the overall public policy
7 considerations that include carrying forward the concept
8 of bringing in a well-run company to run otherwise
9 morally and financially bankrupt systems, than codifying
10 it. And I'm just -- I'm trying to identify with your
11 decision, and when I get there I would think that I would
12 be against this rule. I would rather have the
13 flexibility to show that in fact there is a qualitative
14 difference between a Southern company, given the
15 circumstances in Florida water and wastewater, and yet
16 we're reaching different conclusions. And then you all
17 try to convince me that we have a disincentive, and yet
18 there's a clear policy. So I'm at a loss, Mr. Cresse.
19 It's part of the learning process.

20 MR. CRESSE: Mr. Lauredo, let me see if I can
21 clarify it, sir. Until it's adopted as a rule, even
22 though the Commission and the various panels of the
23 Commission has been doing essentially what's in this
24 rule, as this order says, for the last nine years, okay,
25 until it's adopted as a rule, a panel is not bound by

1 that. They can go in and do what they please. There's a
2 prior precedent, but it's not policy until it's in a
3 rule.

4 My advice to my clients is you got a new
5 Commissioner over there; we don't know how they're going
6 to vote on a case-by-case basis. Let's see if we can get
7 them to adopt a policy on this subject so it will give us
8 guidance to go forward. I can't say it any clearer than
9 that. I know that at least one of the commissioners
10 sitting behind that bench today doesn't agree with this
11 policy. I've heard him articulate it before, and that
12 may tell you who it is.

13 COMMISSIONER LAUREDO: Probably me, right?

14 MR. CRESSE: No, it's the chairman. I've heard him
15 articulate it when he worked for Mr. Shreve. And as
16 wrong as he was, but now he's got to vote on it with all
17 this evidence. And I'd like -- and I think the industry
18 is entitled to know what the policy is of this body.

19 COMMISSIONER LAUREDO: Let me engage you on
20 something because I think you have given the absolute
21 best advice to your client. However, if --

22 MR. CRESSE: I hope so.

23 COMMISSIONER LAUREDO: I think you're absolutely
24 right. You have to try to prepare them on a very -- the
25 regulatory ambience is always going to be a very insecure

1 area, particularly for business people. So as much as
2 you tried to get him to have a on-moving playing field,
3 that's great advice, but put yourself in the position of
4 a Commissioner, which you once were, I bring my point of
5 view; I've been appointed for a number of very complex
6 reasons to this Commission and five other individuals
7 with all their pluses and minuses. That is the system.
8 And I think that this precludes -- I don't want to take
9 argument with this rule, for example, but not only was I
10 not here, but it's two Commissioners made this policy.

11 COMMISSIONER CLARK: That's not true. I mean
12 that --

13 COMMISSIONER LAUREDO: Two Commissioners reaffirmed
14 the policy about a month after -- a few days after I was
15 sworn in. I don't want to get into the arguments of
16 whether or not it's a policy, but it seems to me when you
17 try to push me into codifying things in a very fluid
18 environment, which is the state of Florida, you, in
19 essence, are taking away not only some of my -- I don't
20 mean me as a Commissioner, not me personally -- my powers
21 and flexibility to best serve the people of Florida,
22 because there may be times -- Mr. Shreve -- I write these
23 things down because I want to get to them on other times
24 -- he says, for example, he has no problems with
25 incentives. I wrote it down. He just has problems with

1 incentives on a blanket thing, but he says on a
2 case-by-case basis I may be convinced that there may very
3 well be -- and I think he quoted an example, and I
4 couldn't write that fast. I like that way of doing it.
5 I like to be able to hear his point of view and disagree
6 with it and try to persuade, but putting it in a rule, it
7 seems to me -- and I'll sleep on this, Mr. Cresse, maybe
8 I'm wrong -- takes away more flexibility. And if I were
9 a businessman, on balance, I would like the flexibility,
10 particularly if I was a well-run company like the Company
11 you represent.

12 I mean where you come in, not only with all of this
13 stuff, but you come in with your resume and you say, I
14 think I'm the best person to get this state out of this
15 jam and give me this flexibility, and you think it takes
16 away flexibility, and yet you want it that way. And I'm
17 just kind of perplexed.

18 MR. CRESSE: Commissioner, let me respond and see if
19 I can help you, sir. One of the things that new
20 Commissioners do, I think, when they come to the Public
21 Service Commission, is to acquaint themselves with the
22 existing policies and the existing rules. They have to
23 do that, and they need to do that for their own
24 satisfaction, to be sure that they themselves are
25 satisfied with that rule, that policy. And if you're

1 not, then all you have got to do is come there and say,
2 Commissioners, "I'd like to open that issue up for
3 further discussion and for change." That's the way to
4 change policy. Sit there and review it, bring the Staff
5 in, say, "Y'all explain this to me because I don't quite
6 understand it." I mean they spent so much time in my
7 office when I first came here, they thought that was
8 their office, because I didn't understand it -- and I can
9 promise you, sir, if I didn't understand it, then I
10 didn't like it. So they come in and they explained it.
11 And whenever they explained it, if I didn't like it, then
12 I set about changing it.

13 That's your job. And you're not restricted, sir, to
14 changing those policies, but the people that's affected
15 by your policies, by this Commission policy, are entitled
16 to know what they are. And they do that in the
17 combination of the things with the law and Chapter 120
18 and all that stuff that lawyers go through. They say,
19 "Spell it out." That's all we're asking you to do
20 today. Not to put it into stone, not to put it in the
21 position where it can't be changed, but until such time
22 as giving people due process, it is changed, that's what
23 we know we can expect. That's all we're asking to do.

24 COMMISSIONER LAUREDO: I hope you came on to this
25 Commission at a little more leisurely pace than I did. I

1 unfortunately picked a very bad year to be initiated. I
2 didn't have the leisure of reading a lot of -- I was
3 thrown right into, I think the first thing was in
4 Southern Bell, one of Mr. Shreve's radical proposals. I
5 think that was the very first day. I'm just beginning to
6 catch my breath. But even so, even so, if you look back
7 on the record, I used to say from day one, I don't like
8 this talk about Commission policy, because I knew that's
9 kind of an ambiguous thing. And I kept saying, "Would
10 you all show me the order? I'd like to read the order."

11 MR. CRESSE: I felt for you. I heard you make some
12 of those statements. I was crying out, "Help him."

13 COMMISSIONER LAUREDO: I might have been derelict in
14 my responsibility to be thoroughly knowledgeable on the
15 policies, but the philosophical problem I have is when
16 does accepting a policy -- do I delegate my public
17 responsibility to the people who appointed me to make
18 judgments? And what I'm saying in this case is I have a
19 problem with it in that I haven't been given the
20 opportunity, I wasn't on that panel. This is the first
21 time I've had the opportunity to give my opinion. But
22 I'm going further than that. I'm saying I don't see the
23 benefit. What I'm saying is if I take my hat off and say
24 I want to be in the position of the Company, I don't --
25 from my biases, my background, my -- I guess my being

1 involved in the other world, says I would rather have the
2 flexibility if I were a well-run company -- that's a big
3 if -- to come in before this Commission and by the weight
4 of my character and performance, I get a better deal than
5 something codified. That's all. That's where our
6 differences are.

7 CHAIRMAN DEASON: I think Commissioner Johnson --

8 COMMISSIONER JOHNSON: I just wanted to say that I
9 understand where Commissioner Laredo is coming from.
10 It's rather difficult as a new commissioner when you come
11 in and you're presented with something that this is
12 Commission policy. As an attorney, I understand that the
13 law now requires when we have nonrule policy to make that
14 policy into a rule, and when we get past the point of
15 incipient policy, then we should codify that. However,
16 for a new Commissioner, I think it's probably a two-step
17 test. First, is this existing policy? If it is, then do
18 you agree with the policy? Because actually this is an
19 opportunity for new commissioners. This is an
20 opportunity to say, yes, this is what we've done before.
21 We have not codified that yet. Do we want to change
22 that? I think that we have -- the law allows us that
23 before we make a policy of rule, to, through rulemaking
24 process, say, well, I haven't for the last ten years been
25 voting on that issue, and I think it should be handled

1 differently.

2 When I asked the question earlier though, it would
3 be difficult for me to say that I disagree with policy
4 and I think it should be handled another way, and let's
5 adopt that today. Yesterday, Commissioner Beard said,
6 "This is your opportunity; if you disagree, get three
7 votes." I would say at that point if I disagreed, that
8 then what we almost have to do is go back through an
9 incipient process. To me that would be the most prudent
10 thing to do, to then incipiate, well, let's apply case by
11 case just to make sure.

12 Now, Mr. Cresse, I think what I'm hearing from you,
13 though, is that if I disagree with this current policy,
14 which at this point in time, just -- to let you know I
15 kind of disagree with this policy -- then you would
16 suggest that then go ahead and adopt the rule that you
17 think is the right rule.

18 MR. CRESSE: I would on acquisition adjustments. On
19 some other subject matters I might not. The reason I
20 would on acquisition adjustments is I think the lack of a
21 clear policy is going to deter acquisitions. And I think
22 many of them should go ahead and go forward because
23 that's what's in the best interest of the customers. And
24 I think the real criteria, bottom line criteria,
25 Commissioner, on transfers of ownership from one to the

1 other has to pass that acid test: Is it in the benefit
2 of the ratepayers affected? Everything else is garbage
3 and process. Is it in the benefit of ratepayers? You
4 have to make the other stuff kind of clear, but if it
5 doesn't pass that test of being in the benefit of the
6 ratepayers, you say no. That's what your job is, is to
7 protect the ratepayers.

8 Mr. Shreve represents them, and there's a big
9 difference between those two, between representing and
10 protecting. You have to protect the ratepayers from the
11 utility and you have to protect the ratepayers from
12 Mr. Shreve.

13 MR. SHREVE: You need to let the ratepayers vote on
14 it.

15 MR. CRESSE: No, you don't need to let the
16 ratepayers vote. You cannot do your job by popular
17 vote. One of the things Commissioners have to accept, if
18 they do their job right, they're going to successfully
19 make the utilities mad and the customers mad. Comes with
20 the territory; you won't be popular.

21 COMMISSIONER LAUREDO: By the way, that's my test if
22 I know if I'm going something right; everybody's mad at
23 me.

24 MR. CRESSE: You may be right if you got them all
25 equally mad. Yes, sir.

1 CHAIRMAN DEASON: Commissioner Clark has a
2 question.

3 COMMISSIONER CLARK: I have an question as to the
4 impact of the new legislation -- I guess it's not new
5 anymore, two years old -- that says if you have a policy
6 that you have consistently applied, and you attempt to
7 apply it again, or you do apply it again, it's subject to
8 challenge; that in fact the case can be overturned
9 because you are applying policy you should have put in a
10 rule. How would that work in this case? Who could come
11 in and challenge it?

12 MR. SHREVE: I don't think anyone can. I think
13 you'll take this on a case-by-case basis and hear
14 evidence on it rather than accept it as an incipient
15 rule, policy.

16 COMMISSIONER CLARK: Under the APA now, you have
17 another avenue of coming in and saying, "I challenge it
18 simply on the basis that for the past five years you have
19 filed this policy, you're trying to do it again, you have
20 had ample opportunity to put it into rule." What will
21 happen then?

22 MR. SHREVE: If that is the case, probably, some of
23 you might not have any votes on a great many issues,
24 because there's no way you can ever change anything. And
25 I totally disagree with that concept.

1 CHAIRMAN DEASON: The problem is if you don't have
2 evidence in the record, and you just say, "We don't have
3 anything in the record on this, but it's been our policy
4 to do it this way, so we're just going to do it again
5 this case," then I think it can be challenged if we don't
6 have a rule. If we have a rule, we don't have to have
7 evidence in the case. We've got a rule and we're
8 supposed to abide by that rule unless there's some waiver
9 of the rule. That's the way it's always been explained
10 to me.

11 COMMISSIONER CLARK: No, it's a different question
12 I'm asking. It's the new opportunity under the APA that
13 once -- Mr. Mann, maybe he can answer it because he's
14 shaking his head like he understands -- simply because
15 even if you prove it up in that case, because you haven't
16 adopted it as a policy, it can be overturned, and
17 that's a new law from two years ago, and I'm just
18 wondering what the impact is going to be. Even if we
19 prove it up, there's substantial evidence in the record,
20 and somebody just comes in and says, "That's true, but
21 the legislature told you to put it in a rule, and because
22 you haven't, it's subject to being reversed and remanded
23 on that basis alone."

24 CHAIRMAN DEASON: Hold it. I got -- you mean to
25 tell me that if we have a policy that we've been

1 uniformly adopting and applying, and then we have a case
2 and it's not in a rule, and we have a case and we take
3 evidence that supports that same policy and we do the
4 same thing all over again, somebody can come in and say,
5 "Because you didn't have a rule, we can get that
6 overturned?"

7 MS. MOORE: That's correct, and we --

8 COMMISSIONER CLARK: I'm not arguing that's good or
9 bad; I'm saying that's what the law says.

10 CHAIRMAN DEASON: Is that the law?

11 MS. MOORE: That is. And the agency can be liable
12 for attorney fees and costs too, by the person
13 challenging it. It's 120.535, subsection 5 and 6. Six is
14 the attorney fees.

15 CHAIRMAN DEASON: That is amazing.

16 COMMISSIONER LAUREDO: Then you would get into the
17 argument -- well, is Betty Easley and Tom Beard on
18 2-17-92 the policy-making body of this commission? When
19 did I delegate my ability to make policy would be my
20 argument.

21 COMMISSIONER CLARK: Because we had a hearing and
22 you weren't there.

23 COMMISSIONER LAUREDO: I wasn't invited to the
24 hearing. And I was appointed with the same rights and
25 responsibilities -- no, I'm not being -- what is policy?

1 What is policy?

2 MR. ARMSTRONG: Can I just have a second to -- I've
3 been waiting an opportunity. I hope this is a good one
4 -- tell me if it's not -- but Commissioner Lauredo asked
5 a question, "Why do you want certainty?" And it just
6 really stems off of what we just talked about. There is
7 another facet, a dollar-and-cents facet, to this policy,
8 whether we have a rule or not, and have some certainty:
9 Capital costs. We obviously need to go to refinancings
10 at times and we need to get financing at other times.
11 One of the questions that comes in, and this happens, is
12 rate counsel and myself, Forrest Ludsen, vice president,
13 we sit down, and others who are involved in those
14 refinancings, and have to talk to potential investors,
15 potential bankers, and others, and they ask the
16 questions. What do you expect in rate case is one of
17 them. Another thing, for instance, with the Lehigh
18 acquisition is how do you expect treatment? Are you
19 going to get full rate base? What's the Commission's
20 policy? If we are faced with a situation of uncertainty
21 and we have in our minds that the uncertainty we had as
22 result of those proceedings, pre-'90 proceedings where
23 we heard the "buyer beware" and where we heard the,
24 "Well, we're going to look at deteriorated assets," and
25 we heard possibilities of us being held accountable for

1 maintenance or allegations of lack of maintenance, or
2 lack of prudence, or lack of whatever, capital costs will
3 be affected. A banker or investor can't walk out of that
4 room and be more satisfied. If there's going to be any
5 impact from --

6 COMMISSIONER LAUREDO: Counsel, do you expect in
7 that scenario, the banker or underwriter on Wall Street
8 to -- do you expect -- do you think he expects you to
9 give him 100 percent comfort? Because if not, you tell
10 him I said to get out of the business of lending to
11 utilities. Because there's a lot of people into
12 utilities and they weight much more positively in the
13 fact that they have an -- I don't want to use the word
14 "guaranteed return" -- I mean, so, that's a bad example
15 to use with me.

16 MR. ARMSTRONG: It's not uncertainty. That's not
17 what I was talking about. It's the comfort of if you
18 have a rule and you have a precedent that you can rely
19 upon which has used that rule or used that policy, that
20 you're much better off than if we have to seek honestly
21 with these people and we know that there is this buyer
22 beware concept and we have to go in and show proper O&M
23 and we have to go in and show proper prudence, and we
24 have to go in and make all these other things we're
25 looking at now.

1 COMMISSIONER LAUREDO: That is why you're a public
2 utility. Go back to premises. Particularly in your
3 Company, if anything, we're getting overly criticized in
4 the public forum because we have been very forthcoming
5 with you, because we have been receptive to your track
6 record. You keep pushing on the envelope, and you push
7 us long enough, we'll just relinquish our responsibility
8 to be public regulators. That's my whole dilemma.

9 MR. ARMSTRONG: We don't really mean to push on an
10 envelope.

11 COMMISSIONER LAUREDO: I didn't mean you, but I'm
12 saying, you see, there is a point where you have got to
13 say my responsibility while I'm sitting is one to balance
14 your interest with that of the -- Mr. Cresse says
15 "protect"; I always say "balance." I have to balance
16 your interest with the interests of the ratepayers, and
17 sometimes I have to have the ratepayers be mad a little
18 bit more than you just so I can get that balance. And
19 that is a difficult job. As he knows better than
20 anybody, one of the greatest men to serve on this bench,
21 but it's not easy. But I just think whenever you keep
22 codifying things -- particularly when commissioners, a
23 lot of new commissioners -- probably one of the reasons
24 this is relevant is because there's has been a
25 disproportionate -- I could be wrong -- number of

1 turnovers in this commission over the last two or three
2 years. Some of us have not been able to come to grasp
3 with all of these issues.

4 So when you say "Commission policy," my first thing
5 is I have a negative reaction: Well, I wasn't part of
6 this panel. I'm willing to understand it for us to
7 function we have to have panels, but I'm just saying, I
8 just wonder what is it that you're gaining by pushing on
9 this issue when I think flexibility, in my view --
10 Mr. Chairman, I will bring it to closure -- obviously, it
11 should be clear, that I'm not sure of this rule, but not
12 for all of the wrong reasons, but I think for the right
13 reasons. I think that the industry and the state and
14 even Public Counsel will all be best served if we
15 maintain flexibility and use some discretion.

16 And the industry that you refer to, including Wall
17 Street, knows that this is one of the brighter and
18 more-balanced Commissions in all of the United States,
19 and one of the most fair. And that's established. And I
20 can give you hundreds of quotes on it. So to go past
21 that is really almost getting to the point where we would
22 just give you a degree of certainty that is not incumbent
23 upon the very nature of the industries you're in. You're
24 going to have to take a little bit of uncertainty,
25 because we live with that all the time. That's all I'm

1 trying to say.

2 MR. ARMSTRONG: I understand.

3 CHAIRMAN DEASON: Mr. Guestella?

4 MR. GUESTELLA: Thank you, Commissioner. I think
5 Commissioner Deason answered one of your questions before
6 when he said when you have a rate proceeding, an
7 acquisition adjustment is raised as an issue in that
8 proceeding, utilities really have an obligation to
9 present, all over again, time and time again, evidence in
10 support of the acquisition adjustment. And it's a price
11 to pay. And often that price is disproportionate in
12 terms of the cost of adjudicating that issue and some of
13 the acquisition rate bases of the acquired utilities.

14 And then I think we've then stepped back and talked
15 about what is the impact on the rates, whether you use
16 rate base or purchase price? I think from your
17 perspective and from the Company's perspective, the idea
18 is for those small utilities, that the rates to those
19 customers of the small utilities, if they're not
20 acquired, are going to be at least equal to and probably
21 more than if the acquisition takes place, because the
22 rate base isn't going to change for the utilities, and if
23 there's an acquisition and you don't change the rate
24 base, you keep it at rate base instead of purchase price,
25 the worse that the customers can do -- and you don't need

1 any analysis for this -- is the same level of rates. But
2 what really happens is the customers get the benefit of
3 the improvements at a lower cost than they would
4 otherwise be.

5 If the industry is telling the regulatory body that
6 the policy, one, eliminates the need to readjudicate
7 every acquisition issue in the rate cases time and time
8 again, and that saves a cost, and if the result of a
9 policy that's codified by rule gives such a level of
10 comfort to the industry that they're willing to go out
11 and acquire these utilities, take the risks that they
12 take that have been described time and time again, with
13 the result being that the customers of those small
14 utilities get improved service, which they might not
15 otherwise get, solve regulatory problems in terms of you
16 having to regulate utilities that have problems, and to
17 address customers that aren't getting service, and the
18 cost is lower than it would otherwise be, it's kind of
19 the best of all worlds.

20 I mean, you know, the line is drawn in the sand, so
21 to speak: Do you want the customers' best interests to
22 be served or not? And if policy does that, I don't know
23 how, in all honesty as a regulator, I don't know how you
24 could come down not in favor of the customers' best
25 interests.

1 COMMISSIONER LAUREDO: Well, we had crossed that
2 bridge already a while ago. We were trying to figure
3 out, being 100 percent in agreement with what you said,
4 whether that is best served through policy, whatever that
5 is, or rule. That's the issue at hand. Where we --
6 where the fork in the road comes is why do I need to go
7 to rule, not disagree with your premise.

8 By the way, I must apologize to the chairman and to
9 all of you. Sometimes I get carried away. It's part of
10 my culture. If I sound too loud, it's not -- but these
11 are difficult things and they're not personal or even
12 company-wise. I'm just trying to -- these are one of the
13 few times -- in fact, some of you have been around --
14 that we get a chance to talk freely among each other
15 without somebody telling us some rule why you can't
16 express yourself. So I hope you understand that and not
17 take offense.

18 MR. HOFFMAN: Mr. Chairman, may I make a couple of
19 brief comments?

20 CHAIRMAN DEASON: Mr. Shreve had his hand up first.

21 MR. HOFFMAN: I'll be briefer.

22 MR. SHREVE: He can go first. I don't mind.

23 CHAIRMAN DEASON: Go ahead, Mr. Hoffman.

24 MR. HOFFMAN: I just wanted to respond very quickly
25 to some of the things Commissioner Lauredo has said and

1 the statute that Commissioner Clark brought up. And very
2 recently in the Administrative Law section newsletter
3 published by the Florida Bar, there was an article
4 written about the particular statutory section that
5 Commissioner Clark brought up, which is Section 120.535,
6 and that was a statute that was passed in 1991 which
7 essentially codified a lot of case law and provided the
8 statutory incentives and requirements to take agency
9 policy and put them into rules.

10 The article was written by an attorney in town named
11 Steve Pfeiffer, who I know Commissioner Johnson has
12 worked with recently, and essentially what that article
13 said is that there have not been a lot of challenges or
14 actions brought under that statute. What has happened is
15 the various agencies have responded to that statute by
16 going to rulemaking. They have responded by doing
17 essentially what we're doing here today. And so there
18 have only been maybe three or four actions brought at the
19 Division of Administrative Hearings under that statute.

20 And another point that that article makes is that
21 there may not be many actions brought under that statute,
22 because if you're dissatisfied with an action that an
23 agency such as the Commission has taken on the ground
24 that it's a policy, well, then, all the agency has to do
25 then is take that policy and put it into a rule.

1 So I just want to try and clarify to you that this
2 is a signal that has been sent. It's a requirement
3 that's been sent by the Florida Legislature as of 1991,
4 and that there have been a number of rules. What the
5 agencies have done is they've taken their policies and
6 they've put them into rules. And I think that's why
7 we're here today.

8 And to go back to one of your questions, it is
9 preferable to Southern States to have that policy in a
10 rule because what the law has said over the years is that
11 if you don't have a rule, if you only have a policy, then
12 you have to establish that policy through an evidentiary
13 proceeding. But if you have it in a rule, you don't have
14 to do that. And the only thing that would be left for
15 the evidence in a transfer proceeding would be the
16 existence or nonexistence of an extraordinary
17 circumstance.

18 COMMISSIONER CLARK: The chairman brought up a
19 point. If you keep re-establishing the basis for that
20 policy as, presumably, we have done for the last five
21 years, is it still subject to challenge?

22 MR. HOFFMAN: In my opinion, if you have a policy
23 that is not part of a rule, it is subject to challenge.
24 But under 120 --

25 COMMISSIONER CLARK: Regardless of whether you prove

1 it up again and again in individual cases?

2 MR. HOFFMAN: Right. I think that so long as it
3 remains a policy, then the one who relies on that policy
4 has the burden of establishing that policy under the
5 cases -- under a number of Florida cases. But what
6 120.535 has said is that an affected party may take those
7 policies, file a petition to have that policy placed into
8 a rule of that agency.

9 COMMISSIONER CLARK: Could we have a situation where
10 we issued a PAA, it went unchallenged, and that -- we
11 simply said we're going to follow our policy and not
12 allow an acquisition adjustment? Nobody challenges it
13 and goes forward. Could later, a ratepayer come in and
14 say, you know, that's nonrule policy; you have an
15 unwritten rule? And essentially overturn that decision,
16 and have -- I don't know what happens after that. I mean
17 does it go away and there's no opportunity -- how do you
18 remedy that situation?

19 MR. HOFFMAN: Commissioner, I think if you're
20 talking about a PAA decision based on a policy, I think
21 that there might be room for a legal challenge, if it was
22 timely filed, to the policy on the ground that there's no
23 evidence supporting the policy, even if it's only in the
24 form of official recognition of a prior Commission
25 order.

1 COMMISSIONER CLARK: If it's untimely filed?

2 MR. HOFFMAN: If it is timely filed.

3 COMMISSIONER CLARK: Well, I'm saying if it is
4 untimely filed, is it still -- because there's no limit
5 to the time you can challenge a rule. And there's no
6 limit to the time you can challenge an uncodified rule,
7 if I recall correctly.

8 COMMISSIONER LAUREDO: On that article and on that
9 legislative -- I'm not going to be argumentative, but was
10 there a differentiation between the definition of
11 agencies, traditionally, community action and all of the
12 other administrative type of agencies where policy is
13 clearly executed through an executive or secretary of
14 that department? Certainly I can stand before a court,
15 and a good lawyer would, and argue that there's a
16 substantive difference between that and a five-member
17 Public Service Commission that has its own jurisprudence
18 and historical reason for being, and has probably an
19 overriding public policy representing the public, as
20 versus just an agency.

21 But I guess even if I accept the premise, then what
22 I'm about to do today, what I would like to do is then
23 break the policy. If, in fact, you're telling me that's
24 my choice, then my choice would say, "I want to break
25 with that policy," which is what I hope I wouldn't have

1 to do, so I'm not forced into rule, because I really
2 think we sacrifice a lot of flexibility when we go into a
3 rule.

4 CHAIRMAN DEASON: Mr. Shreve?

5 MR. SHREVE: Very briefly on this point, and then a
6 couple of others here. There is no way that I'm going to
7 be convinced that you can't go through a rate case, take
8 evidence on issues and come out with a different policy
9 than you had in the past. Otherwise you might as well
10 abandon the changes and you would never have any
11 different policies coming from any commissioners. I want
12 to compliment Mr. Cresse because when he came on board,
13 very few people have ever changed more policies or put in
14 policies into effect than he has.

15 As far as Mr. Guestella and Mr. Armstrong's remarks
16 concerning the litigious nature of the certificate cases,
17 I don't even know what he's talking about. We tried to
18 get into Grand Terrace and pulled back out because we
19 were concerned about rate case expense. We did the same
20 thing with Citrus Park and agreed to take that issue up
21 in the next rate case, and when it has been raised in
22 rate cases, then they have collected any rate case
23 expense that was a result of that in that litigation.

24 I think -- and another thing Mr. Guestella talked
25 about, he can't understand how you could possibly go

1 against the public interest. Believe me, you would not
2 be going against the public interest if you held Southern
3 States to a fair return on their investment. Thank you.

4 CHAIRMAN DEASON: Commissioners, I think now is a
5 good time for a break. And we're going to take ten and
6 we'll come back and dispose of 0371 and then we'll go
7 from there.

8 (Recess)

9 CHAIRMAN DEASON: Commissioners, I believe we were
10 at the stage where we were going to consider Rule 0371,
11 unless there were further questions.

12 Do we have a motion or a suggestion or any direction
13 we wish to give to Staff at this point?

14 (No response)

15 CHAIRMAN DEASON: Boy, there's a lot of silence
16 here. Perhaps the best thing to do would be to -- we've
17 had a very thorough discussion of the issue here.

18 COMMISSIONER CLARK: Mr. Chairman, I do want -- I
19 think it would be helpful for us to have that information
20 in terms of what the purchase price was, what the rate
21 base was that we allowed, and the impact on rates. It
22 seems to me we've requested that information before and
23 it may be -- I think it would be helpful to put this
24 matter in some context.

25 CHAIRMAN DEASON: Well, the comment I was going to

1 make is we're under no obligation at this point to make
2 any decisions today. I think it's been helpful that we
3 have been able to give some direction to Staff on those
4 matters which we're comfortable with. This is probably
5 one where we're not exactly comfortable with at this
6 point, and in fact there has been some additional
7 information requested from Staff, and I'm sure that
8 they're going to endeavor to assemble that information.
9 I don't want to find ourselves, though, in the situation
10 of come July that we're going to redo, then, everything
11 that we've done this afternoon. I think that would be
12 counterproductive. At some point we've got to reach
13 closure on the arguments, and we've got to make a
14 decision to go forward. I would suggest that the
15 information that Staff has been asked to assemble, be
16 assembled and be provided. And if there are any comments
17 or questions on that limited information, we can do that
18 in July, but it would be my earnest desire not to redo
19 everything we've already done on this issue in the July
20 hearings. I assume that would be acceptable.

21 COMMISSIONER CLARK: I feel that I've been --

22 COMMISSIONER LAUREDO: We decided not to decide on
23 this one for now?

24 CHAIRMAN DEASON: Very well.

25 COMMISSIONER LAUREDO: Is that what you did,

1 Mr. Chairman?

2 CHAIRMAN DEASON: We decided we're not going to make
3 a decision today. We're under no obligation to make a
4 decision at this stage of the hearing. We've found it
5 helpful to do so on some previous rules, and this is one
6 we're not at that stage yet, and Staff is going to
7 assemble some information and provide that. And to the
8 extent there are comments or questions on that
9 information, we'll entertain that at the July hearing,
10 but it would be limited just to that information and
11 we're not going to redevelop the record on this matter,
12 other than just that additional information.

13 COMMISSIONER JOHNSON: Could I ask a question of
14 procedure just with respect to the rulemaking process?
15 After today, do we still receive comments from the
16 parties? We do?

17 CHAIRMAN DEASON: That's my understanding that we
18 do.

19 COMMISSIONER JOHNSON: Okay.

20 CHAIRMAN DEASON: Ms. Moore, can you offer some
21 further explanation?

22 COMMISSIONER JOHNSON: And up until what point?

23 MS. MOORE: There's a seven-day period provided in
24 our rules. The Commission can authorize something else,
25 but by rule it's seven days.

1 COMMISSIONER LAUREDO: But on the July meeting, it's
2 a little bit further along, we won't have the same kind
3 of setup as we do today, right with a lot of discussions
4 on everything all over again?

5 CHAIRMAN DEASON: We're going to go as far as we can
6 on these rules, and then come July the rules that we
7 don't get to, we're going to go --

8 COMMISSIONER LAUREDO: I meant August, I'm sorry,
9 you're right.

10 CHAIRMAN DEASON: It appears that we -- the original
11 schedule was to have a special agenda in August, but
12 since we're going to continue the bulk of this until
13 July, it looks like at this point we're going to be
14 having a special agenda sometime in September.

15 MR. SHREVE: Mr. Chairman, you're not going to
16 receive comments on the parts of the rules that you have
17 voted down, are you, or voted out? Is that over?

18 CHAIRMAN DEASON: I don't think we can preclude a
19 party from doing that, but those that we voted on I think
20 should be a strong signal to those involved that we feel
21 comfortable with what we've done, and unless there is a
22 party that feels we have made a grave error, we would
23 expect them not to take the opportunity just to file
24 additional paper with the Commission.

25 MR. SHREVE: I agree. I think there's going to be

1 enough left to do that anything that can be eliminated, I
2 think, if the Commission has decided and know where they
3 want to go, it should be eliminated to save some work all
4 the way around, and time next time.

5 CHAIRMAN DEASON: Mr. Hoffman?

6 MR. HOFFMAN: Mr. Chairman, particularly since we're
7 in some small part separating this acquisition adjustment
8 issue, at least with respect to comments in July, on the
9 day that that's going to be provided by Staff. At this
10 point there's a procedural order which would permit
11 comments to be filed prior to June 18th, and my question
12 is, I think it would be more appropriate, maybe, at this
13 point to reschedule that and allow all comments to be
14 submitted at once following the conclusion of the July
15 proceeding.

16 MR. SCHIEFELBEIN: We would support that as well.

17 CHAIRMAN DEASON: Mr. Shreve? I think the proposal
18 is that we just have comments, final comments filed after
19 the July hearing at one time on the entire rule
20 proposal.

21 MR. SHREVE: That's fine.

22 CHAIRMAN DEASON: Any problem with that, Ms. Moore?

23 MR. SHREVE: Commissioner, would the information
24 that's being gathered by the Staff at Commissioner
25 Clark's request be furnished to all of us so we can take

1 a look at it and be ready to go on that, because I've got
2 a feeling we'll have some real questions?

3 COMMISSIONER CLARK: And I would like information
4 from Mr. Armstrong to substantiate a statement with
5 respect to the used and useful, because I think that's
6 another piece of the puzzle.

7 While we're concluding this rule, it's been
8 represented several times that Mr. Hoffman and his law
9 firm did a survey of other states with respect to what
10 they do in acquisition adjustments. You indicated that's
11 not been provided.

12 MR. HOFFMAN: Not in this docket. That
13 information --

14 COMMISSIONER CLARK: Was it provided in the other
15 docket?

16 MR. HOFFMAN: Yes. That was legal research that we
17 conducted. The results of that research was included as
18 part of the comments Southern States filed in the prior
19 acquisition adjustment docket, very definitely.

20 COMMISSIONER CLARK: Okay. I would like -- would
21 you provide the same thing in this docket? I would like
22 to look at that. And I think maybe the most expeditious
23 way to get it is for you to just provide it.

24 MR. HOFFMAN: We will do that.

25 MR. SHREVE: Commissioner, I would assume on the

1 information you were asking from the Staff, as well as
2 the information from Mr. Armstrong on the used and
3 useful, that the information -- there would be sufficient
4 information there to tell what the differences are in the
5 argument, because I think the discussion about the return
6 that was also talking about the used and useful, that is
7 certainly going to impact what type of return they're
8 representing.

9 COMMISSIONER CLARK: I would hope in that situation
10 we can get to a point where we're not bickering over the
11 calculations and stuff like that. The calculations will
12 represent an accurate picture of what's gone on and then
13 we'll debate the philosophy that is or is not supported
14 by those -- by that information that's provided.

15 MR. SHREVE: What you were getting from the Staff
16 was the purchase price for everything including the
17 Deltona, compared to the net book value or rate base that
18 was established.

19 COMMISSIONER CLARK: And the impact that would have
20 on rate.

21 MR. SHREVE: Right.

22 COMMISSIONER CLARK: And then I think another piece
23 of that is going to be -- I think used and useful is
24 going to figure into that.

25 MR. SHREVE: It would be interesting information.

1 It depends on what it's talking about.

2 COMMISSIONER CLARK: Mr. Chairman, one final thing
3 on this rule that's not related to the used -- I mean to
4 the acquisition adjustment, I just had a concern about
5 Subsection 4 where it says the buyer, if he can't obtain
6 the original cost, then we can establish rate base based
7 on competent, substantial evidence, reconstructing and
8 estimating original cost and the amount of CIAC. Is that
9 clear that that -- that after you establish that, then
10 you go through the various adjustments for depreciation,
11 and what is it, less accumulated depreciation, plus
12 construction work in progress, less contributions in aid
13 of construction, less advances -- I mean does it need to
14 be made clear that this is just the starting point, and
15 then you make all the other appropriate adjustments to
16 rate base?

17 MS. CHASE: Commissioner, I do think it's clear
18 because it does say "establish rate base," and rate base
19 is defined in number one as including all of those
20 things.

21 COMMISSIONER CLARK: And it uses the term "based
22 upon."

23 MS. CHASE: Uh-huh.

24 COMMISSIONER CLARK: If it's clear to anyone else
25 who picks this up that it's also going to have those same

1 adjustments made to it, that's fine with me.

2 MS. CHASE: That was our intention and we haven't
3 gotten any comments that there's any confusion about
4 that.

5 CHAIRMAN DEASON: Let me ask a question about that.
6 I notice the term "may" is used; that is permissive. I
7 would assume that if for some reason the Commission felt
8 like a better determination of rate base would be
9 purchase price in that situation, we would be free to
10 utilize that as well?

11 MS. CHASE: That's true, Commissioner. Also, you
12 may not establish rate base at all. If there are no
13 records, it gives you the opportunity to not establish
14 rate base.

15 MR. CRESSE: Mr. Chairman, I think it's well for you
16 to understand that you may be facing some transfers that
17 are contingent upon your establishing a rate base when
18 you approve the transfer. I think the fact is is that a
19 lot of people will not want to acquire a utility, have it
20 transferred to them and then nine months later you tell
21 them how good or bad investment they made. That's just a
22 risk that some folks may not be willing to take.

23 CHAIRMAN DEASON: I think we've had a case similar
24 to that. That may not be exactly what you're
25 describing. I think Mr. Schiefelbein is aware of it. So

1 we've had a little bit of experience in those areas.

2 Ms. Moore, did you understand Mr. Hoffman's concern
3 about the comments that were due June 18th?

4 MS. MOORE: In the procedural order?

5 CHAIRMAN DEASON: In the procedural order, and we're
6 going to change that?

7 MS. MOORE: Extending it beyond the July hearing is
8 the --

9 CHAIRMAN DEASON: Right. Right now we're looking at
10 three days in July, July 14th, 15th and 16th, and there
11 will be proper notice and all of that issued at the
12 appropriate time, but just for your own planning
13 purposes, that's what we're looking at at this time.

14 MS. MOORE: And additional documents can be filed
15 through that period of time? What about between now and
16 the hearing? I'm not clear about that, other than what
17 we've -- what Commissioner Clark has asked for.

18 CHAIRMAN DEASON: You mean additional testimony, for
19 lack of a better term?

20 MS. MOORE: Yes. We're going -- have the
21 information from Staff and then what has been requested
22 from Mr. Armstrong, and Mr. Hoffman, and that will be
23 filed --

24 CHAIRMAN DEASON: That's going to be filed -- is
25 your question beyond that other information?

1 MS. MOORE: Beyond that is the -- are we
2 anticipating anymore comments being filed on rules that
3 haven't been taken up yet or that have already been
4 dispensed?

5 CHAIRMAN DEASON: Tell you what, let's discuss that
6 tomorrow before we get into the hearing.

7 COMMISSIONER LAUREDO: Tell you what, let me ask,
8 since you're on procedure. I'm going to get a legal
9 opinion. On rulemaking there is no ex parte, correct?

10 MS. MOORE: That's correct.

11 COMMISSIONER LAUREDO: So it may help shorten the
12 subsequent hearings. I can meet with each of these
13 parties individually just to discuss things under
14 rulemaking, correct?

15 MS. MOORE: There's no prohibition against ex parte
16 communications.

17 COMMISSIONER LAUREDO: So if I have a question and I
18 want to continue this dialogue, and call them into my
19 office. All right, I just want to make sure I'm not
20 doing --

21 MS. MOORE: The rules have been proposed and any
22 changes have to be based on information that's in the
23 record.

24 COMMISSIONER LAUREDO: I'm not talking about making
25 decisions, but maybe saving a lot of dialogue time that

1 some philosophical things I could spend an hour with some
2 of these parties and carry on -- fine-tune my decision.
3 That's not prohibited under the law?

4 MS. MOORE: No.

5 COMMISSIONER LAUREDO: Thank you.

6 MR. HOFFMAN: Mr. Chairman, at this point I guess
7 we're saying we're going to try and straighten out all
8 the procedural filing deadlines with respect to the July
9 hearing tomorrow?

10 CHAIRMAN DEASON: Before we conclude things
11 tomorrow, and we're probably looking at trying to
12 conclude things tomorrow midafternoon. Probably
13 somewhere around 3:00 tomorrow we need to conclude this
14 segment of the hearing.

15 The next rule is, according to my list, is 037, but
16 I think we indicated that we may take a couple rules out
17 of order. Do you still want to do that,
18 Mr. Schiefelbein?

19 MR. SCHIEFELBEIN: No, Mr. Chairman. Thank you.

20 CHAIRMAN DEASON: The next rule is 037. Staff?

21 MS. CHASE: Commissioner, my name it's Joann Chase.
22 I work in the Division of Water and Wastewater. Rule 037
23 is a filing requirement rule for transfers. This is a
24 rule that's in place. We are recommending some changes
25 to it. The overall purpose of the changes is to simply

1 get more information to help us evaluate and to help the
2 Commission evaluate the merits of the application. Some
3 of these changes are clarification in nature, for
4 housekeeping; others codify current practice. And we do
5 have some changes that I will highlight.

6 The clarification changes include such things as:
7 An applicability statement as to when they would file a
8 transfer application, clarifying that the buyer will
9 fulfill the commitment of the seller with regard to
10 utility matters; more explanation from the buyer if the
11 books and records are not available for setting rate
12 base; more explanation as to what steps they took to get
13 the books and records; and in the case of a sale to a
14 governmental entity, we are requiring a copy of the
15 contract, which we don't currently do.

16 There is a change in what we do now that is included
17 in the rule, and that is in 037(2)(o) where we are adding
18 language to ensure that the buyer is getting the income
19 tax returns of the seller, if available. And we will use
20 this to determine contributions in aid of constructions,
21 if need be.

22 Also, we are adding a provision in (2)(p) which
23 relates to the tradition of the acquired system. Now
24 this will go hand in hand with 0371 that we just talked
25 about. And in this provision, the buyer will simply

1 provide a statement regarding the condition of the
2 system, listing any improvements that are needed, that
3 they are aware of upon their investigation, and any DER
4 violations, et cetera. This would also include the cost
5 of any of these improvements that will need to be made.

6 In this rule on transfers, we do also have a
7 requirement regarding land ownership of the treatment
8 site, and it is consistent with the discussions we've had
9 this morning. So we will be looking at that provision
10 and make any changes consistent with our discussion this
11 morning as to look at other requirements other than just
12 a warranty deed.

13 In my comments I have made an additional change to
14 037. My comments are in tab 17. It's Exhibit JC-1,
15 which is on Page 14, and in this addition -- the way the
16 rule currently reads is it's a requirement for a
17 statement setting out the reasons for the inclusion of a
18 positive acquisition adjustment, if one is requested, and
19 I am suggesting that we add "or if appropriate, a
20 statement setting out the reasons why a negative
21 acquisition adjustment should not be included." This I
22 am suggesting be added so that Staff can -- and the
23 Company, can provide their explanation of why a negative
24 shouldn't be included up front in the filing
25 requirements. This is something that Staff, since we are

1 advisory in nature, always have to ask and always have to
2 get to the bottom of in any transfer application. So I'm
3 just simply asking the Company to provide it up front.

4 Those are -- that's a summary of the rule, and those
5 are all the changes that Staff is proposing.

6 CHAIRMAN DEASON: Thank you.

7 COMMISSIONER LAUREDO: Let me ask you, on the
8 questions of income tax of the seller, does that -- that
9 is -- would be an entity, unless it's owned privately?

10 MS. CHASE: That would be an entity. It could be an
11 individual if it's a sole proprietorship.

12 COMMISSIONER LAUREDO: But you don't know beyond
13 that if it's a corporation?

14 MS. CHASE: We would not go beyond the entity, no.

15 CHAIRMAN DEASON: Mr. Schiefelbein?

16 MR. SEIDMAN: We just have a couple of comments.
17 First one is with regard to 037(2)(g), which regards a
18 copy of the contract for sale. We don't have any problem
19 with the rule as it's been proposed. Public Counsel has
20 suggested some modifications that expand the amount of
21 information required to be filed with the contract for
22 sale. We don't take any issue with the basic change,
23 which is to include all auxiliary or supplemental
24 agreements to the contract. This is a point of
25 clarification in that it points out that contract for

1 sale means the total contract, including the auxiliary
2 and supplemental agreements.

3 We do take some issue with the list of items which
4 these agreements shall include. Public Counsel has
5 listed specific items such as a dollar amount of assets
6 and liabilities assumed or not assumed, description of
7 promised salaries, retainer fees, et cetera. This list
8 presupposes what the contract and auxiliary and
9 supplemental agreements may or may not contain. Our
10 feeling is the documents are what they are and the
11 information that's contained in them is prima facie.

12 If the information Public Counsel has asked for is
13 in the agreements, in contracts, they'll be there. If
14 they're not asking for them, we'll not add them to the
15 contract. So it's kind of superfluous.

16 Next comment is on 037(2)(k). This is a request for
17 a list of entities that have provided or will provide
18 funding to the buyer. Again, we don't take any issue
19 with the rule as proposed. Public Counsel has suggested
20 expanding the amount of information required to be filed
21 with regard to financial agreements with the utility. We
22 do not take issue with the basic change to include all
23 auxiliary or supplemental agreements to the financial
24 agreements. But for clarification, we think that wording
25 that should be added should be "It should include all

1 auxiliary or supplemental agreements related to the
2 funding of the utility," so that there's just not a great
3 mass of supplemental agreements added to this, just
4 anything related to the funding of the utility.

5 The only other comment we have is with regard to
6 Ms. Chase's latest edition in her Exhibit JC-1 in which
7 she adds a requirement that we put out reasons of why a
8 negative acquisition adjustment should not be included.
9 Now, I'm going on the basis of what I thought was the
10 Commission policy, being that except in the case of
11 extraordinary circumstances, there are no adjustments.
12 It seems odd to me to have to explain why we're not
13 making an adjustment when the policy is that you don't
14 get adjustments unless there's an extraordinary
15 circumstance. And that concludes my comments.

16 CHAIRMAN DEASON: Mr. Hoffman, how extensive are
17 your comments going to be?

18 MR. HOFFMAN: About a minute.

19 CHAIRMAN DEASON: Go ahead.

20 MR. HOFFMAN: Mr. Chairman, I'm going to be briefly
21 addressing Ms. Chase's return to .0371 because I thought
22 we were through with that. She did mention one point on
23 that, which was the request that the rules be revised to
24 require the utility to file some information addressing a
25 negative acquisition -- the potential of a negative

1 acquisition adjustment. I think her testimony also
2 states that that's consistent with Public Counsel's
3 proposal that a utility bear the burden of establishing
4 that a negative acquisition adjustment is not
5 appropriate.

6 And our position simply is this: That that
7 proposal, both Ms. Chase's proposal and the proposal of
8 Public Counsel, is a legally deficient proposal; that the
9 Commission should not be requiring a party to come in and
10 prove the negative. I'll cite you to Order No. 21907
11 where the Commission states, "In an administrative
12 proceeding, the burden of proof is on the party seeking
13 the affirmative of an issue." It cites the case of
14 Florida Department of Transportation versus J.W.C.
15 Company, Inc., at 396 So. 2d 778. That is a very
16 fundamental rule of law.

17 In terms of the burden of proof of establishing a
18 negative acquisition adjustment, that should properly lie
19 with the party who would seek a negative acquisition
20 adjustment, most likely Public Counsel or some other
21 intervenor.

22 And also, we believe that it is questionable at this
23 point whether the Commission has the legal authority to
24 take the principle of burden of proof and incorporate it
25 into one of its rules, and that that responsibility, in

1 terms of addressing evidentiary presumptions and burden
2 of proof, properly lies with the legislature and the
3 courts. Thank you.

4 CHAIRMAN DEASON: Thank you. Mr. Shreve?

5 MR. MANN: Commissioner, I don't --

6 CHAIRMAN DEASON: How extensive are your comments
7 going to be?

8 MR. MANN: 30, 35 minutes. Just a couple minutes.
9 I've just got a couple comments off the top of my head in
10 response to Mr. Hoffman's comments, and that is
11 concerning 037(2)(m), proposed by Ms. Chase. I don't
12 think that what that involves concerns proving a
13 negative. I think what that amounts to is that the
14 utility is being asked by this agency to set out reasons
15 why, in essence, a negative acquisition adjustment should
16 not be -- or should be excluded from the calculation to
17 rate base. And I don't believe that that gets into a
18 legal presumption at this point. And with the agency
19 asking for that information, if -- I disagree that that
20 does establish a burden on the Company at this stage that
21 -- that it simply requests at this point to provide that
22 information as to why that negative acquisition
23 adjustment should be excluded from the calculation. And
24 that's all I have to say at this time.

25 CHAIRMAN DEASON: Let me ask Staff a question. I

1 know we've not dealt with 0371, so we really don't know
2 what the outcome is going to be, but if the outcome of
3 0371 is to affirm or establish the policy that there is
4 no acquisition adjustment absent extraordinary
5 circumstances, if that is reaffirmed in these rules, is
6 it necessary to have the proposed change to Section 2(m)
7 concerning proof of no negative?

8 MS. CHASE: I believe it is, Commissioner, and the
9 reason for that is one of the things that we do as Staff
10 is we try to evaluate the idea of whether or not there
11 are extraordinary circumstances. And I think this helps
12 us. And maybe there is a better way of getting at this,
13 but what the purpose of this really is they're obviously
14 paying less than rate base. There's reason for that.
15 And we're trying to get at their motivation for the
16 determination of the purchase price. In other words if
17 they are paying less, why is that? And I think that
18 would get to why there shouldn't be a negative
19 acquisition adjustment. Is it because the system is run
20 down, or is it because the seller just simply wants to
21 get out of the business and is willing to do this, the
22 disinterest, whatever. So maybe that isn't the best way
23 of getting at that point, but that is what we were trying
24 to do. We were trying to find out if, in fact, there are
25 extraordinary circumstances.

1 COMMISSIONER LAUREDO: What if the statement is
2 because that's a great deal we worked out?

3 MS. CHASE: Well, absent any extraordinary
4 circumstances, I would say they would get rate base.

5 MR. SEIDMAN: If I could go further, what if the
6 response was because there was no extraordinary
7 circumstances? Because it just seems to me we're being
8 put in a place of having a burden of proof to prove
9 something that isn't.

10 CHAIRMAN DEASON: Well, I know your answer is kind
11 of facetious, but the fact of the matter is if you give
12 an answer like that, you're probably going to get some
13 extensive discovery questions from Staff, and it's going
14 to be more specific, and it may be easier just to be up
15 front about it and express what you earnestly believe the
16 reason why there's a negative acquisition adjustment.
17 And it may be easier to be forthcoming in your answer and
18 try to be helpful. And I don't mean any disrespect by
19 that, but I'm sure that Staff feels they have a burden to
20 try to look at the issue, and they're going to get the
21 information one way or the other.

22 MS. CHASE: Commissioners, that's really the point I
23 was trying to make. We have the issue as to whether or
24 not there should be an acquisition adjustment. We have
25 to evaluate that. Whether or not they've asked for a

1 positive or a negative, we are going to evaluate that.
2 We need something to help us get to the bottom of it.
3 And we can -- since there is not going to be a decision
4 made today in 0371 -- and this does hinge with it
5 somewhat -- we can certainly look at other ways of
6 getting at that. But what we are trying to do -- we are
7 asked the question at agenda: Why would they pay less
8 than rate base? That's what we try to get at. And we
9 get that information, and it is forthcoming, I'm not
10 saying that. We just want it as part of filing and not
11 something we have to get as we process the case.

12 MR. CRESSE: Mr. Chairman, if you ask at agenda
13 conference why the buyer paid less than rate base, the
14 appropriate and proper answer is because that's the least
15 amount of money that the seller would accept. The real
16 question, why could they buy it at less than rate base,
17 is a question that you have to pose to the seller. I
18 mean if that's what you're interested in, why are you
19 selling at less than rate base? I don't think that's
20 really what you're interested in. I think what her
21 language says is, "If appropriate, set out reasons why a
22 negative acquisition adjustment should not be included."
23 I think they know the purchase price at this time, and
24 they're asking why a negative acquisition adjustment
25 should not be included. The answer to that is very

1 simple: In every case it's because the ratepayers are
2 better off if we acquired that than it would be if it
3 stayed in the hands of the seller.

4 CHAIRMAN DEASON: And if we're going to get some of
5 these contingent transfer contracts, maybe we'll have an
6 opportunity to ask that question to the seller.

7 MR. CRESSE: Well, you may. But you certainly ought
8 not ask the buyer why he bought it as cheap as he could.
9 Because the answer is always, when you buy, you pay the
10 least amount that you can, if you're a prudent person.

11 COMMISSIONER LAUREDO: I wasn't being facetious when
12 I --

13 MR. CRESSE: I think you were right on point.

14 COMMISSIONER LAUREDO: Although I might have been
15 being facetious as to the theme of the language, but I
16 think that's an honest answer, what I've proposed. How
17 do we do -- do we segregate M out of this, if we want to
18 move this rule or --

19 CHAIRMAN DEASON: Well, I think, first of all, Staff
20 already needs to incorporate some language on land
21 ownership, or alternatives to land ownership as we
22 discussed in a previous rule, and that's going to need to
23 be incorporated into this one.

24 MS. CHASE: That's true.

25 CHAIRMAN DEASON: And it may be best to continue the

1 discussion of the acquisition adjustment related issue in
2 conjunction with 0371.

3 The only thing that leaves then were the comments
4 that were given by Mr. Seidman in relation to 2(g) and
5 2(k) concerning additional information requirements.

6 MR. MANN: Commissioner. I'm sorry, if I may, I
7 inadvertently excluded Ms. Dismukes, she had some
8 comments that she wished to make regarding Public
9 Counsel's comments, and Mr. Seidman's comments on those.
10 If we may have that opportunity.

11 CHAIRMAN DEASON: What we're going to do is do that
12 first thing in the morning, okay? Because we're
13 potentially going to be losing a quorum here shortly, so
14 we need to go ahead and conclude for this evening. We'll
15 pick up with Ms. Dismukes' comments on this rule tomorrow
16 morning and we'll begin at 9:30. Thank you all.

17 (Hearing adjourned at 5:15 p.m.)
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CERTIFICATE

STATE OF FLORIDA
COUNTY OF LEON

I, LISA GIROD JONES, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record.

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

DATED THIS 10th DAY OF June, 1993.

Lisa Girod Jones
LISA GIROD JONES, RPR, CM

STATE OF FLORIDA
COUNTY OF LEON

The foregoing certificate was acknowledged before me this 10th day of June 1993, by Lisa Girod Jones, who is personally known to me.

Evelyn L. Borschel



EVELYN L. BORSCHHEL
MY COMMISSION # CC289265 EXPIRES
May 25, 1997
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