

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the matter of

Proposed Revisions to Rules

DOCKET NO. 911082-WS

25-30.020, 25-30.025, 25-30.030,
25-30.032, 25-30.033, 25-30.034,
25-30.035, 25-30.036, 25-30.034,
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.

FIRST DAY - EVENING SESSION

VOLUME III

Pages 263 through 393

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Thursday, August 12, 1993



DOCUMENT NUMBER-DATE

08932 AUG 18 86

FPSC-RECORDS/REPORTING

1 TIME: Commenced at 9:30 a.m.
2 Concluded at 7:56 p.m.

3 PLACE: FFSC Hearing Room 106
4 Fletcher Building
5 101 East Gaines Street
6 Tallahassee, Florida

7 REPORTED BY: JOY KELLY, CSR, RPR
8 Chief, Bureau of Reporting
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12 APPEARANCES:
13 (As heretofore noted.)
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I N D E XEXHIBITS

<u>Number:</u>		<u>Identified</u>	<u>Admitted</u>
10	(Staff) Revised PD-8	167	299
11	(Staff) (Spreadsheet) Examples of Class C Alternative Rate Settings	281	298
8			299
9			299
12	Florida Cities' Response to FFSA, April 22nd Filing.	300	300
	CERTIFICATE OF REPORTERS		393
	ACKNOWLEDGEMENT		393

P R O C E E D I N G S

1
2 (Hearing continues in sequence from Volume
3 II.)

4 CHAIRMAN DEASON: Go back on the record.

5 COMMISSIONER CLARK: Mr. Chairman, we were
6 concluding a discussion on 30.455.

7 CHAIRMAN DEASON: Okay. I understand that
8 before we continue that discussion of .455 that there
9 has been another exhibit or perhaps a revised exhibit
10 prepared. I think that's being distributed at the
11 present time. It may be beneficial if we could have
12 that identified. Who's responsible for this exhibit?

13 MS. CHASE: Commissioner, I am. This is a
14 revised exhibit of PD-8. What this does show at the
15 Commission's request, we have added to the Southern
16 States acquisition adjustment the two last lines.
17 Deltona, United Florida and Lehigh.

18 We do stress that these were both stop
19 transfers as opposed to transfer of assets, but the
20 information we got from Deltona and United Florida is
21 based on an audited financial statement of Price
22 Waterhouse that they provided in the transfer docket as
23 a late-filed from the order.

24 And the Lehigh information that we got the
25 purchase price from, the transfer docket and the net

1 book value or the rate base from the rate case
2 proceeding, the supporting documents are attached to
3 it. I would like to point out, like in the Lehigh
4 case, the \$40 million purchase price. That included
5 much more than just the utility. That was some other
6 companies that they had purchased, the stock as well.

7 And the Deltona and United Florida those
8 numbers both include some LP Gas companies that were
9 part of the acquisition. So we don't really believe
10 these numbers are meaningful or relevant, but we have
11 provided them for whatever they are, for whatever
12 they're worth.

13 CHAIRMAN DEASON: Just for clarification on
14 the record, we'll identify this as another exhibit even
15 though it updates or adds to PD-8. We'll identify it
16 as a separate exhibit. Is the next exhibit number No.
17 10?

18 MS. MOORE: No. 10 is correct.

19 CHAIRMAN DEASON: Okay. Revised Exhibit PD-8
20 will be identified as Exhibit 10 that includes the
21 revision plus the attached backup information.

22 (Exhibit No. 10 marked for identification.)

23 CHAIRMAN DEASON: Are we prepare now to
24 continue the discussion of 30.455?

25 MR. HILL: Yes, sir. Mr. Shreve and I spoke

1 during the break and it appears that perhaps he and I
2 were talking past each other, maybe I'm just intense,
3 but there was a partial sentence in the Staff-assisted
4 rule that's on Page 133, Line 6 where it says the
5 utility has the burden of proof in the case.

6 And even though the rule goes on to do
7 exactly what we've talked about that the utility will
8 provide supporting evidence that the Staff used in
9 preparing their PAA and the Staff will put on witnesses
10 to do the PAA, those particular words "the utility has
11 the burden of proof in a case" is troublesome.

12 And I have no problem removing those words so
13 that the sentence would read (13) "in the event of a
14 protest of the Commission's notice of proposed agency
15 action in a Staff-assisted rate case, comma, the
16 utilities shall, colon."

17 COMMISSIONER CLARK: This is 18, (18).

18 MS. MOORE: That language is in both Rule
19 .455 and .456. It's (13) in .455 and it's (18) in
20 .456. Pages 127 and 133 of the rules.

21 MR. HILL: And on both of those, I have no
22 problem removing that language.

23 MR. SHREVE: Commissioner, I think we've
24 probably had the same things in mind there. Nobody's
25 trying to shift the burden of proof or anything, but it

1 was just to make clear that the company would not come
2 in and put on a full-blown rate case.

3 COMMISSIONER CLARK: Do you think that does
4 it?

5 MR. SHREVE: That was the main concern we
6 have. It looks like they've laid out in the other
7 areas the requirements of the Staff coming in and
8 putting on, not the company's case but the PAA case;
9 and, of course, the company would still have the
10 opportunity to put on their president or whoever, but
11 not come in -- billing rate case expense the way we
12 have seen it in the past when the companies didn't even
13 want to. That's good.

14 CHAIRMAN DEASON: You agree then that this
15 language should be stricken from the proposed rule?

16 MR. SHREVE: Yes, sir. It's what we
17 discussed. I wasn't following that closely, but what
18 we discussed was to eliminate -- Mr. Chairman, I can
19 see where you would be concerned there where we're
20 talking about eliminating the burden of proof on the
21 company.

22 I think the burden of proof still lies, not
23 with the company so much as in the case. Because the
24 way it would be set up now, the company would furnish
25 the Staff the information, the Staff would come out

1 with a PAA, then if the customers decided to protest
2 and request a hearing rather than backing off and the
3 Company having to then come in to put on a full-blown
4 rate case, the Staff would put on a case supporting
5 their PAA; not the company's case but their PAA.

6 And I guess our feeling was if you put the
7 language in there that the company has the burden of
8 proof in that situation, then the company would feel
9 that they would be required to come in and put on
10 witnesses in the case.

11 They have the opportunity to still come in
12 and put on the president or explain whatever positions
13 or information they want to, but the exposure of the
14 rate case expense to a smaller system wouldn't be
15 there.

16 We just mentioned this. I don't want to make
17 any intention that shifts the burden of proof, but in
18 that situation, we don't want to point and say, "You,
19 the Company, had the burden of proof in this proceeding
20 to come in and put on a case."

21 COMMISSIONER CLARK: I'm on Page 133. The
22 lead in in (18) will be "in the event of a protest of
23 the Commission's PAA order in a Staff-assisted
24 alternative rate setting application, comma, the
25 utility shall," and then all those things that are

1 listed. Okay.

2 MR. SHREVE: It's amazing me how we can have
3 confusion just because Mr. Cresse showed up. He hasn't
4 even said a word yet.

5 COMMISSIONER CLARK: I agree.

6 MR. CRESSE: I'm glad I make him nervous. It
7 confuses him when he gets nervous. You have to watch
8 that closely.

9 CHAIRMAN DEASON: Are there other matters on
10 .455 to be discussed?

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

12 CHAIRMAN DEASON: Commissioners, what's your
13 pleasure on .455? Are we also simultaneously
14 discussing .456 or just .455?

15 MR. HILL: We've just concluded .455.

16 COMMISSIONER CLARK: I think I was on .456.

17 CHAIRMAN DEASON: Commissioners, do you wish
18 to give any direction to Staff in regards to .455.

19 COMMISSIONER CLARK: I think as changed, it's
20 acceptable.

21 CHAIRMAN DEASON: Without objection?

22 COMMISSIONER LAUREDO: What we've been doing
23 today is passing things really, not making judgment --

24 CHAIRMAN DEASON: I think that's fine. We're
25 suggesting that .455 be included in the final

1 recommendation with this modification.

2 Rule .456.

3 MR. HILL: Rule .456 is a Staff-assisted
4 alternative in rate setting. It's basically an O&M
5 expense, much like the Commission used to do back when
6 they regulated trucking. What we're attempting to do
7 here is to minimize rate shock to the customers to have
8 these little companies keep their revenues in line with
9 their expenses as much as possible without going
10 through a SARC filing and a rate case. They have the
11 statutory authority to do this type of thing but only
12 through rule.

13 COMMISSIONER CLARK: Public Counsel is the
14 only one who commented -- who has a comment on this one
15 as I understand it.

16 MR. MANN: Yes, Commissioner. Ms. Dismukes
17 has some comments on those.

18 MS. DISMUKES: Basically, OPC's not opposed
19 to some kind of an alternative rate setting. I think
20 our main concern at this stage is that the Staff
21 proposal has not been tested that they -- the way the
22 rule is written, we don't even know what ratio is going
23 to be used to establish what the revenuing increase is
24 going to be.

25 The Staff submitted something, I believe Greg

1 Shafer submitted something, that attempted to look at
2 what Staff's proposal would do relative to a
3 Staff-assisted rate case. And I had a couple of
4 questions about that because I think that's a step in
5 the right direction in terms of giving us a feel for
6 what would happen.

7 COMMISSIONER CLARK: As I recall this showed
8 with the 15% increase.

9 MR. HILL: The rule was proposed as a cap of
10 50%.

11 COMMISSIONER CLARK: If we had used this
12 alternative procedure in the rate cases listed, you
13 would have had less of an increase than under this
14 rule.

15 Kim, are you concerned that -- or are you
16 interested in looking at the backup to these to --

17 MS. DISMUKES: I had a couple of concerns.
18 One was how the particular utilities on here were
19 chosen. Was it a random sampler to the most recent
20 five? I went back and did some checking myself and
21 more some SARC cases that were not included in this
22 that were fairly recent.

23 The way it's set up is it's set up so the
24 utility can recover the O&M depreciation taxes and
25 return on working capital. Basically, that's, as I

1 understand it, the way this document is proposed that
2 revenue requirement be set, then there's the 50%
3 limitation. But what Staff actually pulled when they
4 pulled the O&M expense is depreciation in taxes that
5 was the amount that was allowed in the last
6 Staff-assisted rate case.

7 I don't believe that if a Utility was going
8 to come in under this alternative form of rate setting
9 that you would have that set of numbers to work from.
10 I believe you'd be working from whatever was in there
11 and a report. It would not be adjusted. And in
12 several of these cases, there were numerous adjustments
13 made to the expenses, so, basically, the date that is
14 shown in this exhibit is in reality --

15 COMMISSIONER CLARK: What might have
16 happened?

17 MS. DISMUKES: What might have happened.
18 Unless Staff envisions going through and making
19 adjustments and then proceeding with this alternative.
20 And I don't think that's the intent of Staff's
21 proposal.

22 MR. HILL: And I'm trying to familiarize
23 myself with the SOP. First of all, we grabbed whatever
24 we could grab that were already closed. In fact, we
25 will run this against all SARCs as we complete them. I

1 believe the SOP, which Public Counsel has a copy of,
2 says that if we've got accurate information from a more
3 recent Staff-assisted rate case, then we will use that
4 particular information for taxes or other things.

5 It's just an attempt to have a company cover
6 their expenses.

7 COMMISSIONER CLARK: Let me, if I might, ask,
8 are you opposed to the rule?

9 MS. DISMUKES: We're opposed to having the
10 rule implemented now without any kind of testing and
11 further analysis of it.

12 COMMISSIONER CLARK: How do we go about
13 testing of it if it's not a rule?

14 MS. DISMUKES: The same way that they're
15 testing the used and useful right now.

16 COMMISSIONER CLARK: Well, but the used and
17 useful is an adjustment you make within a rate case.
18 As I understand it, this is sort of an alternative
19 handling of a rate case.

20 MS. DISMUKES: Well, I think you would
21 basically go through the same process that we're
22 talking about here, that they've done here. We look at
23 old cases and --

24 COMMISSIONER CLARK: Well, what I'm trying to
25 figure out is we wanted to test it and see if it works

1 in the real world. How do you tell people ahead of
2 time that they can choose this option?

3 MS. DISMUKES: I'm not necessarily talking
4 about testing it in the real world in a sense that you
5 have -- what I'm talking about is testing it based upon
6 what's happened in the past so that you can get a gauge
7 for what will happen in the future.

8 COMMISSIONER CLARK: Okay. And your point is
9 you don't think that this represents that?

10 MS. DISMUKES: Right.

11 MR. HILL: And we believe it does represent
12 it. The data, we've got all the cases right here.
13 Again, this could be protested. It goes out as a PAA;
14 much like a SARC, or any other PAA, it can be
15 protested, if it is, it can go as a SARC route or it
16 could go a file-and-suspend rate case route.

17 COMMISSIONER CLARK: This is at the option of
18 the utility?

19 MR. HILL: Yes.

20 MS. DISMUKES: Yes.

21 COMMISSIONER CLARK: And once they choose it,
22 Public Counsel could come in and protest?

23 MR. HILL: Absolutely.

24 MS. DISMUKES: I just want to make one other
25 comment, too. It's kind of -- the way that it's

1 proposed right now without any kind of other tests to
2 determine the reasonableness of the expense level of
3 the utility, it could create an incentive for the
4 utility to come in and gradually increase their
5 expenses, get them high during the test year, recover
6 those expenses and then cut back and overearn in the
7 future. I mean, because it is so simplified, if
8 there's nothing done other than you get your expenses
9 and that's it.

10 CHAIRMAN DEASON: But this is based upon
11 historical expenses, is it not?

12 MS. DISMUKES: That's correct.

13 CHAIRMAN DEASON: So to do that they would
14 actually have to incur expenses for at least one year
15 and then hopefully make it up in future years after the
16 rates were set.

17 MS. DISMUKES: That's exactly what I'm
18 suggesting could easily happen. I mean --

19 MR. HILL: And we would catch that,
20 Commissioners, the next time they filed an annual report.

21 COMMISSIONER CLARK: Overearnings?

22 MR. HILL: Yes.

23 MR. SHREVE: Commissioner, I think the main
24 thing we really just are not sure what the situation is
25 going to be with this. I don't know that I've really

1 thought it all the way through as to whether or not the
2 utility, who has the full option, could really play
3 some games with this in the way they pick it. They
4 could take this and come in, I guess, every year and
5 never have gone through the full-blown rate case.

6 CHAIRMAN DEASON: Seems to me --

7 MR. SHREVE: I see the direction that they're
8 trying to go. I don't know, I just -- I'm afraid I
9 don't have a thorough understanding of exactly how you
10 would handle this. Maybe you all do.

11 CHAIRMAN DEASON: Seems that a potential area
12 of abuse -- I'm not saying it would occur, but a
13 potential area of abuse would be salaries for officers
14 of the utility.

15 MR. SHREVE: Absolutely.

16 CHAIRMAN DEASON: If you could set high
17 salaries and then come in and then probably not even
18 reduce the salaries next year.

19 MS. DISMUKES: You wouldn't need to.

20 UNIDENTIFIED SPEAKER: Well, that's right.

21 MR. HILL: I recognize that area for
22 potential abuse and maybe we can put some safety nets
23 in. Salaries is one area in the SARC program where we
24 really cut them to the bone. We just don't -- but I
25 have no problem saying in the rule that, you know, you

1 have to have had a full-blown SARC or file-and-suspend,
2 you know, within the past three years. I mean, we
3 could work with some wording to make sure that this
4 could only be used two or three years before they come
5 in for a full-blown Staff-assisted rate case or a
6 file-and-suspend case.

7 MR. SHREVE: I'm sorry. There is something I
8 don't understand. Maybe Chuck can explain it. What
9 would you do, you're really here to just supposedly
10 cover expenses and the maximum increase would be 50%?

11 MR. HILL: That's it. Yes. You know, we're
12 just trying to cover expenses, that's it. And the
13 maximum increase would be 50% and it goes out as a PAA.

14 COMMISSIONER CLARK: I still think this may be
15 one of those situations where we've got to adopt the rule
16 to see if it works. Because you don't have -- how else
17 are you going to implement it and offer it as an option?

18 MR. SHREVE: Well, I think you can take each
19 one of the -- I think what Chuck was talking about
20 doing in his survey, I think you'd take the past cases
21 and just take the expenses and check them and see where
22 it would have gone. I don't know --

23 COMMISSIONER CLARK: That's what this does. But
24 Pam is concerned that it doesn't accurately reflect that.

25 MS. DISMUKES: I can tell you I looked those

1 cases up. And they are the Staff adjusted expenses,
2 they are not raw expenses that are shown here.

3 MR. HILL: And we'll make adjustments in
4 this, as well. I mean we don't -- we make adjustments
5 in everything we do. I guess maybe that's why I'm
6 having difficulty.

7 We're not going to just take somebody's word
8 that, "Here's our expenses." We're going to get the
9 actual invoices and we're going to say, "No, I'm sorry,
10 this was for something else and here's what we come up
11 with and here's what your utility expenses are." And
12 that will be presented to the Commission at an agenda
13 to be voted on.

14 MS. DISMUKES: So you're really going to go
15 through a formal or an informal analysis of the
16 reasonableness of the expenses?

17 COMMISSIONER CLARK: Yes. What I understood
18 this to be was this was basically unaudited. I mean,
19 that was the difference between this and a SARC. You
20 wouldn't audit, but you would look at the expenses for
21 reasonableness.

22 MS. DISMUKES: I didn't get that impression
23 at all. That's, you know, just perhaps a
24 misunderstanding on my part. It doesn't appear to be
25 that way in the rule, maybe it doesn't need to be

1 specific in the rule.

2 MR. CRESSE: Commissioner, let me -- on Page
3 153, unnumbered line, the last Paragraph (12), where it
4 says "Compare the operation and maintenance expense,"
5 would it provide satisfaction if it said, "Compare the
6 allowable operation and maintenance expense"? I think
7 that's what you have in mind, isn't it?

8 MR. HILL: Yeah, that's exactly what we had
9 in mind. And the Commissioners would look at it, and
10 if they had some trouble, you know, with some expense
11 that we had allowed or some level, then they would
12 adjust -- that's exactly what we have in mind. (Pause)

13 COMMISSIONER CLARK: Mr. Chairman, while
14 there's a lull, should we label this as an exhibit, the
15 spreadsheet?

16 UNIDENTIFIED SPEAKER: Yes, I'm sorry.

17 CHAIRMAN DEASON: Yes, we'll identify that as
18 Exhibit No. 11.

19 (Exhibit No. 11 marked for identification.)

20 COMMISSIONER LAUREDO: Did you pass out one
21 before?

22 CHAIRMAN DEASON: Was there an Exhibit 10,
23 I'm sorry, Exhibit 10, yes, was there a copy of that
24 given to Commissioner Lauredo?

25 UNIDENTIFIED SPEAKER: Yes.

1 COMMISSIONER LAUREDO: What was that?

2 COMMISSIONER CLARK: Here, I'll give you a
3 copy. Right here.

4 CHAIRMAN DEASON: It was a revised Exhibit
5 PD-8 with attachments.

6 COMMISSIONER LAUREDO: Oh, that's what you
7 asked for this morning? Boy, they did it fast. Okay.

8 COMMISSIONER CLARK: Mr. Chairman, I think
9 maybe we should just pass this and let it be subject to
10 Staff's recommendation to adopt it or not adopt it, but
11 Public Counsel will have further opportunity to comment
12 on it.

13 MR. SHREVE: This may very well be a move
14 that would benefit the ratepayers, which is where Chuck
15 is trying to go. I'm not sure that the best way to do
16 it wouldn't be to just drop it, bring it up as a
17 separate rule so that we all understand. I think I
18 probably just don't thoroughly understand exactly what
19 you're talking about when you say you're going the
20 compare operation and maintenance expenses to the test
21 year revenues. I mean, are you going to compare that
22 to other systems and were they reasonable or not?

23 MR. HILL: No. We were going to do it like
24 we did in trucking. We're going to look at the
25 expenses of this given company and look at the revenues

1 they're bring in and see if their current revenues
2 cover their current expenses; and if not, we're going
3 to increase their revenues.

4 We're not going to compare them to anybody
5 else. We're going to look at this company and we're
6 going to look at their expenses, their reasonable
7 expense, what we would bring to the Commission and say,
8 "Yeah, this is what they pay for electricity, and this
9 is what they pay for fuel, and here's the revenues they
10 currently have, and they need to go up 10%, 15%, and so
11 we're recommending that you increase their revenues to
12 cover their expenses."

13 MR. SHREVE: As far as comparing to the
14 revenues, you're not talking about any comparison to
15 show whether it's reasonable or not. The
16 reasonableness will come as to whether the expenses are
17 reasonable or not.

18 MR. HILL: Exactly.

19 MR. SHREVE: Then you're talking about bring
20 the revenues up to cover the expenses.

21 MR. HILL: Yes.

22 MR. SHREVE: Not comparing expenses to
23 revenues as to reasonableness, because that doesn't
24 have -- that's apples-and-oranges.

25 MR. HILL: Right.

1 MR. SHREVE: All right.

2 MR. HILL: And I guess what I'd say is, I'd
3 ask that -- we are going to red flag this. I mean,
4 obviously the Commissioners, should they pass this rule
5 and we actually bring one of these in front of them.
6 Your office is going to be aware of it, the customers
7 are going to be aware of it, the Commissioners are
8 going to be aware of it, and if there's anything bad
9 happening in it, it will get protested and it will end
10 up being a Staff-assisted rate case.

11 MR. SHREVE: Yeah. But the thing that
12 worries me about that is all of a sudden, if you do
13 protest it, you've removed the cap. I mean, that's
14 sort of a, "I dare you to do it because we're taking
15 the cap away." And at that point, do we fall back into
16 a Staff-assisted rate case, get a PAA and then we're
17 back into the whole game again?

18 MR. HILL: I guess, when a PAA is objected to
19 it goes in the trash can. And I guess that's, you
20 know, I mean that's what I've been taught for years is
21 we can stipulate the issues, but it really doesn't
22 matter what the Commission has issued as far as a PAA
23 -- Noreen, if she were here, she'd tell me what that's
24 called. But when it's objected to, the PAA doesn't
25 exist any more.

1 MR. SHREVE: Yeah. But you're not talking
2 about the PAA disappearing, you're talking about the
3 50% cap disappearing.

4 MR. HILL: Right. And so we're basically --

5 MR. SHREVE: And that has nothing to do with
6 that.

7 MR. HILL: -- bringing all the parties back
8 to the beginning and saying, "Okay, great, you need a
9 rate increase." Then --

10 MR. SHREVE: Okay. But what's wrong with
11 leaving the 50% cap and then still coming in and
12 saying, "Okay, you've elected the procedure, we think
13 you've given them too much because these expenses
14 should be lowered." I mean, why do you have to remove
15 the 50% cap? Then we're all on the same playing field.

16 COMMISSIONER CLARK: They should have the
17 opportunity to show that maybe some we removed need to
18 go higher.

19 MR. SHREVE: Right. They have the
20 opportunity when they made the first election, if it
21 would have benefited them more to go under a different
22 procedure, they would have done it. They elected to
23 come under this, so then we shouldn't be penalized
24 because we want to say, "Look, there's an issue on this
25 one expense here, we think this has been well

1 overstated and should be cut down." So why should we
2 then be thrown into a different ballgame?

3 CHAIRMAN DEASON: What incentive does the
4 utility have to file under this option anyway?

5 MR. HILL: None other than --

6 CHAIRMAN DEASON: If they could file a
7 Staff-assisted rate case and if they believe they're
8 entitled to more than 50%, and they also want to earn
9 on an investment other than just working capital, --

10 MR. HILL: Yes.

11 CHAIRMAN DEASON: -- why would they ever
12 choose this option if they qualify for Staff
13 assistance?

14 MR. HILL: They probably wouldn't. And I
15 guess if they were all as knowledgeable as some of us,
16 they wouldn't. But so many of them are not. There are
17 the Turco's and those types of people out there, but
18 there's also the J. D. Ditullio's that have no idea if
19 they're earning a profit or losing money. And they may
20 well look at this and say, "Okay, I can quickly get a
21 small increase. And if my customers aren't upset, then
22 I'll be okay and I can cover my expenses." And they
23 may well opt for it.

24 They may find out in the process, that, gee,
25 you really need to get a return on your investment, and

1 everything else could have had a 400% increase. And I
2 guess at that time, they could just go ahead and close
3 the docket and withdraw and refile something else.

4 Because, I mean, if I remember correctly,
5 they're free to file under any of the statutes at any
6 time. And I think, even if we kept them to this cap, I
7 think they could go ahead and withdraw their petition
8 and refile anyway. I believe. So I'm not sure --

9 CHAIRMAN DEASON: Or, if we did have the 50%
10 cap, they'd go ahead and get that and then they'd
11 immediately turn around and file another case,
12 potentially.

13 MR. HILL: Right. Again, I guess, like
14 Commissioner Lauredo, I was just sort of thinking out
15 loud myself. If we leave the cap in, they could
16 conclude the case and file or I think they could just
17 withdraw the case and file.

18 CHAIRMAN DEASON: Other comments?

19 MR. TODD: I would just like to suggest the
20 nature of the protest may be because of the need for
21 additional revenue requirements.

22 It seems rather arbitrary and penalizing the
23 utility if someone does not like OPC's position or the
24 customers think that this is not a fair and reasonable
25 way to do the rates and they file a protest. And that

1 may be completely out of the utility company's control.

2 MR. SHREVE: But I'm sure he's not meaning
3 that the customers shouldn't have a right to be heard
4 on an issue that they want to be heard.

5 MR. TODD: No. But the utility should have
6 the opportunity to respond to that in any manner they
7 want and that should not be penalized subject to the
8 50% cap.

9 MR. SHREVE: I think they should have an
10 opportunity to be heard. And maybe if you limit it to
11 the 50% -- well, then you'd say that you want to be
12 able to go above the 50% cap?

13 MR. TODD: Yes, if it's under protest.

14 MR. SHREVE: Well, then, that doesn't make
15 any sense, either, because you said they wouldn't have
16 picked -- unless they had a reason to come in and take
17 this in the first place, they wouldn't be here, they'd
18 be in a full-blown Staff-assisted case.

19 Now, I don't know exactly why they would be
20 in this unless there is something in there in expenses.
21 And if you had one expense that you wanted to
22 challenge, why shouldn't the utility be able to come in
23 and justify that expense and give the customers the
24 opportunity to challenge that expense, keep the cap on
25 that since they were the ones that elected the

1 procedure in the first place?

2 I'm really tired of people throwing out here,
3 we've got rate expense that's going to be built up
4 because the customers exercised their rights.

5 MR. HILL: That certainly wasn't our
6 intention.

7 MR. SHREVE: No, I know it. It was his.

8 MR. HILL: I'm trying to remember discussions
9 that I had with Mr. Shafer and the others, they are the
10 ones that put it together. I'm thinking that time had
11 something to do it, as well; and the fact that they can
12 come in for this and maybe get it over with, but if
13 it's protested, then we are looking at, again, another
14 eight to 15 months. And if they're going to have to
15 have wait another six months to a year and a half to
16 get a revenue increase approved by this Commission,
17 that would have been time for them to come in for
18 another one of these and they would have been at 100%
19 increase as opposed to 50%. And it's just my
20 recollection is that the time frames involved with
21 going to hearing and that did have something to do with
22 the elimination of the cap if there was a protest.

23 CHAIRMAN DEASON: Further comments?

24 MR. SCHIEFELBEIN: Yes. On both the .455
25 Staff-assisted rate cases and .456 alternative

1 Staff-assisted. As I understand it, eligibility,
2 determination of eligibility is being made by whom?
3 The Chairman?

4 MR. HILL: Yes, the Commissioners, the
5 Chairman.

6 MR. SCHIEFELBEIN: And then as the rule is
7 written, if the utility is determined to be noneligible
8 by the Chairman, then it can be moved for
9 reconsideration, which is decided by the Chairman?

10 MR. HILL: Yes.

11 MR. SCHIEFELBEIN: I would suggest that
12 reconsideration ought not to be decided by the Chairman
13 but should be decided by the full Commission as far as
14 an eligibility determination for either one of these.

15 MR. HILL: I can hardly argue with that.

16 CHAIRMAN DEASON: I certainly wouldn't argue
17 with it.

18 MR. SCHIEFELBEIN: Unless Chairman Deason
19 would be the Chairman then we'd be all for it.

20 (Laughter)

21 CHAIRMAN DEASON: I'm all in favor of
22 spreading the joy to all Commissioners.

23 COMMISSIONER LAUREDO: All controversial
24 decisions shall fall to the Chairman; all easy ones
25 should go to the full Commission. I think that's a

1 fair rule. (Laughter)

2 CHAIRMAN DEASON: What specific paragraph?

3 MR. SCHIEFELBEIN: Let me see. I'm working
4 off of comments we filed two years ago.

5 MR. HILL: We were aware of that, Mr.
6 Chairman. I spoke with our Staff about it, and I found
7 it somewhat humorous because I was told that our
8 current rule on the SARC says exactly that, and they
9 were off in that language in the .456. And I smiled
10 and said, "Fine, we'll let it go," but our intent, I
11 believe, was to have the Chairman make the initial
12 decision and if that was challenged that it go to the
13 full Commission.

14 MR. SCHIEFELBEIN: To answer your question,
15 Chairman Deason, Section .455, I believe it's (6), the
16 last sentence is where it says, "The Chairman shall
17 make the determination of eligibility", and then it is
18 --

19 MR. HOFFMAN: Section 10.

20 MR. SCHIEFELBEIN: Thank you.

21 Section 10, "An aggrieved petitioner may
22 request reconsideration which shall be decided by the
23 Chairman."

24 CHAIRMAN DEASON: And you're simply
25 suggesting that we replace "decided by the Chairman"

1 and just "decided by the full Commission"?

2 MR. SCHIEFELBEIN: Yes, sir. And for .456 --

3 MR. CRESSE: Mr. Chairman, why don't the
4 Director of Water and Sewer Division make the first
5 determination; and then if there's an objection to it,
6 take it to the Commission?

7 CHAIRMAN DEASON: You want to bypass the
8 Chairman all together then, right?

9 MR. CRESSE: No, sir. It's a decision where
10 they use a certain process; and if they meet the
11 statutory rule, criteria for using that process,
12 obviously, somebody below the Chairman ought to be able
13 to decide that.

14 Because what you're going to do, I suspect,
15 or any Chairman, is going to say, "Does this meet our
16 rule?" If it does, then they are eligible. And if it
17 doesn't, then they are not.

18 And I think you ought to delegate as much
19 computer processing as you can to the Staff. Then
20 you've got more time to devote to things that are far
21 more important than processing. I know Mr. Shreve
22 would second that suggestion.

23 COMMISSIONER LAUREDO: Your stock has gone
24 down a lot today because I know you chose another
25 meeting in the same town to be at while we're waiting

1 for you. On the other hand, it shows that you know
2 where power really lies.

3 MR. CRESSE: No. That's not exactly right,
4 but it does show that I had a full day's work sitting
5 up there waiting before I got down here.

6 We delegate a lot to the staff. We delegate
7 things to the General Counsel. You all delegate things
8 to the General Counsel to make decisions to be appealed
9 to the Commission.

10 COMMISSIONER CLARK: You're saying it's
11 purely ministerial, and, therefore, it should be
12 carried out at the Staff level.

13 COMMISSIONER LAUREDO: I agree.

14 COMMISSIONER CLARK: It's fine with me.

15 CHAIRMAN DEASON: I have no problem with
16 that.

17 MR. HILL: Well, certainly, we'll do that.

18 COMMISSIONER CLARK: What's the difference,
19 Chuck? You just go into the Chairman's office and say,
20 "Yes, this is what we ought to do." Has he ever said
21 no?

22 MR. HILL: No -- yes. (Laughter)

23 COMMISSIONER CLARK: When you say it meets
24 the criteria --

25 MR. HILL: Every time we've been wrong.

1 CHAIRMAN DEASON: Chuck, you should have been
2 a politician.

3 COMMISSIONER CLARK: I think he is.

4 CHAIRMAN DEASON: Commissioners, do you wish
5 to give any guidance to Staff on .456?

6 I think we've already decided that we would
7 change the language concerning approval by the Chairman
8 of applicability or qualifications.

9 Do you wish to give any other direction for
10 .456?

11 COMMISSIONER LAUREDO: Well, where would Mr.
12 Cresse's suggestion fall under, on the same paragraph
13 10?

14 CHAIRMAN DEASON: Well, we were really
15 talking about .455.

16 COMMISSIONER CLARK: Well, I think you make
17 that change where you need to.

18 MR. SHREVE: Where are we now? I'm talking
19 about --

20 CHAIRMAN DEASON: We made a suggestion, and
21 what I think -- I'm sorry. Go ahead.

22 MR. SHREVE: Who would -- you, being the
23 Chairman, do the reconsideration of Mr. Hill's decision
24 or the full Commission?

25 COMMISSIONER CLARK: The full Commission.

1 COMMISSIONER LAUREDO: The full Commission.

2 MR. SCHIEFELBEIN: Yes. That's what was just

3 --

4 MR. SHREVE: You might want to think about
5 this a little bit. I'm not sure that technically this
6 is being handled properly. I mean, you need to get
7 down there and test it, and I think Mr. Hill's
8 recommendation, for all practical purposes, probably
9 makes the decision. But I'm not sure.

10 Did you have -- I've just never seen it.
11 I'll be glad -- it doesn't really make that much
12 difference to me. But when you get right down to it, I
13 don't know if the full Commission -- you may have
14 reconsideration of a Commissioner's decision.

15 CHAIRMAN DEASON: Well, I guess it's not
16 reconsideration. I guess the issue then would just be
17 decided by the Commission. We wouldn't be
18 reconsidering because, really, it's probably an
19 improper use of terminology.

20 COMMISSIONER CLARK: If someone contests the
21 Director's decision, then it goes to the full
22 Commission.

23 MR. SHREVE: All we're doing is, as someone
24 suggests, his decision comes to me.

25 Okay. You see what I'm getting at? We've

1 never had that situation before.

2 CHAIRMAN DEASON: I think the belief is that --

3 MR. SHREVE: The orders come out of the
4 Chairman's office.

5 CHAIRMAN DEASON: It should be pretty
6 straightforward as to whether somebody qualifies or not
7 and --

8 MR. SHREVE: That decision should be made.

9 CHAIRMAN DEASON: That's why we think Chuck
10 can handle it. (Laughter)

11 MR. SHREVE: And where does the
12 responsibility lie, Mr. Hill?

13 MR. HILL: I'm certainly indifferent. You
14 know, it's a determination of eligibility.

15 MR. CRESSE: Mr. Chairman, I'm sorry I
16 brought it up. I was just trying to save you some
17 time.

18 It seems to me that you delegate a lot of
19 things to Staff. I remember when I applied for my
20 Class B Practitioner's certificate, General Counsel
21 offered that to me but Mr. Shreve could have objected
22 to it, and the full Commission would have had to
23 decide. The fact is, he didn't know she had issued it,
24 so I got it.

25 MR. SHREVE: That is one of the things that

1 happens a lot of times when you don't know something
2 has happened.

3 MR. CRESSE: Of course, the rule is he can
4 protest at any time.

5 MR. SHREVE: I really don't have a problem
6 with the timing of it.

7 CHAIRMAN DEASON: Any other desire for
8 further direction on .456?

9 COMMISSIONER CLARK: At this point I think we
10 should leave it in and I would encourage Public Counsel
11 to look further at it and file comments; particularly
12 look at that spreadsheet and see if -- I just would
13 leave it in and encourage more comments on it and then
14 let Staff make a recommendation.

15 CHAIRMAN DEASON: Let me ask one question on
16 the spreadsheet. Am I to conclude from this that if I
17 were to compare Columns 9 and 11 that if this procedure
18 had been elected by the utility listed that their
19 increase under this rule, in most cases if not all,
20 would have been less than what they received under the
21 actual decision in the Staff-assisted rate case?

22 (Pause)

23 And I think Public Counsel's concern is that
24 those expenses listed here are adjusted expenses, not
25 just those expenses taken directly from the books. And

1 that Staff's position is that under this alternative
2 procedure that those expenses would be reviewed for the
3 reasonableness just as they are reviewed in a regular
4 Staff-assisted rate case.

5 Any further questions, Commissioners?

6 MS. MOORE: Mr. Chairman, I think the exhibit
7 was identified as 11. I don't think it's been
8 admitted.

9 CHAIRMAN DEASON: Without objection, show
10 that Exhibit 11 is admitted.

11 (Exhibit No. 11 received into evidence.)

12 MR. SCHIEFELBEIN: Can we assume that
13 everything now through 11 has been admitted?

14 CHAIRMAN DEASON: According to the list,
15 which I have maintained and Commissioner Clark has
16 maintained, there is some question about Exhibits 8, 9
17 and 10 as to whether they have been admitted.

18 COMMISSIONER CLARK: We've identified them
19 but we didn't admit them. And 8 is the allowance for
20 funds prudently invested, calculation of carrying
21 costs. That was in response to your request and my
22 request.

23 Debra Swain's comments on that calculation is
24 9. And 10 is revised and submitted as PD-8.

25 I would suggest they be admitted without

1 objection.

2 CHAIRMAN DEASON: Is there any objection?
3 Hearing none, show that Exhibits 8, 9 and 10 are also
4 admitted.

5 (Exhibit Nos. 8 through 10 received into
6 evidence.)

7 COMMISSIONER CLARK: Mr. Chairman, on the
8 rules that remain with the exception of .433, I'm not
9 sure anyone had any comments on them.

10 MR. SCHIEFELBEIN: If I might, we did not
11 have on your list 25-30.465, private fire protection
12 rates. That was debated at length at the last hearing.

13 At that hearing we first became aware of the
14 previous month's filing by the Florida Fire Sprinkler
15 Association, who, incidentally, I should mention to you
16 has been working very cooperatively with us as far as
17 the exchange of documents. Since our little
18 disagreement at that hearing they've been very helpful.

19 We have -- "we" being the Florida Cities
20 Water Company -- filed a response to what was
21 distributed at the hearing by the Florida Fire
22 Sprinkler Association on July 13th. And I see no need
23 to drag you all into the merits and the content of it
24 at this point; but I would ask that we have a number,
25 an exhibit number, assigned to it and that it be

1 admitted.

2 CHAIRMAN DEASON: It will be identified as
3 Exhibit 12. And short title for that, Mr.
4 Schiefelbein?

5 MR. SCHIEFELBEIN: "Florida Cities' Response
6 to FFSA, April 22nd Filing." That wasn't a very short
7 title; I apologize.

8 CHAIRMAN DEASON: That's fine.

9 Without objection, Exhibit 12 will be
10 admitted.

11 (Exhibit No. 12 marked for identification and
12 received into evidence.)

13 COMMISSIONER CLARK: Do we have copies of
14 that?

15 MR. SCHIEFELBEIN: That was filed with the
16 Commission, 15, 16 copies. Copies were sent to all
17 parties, all -- excuse me, there are no parties. All
18 interested persons.

19 I will be glad, Commissioner, to send another
20 five over for the Commissioners, if the 15 that we sent
21 to Mr. Tribble didn't make it to you.

22 MS. MOORE: I have one copy, and I'll give it
23 to the court reporters.

24 CHAIRMAN DEASON: Are there any comments to
25 be made on .475?

1 MR. MANN: Commissioner, we have some
2 comments on that, Ms. Dismukes does.

3 COMMISSIONER CLARK: You skipped .471.

4 MS. DISMUKES: I just have a --

5 CHAIRMAN DEASON: Excuse me one second. For
6 some reason I had checked off .470, is that correct,
7 that it be shown as completed at this point?

8 MS. MOORE: That's correct.

9 COMMISSIONER LAUREDO: Stipulated.

10 CHAIRMAN DEASON: Ms. Messer, do you wish to
11 give a summary of .475 before we hear comments?

12 MS. MESSER: I can, it will be very brief.
13 It's new tariff language that is intended to simplify
14 the approval dates and to allow rates and charges to be
15 implemented uniformly within a company.

16 CHAIRMAN DEASON: Public Counsel?

17 MS. DISMUKES: I just kind of have a question
18 on Subsection (b), where it's talking about the
19 effective date of the new rates and if they fall within
20 a billing cycle, et cetera. It appears to me, and
21 maybe I'm wrong, that if the rates go into effect in
22 between a billing cycle that the utility will be
23 allowed to prorate the rate increase?

24 MS. MESSER: That's correct.

25 MS. DISMUKES: Our concern is that it will be

1 confusing to the customers that they are going to have
2 rates at one month, then they will get a new rate for
3 one month, and then they will get another new rate for
4 the remainder of the duration that the rate increase is
5 in effect. And I was curious as to whether or not this
6 is what's happened in the past, was it prorated or did
7 they have to wait until a new billing cycle came around
8 before they could bill for the rate increase?

9 MS. MESSER: Well, for some of the older
10 utilities, it's with our old language, I think they
11 tried to force it to coincide with the beginning of the
12 billing cycle. But lately, with some of the larger
13 utilities, they have been implementing -- they've asked
14 for proration and we've been implementing it that way.
15 And we do get some questions, but we go back, check the
16 bill, make sure it's done correctly. I can think of
17 maybe five phone calls that we've gotten from customers
18 who were confused about their bills, so it hasn't been
19 an apparent problem to us.

20 MS. DISMUKES: I have one other question and
21 you all may not be able to answer it, but do they
22 prorate in electric and telephone cases?

23 MS. MESSER: I can't answer that.

24 MS. DISMUKES: I suspect they don't in
25 telephone, just by the way that they bill. Electric

1 would be the most comparable and I was just curious as
2 to whether or not they were -- these would deviate from
3 electric and telephone. I meant to check on it.

4 MR. CRESSE: I think telephones bill in
5 advance for local service as opposed to after the
6 service has been provided. There is an effective date
7 usually in the order on the change in toll. And, of
8 course, that's dated in the telephone bills and so
9 that's effective on that particular date.

10 I think, typically, in electric rate cases,
11 the orders usually reflect the date of the vote and
12 then it's reflected in the bills 30 days after. And I
13 don't think there's proration done in electric bills.
14 I don't recall that there has been any.

15 CHAIRMAN DEASON: Yeah, I would indicate, I
16 don't believe that it's done, either, on a prorated
17 basis. Not that I'm aware of.

18 MR. CRESSE: What they do is, by the time that
19 you vote, that's usually the effective date of the rate
20 change. By the time they get the new tariff filed and
21 they get their bills out, why, that 30 days has passed.

22 MS. DISMUKES: I think our preference would
23 be that it be one rate and it not be prorated, but we
24 can just address that in our comments. I wanted some
25 clarification.

1 CHAIRMAN DEASON: Further comments?
2 Questions, Commissioners? You just wish to direct
3 Staff just to include the .475 as proposed at this
4 point? Very well.

5 .515?

6 MS. MESSER: Commissioners, .515 is a
7 modification of the existing rule that contains
8 definitions. It expanded examples of CIAC, it
9 clarifies the guaranteed revenue definition and it adds
10 the plant capacity definition.

11 CHAIRMAN DEASON: Comments? No comments.
12 Questions, Commissioners?

13 MR. SCHIEFELBEIN: Excuse me. We had filed
14 in April of 1992 extensive comments on this section,
15 basically making a great many proposals for different
16 definitions, suggesting that definitions for all of the
17 rules be put in one section. And we have been advised
18 -- it's been a long time since we heard anything new on
19 this, but we have been advised that our comments will
20 be included or considered in a subsequent phase of this
21 docket, so-called Phase II rules.

22 Is Chuck gone? Well, I would just ask that
23 the Commissioners consider our comments made in our
24 April 29, 1992, filing on that as far as overhauling
25 the definitions. We have absolutely no objection to

1 the extent that it is being approached in the proposed
2 rule to those changes but we think there's a lot more
3 work to be done on the definitions.

4 Thank you.

5 CHAIRMAN DEASON: Is there any reason why
6 those proposed definitional changes are being postponed
7 to a subsequent time?

8 MS. MESSER: Commissioner, I'm not aware of
9 that document and it wasn't something that I reviewed
10 in making these changes.

11 COMMISSIONER CLARK: Well, Mr. Schiefelbein,
12 if it's not forthcoming and you think those things need
13 to be changed and added to the rules, then you can file
14 a petition suggesting that we go ahead with those
15 changes. You don't have any problem with the
16 definitions there?

17 MR. SCHIEFELBEIN: No, ma'am. I sure don't.

18 COMMISSIONER CLARK: You just need more
19 definitions? Okay.

20 MR. SCHIEFELBEIN: More consistency. Thank you.

21 CHAIRMAN DEASON: Well, is Staff in the
22 meantime between now and the special agenda, which is,
23 when, is it in October?

24 MS. MOORE: October 6.

25 MR. WILLIS: Commissioners, we'll address

1 that concern between now and then and we'll let you
2 know in our recommendation what we intend to do with
3 Mr. Schiefelbein.

4 CHAIRMAN DEASON: Great. Very well. Thank you.
5 Rule .565?

6 MS. MESSER: This is a modification of the
7 existing service availability rule. It makes some
8 corrections to cross reference new notice requirements
9 and the filing fee, it codifies Commissioner policy
10 requiring the filing of tariff sheets, and it modifies
11 language on the standard of evaluating the request.

12 CHAIRMAN DEASON: Comments? Questions,
13 Commissioners? Then we'll just ask Staff to include
14 .565 in the recommendation as it is being proposed.

15 I understand that we need to revert back to
16 Rule .443, is that correct?

17 COMMISSIONER CLARK: .433, isn't it?

18 MS. MOORE: .433.

19 CHAIRMAN DEASON: I'm sorry, .433. That's
20 correct, .433. My understanding is that the discussion
21 of this rule has been completed except for proposals being
22 made by Public Counsel's office? Is that correct?

23 MS. MOORE: Yes. We completed all of the
24 discussion of the proposed rules, and Public Counsel
25 had further comments.

1 CHAIRMAN DEASON: Ms. Dismukes?

2 MS. DISMUKES: Thank you.

3 MS. MOORE: We left off with No. (11), so
4 that would be your (12), I think?

5 MS. DISMUKES: Right. OPC is, in this
6 subsection, is proposing a rule to remove from the
7 equity component of the capital structure a utility's
8 investment in nonutility operations. This, my
9 understanding, has been a standard practice of this
10 Commission in the water and wastewater industry. And
11 in the last five rate cases that I have been involved
12 in, the utility typically has voluntarily removed it
13 from the equity component. There was one case where
14 there was a dispute about the amount, and there was
15 another case where the utility said that it was an
16 inadvertent admission and agreed to it and it was a
17 stipulated issue. So I find it somewhat surprising
18 that Southern States is opposed to it, since three of
19 those cases were Southern States cases where they were
20 voluntarily taking it out in their MFRs.

21 The Florida Waterworks Association has
22 suggested that OPC's proposal, if adopted, be modified
23 to include language that such an adjustment would be
24 made unless the utility provides substantial-competent
25 evidence to the contrary.

1 I think that we would prefer, if we want to
2 modify a language as we proposed it, would be to
3 include language that says "absent extraordinary
4 circumstances." That might solve Mr. Cresse's concern
5 about a utility that is 50% equity, 50% debt, and then
6 50% of its operations are nonutility.

7 Mr. Cresse also suggests that the real issue
8 here is the cost of debt and not the cost of equity. I
9 disagree. It is generally accepted in the financial
10 community that the greater the risk to the utility, the
11 higher the equity ratio. And that's the reason that
12 this Commission has removed the nonutility investments
13 from the equity component of the capital structure.

14 Mr. Cresse argues that the Commission's
15 leverage graph is used to determine the utility's cost
16 of equity for its utility business. And I think what
17 he's saying there is because it's used just for the
18 utility business, you don't need to worry about the
19 cost of equity creeping up because of the fact that
20 they have nonutility operations. That's true. But the
21 cost of equity is different depending upon where you
22 are on the leverage graph.

23 By not removing the nonutility investments
24 from the equity component of the capital structure, the
25 overall rate of return allowed by the Commission would

1 be higher than if the adjustment was made, unless it
2 happens to shift them somewhere into the leverage graph
3 that would lower the cost of equity. I think it
4 actually increases the cost of equity. When you lower
5 the equity ratio, it's going to increase the cost of
6 equity. So you could have a situation where if they
7 did have a substantial nonutility operations, that it
8 may not necessarily lower the overall cost of capital.

9 Mr. Cresse then asserts that the only other
10 issue is whether or not the cost of debt is greater
11 than it would be if the company was not involved in
12 nonutility activities. I agree with that, but I think
13 that that issue is not as significant as the issue of
14 whether or not the equity component of the capital
15 structure should be reduced.

16 My dealings with the cost of debt, given that
17 most water and wastewater companies' nonutility
18 operations are fairly small, as Mr. Cresse conceded in
19 his comments, the impact on the cost of the debt is not
20 going to be that large. And his proposal that we open
21 up a separate investigation into that, as opposed to
22 adopting OPC's recommendation here, I don't really feel
23 has a great deal of merit.

24 CHAIRMAN DEASON: Mr. Cresse?

25 MR. CRESSE: I'm surprised that she says she

1 was surprised by my recommendations because she's had
2 them over six months. But notwithstanding that, she
3 seemed to be very familiar with them.

4 COMMISSIONER CLARK: Mr. Cresse, I think she
5 only meant surprised in the sense that you would make
6 the recommendation.

7 MR. CRESSE: Oh, well --

8 COMMISSIONER CLARK: That's what I understood
9 her to say. Which is even worse, right? (Laughter)

10 MR. CRESSE: The fact of the matter is from a
11 historical perspective this question of how you treat
12 sources of capital to remove investment in nonutility
13 business has never been seriously addressed by this
14 Commission. You started, oh, four or five years ago;
15 and the issue came up and somebody said, "Well, we'll
16 just take it all out of equity."

17 And to be honest, as a matter of practice,
18 you have been taking it out of equity, which is
19 probably the reason that Southern States agreed to go
20 ahead and change theirs and take it out of equity,
21 because that has been your practice.

22 I'm here to argue that that is a bad
23 practice, it is an unfair practice, and you ought to
24 discontinue it. And this is the first opportunity
25 under rulemaking that we have had to do it.

1 The fact of the matter is, it was articulated
2 when this process first started -- and I can almost
3 remember hearing the motion by one Jay Gunter to do it.
4 They said trying to protect the ratepayers from the
5 increased risk the utility will make in a unregulated
6 business. And then everybody knows in the world of
7 finance, a regulated utility is less risky than a
8 competitive business.

9 Now, how to balance that? So we know that
10 somehow up there in New York that they're going to know
11 exactly how much they've got invested in the utility
12 business and exactly how much they've got in the
13 nonutility business and they're going to jack up the
14 price because they've got an investment over there in
15 the nonutility business. And that assumption is what
16 underlies, is what underlies your practice of saying
17 we'll take all the nonutility investment and attribute
18 it to equity.

19 And there's a lady sitting there on the
20 corner that I hope can confirm what I just said.
21 Because she was here. And she knows and she knows more
22 about the history of this thing than I'll ever know.
23 But you can ask Ms. Causseaux when I get through,
24 because I want to close on my argument.

25 In the first place, the assumption that it's

1 based on is fallacious.

2 In the second place, I'm absolutely correct
3 that whenever the utility uses the leverage graph --
4 and you can ask the Staff this question, too -- do they
5 determine the cost of equity using the leverage graph
6 of a utility on the utility business? And I believe
7 they'll say, "Yes, that's what we do. We look at the
8 cost of equity for the utility, for the utility
9 business." So we have solved the problem using the
10 leverage graph that the Washington folks up there and
11 New York folks up there somehow are going to look, come
12 down and tell us what the cost of capital is of that
13 company. Because we used the leverage graph, you know,
14 for practically all the cases.

15 If you don't use the leverage graph, then on
16 cross examination, the Public Counsel, and the Staff,
17 and the Commissioners all have got a chance to ask that
18 witness how much more is the cost of acquittal because
19 they're involved in a nonutility business? About 5%
20 total investment. Most of them will tell you, there is
21 no difference. But to avoid that, you've really gone
22 over too deep.

23 Now, it is a legitimate concern in my mind,
24 that if the utility is involved in a riskier business
25 than the utility business is, and their involvement in

1 that riskier business increases their cost of debt,
2 that's an embedded cost of debt and you've got to look
3 at that. And I don't deny that at all. But the equity
4 problem is taken care of and I believe Ms. Dismukes
5 will acknowledge that. If she won't, then I'll have to
6 get somebody else who knows more about it to
7 acknowledge it. And that will be Ann.

8 So I think what you have to concentrate on,
9 is it fair to just automatically without any
10 examination at all penalize a company that's invested
11 in both the utility and nonutility business? Or is it
12 more fair to protect them from any increased cost that
13 they might try to impose on the ratepayers because of
14 their involvement in a nonutility business?

15 You all have been for the last year hearing
16 about economies of scale. The best I can read some of
17 your orders, you bought into that argument. I don't
18 think you want to discourage economies of scale, if
19 there is any, from being applied into the other -- all
20 utilities, if that works.

21 You do have to protect, you do have to
22 protect about any cross-subsidy, be it in the cost of
23 interest or any other type of cross-subsidy. That's
24 not the issue. But if you make a rule, you flat deny
25 yourselves the opportunity for those benefits and you

1 ought not to adopt it in a rule, in my opinion.

2 Thank you.

3 COMMISSIONER LAUREDO: Did you just equate
4 the economies of scale with what the benefits of
5 diversification --

6 MR. CRESSE: No. There's been a lot of
7 discussion here before this body in the last year about
8 the economies of scale of keeping competitive and
9 noncompetitive business in the same company.

10 And utilities have argued, the telephone
11 companies have argued that, "Well, if you require us to
12 put some of those competitive businesses in a fully
13 separate subsidiary, we will lose economies of scale."
14 And I said the Commission has appeared to buy into that
15 argument some. So, I wanted to use it again to help my
16 argument.

17 COMMISSIONER CLARK: I thought that was
18 economies of scope?

19 MR. CRESSE: It's both scope and scale.

20 CHAIRMAN DEASON: But you would agree that
21 the primary issue is one of prevention of cross
22 subsidization between regulated and nonregulated
23 operations.

24 MR. CRESSE: Absolutely, that is the issue.

25 CHAIRMAN DEASON: There is a higher equity

1 ratio as a result of a company engaging in both utility
2 and nonutility operations. How do we account for that
3 so that we protect the ratepayers?

4 MR. CRESSE: I'm glad you asked that
5 question. If a utility comes in with a higher equity
6 ratio than is appropriate for utility business, in my
7 opinion, Mr. Chairman, you all can treat them as though
8 they had an equity ratio that you thought was
9 appropriate.

10 COMMISSIONER LAUREDO: By industry standard?

11 MR. CRESSE: Pardon?

12 COMMISSIONER LAUREDO: Like the industry
13 standard.

14 MR. CRESSE: Whatever standard that you want
15 to use, like a leverage graph, for example. You can
16 put a leverage graph and you can say, "70, 65, 60,"
17 whatever you think is appropriate. That's as much as
18 we're going to allow on the equity investment because
19 we want some low cost of capital in your capital
20 structure.

21 That issue can be debated and presented to
22 you and raised as an issue in a rate case that the
23 equity, in fact, it has been raised in rate cases in
24 one of my memories.

25 But the equity ratio was too great. And I

1 think the parties asked you to reduce the equity ratio
2 for that particular company down to a level that was
3 more appropriate. They were accumulating too much
4 equity from one party's viewpoint.

5 Clearly, you don't want to -- you know, they
6 may have a very small utility that's 100% equity
7 because the guy just went out and built it he's only
8 got \$50,000 in it. And he couldn't get a loan on it to
9 save his life. So any money he's got invested in that
10 may be equity. That's not what I'm talking about.

11 I'm talking about whether your large company,
12 and you're trying to provide a high quality service,
13 you'll have some debt in your capital structure.

14 COMMISSIONER LAUREDO: Unless you're GDU,
15 right? And GDU is about 100% equity. What did we
16 decide in that case?

17 COMMISSIONER CLARK: You adjusted the capital
18 structure.

19 COMMISSIONER LAUREDO: The 60/40?

20 MR. WILLIS: That's correct. I'm not sure if
21 it's 60/40, but we did adjust the capital structure.

22 MR. CRESSE: Well, you already did what I
23 suggested that you do. And that is, you just capped
24 them out to determine it if you thought it was
25 inappropriate.

1 COMMISSIONER LAUREDO: So your overall
2 argument beyond the specifics is let the specific --
3 decide the specifics on a case-by-case basis and look
4 at the overall company?

5 MR. CRESSE: Yes, sir. And the people that I
6 advise, if they listen to my advice, will not
7 voluntarily take it all out of equity, so that we can
8 have the discussion that needs to be had on this issue.
9 If you adopt it by rule, you will eliminate any
10 discussion. And I put that in my written testimony.
11 Imagine the fairness if you had a utility up here
12 that's got 50% equity, 50% debt. That's a pretty good
13 ratio, okay? Kind of low maybe.

14 And then, also, they had 50% nonutility
15 business, which you would be attributing under this
16 rule. It's funded 100% out of debt, if you adopt this
17 rule. That's ludicrous. I know that's not Public
18 Counsel's intention to make a bad recommendation like
19 that, but that's the end result of it if you adopt it.

20 CHAIRMAN DEASON: Mr. Cresse, I understand
21 what you're saying, but I understand that part of the
22 purpose that we're here today. And we met for three
23 days in May and this process is going on is that we're
24 trying to implement rules that's going to expedite the
25 process, and, hopefully, cut down on the amount of rate

1 case expense.

2 And there have been a number of arguments
3 made on other issues that adopt a rule and let's just
4 do it this way as an extraordinary circumstance so we
5 don't have to come in every rate case and debate the
6 issues so that we'll know, and, hopefully, we can
7 reduce rate case expense.

8 Now I hear a different argument. I hear that
9 for this issue, "Let's do it case by case every time,
10 and the heck with the rate case expense. We want to
11 prove it up every time."

12 But I heard Public Counsel saying put in
13 language about absent extraordinary circumstances. Why
14 is it that this issue should be treated one way and
15 other issues should be treated differently?

16 MR. CRESSE: In the wording I have from
17 Public Counsel there's not any wording at all about,
18 extraordinary circumstances. Have they modified their
19 written recommendation?

20 MS. DISMUKES: I just said it.

21 MR. CRESSE: Well, that's an improvement over
22 their original position. They're coming home.

23 CHAIRMAN DEASON: They're making progress.

24 MR. SCHIEFELBEIN: To further improve it --

25 MR. CRESSE: What I would like to do, Mr.

1 Chairman, is not say "absent extraordinary
2 circumstance, I would say okay unless the utility
3 demonstrates that a more fair and a just cost of
4 capital will be obtained, the investment in nonutility
5 operations shall be removed."

6 MS. CAUSSEAU: Commissioners, Staff would
7 offer an alternative to that, also. Staff would take
8 out, "Unless the utility can show," and put in, "Unless
9 it can be shown," then any party would have the
10 prerogative of offering evidence that there's a more
11 fair method.

12 COMMISSIONER LAUREDO: What's that again,
13 "Unless --

14 MS. CAUSSEAU: It says, "unless the utility
15 can show." Staff would suggest that it be, "unless it
16 can be shown by competent substantially evidence."

17 COMMISSIONER LAUREDO: You're referring back
18 to the -- are you working off Page 52, OPC's Proposed
19 12?

20 MS. CAUSSEAU: Yes.

21 COMMISSIONER LAUREDO: So, you would add that
22 in a sentence. You would have no problem with their
23 proposed first sentence, "The investment in nonutility
24 operation shall be removed from the equity component of
25 the capital structure"? Here we go. You have no

1 problem with that?

2 MS. CAUSSEAU: No.

3 COMMISSIONER LAUREDO: And you would at
4 "unless the utility --"

5 MS. CAUSSEAU: "Unless it can be shown,"
6 rather than, "unless the utility can show."

7 COMMISSIONER LAUREDO: Go ahead. We finished
8 the --

9 MR. CRESSE: Could you read that again, Ann?
10 That goes to the end of that sentence, right?

11 MS. CAUSSEAU: Yes. "Nonutility investments
12 should be removed directly from equity when reconciling
13 the capital structure to rate base, unless it can be
14 shown through competent evidence that to do otherwise
15 would result in a more equitable determination of the
16 cost of capital for regulatory purposes." And Staff
17 believes that --

18 COMMISSIONER LAUREDO: Well, you lost me,
19 because I don't know where you are on the paper.
20 That's why I asked you. Are we talking about 12 as
21 proposed by OPC? And if that's the case, I'm on Page
22 52 on the top of 8, which only reads, "The investment
23 in nonutility operations shall be removed from the
24 equity component of the utility capital structure,
25 period." Is that what we're discussing?

1 COMMISSIONER CLARK: I'm just wondering if
2 that really accomplishes anything because who besides
3 the utility is going to advocate it be taken out of
4 anything but equity?

5 MS. DISMUKES: And I think Mr. Cresse just
6 insinuated that, you know, he would make a
7 recommendation to his clients that they not go along
8 with that in the next case. And, to me, that would
9 mean that in the next rate case that it's going to be a
10 litigated issue, especially if you put that language in
11 there. It gives them a complete out.

12 CHAIRMAN DEASON: Commissioner, you raised a
13 good question, but I guess it's conceivable there could
14 be a company that has 20% cost of debt that was issued
15 back when there was high interest rates, or something,
16 and it may be advantageous to have a high equity ratio.
17 I mean, it's possible the leverage graph could result
18 in a lower cost of capital than the embedded cost of
19 debt. It's possible.

20 MS. DISMUKES: Well, I think if you put in
21 the wording, "In the absence of extraordinary
22 circumstances," I think that that would --

23 MR. SCHIEFELBEIN: That doesn't codify your
24 existing decisions, though. As indicated on Page 30 of
25 the Florida Waterworks Association's May 17th

1 supplemental comments on this, it's our understand that
2 the policy has been that unless the -- when reconciling
3 capital structure to rate base, nonutility investment
4 is removed directly from equity, quote, "unless the
5 utility can show through competent evidence that to do
6 otherwise would result in a more equitable
7 determination," et cetera. That has been the standard
8 language that you all have used.

9 This extraordinary circumstance language is a
10 quantum leap, I think, from that. So if you're looking
11 to codify what your policy has been, I think the
12 language somewhere between what Ms. Causseaux is
13 talking about and what we're talking about in our
14 comments does codify that practice.

15 COMMISSIONER LAUREDO: Well, I'm having
16 trouble with this statutory construction we're going
17 through is that we go, we take the first step and we
18 have the first line that is definitive and conclusive.
19 And then we modify it by what you just said or by what
20 she said to inject flexibility. And whatever that
21 crack in the door is people are going to bring it up
22 anyway, so why don't we just do away with it altogether
23 and do it on a case-by-case basis?

24 MR. CRESSE: That's is what your present rule
25 -- the condition of the present rule is not in there,

1 so you're just advocating to put it in. I was really
2 advocating to leave it out.

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

5 MR. SHREVE: Commissioners, I apologize.

6 Mr. Schiefelbein, what were you reading from?
7 I didn't know what you were reading from.

8 MR. SCHIEFELBEIN: I was reading from our May
9 17th supplemental comments filed this year of Frank
10 Siedman, Page 30, which was our response to
11 Ms. Dismukes' testimony.

12 MR. SHREVE: Well, where was the quote from?
13 What was that cite you read about the language.

14 MR. SCHEIFELBEIN: It's something that we
15 wrote.

16 MR. SHREVE: Okay.

17 MR. SCHIEFELBEIN: I can provide you with the
18 cases, Mr. Shreve. I don't have them with me right
19 here, but that is our understanding of what the
20 Commission has held previously for this kind of issue
21 -- has used that exact language repeatedly.

22 MR. SHREVE: Is it in an order?

23 MR. SCHIEFELBEIN: I'll be glad to get them
24 to you.

25 COMMISSIONER LAUREDO: We've sat through,

1 Mr. Chairman, today, the same arguments used, depending
2 on which side of the question, the same argument. I
3 have been -- try to be consistent, but I have a great
4 jealousy of my flexibility as a Commissioner,
5 generally.

6 Although I understand that the move towards,
7 quote, "codifying and making rules," is to, quote,
8 "safe money," and we've had some examples today that
9 will scare you about -- we're moving in a different
10 direction and paper work.

11 So I would propose keeping that out because
12 Paragraph 12 just seems to take away some of that
13 flexibility.

14 If there's something we have to vote on today
15 -- I mean, some of my other votes which follow the same
16 philosophical line are not out for a vote today.

17 And this is one of those issues that cuts
18 across, you know, so many cross-subsidies about the way
19 Wall Street looks at a company, and all that, and what
20 type of diversification. I mean, it is too complex to
21 just put into a rule. If anything, this question is
22 one that needs to be looked at, on a company-specific
23 basis.

24 CHAIRMAN DEASON: Well, I can understand
25 that. But I've heard many times during the course of

1 the discussions we've had is that we're under an
2 obligation to put into a rule what our policy is. I
3 understand that policy sometimes is a nebulous thing,
4 and it is evolutionary, and sometimes revolutionary,
5 changes, but that we are under an obligation.

6 If this is our policy, perhaps it should be
7 modified with the, "unless it can be shown otherwise by
8 competent substantial evidence," et cetera, et cetera.
9 But if that is our policy, it seems to me that may be
10 under some obligation to include it in the rule.

11 What is Staff's position on this proposal?

12 MS. CAUSSEAU: I think it's a fair
13 representation of what we've been doing up to this
14 point of time with the modification allowing a showing
15 that something else should be done. And one would hope
16 that if there are extraordinary circumstances, that
17 would be what would trigger it.

18 I mean, you may get from Staff some changes
19 proposed or whatever. But I think it is basically what
20 we have been doing, it's just that we have not found
21 those circumstances very frequently to this point in
22 time that would make us actually do something other
23 than remove it totally from equity.

24 CHAIRMAN DEASON: But I also understand the
25 argument on being able to retain flexibility. I think

1 those are valid arguments as well.

2 Unless there's some objection, I would just
3 -- I think it would be appropriate for this to be
4 identified as an issue in the final recommendation. If
5 Staff has a position and wants to propose language,
6 we'll vote on it at that time.

7 COMMISSIONER LAUREDO: And could Staff please
8 -- I had a hard time following what exactly you're
9 proposing, so if you could just write it for me.

10 MS. CAUSSEAU: Surely.

11 CHAIRMAN DEASON: That, I think, concludes
12 OPC's recommended Section (12) of .433; but there's
13 also a recommended Section (13), is that correct?

14 Do you want to address that, Ms. Dismukes?

15 MS. DISMUKES: Yes. Section (13), that would
16 be issue of interest synchronization and synchronizing
17 the company's interest expense with the tax effect of
18 its parent debt, its ITCs and basically its rate base.

19 Florida Waterworks had some good points: One
20 was that the method of calculating the tax effect of
21 parent debt is already established in a prior rule so
22 our comments in terms of the tax effect of parent debt
23 don't need to be considered for purposes of our
24 proposed rule. However, the comments concerning the
25 interest expense on the debt associated with investment

1 tax credits, Florida Waterworks also argues that
2 because this is a function of the MFR requirement
3 forms, that it's not necessary and that it's redundant.

4 And I don't dispute that the Schedule C sets
5 forth how the interest expense is supposed to be
6 calculated. I would just point out to the
7 Commissioners that in the Marco Island case, Southern
8 States in their brief and in their prehearing order,
9 they opposed making adjustment for the interest expense
10 associated with the debt in the ITCs.

11 And so even though Florida Waterworks is
12 saying, "Don't worry about it, it is not an issue, it
13 is set out in the MFRs," I'm, saying, "I'm sorry, it is
14 an issue, Southern States did it in the Marco Island
15 case." And if we don't put it in the rule I think we
16 are going to see it litigated in the next Southern
17 States case; and once they do it, all the other Class A
18 and B utilities.

19 CHAIRMAN DEASON: Comments?

20 MS. DISMUKES: Their basic argument is the
21 phantom tax argument --

22 MR. HOFFMAN: The only thing I would say, Mr.
23 Chairman, is that I don't know that it will be an issue
24 that will be litigated down the road. And the position
25 Southern States took in the Marco Island case was

1 rejected by the Commission.

2 MS. CAUSSEAU: Commissioners, Staff does not
3 really object to the inclusion of the parent debt
4 reference because at some point in time all those
5 generic rules that apply to all industries will
6 probably be moved into the industry rules.

7 CHAIRMAN DEASON: So this is consistent with
8 what we do for other industries?

9 MS. CAUSSEAU: Yes.

10 CHAIRMAN DEASON: Further comments or
11 questions, Commissioners?

12 Without objection, we'll just have Staff
13 include this in the final recommendation and we'll take
14 a vote on it at that time. (Pause)

15 Public Counsel proposed .433 (14).

16 MS. DISMUKES: Yes. This involves tax loss
17 carryforwards. OPC believes that income tax expense
18 should not be allowed if the utility has sufficient
19 loss carryforwards to offset that expense.

20 COMMISSIONER LAUREDO: Is the loss
21 carryforward, it's really a tax deferral, isn't it?

22 MS. DISMUKES: No, I --

23 COMMISSIONER LAUREDO: It's an offset --

24 MS. DISMUKES: My understanding --

25 COMMISSIONER LAUREDO: I'm asking you. I'm

1 trying to see if there's a generational inequity here
2 between who accrues what and who pays what. Who
3 accrues the benefit of the loss carryforward?

4 MS. DISMUKES: My understanding of what a tax
5 loss carryforward is if you have a tax loss in the
6 prior period and that loss is carried forward and it
7 offsets your taxes in that future period. So you don't
8 have to pay a tax or pay a smaller tax.

9 COMMISSIONER LAUREDO: Okay. But first of
10 all, why did you -- and you also, in your proposal, you
11 want to tie in the parent company. You want to get
12 them on this -- sometimes you want to segregate them,
13 but when it's a question of getting the benefits, you
14 want to include it. I think that is inherently unfair,
15 it seems to me.

16 In a nonutility holding company, it would,
17 you're asking -- I read this that the benefit would
18 flow to the ratepayer. I'm not arguing, I'm asking
19 you. It just strikes me that --

20 MS. DISMUKES: I'm at a little bit of a
21 disadvantage. Our tax expert is not here, so --

22 COMMISSIONER LAUREDO: Oh, I'm far from a tax
23 expert, I'm just --

24 MS. DISMUKES: I'm far from a tax expert.

25 COMMISSIONER LAUREDO: I'm concerned about

1 the words "parent level," because it seems to me you're
2 accruing a benefit that shouldn't be there. You make
3 the argument all the time correctly that the other way
4 shouldn't work.

5 And secondly, a tax loss carryforward is some
6 sort of -- has a value. And I'm wondering who paid for
7 that value and why is this guy over here -- you know,
8 it's kind of a takeoff on the generational inequity
9 thing -- getting the benefit of it when he didn't
10 contribute to this value here. But I can't quite put
11 my hand on the mechanics of it, but I know
12 philosophically that's what's happening.

13 MS. DISMUKES: Well, I think one of the ways
14 that you can look at is, if it wasn't for the fact the
15 utility was generating a profit in this time period,
16 they wouldn't be able to utilize that tax loss that
17 happened in the prior period. That profit is solely
18 the result of the current ratepayers that are paying
19 those rates.

20 COMMISSIONER LAUREDO: Yeah, but you're
21 saying basically they don't have to pay any taxes
22 because something that occurred prior -- if I move into
23 the -- let's just make it simple. If I move into the
24 subdivision on January 1 of '93, something happened
25 prior to that which created a value of a carryforward,

1 that somebody else had to pay for it, quote/unquote,
2 "had to pay for it" to accrue that value. And now, all
3 of a sudden, I'm going to have the benefit of that as a
4 ratepayer in '94. Because if the Company made \$100 and
5 they had to pay 10% of the tax, and they have enough to
6 wipe it out with a loss carryforward, I'm accruing
7 benefits.

8 MS. DISMUKES: That's correct.

9 COMMISSIONER LAUREDO: And I am always
10 hearing from you all, that's not fair. That's
11 generational -- what is the word, generational
12 something, inequity?

13 MS. DISMUKES: Intergenerational inequity.

14 COMMISSIONER LAUREDO: Intergenerational
15 inequity. I knew I would get this lingo. Maybe we
16 ought to just move it and think about it, but those are
17 two issues.

18 CHAIRMAN DEASON: I think there are some
19 comments that wish to be made.

20 MR. CRESSE: Mr. Chairman, Commissioners, as
21 I understand the tax loss carryforward, they exist on
22 the utility's books because in the year that it was
23 recorded the utility lost money. And very simply put,
24 they had to have had insufficient revenue to pay their
25 O&M costs plus their interest.

1 If they had insufficient revenue to pay their
2 O&M costs plus their interest and they lost \$100,000,
3 they would probably book, assuming a 34% tax rate, a
4 \$34,000 tax loss that could be used in future periods,
5 if they make any profits, to offset the taxes that they
6 would have to pay in future years.

7 What the Public Counsel is saying is, "If you
8 lost money in prior years, if you got way below a fair
9 rate of return, even if you didn't earn enough to pay
10 your interest and operation and maintenance expense,
11 when you come into a rate case, we're going to give you
12 the opportunity to earn a fair rate of return," and
13 assuming my illustration that that would be \$100,000 on
14 equity, just for purposes of discussion. What they are
15 saying is, "Now that you're going to earn \$100,000
16 equity, because you lost so much money before this
17 period, we're going to reduce that \$100,000 by the
18 \$34,000 loss carryforward."

19 So the benefit of the loss carryforward,
20 which came out of the owner's pocketbook and reduced
21 his equity investment when they had that loss, you're
22 going to take that loss carryforward that he paid for,
23 that the owner paid for, and you're going to use it for
24 the benefit of the ratepayer. That's what that
25 proposal does.

1 COMMISSIONER LAUREDO: Okay. So the person
2 -- the only thing I was looking for in my attribution
3 of value, as you correctly identify it now, is the
4 shareholder.

5 MR. CRESS: That's correct. That's the
6 person that paid --

7 COMMISSIONER LAUREDO: I knew somebody had to
8 pay for the --

9 MR. CRESSE: That's the person that paid for
10 the loss, you know, for the loss, the tax loss. And
11 the proposal would say we're going to consider that.
12 So you would disregard any income taxes in your rate
13 increase calculation up to the extent that they had a
14 capital loss carryforward to cover that income tax
15 expense.

16 CHAIRMAN DEASON: So it really wouldn't be a
17 case of reducing the 100,000 profit. They would keep
18 that; it's just that there would be no recognition of
19 the --

20 MR. CRESSE: Their loss, instead of being
21 100,000, would be reduced to 66,000, because they would
22 get the benefit without interest in the future if they
23 ever made any money to use up that tax loss.

24 That would help offset some of their loss
25 that they incurred in that prior period. Don't offset

1 it completely because the tax rate is not yet 100%, but
2 it's early yet this year.

3 COMMISSIONER LAUREDO: I just have a feeling
4 that we should have on tax treatment, other than, you
5 know, like before, we talked about Chapter S and that
6 was kind of sneaky trying to say, "Hey, you don't pay
7 on Chapter S or partnership tax."

8 But this is different. I think we should
9 apply some sort of tax expense equalizer, for lack of a
10 better effect. I mean, look at it over a period of
11 time, and it's an equalizing effect.

12 Sometimes you have a loss and it gets carried
13 forward, but you still have an expense that we
14 shouldn't just discard on a year-to-year basis just
15 because somebody else -- in this case, on a loss, it is
16 the shareholder. Well, maybe you can dispute that.

17 But somebody paid for that value, and I don't
18 think another entity should accrue that benefit, I
19 really don't. I don't think that's fair; it doesn't
20 strike me as fair.

21 CHAIRMAN DEASON: Ms. Causseaux?

22 MS. CAUSSEAU: Commissioners, I would remind
23 you that taxable income and book income are not
24 necessarily the same, and you can have book income at
25 the same time that you incur a tax loss.

1 Staff would omit the words "or parent level."

2 COMMISSIONER LAUREDO: "Or parent level," you
3 would take that out?

4 MS. CAUSSEAU: And put a period after
5 "future."

6 COMMISSIONER LAUREDO: Well, I certainly, as
7 a minimum, would today take out "parent level." I
8 think that's --

9 COMMISSIONER CLARK: Is this what we do now?

10 MS. DISMUKES: With the exception of the
11 parent, I think that's right.

12 COMMISSIONER LAUREDO: And take out after
13 "regardless of whether a tax sharing --"?

14 MS. CAUSSEAU: Yes, because that truly would
15 relate primarily to reaching up to the parent level.

16 COMMISSIONER LAUREDO: Let me ask --

17 MS. CAUSSEAU: Staff has basically viewed a
18 loss as a commodity that has a value. That value is
19 the marginal rate times the loss that is applied
20 against some future or prior taxable income, and that's
21 just a recompense for the use of the loss.

22 COMMISSIONER LAUREDO: It is a future income,
23 not retroactive income?

24 MS. CAUSSEAU: Well, federal has a
25 three-year carryback, state does not.

1 COMMISSIONER LAUREDO: Well, how do you
2 address the fairness question that I raised? I mean,
3 I'm only thinking aloud, I'm not -- (Pause)

4 MS. CAUSSEAU: If we had perfect knowledge
5 of a utility over its life, we would know what all of
6 its expenses were, including tax expense, and we would
7 find some equitable method to allocate it among the
8 customers in relation to the service that they receive.
9 We don't.

10 And so, as we get new information with the
11 passage of time that the taxes of this entity have been
12 permanently reduced by this amount of money, we make
13 basically what would amount to almost a true-up, over
14 or underrecovery of tax expense is the way we viewed
15 it.

16 COMMISSIONER LAUREDO: You know, I think
17 there is a phrase in American phraseology, "There is
18 only two things certain in life, one, death and taxes,"
19 or something, a deviation thereof. And that leads me
20 to this tax equalization concept. As it comes to the
21 IRS, you're either going to pay it now or you're going
22 to pay it later. You may defer it, you may carry it
23 forward, but you're going to get taxed, one way or the
24 other.

25 CHAIRMAN DEASON: I don't have any problem

1 including it, not for a final adoption, but to include
2 it for further consideration.

3 I do have a problem with the concept that
4 this basically, this commodity, as you describe it is
5 basically created as a result of losses. Now, I know
6 there is a difference between a tax loss and an actual
7 book loss. In a situation of an actual book loss,
8 obviously, it could be argued that the ratepayer
9 shouldn't have any right to that because, obviously,
10 revenues are less to even cover expenses; So, in
11 effect, the ratepayers have gotten the benefit of that
12 in prior years and shouldn't have any claim to the tax
13 loss carryforward, which is going to be recognized in a
14 current period.

15 But if I understand what you're saying is
16 that there is a difference between book loss and tax
17 loss. And you think there could be a situation where
18 the ratepayer has a right to claim or the right to a
19 benefit of a tax loss in a prior period?

20 MS. CAUSSEAU: There could be some
21 situations where that would certainly be possible.

22 CHAIRMAN DEASON: But it may be unlikely,
23 though, is that --

24 MS. CAUSSEAU: It might be unlikely.

25 COMMISSIONER LAUREDO: Don't misunderstand

1 me, Mr. Chairman, I was only saying move it just for
2 the sake of -- intuitively, I'm against this.

3 MR. CRESSE: Mr. Chairman, I understood this
4 to be income tax expense as booked for regulatory
5 purposes in the way it's written. My comments were
6 addressed to income tax expense as booked for
7 regulatory purposes.

8 And I do know cases where that income tax
9 expense, as booked for regulatory purpose, has reduced
10 the opportunity to earn a fair rate of return in the
11 future because it was carried forward, deducted from an
12 otherwise calculated rate increase. And the same thing
13 that you think, you know, it needs to be pursued and
14 looked at is what I'm talking about.

15 CHAIRMAN DEASON: But you do agree, though,
16 that tax loss carryforwards are something that's
17 determined by the income tax law and IRS regulations,
18 and you could -- and it's not necessarily the same as
19 income tax expense for regulatory purposes?

20 MR. CRESSE: That is absolutely correct.
21 There can be a difference between those two, but you
22 can have a tax loss carryforward for regulatory
23 purposes also. It's treated the same as a tax loss
24 carryforward. It would be for tax purposes. All the
25 difference is, as I understand it, between taxes for

1 tax purposes and taxes for regulatory purposes are run
2 through the deferred tax account.

3 CHAIRMAN DEASON: Commissioners, what I'd
4 suggest is that we really don't give any direction to
5 Staff, but that we ask Ms. Causseaux to address the
6 equity -- I'm not talking about equity in terms of
7 equity investment capital structure, but the equity or
8 the fairness of giving current ratepayers the benefit
9 of a loss carryforward when potentially they did not
10 have any investments, so to speak, in creating that
11 back loss carryforward.

12 I think that -- what I understand
13 Commissioner Lauredo's questions and comments is that
14 he has a concern about whether there is a fairness
15 there. I also have a concern there. And if you will
16 give us the benefit of your feelings on that come
17 October, we'd appreciate that.

18 MS. CAUSSEUX: I'll be glad to.

19 COMMISSIONER LAUREDO: And, as of today,
20 though, we're taking out the parent because that is
21 imminently, to me, unfair.

22 CHAIRMAN DEASON: I have no problem with
23 that. We can go ahead, unless there's an objection by
24 the Commissioners. Hearing none, we can go ahead and
25 make that change.

1 Ms. Dismukes, there is a proposed Paragraph
2 15, but there's not specific language proposed. Do you
3 wish to discuss that at this point? (Pause)

4 MR. SHREVE: Commissioner, the main point we
5 were trying to raise, almost the entire justification
6 for this entire set of rules has been lowering rate
7 case expense. And in my view, while we ain't totally
8 toward the utilities in every issue, I don't want to
9 spend a lot of time on this rate case expense issue.

10 But, although, that was the main
11 justification for these rules, nowhere in here has
12 there been any discussion of doing anything to control
13 rate case expense; I mean, direct discussion of rate
14 case expense.

15 At one point there was some legislation that
16 would limit the recovery of rate case expense to that
17 percentage that was recovered by the company in a rate
18 case that has since gone by the boards for several
19 different reasons. None of which I was involved in.

20 I guess the main point we wanted to make here
21 was, and I don't know exactly what the answer is to it,
22 but I think this Commission should take a look at rate
23 case expense, not just by eliminating the issues and
24 giving the issues to the utilities and saying, "Look,
25 we're going to do this. That eliminated the issue, so

1 it eliminates the rate case expense."

2 But I think rate case expense has gotten
3 totally out of hand. It's used like a hammer over our
4 head in trying to handle cases time and time again. I
5 just think -- the main thing, I think, this Commission
6 needs to focus on it. It is probably the one thing
7 that the public, the customers hate worse than anything
8 else in the way it's handled. And I just think the
9 Commission needs to do something about it. And I don't
10 know if this is the place to do it, and I don't know if
11 we have the answers to it either.

12 COMMISSIONER LAUREDO: I tell you, I agree
13 with you 100%. I just wished you had a specific
14 proposal because I agree with you. It is the most --
15 some of it is the most offensive; some of it, on the
16 other hand, is very prudent and very well thought out,
17 and you can see where management has been very
18 cautious. And some is just like "it's not my money"
19 attitude. And it gets, you know -- and, of course, we
20 cut it down as much as we can.

21 I fought against rate expenses in some cases
22 where it didn't make that much difference in the end,
23 but I just thought it as a matter of principle, it's
24 just ridiculous to have, you know, things 100% over
25 original estimate.

1 MR. SHREVE: Absolutely.

2 COMMISSIONER LAUREDO: But how does it relate
3 to this other than philosophically or are you going to
4 propose later on a rule?

5 MR. SHREVE: Well, I don't know that this is
6 the place or time to try and determine what we can do.
7 I think everybody in this room knows there is a very
8 real problem. And I guess the point I'm trying to make
9 is the entire answer is not eliminating issues at the
10 expense of the customers.

11 I think we need to focus in on rate case
12 expense. I think it needs to be held to prudent rate
13 case expense. And there are situations -- there are
14 situations where the company has held it down and gone
15 to extremes to try to hold it down. And that's good.
16 There are also situations where we have been threatened
17 time and again that if we take action or oppose rate
18 case increases, rate case expense is going to be used
19 to overcome that. And that is the wrong use.

20 I think the company has -- there are just
21 examples, clearly, that would not be spent by a prudent
22 businessman in a rate case in a way if they truly were
23 responsible for the rate case expense themselves. I
24 think if the company views it that they can spend
25 anything they want to as long as it's coming from the

1 customers, and they do it and they're wrong. If it was
2 a prudently incurred rate case expense, that is a
3 different story.

4 That's the reason I was the one that first
5 bought up trying to share it in some way so that no
6 matter how much was spent, the company had to share a
7 part of the responsibility.

8 That was changed by an amendment in a
9 legislative session. It really came by without anyone
10 knowing it was coming, but that was taken out. Maybe
11 we can go back and maybe get the legislature to take a
12 look at rate case expense. But I think it's coming,
13 and I think it's incumbent on this Commission to focus
14 their efforts in trying to really look into and have
15 the companies justify their rate case expense and not
16 allow them to use it as a weapon.

17 CHAIRMAN DEASON: Maybe we should adopt an
18 insurance concept and have a 10% copayment or something
19 like that as an incentive to not have unnecessary
20 claims filed. And perhaps we need to think about
21 having the utility be responsible for proving the
22 prudence of their rate case expenses, but in no way are
23 they going to cover more than 90%. They know they're
24 going to be -- they're going to have 10% of it coming
25 from their pockets, from their stockholders.

1 Now, I know there's an argument that, "Well,
2 that's confiscation. You're determining expense to be
3 prudent, and you're not letting the utility recover
4 it." But I do agree with you there is a problem that
5 -- or a potential problem that some utility managers
6 don't consider expending rate case expense dollars as
7 expending their own dollars because they feel like
8 they're really not at risk for those because it's just
9 going to be recovered in the rate case.

10 That may be a radical proposal and I'm not
11 saying that's what we should do.

12 MR. SHREVE: I agree with you. I think they
13 should have some type of a reason to hold it down
14 themselves.

15 COMMISSIONER LAUREDO: Mr. Shreve, you know,
16 in the real-world scenario, you have a big part to
17 play. I've been pushing, moving the whole ambiance on
18 which this whole Commission operates from this
19 conflicting, challenging each other to more
20 reconciliation and stipulation.

21 I think if both sides become a little bit
22 more reasonable, we'll eliminate a lot of the expense.
23 I mean, I think what you're saying is true, but I think
24 what we need -- in life I find 90% of any solution is
25 attitude. And it strikes someone who comes new to this

1 Commission that the attitude in this industry is you
2 say hee and I say haw, and that's the end of it. I
3 mean, you know, if you say blue, I said red.

4 I mean, you know, we have to -- and we forget
5 the ratepayer to a great degree, even as we defend them
6 because the system itself is steered toward them in the
7 end shouldering those expenses.

8 So, I agree with you that we should do
9 something mechanically, but I think we also should
10 change the way we think about how we interrelate, the
11 three parties; the company, the Public Counsel and the
12 Commission.

13 MR. SHREVE: Commissioner, I understand where
14 you're coming from and I agree with you. I think
15 probably some of the best results that we have had for
16 the company, the customer and everybody concerned is
17 where we have been able to settle cases. I think
18 that's the case.

19 I think you may see it as a little bit more
20 antagonistic than it is because you do see the company
21 comes in as an advocate and the customers coming in or
22 the Citizens coming in as an advocate, and I think it
23 has to be that way. And the only way you're able to
24 settle cases is you know you can take your best
25 position and your best hold -- yet, in the long run, if

1 you need to, go to a fair Commission and get a
2 decision.

3 And I frankly think we're moving more and
4 more in that direction, so that I think we'll be able
5 to settle more cases; but I do agree with you and I
6 think some of the best results we've had were out of
7 settlements.

8 CHAIRMAN DEASON: Anything further to come
9 before the Commission?

10 MS. MOORE: The matter of posthearing
11 filings, the parties have seven days from the
12 conclusion of the hearing to file by our rule. I
13 understand that the transcript can be prepared by the
14 the 23rd, August 23rd?

15 REPORTER SILVA: Yes, ma'am.

16 MS. MOORE: And perhaps the posthearing
17 filings August 30th? That would be two weeks from
18 tomorrow? No, two weeks from the coming Monday.

19 CHAIRMAN DEASON: Any objection to having
20 posthearing filings made by August 30th?

21 MS. MOORE: August 30th.

22 CHAIRMAN DEASON: I see some very unusual
23 expressions on the faces of some of the people in front
24 of me. Don't be bashful, speak up.

25 MR. MANN: Mr. Chairman, we had a couple more

1 proposals under .433 that we did not get into our
2 written comments and we would like to take a couple of
3 minutes to present those proposals to you, if we may.

4 CHAIRMAN DEASON: I'm sorry. These are
5 unwritten proposals, is that correct?

6 MR. MANN: Correct.

7 CHAIRMAN DEASON: How many of those do we
8 have, Mr. Mann?

9 MR. MANN: Two of them.

10 CHAIRMAN DEASON: What time frame do you
11 anticipate? It may be necessary to take a break, we've
12 been going for quite a while.

13 MR. MANN: Five minutes probably for both of
14 them.

15 CHAIRMAN DEASON: Go ahead.

16 MS. DISMUKES: We just wanted to put out for
17 consideration two more proposed rules. They codify
18 past Commission policy. One is regarding charitable
19 contributions and donations. It's pretty standard
20 practice that those are not allowed recovery for
21 ratemaking purposes and we believe that the Commission
22 should establish a rule so that it doesn't get argued
23 in cases. It is very seldom argued anyway.

24 And the other one is dealing with Chamber of
25 Commerce dues. Basically it's, again, past Commission

1 policy has been to not allow Chamber of Commerce dues
2 for recovery from ratepayers, and we just would like to
3 see a rule implemented so that we don't have to
4 litigate that issue in every case. Chamber of Commerce
5 dues, even though it has typically been disallowed,
6 does sometimes crop up as an issue that's litigated.
7 Those are the only two other proposals that we have.

8 CHAIRMAN DEASON: Comments?

9 MR. CRESSE: Commissioner, I won't comment on
10 the question of charitable contributions at all.
11 That's a philosophical sort of thing, things that you
12 all have to arrive at your own philosophy. It's been
13 debated and the Commission has been on both sides of
14 that issue in the last 15 years. But if there's no
15 debate and the debate is over, then I think you ought
16 to go ahead and put the charitable contributions -- I
17 can't object to that because that is your policy.

18 If it is your policy, if you have ever
19 debated it and talked about it and decided that's what
20 you want to do, that's what you want to continue, then
21 fine, put it in the rule.

22 I would suggest, however, though, that you be
23 a little bit careful about the Chamber of Commerce and
24 the economic development activities of the utility.
25 You have some requests pending, I think, for you all to

1 look at that, and so forth.

2 A lot of the economic development activities
3 are participated in through the Chamber of Commerce;
4 and not just water and sewer, but other utilities
5 participate in economic development activities. If you
6 have concluded that you're going to disallow those type
7 expenses, then you ought to adopt that as Kim is
8 talking about. But I thought that docket is still
9 open, and I don't think you should pick on water and
10 sewer companies only.

11 COMMISSIONER LAUREDO: You took some words
12 out of my mouth. I'm very, very strongly against the
13 last one because I'm very strongly for economic
14 development expenses to be a part of rate base, or some
15 percentage thereof. And we are in the middle of
16 looking at it generically.

17 I think we ought to wait until the Commission
18 decides on that. Whatever the decision is, it would
19 apply across-the-board to all utilities and I don't
20 think you should segregate it now before we finish
21 that.

22 COMMISSIONER CLARK: Mr. Chairman?

23 COMMISSIONER LAUREDO: Have we got a formal
24 docket on that? Are we moving towards a position?

25 COMMISSIONER CLARK: Yes, on economic

1 development. I don't know if it's rulemaking but it is
2 a docket.

3 COMMISSIONER LAUREDO: It's just that I know
4 you specifically talk about Chamber of Commerce but I
5 think they are almost impossible sometimes to dissect.
6 I mean, the economic development activities sometimes
7 are channelled through Chambers of Commerce. In the
8 state of Florida, for example, I don't know what you
9 would call the Enterprise Florida, I guess that's the
10 new, we are doing some very new innovative stuff in the
11 state of Florida where the private sector with the
12 public sector is taking the leader in economic
13 development. And some people think in the next three
14 years all of the economic development will shift from
15 the Department of Commerce into this, is it called
16 Enterprise Florida? I think it is.

17 So, I mean, we've got to be careful because
18 there's a parallel activity going on.

19 COMMISSIONER CLARK: Mr. Chairman, I would
20 suggest that we direct the Staff to include that item
21 on charitable deductions but leave the Chamber of
22 Commerce until after we make a decision in the economic
23 development docket.

24 CHAIRMAN DEASON: Without objection, Staff is
25 directed to include language concerning the

1 Commission's policy on the treatment of charitable
2 contributions.

3 MR. HOFFMAN: Mr. Chairman, is this something
4 that Staff is going to draft or has Public Counsel
5 already drafted it? Because, if so, we haven't
6 received anything. I'm just wondering where we're at.

7 CHAIRMAN DEASON: I don't think that Public
8 Counsel is going to draft that. We're going to direct
9 Staff to draft that. I think it is pretty much a
10 philosophical question and I think the exact
11 terminology in the rule should be pretty
12 straightforward and hopefully it would not cause a
13 great need to respond to that.

14 COMMISSIONER LAUREDO: We will, however, as
15 Commissioners, we'll have --

16 CHAIRMAN DEASON: Oh, it will come before the
17 Commission and it will be voted up or down.

18 COMMISSIONER LAUREDO: Because I'll have a
19 lot of thoughts and questions on that issue.

20 MR. HOFFMAN: You may be right, Mr. Chairman,
21 in terms of how controversial or noncontroversial it
22 may turn out to be. But I think in terms of our due
23 process rights, if possible, we would like to have a
24 look at the language of that proposal.

25 CHAIRMAN DEASON: Why don't you propose some

1 language in your posthearing filings that you can live
2 with and maybe Public Counsel will do the same. That
3 may be helpful to Staff in formulating the language.
4 It may be the same language that you both propose.

5 MR. WILLIS: That's a great suggestion.

6 MR. SCHIEFELBEIN: I have a question, if I
7 may.

8 Staff, we've got a lot of new issues that
9 have been raised during the course of this proceeding,
10 the last couple of hearings; you've got some potential
11 180-degree turns that are under consideration from what
12 was published and proposed. Maybe you all can't answer
13 this, but what is the procedure as far as evaluating
14 the economic impact of -- beg your pardon?

15 COMMISSIONER CLARK: I don't think you have
16 to -- I mean, we could ask Staff. It might be
17 appropriate to ask them if they recognize the change
18 that they are recommending that it does have an
19 economic impact, to do a rough estimate of how that
20 impacts the original --

21 MR. SCHIEFELBEIN: I'm not referring to the
22 charitable stuff or anything like that in particular, I
23 just mean the whole gamut of things --

24 COMMISSIONER CLARK: I'm a little confused.
25 What do you mean by, which --

1 COMMISSIONER LAUREDO: Economic impact
2 statement, sort of?

3 COMMISSIONER CLARK: Yeah. But which rules
4 do you mean specifically?

5 MR. SCHIEFELBEIN: I'm just too darned
6 exhausted to remember. I know there are lots of things
7 that are causing, based on comments made at the various
8 hearings, there are issues that are causing some
9 anxiety in the industry which I'm somewhat responsible
10 for advising. And they say, "Well, gee, have they
11 considered the economic impact for that?"

12 And I said, "Well, they did an EIS for what
13 they proposed initially." And I'm really not a
14 specifically a rulemaking attorney -- I guess I am
15 right now.

16 COMMISSIONER CLARK: You don't have to do
17 another EIS.

18 MR. SCHIEFELBEIN: Although it's something
19 that has just come about during the course of the
20 hearing?

21 COMMISSIONER LAUREDO: I think a more
22 constructive economic impact activity, and particularly
23 since we have looser rules as to meeting since this is
24 rulemaking, is for the parties to try to between now
25 and October work diligently, reasonably and intensely

1 to try to narrow their differences. I mean, that would
2 be one heck of a way of saving --

3 COMMISSIONER CLARK: I do think it would be
4 appropriate in your comments to point out if you think
5 there is a significant impact as a result of a change.
6 Because, after all, we would come to the utilities to
7 ask them what is the economic impact, and the Public
8 Counsel to ask them what it is.

9 MR. SHREVE: Commissioner, I think this is
10 something good to talk about because I don't think
11 there was ever an economic impact or any discussion of
12 the effect of these rule changes on the rates in the
13 first place. I didn't see anything as to how it
14 affects the customers when these changes -- the only
15 thing that was discussed was we're going to remove the
16 issue from the rate case. Whether there would be an
17 impact on the company or on the customers from the
18 actual rule changes.

19 I think that's where we should start. And
20 then, as Mr. Schiefelbein says, if we started with a
21 set of proposed rules, what was the economic impact of
22 the alternatives there, and then where are the changes
23 that have been discussed at this point is where I think
24 he's going, because all these other things have been
25 mentioned.

1 And I don't think there was ever anything
2 there in the first place. Because we have had a lot of
3 customers that we have requested the rule sent to and you
4 look at it and there is nothing there that will tell you
5 what the alternatives were and what the impact was.

6 MR. SCHIEFELBEIN: I don't really mean it as
7 a partisan comment, it was really a request to better
8 understand the process.

9 COMMISSIONER LAUREDO: As an underlying logic
10 to this whole thing, he has been bringing it up every
11 15 minutes and he's correct. I mean, why are we doing
12 this -- you know, the "Why?" question, why are we doing
13 all of this? And the answer they give you is because
14 we want to simplify the process because that would save
15 the ratepayers money. I've heard his point already
16 that he's not very convinced that we're getting to that
17 objective, namely, saving the ratepayers money.

18 COMMISSIONER CLARK: Didn't we do an EIS?

19 MS. MOORE: EIS was done and the data request
20 was sent to all the companies and the Public Counsel
21 and it was based on their responses to the data
22 requests --

23 (Simultaneous conversation)

24 MR. SCHIEFELBEIN: It's based on what you
25 proposed to do six months ago.

1 MR. TODD: What you proposed, yeah --

2 MR. SCHIEFELBEIN: It's not based on anything
3 -- if we assume for a moment that the EIS that was done
4 was just done as you normally do them, that would take
5 care of perhaps the economic impact of what you
6 proposed back in February. But there's going to be
7 some perhaps major divergences from that.

8 COMMISSIONER CLARK: I would hope you would
9 bring those out in your comments, that we need to
10 consider this because the data we provided you to
11 indicate the economic impact was X, it has now changed.
12 Because, after all, if we do another one, we're going
13 to come back to you and ask the same questions, and
14 Public Counsel --

15 MR. SCHIEFELBEIN: Sure. You know what's
16 funny, if I might engage in a little reflection?

17 We have been involved in this -- the Florida
18 Waterworks Association -- for two-and-a-half years. We
19 have spent every dime that we have as an association in
20 participating in this. From Day One, we have appeared
21 at every workshop. We've submitted reams of material
22 that no one really seems to have or be aware of because
23 it was really submitted in the early part when I guess
24 everyone was supposed to hide in the bushes. We have
25 made a sincere effort from the beginning as a

1 collective group to let our opinions be known and take
2 our best hold.

3 And now, and I'm sure this affects the other
4 parties, the whole process seems to sort of collapse on
5 itself and suddenly -- and you can tell Commissioner
6 Clark is much more experienced in rulemaking than I am.
7 But suddenly we have got a very short period of time,
8 all of us, to put it all together, to submit a
9 posthearing filing. Staff will have all of about three
10 weeks to synthesize it all down to recommendations.
11 You all have ten days to sort through that and start
12 making votes on things that very much affect the future
13 of this industry. And maybe we should have taken less
14 time on the front end and maybe more time on the back
15 end.

16 COMMISSIONER LAUREDO: Well, why didn't you?

17 MR. SCHIEFELBEIN: Well, we're not the ones
18 that are suggesting that everything collapse now in the
19 next 45 days. We've been participating from --

20 COMMISSIONER LAUREDO: I don't understand. I
21 was following you and sympathizing with you --

22 MR. SCHIEFELBEIN: I'm a little tired.

23 COMMISSIONER LAUREDO: I can stand up almost
24 and make an argument that this whole thing has been at
25 least 50% a waste of time and money, but I --

1 MR. SCHIEFELBEIN: We agree with you.

2 COMMISSIONER LAUREDO: So, I mean, your being
3 a participant in it, do you mean you've been forced in,
4 you have spent all the money from your association just
5 doing this the last two-and-a-half years? That's a
6 pretty sad statement.

7 MR. SCHIEFELBEIN: Well, we were also
8 involved in lobbying and so forth. But we have
9 expended an awful lot of money on this in what has been
10 intended to be a constructive effort.

11 It basically just seems to be who can make
12 the last rule proposal, the latest rule proposal, who
13 can get in the last response to the last piece of paper
14 that is almost -- I mean, there's an awful lot to
15 consider here. And I don't know what the -- I'm not as
16 familiar, I'm sure, as Ms. Moore is in what the
17 timetables are, but I am wondering if the parties can
18 consider stipulating the loosening up what might be the
19 time tables for having the whole thing collapsed down
20 so there might be some give-and-take --

21 COMMISSIONER LAUREDO: What are you talking
22 about, "collapsing down"? I don't understand that
23 word. What does "collapsing down" mean?

24 MR. SCHIEFELBEIN: It's August.

25 COMMISSIONER LAUREDO: In terms of time frame

1 and work load, is that what you're --

2 MR. SCHIEFELBEIN: For all of us, including
3 you all. You are going to have, I guess, 12 days to
4 review Staff's recommendation. Staff is going to have
5 about two-and-a-half weeks to review the record in this
6 case, which is enormous. We're going to have a week
7 after we get the transcript to prepare the
8 transmittals.

9 I apologize, Commissioner Lauredo. I'm not
10 trying to be partisan here, I'm just saying we've come
11 a long way and maybe there's some sensible way for to
12 give us all more time to reflect on all this.

13 COMMISSIONER CLARK: Well, I have a different
14 perspective. It seems to me we're working through this
15 process and we keep whittling down what it is we have
16 controversy over and we eliminate things, that's what
17 we've done.

18 Yes, there are some rules that we have to
19 make a decision, are we going to go this way or that
20 way? And they're diametrically opposed and that's the
21 way rulemaking is. And I don't sense that there is
22 that much that we have done that is like 180 degrees.
23 It certainly was on the table from the beginning and
24 was -- they were issues we have considered all along in
25 water and wastewater cases. It's not like the rules

1 are new.

2 CHAIRMAN DEASON: Let me make this
3 observation as one strictly of practicality. Right now
4 we have two days set aside in October to vote on these
5 rules. And appears it's probably going to take two
6 days.

7 The next available time that we can have two
8 days to vote on the rules probably is going to be
9 sometime, who knows when, but probably sometime in
10 1994. And that would really be expanding the time for
11 comments and recommendations and for Commission
12 consideration. It seems to me that we've got
13 approximately two months until the decision date. When
14 is the decision dates?

15 MS. MOORE: October 6th and 7th.

16 CHAIRMAN DEASON: A little less then two
17 months.

18 When would be the latest that post-hearing
19 filings could be filed and Staff still make the time
20 requirements? Is that the 30th?

21 MS. MOORE: The 30th is what date we said. I
22 would assume in the recommendation we're supposed to
23 discuss what the comments are, and they're part of
24 record and we have to discuss the whole record and make
25 a recommendation. It will be difficult to do it in the

1 three weeks on 40 rules.

2 CHAIRMAN DEASON: Well, I'm not stating a
3 preference one way or the other. It's fine with me to
4 do it in October. If we don't do it in October, what
5 I'm trying to warn everyone is that we may be looking
6 at substantial periods of time before we ever decide on
7 these rules. And then you get to the problem of having
8 too much time and not being able to remember what you
9 discussed six months before. That sometimes is a
10 problem as well.

11 COMMISSIONER LAUREDO: I think certainly
12 that's a bigger problem for me than any of the other
13 stuff, such fragmentation of information. And this
14 whole thing, if I was a dictator, I would have never
15 allowed this to happen.

16 To undertake this massive underwriting in the
17 content of our other work loads, a whole set of rules,
18 to me, I'm sorry, Staff, but it just really was not
19 good management of the Commission's time. But that's
20 been done --

21 COMMISSIONER CLARK: I disagree with that
22 enormously because I have watched the Commission
23 struggle through rate cases, and there are policies
24 that continue to develop and we needed to go through
25 this process to be in compliance with the law and to

1 get it on the books so people know. And I think it has
2 been a very worthwhile exercise.

3 MR. SHREVE: If I may, Mr. Chairman. I do
4 think this has been very cumbersome. I think the same
5 thing could have been accomplished by doing it as a
6 rule or a group of rules at a time rather than having
7 the entire amount that we have there. And I would like
8 to know where the Staff has the information -- perhaps
9 you have it, I certainly don't -- where it shows the
10 economic impact or the effect on the customers in any
11 of your fiscal impact or economic impact statements.

12 If it's okay, I'll contact the four of you
13 tomorrow and let you furnish that to me, if the Staff
14 has it. I have not seen it. I have not seen anything
15 that told what the rules do other than a blanket
16 statement that's going to say "rate case expense." I
17 would like very much to see that.

18 COMMISSIONER LAUREDO: Let me ask. If I
19 understand Florida Waterworks Association's requests
20 for more time, if that's translated into the Chairman's
21 very practical necessity that he has to deal with our
22 schedule and he just told you that it's going to be
23 next year, how do you feel about that? Maybe that's a
24 good idea and that way you have a new Commission look
25 at it.

1 Well, see, you've got great choices.

2 MR. SCHIEFELBEIN: I'm not jockeying for
3 delay; I'm not jockeying for partisan advantage.

4 COMMISSIONER LAUREDO: I don't know what
5 partisan advantage is.

6 MR. SCHIEFELBEIN: I was throwing out an idea
7 that, gee, we seem to have an awful lot, all of us, to
8 do in the next six weeks, seven weeks and that includes
9 your vote. And I was just thinking aloud how realistic
10 is that and is there some way -- and if there are
11 restrictions on your calendar, that we --

12 COMMISSIONER LAUREDO: Counselor, is the
13 choice that the Chairman gave you -- my question is
14 very direct. Is the choice that the Chairman has given
15 you on the practical life reality that he has to deal
16 with on the calendar acceptable to you? Yes or no.
17 Which is some time in 1994.

18 MR. SCHIEFELBEIN: My client says "No."

19 CHAIRMAN DEASON: Now, we can get back to the
20 question of post-hearing filings. Is the 30th the
21 latest and we still meet all of the requirements as far
22 as Staff having adequate time and filing a
23 recommendation?

24 MR. WILLIS: Absolutely.

25 CHAIRMAN DEASON: Well, I guess if that's the

1 case, the 30th would be the date that post-hearing
2 filings are due.

3 COMMISSIONER CLARK: If it's October, yours
4 are due ten days before and that it doesn't leave but
5 three weeks, right?

6 MR. WILLIS: That's correct. But Staff has
7 to go further than any other party. We aren't the only
8 party in this proceeding, but any other person here,
9 they basically address their own beliefs and desires in
10 this rule docket. We have to take everybody else's and
11 put them all together in one package and address
12 everybody's comment.

13 COMMISSIONER LAUREDO: And we knocked off --

14 MS. MOORE: And draft loop rule language.

15 COMMISSIONER LAUREDO: On the positive side,
16 we need to remind ourselves that we knocked off three
17 days; that's three days of more transcripts you would
18 have had to read. We knocked off, what, at least one
19 day. And if the spirit of working together prevails
20 from now until October, we may even narrow the issues
21 down to where they'll be less and less work. That's
22 why I said earlier that's probably the best investment
23 in time and effort on a cost-effective basis.

24 MS. MOORE: Well, this does leave two weeks
25 to do post-hearing filings and three weeks for Staff to

1 digest it all and bring it all together.

2 CHAIRMAN DEASON: Anything further?

3 MR. SCHIEFELBEIN: Only the obligation to,
4 the opportunity to do a post-hearing filing is
5 voluntary, correct?

6 CHAIRMAN DEASON: That's my understanding for
7 rule proceedings; is that correct?

8 MS. MOORE: That's correct.

9 MR. SHREVE: May we have a second?

10 CHAIRMAN DEASON: Surely.

11 (Discussion off the record.)

12 MR. HOFFMAN: Mr. Chairman, we've got a
13 unique proposal.

14 We are going to ask you to approve a proposal
15 in light of the time restraints under which the Staff
16 would put together its recommendation first and allow
17 the parties two weeks to file response comments to the
18 Staff recommendation.

19 MR. TODD: You can tell who wasn't sitting
20 back here at the meeting. (Laughter)

21 MR. SHREVE: We won't be making our comments
22 in a vacuum.

23 MR. HOFFMAN: We understand that this would
24 be a different Staff recommendation than your normal
25 Staff recommendation and that the Staff wouldn't have

1 the opportunity to summarize all of our positions. But
2 I think by reviewing the transcript, they will know
3 what our positions are. And they can put forth their
4 recommendations and then we would have the opportunity
5 to file our positions in response to the Staff
6 recommendation.

7 COMMISSIONER CLARK: Let me ask a question.
8 Would it be all right, then, if what they delivered to
9 the Commission was the rule as they recommend it, the
10 reasons for recommending it and then your comments, and
11 that's all they do? Will that save you time? I mean,
12 you won't have to analyze their comments.

13 MR. WILLIS: It will certainly save our time,
14 as far as that goes, as long as we don't have to
15 analyze the positions.

16 COMMISSIONER CLARK: Put forth your rule and
17 the reasons -- in the middle column the reasons, and
18 you just take their comments and add them to the last
19 column.

20 COMMISSIONER LAUREDO: And file them out.
21 But then they would want another shot at --

22 COMMISSIONER CLARK: No. They don't get any
23 more.

24 MR. WILLIS: I understand that doesn't
25 require an analysis by us, it just basically lists out

1 what we believe their position to be, correct?

2 CHAIRMAN DEASON: No. You don't even have
3 the obligation to list out what you think their
4 position is. You would take all the evidence that's
5 been presented heretofore; you would take that and you
6 would analyze it and you would come with your
7 recommendation with the final rule. And you would file
8 that. Then as I understand the proposal of the
9 parties, they would have two weeks to file comments on
10 your proposal.

11 MR. CRESSE: To whom?

12 CHAIRMAN DEASON: They would file the
13 comments to the Commission. And what it's doing is put
14 an extra workload on the Commission, because we're not
15 going to have your advice or your recommendations on
16 the comments. What the Commissioners would be faced
17 with would be Staff's recommendation, comments from
18 parties, pro or con, against or for what you're
19 recommending. And then we're going to have to
20 synthesize all of that --

21 MR. WILLIS: That's correct.

22 CHAIRMAN DEASON: -- analyze all of that, and
23 come with what we think is a fair rule for final
24 adoption.

25 MR. WILLIS: That's fine.

1 MS. MOORE: And you're suggesting that in
2 that analysis in our -- what Staff presents, not that
3 we summarize or report on all of -- present a summary
4 of all the record that has come before. Just we
5 analyze it and tell you what we think should be done.

6 COMMISSIONER LAUREDO: You have got the
7 easiest job --

8 MR. WILLIS: Certainly simplifies our job.

9 COMMISSIONER LAUREDO: Because 90% of what
10 you've already done is already done.

11 MR. WILLIS: I don't think I've ever written
12 a recommendation that simple before. That's what
13 troubles me. (Laughter)

14 COMMISSIONER LAUREDO: But the rule, there
15 are not that many pages of the rules that you gave to
16 us several months ago.

17 MS. MOORE: What would be contemplated at
18 agenda conference?

19 CHAIRMAN DEASON: As I understanding what
20 they're recommending is that when we go to agenda
21 conference, we're basically going to have Staff's
22 recommendation, any comments addressing that
23 recommendation. And then we will have to vote based
24 upon your recommendation, but we'll have the benefit of
25 the comments on that recommendation.

1 MR. CRESSE: Mr. Chairman, I would suggest,
2 and I think it's perfectly legal, that at agenda
3 session the Commissioners would be able to ask anybody
4 a question that they chose to ask, Staff or anybody
5 else who was present.

6 CHAIRMAN DEASON: Because this is rulemaking?

7 MR. CRESSE: Yes. If you had a question, you
8 could ask the Staff about it.

9 COMMISSIONER CLARK: Mr. Chairman, I envision
10 -- all of these rules are new, aren't they? There is
11 no -- you haven't taken an existing rule and done
12 typing and striking, have you?

13 MS. MOORE: Yes.

14 COMMISSIONER CLARK: You have? Okay. Never
15 mind.

16 MR. SHREVE: Commissioner, unless I'm wrong,
17 in our proposal, though, we have viewed that the Staff
18 recommendation would still be the same type
19 recommendation that they would have come out with only
20 without having our comments, and then we'd make our
21 comments after that. They would still have to put
22 their recommendation out with the analysis of the
23 record and everything. I don't think you can do
24 without that.

25 So I really don't see much of a change in the

1 Staff's recommendation except that they have the
2 benefit of time going before we put our comments out so
3 they wouldn't have to review our comments.

4 MS. MOORE: I think that would not be
5 adequate time for us to do it.

6 MR. SHREVE: We feel the same way about us.

7 COMMISSIONER LAUREDO: Well, don't you have
8 less work because you have another set of comments you
9 don't have?

10 MR. SHREVE: Right.

11 MR. WILLIS: Not actually. From what Mr.
12 Shreve has said and from what I've heard from the
13 Bench, it's totally two different things. I was told
14 from the Bench that we'd be putting together our
15 proposed rule and the reason behind our proposed rule
16 but wouldn't have to go into everybody else's scenario
17 why they're right and wrong and going on.

18 What I'm hearing from Mr. Shreve is he wants
19 us to analyze the entire record and put that analysis
20 in there that you all told us we didn't have to do.
21 That means a lot more work.

22 CHAIRMAN DEASON: Okay. We need to get that
23 clarified. What I understand is that you would still
24 -- you would do the same thing that you normally do in
25 a rule except you would not have the benefit of the

1 post-hearing filings. But that you would still be
2 under an obligation to review everything that has been
3 filed up until now; everything that has been discussed
4 during today and the previous days that we had in May,
5 take all of that, and with the direction that the Staff
6 has given you on some of the rules and to come up with
7 your best professional judgment and recommendation as
8 to what the final product should be. Once that's
9 issued then they want an opportunity to comment on
10 that. And they want the last word is what I'm saying.

11 MS. SUMMERLIN: Commissioners --

12 COMMISSIONER LAUREDO: And you don't have to
13 finalize their response.

14 MS. SUMMERLIN: What you're talking about
15 here is not really post-hearing filings. It's filings
16 on a recommendation is what it sounds like to me, which
17 is a different kind of matter.

18 MS. MOORE: And in rulemaking we're not
19 talking about post-hearing filings where they write a
20 brief, as in a 120.57 proceeding. That seven-day
21 period is for any written statements, late-filed or,
22 you know, late comments, or something that came up
23 during this hearing that they were unable to comment
24 on; they have extra time to do it. It's not supposed
25 to be a brief. I don't think that's what's anticipated

1 at all.

2 MR. SHREVE: I think what we see is saving
3 the Staff the time and efforts of reviewing comments
4 that would be filed by us while at the same time, at
5 the end, we know what we're shooting at rather than
6 taking our shots at something that we don't know how it
7 is anyway. And that way it will identify the areas
8 that we have conflicts in and the Commissioners will
9 know where those are.

10 It would actually save you time. It's got to
11 save you time because you don't have to go ahead and
12 get started and you don't have to worry about our
13 comments, and you don't have to include those in it.
14 You just do the same thing. Then we know what the
15 recommendations are and we'll be able to identify the
16 reasons that we think they are inappropriate

17 MS. MOORE: Well, I think you knew what the
18 recommendations are, you know, when they recommended a
19 proposal.

20 I think you're changing the role of Staff.
21 Maybe that's, you know, discussions for another day and
22 whether Staff should make recommendations. The record --

23 MR. CRESSE: I thought that some of the
24 recommendations were given back to the Staff by the
25 Commissioners and said, you know, "Look at that and

1 come back to us." And we don't know what you're going
2 to come back with because they didn't adopt many cases;
3 they didn't adopt and say, "Yes, we'll go with that,"
4 and so forth. They kind of gave it back to you and
5 said, "Here, look at that again and bring us a
6 recommendation."

7 We don't know what comment to make on the
8 closing brief because we don't know what the
9 recommendations are going to contain.

10 COMMISSIONER LAUREDO: Well, I happen to
11 think that the way you should do if it's proper, I
12 think -- I accept at face value that you are, in fact,
13 when you're making the recommendation on the rule, you
14 have considered all of the record.

15 I do not want to see you go through all the
16 time of writing out as you normally do, all that essay
17 about analyzing all of that stuff. I think I know that
18 you've done that when you give me the rule, period. So
19 that should save you at least 50% of the writing.

20 I mean, just write the rule that you're
21 recommending; attach in sequence their rule language if
22 there are any changes by parties, and that's it. And
23 then they'll come back; and then two weeks later you're
24 going to come back and add just one more sheet of paper
25 in sequence again, which is their new positions, if

1 different from the one the two weeks before.

2 MS. MOORE: I don't think that's what Mr.
3 Shreve was suggesting --

4 COMMISSIONER LAUREDO: Well, he wants to.
5 But I'm telling you as a Commissioner that I know that
6 when you propose the rule, you have done what he wants
7 you to do.

8 You have looked at the record; you have
9 analyzed our input. I just don't want you to go
10 through all that verbiage of writing it all down and
11 four pages of why you -- just give us the end result of
12 your reasoning. And I trust that you have done the
13 record, and I hope that they give you that benefit of
14 the doubt, too.

15 COMMISSIONER CLARK: Mr. Chairman, I
16 basically agree with Commissioner Lauredo, and what I
17 envision is you put the rule in this column and you
18 have, with your highlighting, that to indicate where
19 the changes are from the rule as originally proposed.

20 In the middle column you tell why you made
21 the changes. And then when you get to the comments,
22 that's what you'll send out to the parties. And then
23 all they need to do is in that third column put their
24 comments. And then we all have it on a spreadsheet
25 that way.

1 MR. CRESSE: We may have 97 agrees on there,
2 and only 3 disagrees.

3 COMMISSIONER CLARK: That's right. I would
4 expect that would, you know, for each rule, each rule
5 would have to start on another paper, probably, because
6 they would --

7 MR. WILLIS: That's what I understood you to
8 say earlier, but I understood Commissioner Deason to
9 say that he desired the entire record to be analyzed.
10 And that's where we were back to square one.

11 MS. MOORE: Analyzed and discussed.

12 MR. WILLIS: Yes, analyzed and discussed.

13 COMMISSIONER CLARK: I, personally, am just
14 looking for evidence of what you changed from the
15 original rule and your reason for changing it.

16 MR. WILLIS: Uh-huh.

17 COMMISSIONER CLARK: And it could be, you
18 know, "Parties discussed this at length, Public Counsel
19 believed this should be changed, the utilities disagree
20 with it, we agree that it ought to be changed to this."

21 COMMISSIONER LAUREDO: I wouldn't even need
22 that. I just think that, when they give me their final
23 recommendation, I know that you've already done that. And
24 to be fair, you put in in another column OPC's
25 recommendation, if any, and all the other parties. That's

1 it. I don't even want to get into the reasoning why.

2 MR. WILLIS: What you described, Commissioner
3 Clark, is fine. We can do that if the Commissioners
4 can reach consensus that that's what you want us to do.

5 CHAIRMAN DEASON: When can you do that?

6 MR. WILLIS: We can do that within the time
7 frame that was discussed, two weeks after the
8 transcript, I imagine. Two-and-a-half weeks? When is
9 that? (Pause)

10 MR. SCHIEFELBEIN: I was just going to say
11 that we already have the transcripts for the first two
12 or three days of hearing, for what that's worth; and
13 there's been very little, relatively speaking,
14 duplication between this hearing and the other one
15 except for the beginning.

16 CHAIRMAN DEASON: Now, let me ask Staff a
17 question. If you're going to do the abbreviated Staff
18 recommendation, for lack of a better term, when can it
19 be filed? Two weeks after the transcripts are filed?

20 COMMISSIONER LAUREDO: You mean, Staff's
21 recommendation analysis, right?

22 MS. MOORE: Commissioner, we haven't had a
23 chance -- we're having a difficult time and we're
24 trying to respond to you and talk to each other also.
25 If we could have a few minutes to figure this out?

1 CHAIRMAN DEASON: Yeah, let's take five.

2 (Brief recess.)

3 - - - - -

4 CHAIRMAN DEASON: Back on the record. Has
5 Staff had adequate time to review the time schedule?

6 MS. SUMMERLIN: Commissioners, I think that
7 the Staff is prepared to do what we think you want done
8 in two and a half weeks or so.

9 But it's my view and I think it's Ms. Moore's
10 view and the rest of the Staff, that it's not a very
11 good plan. And the reason for that is that if the
12 Staff comes back with a new version of the rule,
13 whatever rule you're talking about, and then we put a
14 very minimal discussion that explains why the rule has
15 that particular form, whatever changes appear to have
16 been desired from today's discussion -- and this is a
17 very minimal discussion is what I assume you're
18 contemplating -- then you receive a whole bunch of
19 comments from parties that have some concerns with
20 those rules, we will not have provided any kind of
21 considered evaluation that you can look at.

22 And then at the agenda conference, I would
23 think that you're going to be asking Staff to explain
24 and to respond to the concerns that have been raised by
25 the parties in their comments. And the Staff is not

1 going to be able to do that in a way that it is
2 normally able to do.

3 It's my personal recommendation that this is
4 not a very good plan. Because I think that the nature
5 of posthearing filings is to follow this hearing
6 process and then the Staff goes and uses those comments
7 and uses everything that has happened today and tries
8 to construct the most acceptable recommendation.

9 That doesn't mean that you might not allow
10 parties maybe to participate at the agenda conference
11 if there were some serious problem. I mean, normally
12 you don't have participation at an agenda conference
13 following a hearing; but it might be that that would be
14 a way to allow the parties to make a comment if they
15 had some real serious concern that the Staff had gone
16 off in left field.

17 But if you end up with very lengthy detailed
18 comments on a very minimal discussion that Staff has
19 given you on a changed rule, then I foresee it being a
20 very difficult scenario.

21 COMMISSIONER LAUREDO: What if you avoid the
22 writing of your analysis, does that help your scenario?

23 MS. SUMMERLIN: Commissioner, the problem is if
24 we don't give you that analysis and all you have is a bear
25 rule, such as earlier today Ms. Causseaux said she would

1 go and deal with this issue on intergenerational equities,
2 and you said, "Discuss in your proposed rule of change" --

3 COMMISSIONER LAUREDO: But that was before.
4 I'm willing to compromise on that for efficiency.

5 MS. SUMMERLIN: That's just an example of
6 many different instances where the Staff may come up
7 with different language and with a very minimal
8 discussion about why they've made that adjustment, then
9 followed with potentially very lengthy comments by
10 parties who don't appreciate that, then --

11 COMMISSIONER CLARK: Well, it's not like we
12 haven't heard it before. I mean, I feel like
13 everything that's going to be in there is going to be,
14 you know, Waterworks is going to say, "We disagree with
15 this, we've stated our reasons. They're one, two,
16 three," or more. A complete reason for it is there. I
17 mean, I think we've whittled it down that there are
18 areas of clear controversy that we're going to have to
19 make a decision on and I frankly don't expect many
20 surprises as to what those areas are.

21 MS. MOORE: I think a more appropriate -- if
22 the parties, participants, would like to see what Staff
23 is going to recommend and then have a chance to comment
24 on it, perhaps we ought to move the agenda, find a time
25 in 1994, Staff will come up with -- based on the record

1 of the proceedings to date, Staff can come up with a
2 proposed final version, which is what is done if
3 there's a hearing officer. And then the parties can
4 comment on that.

5 COMMISSIONER LAUREDO: I'll give you another
6 alternative. If they're willing to waive their post.
7 Whatever comments, if we're completely honest with
8 ourselves, a lot of us have read some of this stuff and
9 have made up our minds. We're going to hear a
10 repetition in a different format of the same arguments.

11 We can't always be honest for ourselves
12 because lawyers have their reasons for getting things
13 on the record, but I'm telling you that's how this
14 Commissioner works. And I think that we're being less
15 than honest by perpetuating this paperwork stuff.

16 I think, if they're willing to waive their
17 writing or whatever they call it, post, let the chips
18 fall where they may, you come up with your
19 recommendation, your final proposed rules, don't even
20 put your comments on it, and write in the columns their
21 proposed changes that's on the record now, and I think
22 we ought to just vote on it.

23 You're going to get just as much
24 consideration, folks. I hate to tell you, I know that
25 it's less legal billing time, et cetera, but that's the

1 way -- there is a great redundancy in the process and I
2 don't foresee any outstanding new fact or philosophy
3 that is going to jump out.

4 So if they're willing to do that, I think
5 that will simplify things and maybe compromise by
6 having a more open verbal input the day of the hearing
7 on things that are --

8 COMMISSIONER CLARK: At the agenda.

9 MS. MOORE: I'm not sure what you're talking
10 about what they're willing to do, waive --

11 COMMISSIONER LAUREDO: No, I'm asking them if
12 they are willing to do that, it would solve the problem.

13 COMMISSIONER CLARK: Mr. Chairman, I would
14 like to make a motion that we give the Staff until two-
15 and-a-half-weeks from today. Sydney, when can the
16 transcripts be done?

17 THE REPORTER: The 23rd or the 24th, the
18 commitment Ms. Kelly made.

19 MS. MOORE: August 23rd.

20 COMMISSIONER CLARK: How about two weeks from
21 the 23rd you will put out your proposed version of the
22 rule. One column will be the rule as changed; your
23 reasons for the change will be in the next column; the
24 third column will be reserved for parties to put their
25 comments and suggestions with regard to the changes

1 made. And I would move that they have two weeks from
2 the date the Staff puts out their version.

3 MS. MOORE: Which would be the 13th.

4 COMMISSIONER CLARK: Of what?

5 MS. MOORE: Of September.

6 CHAIRMAN DEASON: No, let's think about that.
7 The transcripts are due the 23rd, two weeks from then
8 would be September the 6th.

9 MS. MOORE: That's right, I'm sorry. And
10 then the 20th.

11 CHAIRMAN DEASON: And then two weeks from the
12 6th would be the 20th. That might fall on a Saturday
13 or Sunday, I'm not sure.

14 COMMISSIONER CLARK: And then all you do is
15 you put their comments -- you're going to have to take
16 their comments and order them in the third column and
17 that's all you file as the recommendation. A cover
18 sheet that says, "Here it is, here's the rules, our
19 recommendations and the comments to the rules," and
20 it's just a one-page memo with those rules attached.

21 MS. MOORE: If theirs are due on the 20th and
22 then the recommendation, that document, whatever we're
23 going to call it, is due on the 24th?

24 COMMISSIONER CLARK: Right. That should just
25 be cutting and pasting.

1 MS. MOORE: We're talking about just
2 duplicating their comments.

3 COMMISSIONER CLARK: That's right.

4 MS. MOORE: Not rewriting them, not --

5 COMMISSIONER CLARK: I would envision them
6 saying, "Rule 30.433, you know, the change to
7 Subsection (3) is not agreeable to us for the following
8 reasons." And you just paste that right where it goes.

9 MS. MOORE: All right. We'll ask if they can
10 give it to us on diskette also?

11 (Simultaneous conversation.)

12 CHAIRMAN DEASON: You need to talk one at the
13 time. I'm sorry.

14 COMMISSIONER JOHNSON: What about the
15 discussion at the special agenda, do we want for allow
16 that? Actually, I probably would prefer some discussion
17 initiated by us, if we have questions for them.

18 COMMISSIONER CLARK: I have no problem with
19 the parties may be asked to respond to questions at
20 agenda.

21 CHAIRMAN DEASON: I have a proposal. Any
22 objection other than Staff's objection?

23 Commissioners, I'm going to go along with
24 this, but I'm going to share a concern, and that is that
25 we're potentially going to be voting on something without

1 Staff's having the last say. And that is pretty much
2 breaking tradition and procedure and practice at the
3 Commission that causes me some discomfort.

4 On the other hand, we always are trying to
5 encourage parties to try to come to us with some
6 reconciliation of issues or the way things should be
7 done. We've get a situation here where all the parties
8 think this would be better; maybe we'll go through this
9 experience and decide never to do it again. (Laughter)
10 And we'll learn.

11 They say that part of these hearings are to
12 educate Commissioners, we may be in for a real
13 education on this one. Because we're going to be in that
14 agenda conference basically on our own. So everybody
15 needs to be warned of that and come to the agenda well-
16 prepared. And a lot of that preparation is going to have
17 to be on your own behalf, because you're not going to have
18 that last Staff recommendation to fall back on when
19 there's doubt.

20 So are you sure that's what you want to do?

21 COMMISSIONER LAUREDO: No, I wanted to get
22 them to waive having to write the thing and just come
23 verbally. Can they do that?

24 COMMISSIONER JOHNSON: When will we receive
25 their comments?

1 COMMISSIONER CLARK: As I understand it,
2 we're not going to get their comments. It will be
3 given to Staff and it will be put on that spreadsheet
4 and, just like before, ten days prior to the agenda, we
5 get the recommendations from Staff.

6 CHAIRMAN DEASON: 12 days.

7 COMMISSIONER CLARK: And we'll have those 12
8 days to call up Staff and say, "This one looks pretty
9 good to me, let's talk about it." So you will have an
10 opportunity, verbally, to get --

11 MR. CRESSE: And I think at the agenda
12 conference you have the opportunity to ask Staff any
13 questions that you want to ask.

14 COMMISSIONER JOHNSON: Let me ask one
15 fundamental question: Why are we doing this? I mean,
16 it's not saving anybody any time. Who is this going to
17 benefit? Or how is it benefiting me? Yeah, how is it
18 benefiting me?

19 MR. CRESSE: I think, it benefits you in the
20 following ways.

21 I think, typically, we know what the Staff
22 position is now, I mean, we've been through a process.
23 You go through a hearing and you pretty much know what
24 the Staff position is. When they get through and make
25 you an ordinary recommendation, they wait until briefs

1 are filed. The briefs are supposed to essentially be a
2 summary of the position that the party took and the
3 recommendation. Staff then comes in and they have to
4 write up what every party said, and you see how thick
5 those things are.

6 They don't have to do that in this process,
7 what we have said. They've got to come back with their
8 recommendations and then we're going to comment on
9 that. They're going to know what we've said because
10 they're going to get that all out of the record anyway.
11 It saves them having to analyze and repeat everything
12 in a brief.

13 I think the benefit that you will get is if
14 the Staff has made a bad recommendation, we'll get to
15 comment on that. If they made an error in their
16 assumption, we'll get to comment on that.

17 Now, in many cases, whenever you vote, you
18 don't know whether or not there's been an error in
19 calculation. If there is an error in calculation,
20 sometimes we can go to the Staff after their
21 recommendation is out and get them to alter that before
22 the hearing. I think it benefits because everybody
23 knows exactly where they are.

24 COMMISSIONER JOHNSON: You know where they
25 are, you can comment, we can keep the same order and

1 you can comment on what you know they're going to say.

2 MR. CRESSE: Well, if I knew exactly what
3 they were going to say, that might be correct. But,
4 you know, let's say, in exchange over the last long
5 period of time, and you all have made some decisions,
6 and you've said yeah, and I do that. You've said okay;
7 you've moved it. We don't know how all this is going
8 to come out. Of course, when you have made a decision
9 sitting there, that's what the Staff is going to come
10 back with. Because that I think was their instruction,
11 yeah, this is the way you want to see it. Other times
12 you've said, "We'll come back with a recommendation."
13 We just don't know where we stand.

14 It will benefit you, I think, because you
15 will know where we stand and you will know where the
16 Staff stands. And you will be able to evaluate both of
17 those succinctly. This has not been a succinct
18 hearing.

19 COMMISSIONER LAUREDO: Mr. Cresse, is there
20 any new material ever introduced in post-hearing
21 filings?

22 MR. CRESSE: If there is somebody trying to
23 introduce new material in a post-hearing brief, the
24 Staff would probably say that material that's in that
25 post-hearing brief has to be disregarded because

1 there's nothing in the record to support it.

2 COMMISSIONER LAUREDO: Well, what's the point
3 of going through all of this exercise? I already know
4 your position -- your party's position.

5 MR. CRESSE: What's the point of going
6 through a post-hearing brief? What's the point in
7 regularly filing a post-hearing brief? It makes it --

8 COMMISSIONER LAUREDO: Oh, you're insisting
9 on doing that now?

10 MR. CRESSE: It makes it, I think, two
11 things: One, it makes sure that the lawyers get a
12 chance to file a post-hearing brief, whatever good that
13 is; second, it would may be in some cases -- and the
14 Staff can respond to that -- assist the Staff in
15 analyzing and succinctly putting together their
16 recommendation.

17 COMMISSIONER CLARK: I have an offer to make.
18 I'll help you write the rules. I'll help you with the
19 recommendation.

20 CHAIRMAN DEASON: Commissioners, we have a
21 motion or a suggestion, that we instruct Staff to
22 prepare a final recommended version of the rule as they
23 see fit; have that prepared by the 6th of September;
24 have the parties respond to that by the 20th of
25 September; have Staff prepare their recommendation and

1 responses, compile those for a side-by-side comparison
2 on the 24th of September, and that the agenda
3 conference be on the 6th and 7th of October, and that
4 we allow questions of parties at the agenda conference.
5 That's my understanding of the procedure that's been
6 proposed. Is there any objection to that?

7 COMMISSIONER JOHNSON: Well, honestly, I
8 prefer to do it the way that we have generally
9 conducted the rules, but I don't object to this new
10 method.

11 COMMISSIONER LAUREDO: Well, it's the nuances
12 in this proposal that are important, and we're losing
13 it in the way you're paraphrasing it. I thought they
14 were going to be very brief, very brief rationales from
15 Staff and very brief rationales from the parties that
16 will be put in that third column unedited, right?

17 We did this sort of before in another way
18 where -- when we changed our methodology to having --
19 the positions without having it. So Staff has nothing
20 to do but, like Commissioner Clark said, paste it on
21 the third column. Is that how you understand it?

22 COMMISSIONER CLARK: Yes.

23 COMMISSIONER LAUREDO: And very brief.
24 Because Staff's objection, which I share, is that if
25 we're pushing them to be brief and they're going to put

1 in two lines, then you're going to give these guys an
2 opportunity to file 20 pages. It's not fair.

3 COMMISSIONER CLARK: Well, I agree that the
4 opportunity is there. But, you know, the longer memo
5 you file, the more you'll lose your reader. I mean, if
6 they're not --

7 COMMISSIONER LAUREDO: I agree.

8 COMMISSIONER CLARK: It's to their advantage
9 to be succinct.

10 COMMISSIONER LAUREDO: I would support it
11 with a very big caveat on the record that -- I think
12 the Chairman already said it, but just so that it is
13 restated that this has not -- has no precedential
14 value, that we will look at it because this can come
15 back to haunt us. And I just wish you would wait --

16 COMMISSIONER CLARK: I'll withdraw the
17 motion, if you're going to blame me if it all goes
18 wrong.

19 COMMISSIONER JOHNSON: We're going to blame
20 you. (Laughter)

21 CHAIRMAN DEASON: You're going to be it.

22 COMMISSIONER JOHNSON: Or you're going to be
23 a hero.

24 COMMISSIONER CLARK: I think I'm going to be
25 sick in October.

1 MR. SHREVE: Commissioner, I think it was
2 Commissioner Lauredo that -- no, maybe it was
3 Commissioner Clark. We've discussed it, and if it is
4 your wishes that we get together and talk this over and
5 see if we can --

6 COMMISSIONER LAUREDO: Oh, I said it and I
7 keep saying it. And one of the reasons I'm not very
8 comfortable with this procedure is because I see you're
9 all very relaxed and you're going home because you got
10 a lot of work load off your back and the pressure is on
11 more. The way we have the system now by forcing you to
12 go back and try to stipulate areas where you have some
13 common ground, And I think you're not going to do it if
14 we give you this methodology because it takes the
15 pressure off.

16 MR. SHREVE: We've agreed to get back
17 together the first of the week.

18 COMMISSIONER LAUREDO: Okay.

19 MR. SHREVE: We've had some discussions on
20 some possibilities already. Maybe we won't have to
21 file anything. I don't know if that's likely or not.
22 Sometimes I feel like you all are ready to vote and
23 maybe not file anything, just put it all to bed.

24 CHAIRMAN DEASON: Anything further? Does
25 Staff believe they have adequate direction? I know you

1 don't particularly like it, but --

2 COMMISSIONER LAUREDO: Other than that.

3 CHAIRMAN DEASON: Okay. Nothing else? This
4 hearing is adjourned. Thank you all.

5 (Thereupon, the hearing concluded at 7:56
6 p.m.)

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 3 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

4 We, JOY KELLY, CSR, RPR; SYDNEY C. SILVA,
 5 CSR, RPR; PAMELA A. CANELL, Official Commission
 6 Reporters,

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

11 CERTIFIED that we stenographically reported
 12 the said proceedings; that the same has been
 13 transcribed under our direct supervision, and that this
 14 transcript, consisting of 392 pages, Volumes I through
 15 III, inclusive, constitutes a true transcription
 16 of our notes of said proceedings.

DATED this 18th day of August, A. D., 1993.

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Joy Kelly
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 (904) 488-5981

17 STATE OF FLORIDA)
 18 :
 19 COUNTY OF LEON)

20 The foregoing certificate was acknowledged
 21 before me this 18th day of August, 1993, by JOY KELLY,
 22 SYDNEY C. SILVA and PAMELA A. CANELL, who are
 23 personally known to me.

Evelyn L. Borschel
 EVELYN BORSCHEL
 Notary Public - State of Florida



EVELYN L. BORSCHEL
 MY COMMISSION # CC289265 EXPIRES
 May 25, 1997
 BONDED THRU TROY FAIR INSURANCE, INC.