

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase and increase in service availability charges by Southern States, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Hernando, Highlands, Hillsborough, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS

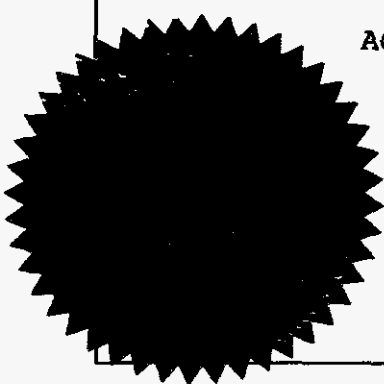
BEFORE: CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING: SPECIAL AGENDA CONFERENCE

DATE: Friday, October 6, 1995

PLACE: 4075 Esplanade, Room 148
Tallahassee, Florida

REPORTED BY: JANE FAUROT
Notary Public in and for the
State of Florida at Large



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P R O C E E D I N G S

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2 CHAIRMAN CLARK: We are ready to call the agenda
3 conference to order. We are here on the Staff's
4 recommended recommendation on interim rates for
5 Southern States Utilities.

6 MR. RENDELL: Commissioner, Southern States filed
7 for interim and permanent rate increases on June 28,
8 1995, and met the deficiencies on August 2nd, 1995.
9 Southern States is requesting additional interim
10 revenues of \$7,428,460 for water, and \$4,920,387 for
11 wastewater. This recommendation addresses Southern
12 States' requested interim rate increase. Due to the
13 fact that subsequent issues relies on decisions on
14 earlier issues, Staff suggests that we proceed
15 issue-by-issue with a brief introduction for each
16 issue. In addition, on Wednesday, Southern States
17 filed a suggestion of error and request for oral
18 argument. Ms. O'Sullivan will be addressing these
19 filings before proceeding to the issues.

20 MS. O'SULLIVAN: Commissioners, Staff recommends
21 that the Commission deny SSU's suggestion of error and
22 its request for oral argument. The Florida Public
23 Utilities order cited in their suggestion suggests that
24 parties may file pleadings concerning errors to address
25 mistakes or mathematical errors in Staff

1 recommendations. However, SSU's filing goes beyond
2 that purpose. The Commission recently decided in a
3 rate proceeding involving Ortega Utilities that a
4 pleading which addresses Commission policy and
5 methodology on interim rates will not be considered.
6 Staff also recommends that the Commission deny SSU's
7 request for oral argument.

8 CHAIRMAN CLARK: Is it your recommendation we take
9 that up now?

10 MS. O'SULLIVAN: Yes.

11 CHAIRMAN CLARK: And as I understand it, there has
12 been no time for people to file in response to that.

13 MS. O'SULLIVAN: That's correct; it was filed on
14 Tuesday of this week.

15 CHAIRMAN CLARK: Give me a second to get that in
16 front of me.

17 MR. ARMSTRONG: Madam Chair, obviously the Company
18 has an opportunity to address the Staff recommendation
19 to deny our request.

20 CHAIRMAN CLARK: I understand that, thank you.

21 MS. O'SULLIVAN: Commissioners, I would note that
22 in an October 5th letter to the Commission, the
23 utility, I believe, suggested the Commission could
24 postpone their proceeding to allow parties to respond
25 to that. So they did suggest that.

1 CHAIRMAN CLARK: Yes. And Staff had talked to me
2 about that yesterday, and their recommendation was it
3 not be deferred. So at that time I told the Staff we
4 would not defer the recommendation on interim rates.
5 Is there any objection to that? Is there any desire to
6 defer consideration of interim rates?

7 COMMISSIONER JOHNSON: If we were to defer would
8 that be just to allow the other parties to also file a
9 written response to what Southern States filed?

10 MS. O'SULLIVAN: I believe that was the purpose of
11 their suggestion. I think also the purpose would be to
12 allow Staff and the Commission time to digest their
13 motion.

14 COMMISSIONER JOHNSON: And Staff's position is
15 that they don't -- you all don't need any more time.

16 MS. O'SULLIVAN: It's not appropriate, exactly.
17 It's not appropriate.

18 CHAIRMAN CLARK: It's your view that the
19 suggestion of error is inappropriate, because it argues
20 the policy and doesn't point out any purely
21 mathematical or calculation errors.

22 MS. O'SULLIVAN: That's correct.

23 CHAIRMAN CLARK: Which I understand was the
24 standard we set in the previous docket as to how
25 concerns about errors that should be apparent to

1 everyone could be addressed. Okay.

2 MS. O'SULLIVAN: (Indicating yes.)

3 CHAIRMAN CLARK: Questions, Commissioners? Is
4 there a motion on --

5 COMMISSIONER GARCIA: Chairman Clark, in all
6 honesty, I didn't even go over Southern States, because
7 from what I understand it was going to be deferred. In
8 other words, we weren't going to defer this today. I
9 mean, I read the case that we have before us about
10 interim rates. What I'm talking about is the motion
11 that was filed by them. And, again, I understood from
12 Staff that it wasn't going to be deferred. They
13 explained what it is, and they said that it wasn't
14 pertinent. I'm just curious; are we going to hear
15 arguments at all from the Company?

16 CHAIRMAN CLARK: Well, I think the request, we
17 have decided not to defer it. I denied the request for
18 deferral. There has been no suggestion here by other
19 Commissioners that we, in fact, defer it. Now we are
20 on their mention for oral argument on their suggestion
21 of error, is that correct?

22 MS. O'SULLIVAN: That's correct. We recommend
23 that that be denied pursuant to Commission rule.
24 Parties may not participate at an agenda where interim
25 rates are being discussed.

1 CHAIRMAN CLARK: Commissioners, are there
2 questions?

3 COMMISSIONER KIESLING: No. I move that we deny
4 the request for oral argument.

5 CHAIRMAN CLARK: Is there a second?

6 COMMISSIONER DEASON: Second.

7 CHAIRMAN CLARK: All those in favor, say aye.

8 COMMISSIONER GARCIA: Aye.

9 COMMISSIONER DEASON: Aye.

10 COMMISSIONER KIESLING: Aye.

11 CHAIRMAN CLARK: Aye. Opposed, nay.

12 COMMISSIONER JOHNSON: Nay.

13 CHAIRMAN CLARK: The request for oral argument is
14 denied on a four-to-one vote.

15 Now we are on Staff's recommendation, is that
16 correct?

17 MS. O'SULLIVAN: That's correct, Issue 1.

18 CHAIRMAN CLARK: Go ahead.

19 MR. WILLIS: I was just going to introduce
20 Issue 1. It's a suspension of rates, the proposed
21 rates.

22 COMMISSIONER KIESLING: I move it.

23 COMMISSIONER DEASON: Second.

24 CHAIRMAN CLARK: All those in favor say aye.

25 COMMISSIONER GARCIA: Aye.

1 COMMISSIONER DEASON: Aye.

2 COMMISSIONER JOHNSON: Aye.

3 COMMISSIONER KIESLING: Aye.

4 CHAIRMAN CLARK: Aye. Opposed, nay.

5 Issue 1 is approved. Issue 2.

6 MS. O'SULLIVAN: Staff recommends that OPC's
7 request for oral argument on its motion to dismiss
8 interim rates be denied. The Commission's rules
9 preclude parties from addressing the issue of interim
10 rates at agenda. Also, OPC did not demonstrate why
11 oral argument would aid the Commission in its decision.
12 We have addressed OPC's motion to dismiss interim rates
13 in Issue 7.

14 CHAIRMAN CLARK: Is there a motion on Issue 2?

15 COMMISSIONER KIESLING: I move Staff on Issue 2.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN CLARK: All those in favor say aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER KIESLING: Aye.

20 COMMISSIONER JOHNSON: Aye.

21 COMMISSIONER GARCIA: Aye.

22 CHAIRMAN CLARK: Aye. Opposed, nay.

23 Issue 3.

24 MR. WILLIS: Commissioners, Issue 3 addresses
25 whether the utility's request for interim rates should

1 be granted. Staff's primary recommendation is that the
2 utility has not a prima facie case for interim rates,
3 and that interim rates should be denied. We believe
4 that the utility's projected test year is inflated, and
5 represents a wish list of plant and expense items.
6 Further, Staff believes that it is the utility's burden
7 to make a prima facie showing for projected interim
8 test year is greater than that required of an historic
9 test year. The difference is that it is much easier to
10 show on an historical basis that a utility is earning
11 less than its required rate of return. Since the
12 projected data has not yet been fully incurred, the
13 risk is that interim rates could be calculated on items
14 that may never be incurred or even approved by the
15 Commission. Although we could make adjustments to the
16 interim projections, we do not have the detail in this
17 case to make plant specific adjustments. Further, we
18 do not believe that to correct the projections falls
19 within the category of a quick and dirty review of what
20 was filed for interim purposes.

21 We also have an alternate recommendation in this
22 issue, and that is the Commission should grant
23 stand-alone interim rates based on 1994 data to those
24 plants for which information was filed. This would
25 exclude the plants previously included in Docket

1 Number 920199-WS, and those systems not owned by
2 Southern States in 1994. And we are prepared to answer
3 any questions that you may have at this time on our
4 recommendation.

5 CHAIRMAN CLARK: Are there questions,
6 Commissioners?

7 COMMISSIONER KIESLING: Yes, I have several. I
8 guess, initially I need to say that both the primary
9 and the alternate trouble me. The primary troubles me
10 in that, I guess, I feel that with the amendment to the
11 statute that allowed for projected test year rate base,
12 that in order to give some meaning to it, it would seem
13 to me that we have to find a way to allow projected
14 test years and the calculation of interim rates. And
15 as far as I have been able to determine, there is no
16 Commission policy on how to implement that statute.
17 That troubles me. I also am troubled because it seems
18 to me that in the discussion on the primary, one of the
19 significant problems with the filing that they have
20 made is that it did not anticipate what would happen in
21 the 199 docket, and what our vote would be after it was
22 already filed. And it would seem as though, to me,
23 that the Company should have an opportunity to file
24 additional information that would allow us to do the
25 system-by-system evaluations that we seem to need to

1 do. The flip side of that is that the alternate
2 bothers me because I don't think that it's reasonable
3 for us to apply interim rates to some systems and not
4 all systems. And, I guess, just to make clear what my
5 concerns are, I would like to know if Staff considered
6 another alternate, which would be to deny this request
7 for interim rates with leave to the Utility to file
8 additional information that would allow us to
9 completely do the analysis that we need to do in order
10 to calculate interim rates based on our decisions over
11 the last months or so in the 199 docket. And that's
12 where my concern comes in. I mean, I don't have any
13 disagreement that with what is filed we should not
14 grant interim rates. My concern is that the Company
15 should not be penalized and denied interim rates at all
16 when the filing that they made at the time they made
17 it, was complete and addressed the rates that really
18 were in force at that time, and that since then, we
19 have made different decisions. And so I guess I want
20 to know is there a problem with doing that, and if so,
21 what problems are there?

22 MR. WILLIS: Commissioner Kiesling, Technical
23 Staff basically agrees with you. We believe that there
24 should not be a problem with the Company refiling
25 interim. We have discussed this with several people.

1 There are different viewpoints. I, for one, believe
2 this case is kind of extraordinary. And one of the
3 cases, I believe, which was a TECO case, I believe, in
4 which the Commission denied interim, they also denied
5 the Company's right to refile interim. And I think
6 that was very different from this one, in that this
7 company has found itself filing a rate case in which
8 originally it had uniform rates in place, and now due
9 to Commission action, it now has a different rate
10 structure which has caused some of the problems that
11 now exist. And I think with that extraordinary
12 circumstance occurring, I don't believe this ought to
13 be -- or the utility ought to be denied the right to
14 refile interim if they so desire.

15 MS. O'SULLIVAN: Commissioners, Mr. Willis
16 referred to the TECO rate case, which was back in 1982.
17 The Commission denied the utility's request for
18 projected interim test year, they asked for another
19 test year, and the Commission, interpreting the
20 statutes at the time, said that they had to preclude
21 the utility from refiling again. But the Commission
22 did note that it wouldn't preclude them from allowing
23 interim when necessary at its own discretion.

24 COMMISSIONER JOHNSON: Say that part, again,
25 Maggie.

1 MS. O'SULLIVAN: The Commission stated that while
2 they found the statute precluded the utility from
3 filing the request, again, nothing expressed here is
4 intended to limit the Commission's authority upon its
5 own motion to determine at any time that interim rates
6 are necessary to assure the financial viability of a
7 utility under its jurisdiction. So, there is some
8 discretion there.

9 COMMISSIONER JOHNSON: So the discretion would be
10 on the Commission to, by its own motion, almost require
11 the Company to refile?

12 CHAIRMAN CLARK: I think we need more background
13 on that case. Because as I -- I have not looked at it,
14 but what I think, what I recall happening in that case
15 is that TECO filed under two different statutes for
16 interim rates.

17 MS. O'SULLIVAN: That's correct.

18 CHAIRMAN CLARK: One of which was the new statute,
19 which set the standard for interim rates, and one of
20 which was the general rate increase. We had previously
21 denied it based on the new statute, which was tied to
22 an historical achieved rate of return. And so they
23 came in and asked alternatively to do it under our old
24 authority, and I think the thinking at the time was
25 they hadn't proved the prima facie case, and they

1 hadn't come up with anything else that indicated they
2 needed that interim relief. But we didn't preclude
3 them from coming in and saying, you know, based on what
4 we are earning, we are not earning our rate of return,
5 and try, again, under the new interim statute.

6 MS. O'SULLIVAN: I believe the first request for
7 interim rate relief asked for alternates. It asked for
8 under the old rate filing statute and the new statute;
9 they were denied under both. When they refiled at a
10 later time they were denied based upon statutory
11 interpretation that they could not refile.

12 CHAIRMAN CLARK: What did they file under the --

13 MS. O'SULLIVAN: Let's see. I believe they filed
14 under the new statute, again.

15 CHAIRMAN CLARK: But let me make it clear. They
16 had not made a showing that they were underearning, had
17 they?

18 MS. O'SULLIVAN: In the first filing or the second
19 filing?

20 CHAIRMAN CLARK: Either one.

21 MS. O'SULLIVAN: Yes, that's correct.

22 CHAIRMAN CLARK: No showing had been made, which
23 somewhat distinguishes it from this one. There has
24 been a prima facie showing according to Staff's review
25 that they are underearning.

1 MS. O'SULLIVAN: That's correct.

2 COMMISSIONER DEASON: Let me ask a question on
3 that. Has there been a determination by Staff that
4 there has been a prima facie -- as I read the
5 recommendation, you're saying that there is no way to
6 really tell with any assurances that the Company is, in
7 fact, underearning.

8 MR. WILLIS: You're correct, Commissioner Deason.
9 We're saying, no, the Company has not made a prima
10 facie case at this point.

11 CHAIRMAN CLARK: I guess, I'm confused, then,
12 because I thought that they had. And I understood --

13 MR. WILLIS: They haven't on their projected
14 portion.

15 CHAIRMAN CLARK: But you have made an alternate
16 recommendation with respect to set '94?

17 MR. WILLIS: Correct.

18 CHAIRMAN CLARK: All right. Now, my question is
19 under '94 have they made a prima facie showing that
20 they are underearning?

21 MR. WILLIS: Yes, they have, but only for those
22 systems that have not been included in the uniform rate
23 structure. Because, basically, it's very difficult, if
24 not impossible, to calculate separate revenue
25 requirements to come up with the actual achieved rate

1 of return for all 125 systems which were included in
2 uniform rates.

3 COMMISSIONER DEASON: But the Company did not file
4 on that basis. That was not the basis of their
5 request, was it?

6 MR. WILLIS: That's correct. They filed based on
7 a 1995 test year. They have not requested another test
8 year. They did not request an alternate test year.

9 CHAIRMAN CLARK: They did not request 1994?

10 MR. WILLIS: No, they did not.

11 CHAIRMAN CLARK: I see. I misunderstood that.

12 MR. WILLIS: Staff went further than we probably
13 should have gone just to give the Commission an
14 alternative in case they decided to go that far. We,
15 basically, don't believe it's Staff's role in a rate
16 case to build an interim rate case for a company. And,
17 therefore, if we find that the utility's proposal is
18 lacking, then our primary suggested that it ought to be
19 denied. And that's what the primary comes from in this
20 case.

21 CHAIRMAN CLARK: Well, I have asked you a
22 question, let me ask you something else on the statute,
23 where it says upon application by a utility, the
24 Commission may use projected test year rate base when
25 determining interim rates or revenues subject to

1 refund. The indication I got was that it came into
2 being in '93?

3 COMMISSIONER KIESLING: I believe that's -- 1992,
4 perhaps, or '93.

5 CHAIRMAN CLARK: It couldn't have been '92, it was
6 '93 or '91.

7 MR. WILLIS: I believe it was '92.

8 CHAIRMAN CLARK: It could not have been, because
9 the history notes say it was amended in '91, or it was
10 amended in '93, not '92.

11 COMMISSIONER JOHNSON: The Staff analysis says
12 '93.

13 CHAIRMAN CLARK: Okay, so it is '93.

14 MS. O'SULLIVAN: It was '93, yes.

15 CHAIRMAN CLARK: How did it get in there? I mean,
16 who advanced getting that language in there? I don't
17 recall it at all.

18 COMMISSIONER DEASON: It was not part of the
19 Commission's legislative package. In fact, I don't
20 even know that we had a legislative package in '93.

21 CHAIRMAN CLARK: Well, that's consistent with what
22 I recall. But it seems to me that this is the type of
23 change we would have been advised of at some point that
24 somebody was seeking.

25 MS. O'SULLIVAN: Staff did research of the

1 legislative history briefly when preparing for this
2 case, and we found reference to some subcommittee
3 meetings. I believe Commission Staff did attend, so I
4 think we were aware of it. I'm not sure who proposed
5 the --

6 CHAIRMAN CLARK: Who sponsored the bill? What was
7 the bill and what is it in?

8 MS. O'SULLIVAN: I don't have a copy of that in
9 front of me right now, I'm not sure.

10 MR. VANDIVER: My memory is somewhat imperfect,
11 but my memory is that Mr. Cresse proposed this.

12 CHAIRMAN CLARK: Well, I guess my concern is the
13 Staff's suggestion, and this is more a question as to
14 how we might proceed with respect to projected test
15 year for interim. But I have trouble with Staff's
16 suggestion that it should be a completely projected
17 test year. Because the language is quite clear; it
18 says projected test year rate base. And certainly
19 people who are amending the statute know when you add
20 that you have been very particular as to what you can
21 use.

22 MR. WILLIS: I understand that, Chairman Clark.
23 We have had several discussions among Staff over the
24 same subject, and I believe when we were redoing the
25 SOP to take into account this change in the statute in

1 1993, there were many discussions at that point, and
2 Staff decided at that point that we would have to
3 proceed case-by-case to develop Commission policy on
4 just how far the Commission wanted to take rate base
5 itself. My recollection going back to other statutory
6 changes that occurred in previous years, in the early
7 '80s, is that there had been another statute that
8 talked about rate base, too, and we took that to mean
9 the test year itself. When it talked about average
10 rate base, or year end rate base, and we have always
11 decided that when you talk about average versus year
12 end rate base, you can't just take one portion of it,
13 you have to take the entire test year itself to an
14 average or year end concept. And that's where the
15 quandary came about with Staff over exactly how far do
16 you take the language of rate base in this case.

17 CHAIRMAN CLARK: Well, I would need to know if
18 that discussion of the statutory language referred to
19 projected test year rate base, or if it just talked
20 about the use of year end rate base, or average rate
21 base. Because I would agree with you, if you have the
22 notion that you can use a year end or average rate
23 base, you would want to do matching. But when in this
24 case they have been very specific as to just one
25 portion of what goes into an interim statute, I have

1 concerns about broadening it.

2 MR. WILSON: I agree with you, and I think --

3 CHAIRMAN CLARK: Coupled with a concern of just
4 using projected test year anyway for interim purposes.

5 MR. WILLIS: I agree with you, and I think if the
6 Commission goes with Staff's primary, then the
7 Commission should be giving the utility some directive
8 as to what they believe that statute means as far as
9 the Company refiling. And if the Commission believes
10 that it means strictly rate base, projected rate base,
11 then it would probably be desirable for the Commission
12 to indicate that, so that this Company can refile based
13 on either projected rate base for 1995 or historical,
14 whatever they choose to do.

15 MR. HILL: And, Madam Chairman, we may want to
16 pursue an amendment. I mean, from a technical
17 standpoint it is a mismatch. And to go out and pull in
18 rate base and not bring in the other revenues, is just
19 a tremendous mismatch.

20 CHAIRMAN CLARK: No other interim statute has that
21 language, does it? The electric doesn't and the
22 telephone doesn't.

23 MR. HILL: Not to my knowledge.

24 CHAIRMAN CLARK: And I guess I have concerns about
25 allowing a projected test year for interim. Do the

1 other statutes allow that, projected test year for
2 interim?

3 MR. HILL: I don't know, Madam Chairman.

4 MS. O'SULLIVAN: Not in the statute, no.

5 CHAIRMAN CLARK: And to some extent it works
6 against the notion of what you're supposed to be doing.
7 If you go into projections, you're going into a lot of
8 assumptions and guesswork about what the future might
9 look like. And I don't think 60 days is a good time
10 frame to do that in.

11 MR. HILL: And I feel, as opposed to believe, that
12 the author probably knew exactly what they were doing,
13 and perhaps the members did not know exactly what they
14 were voting.

15 MR. WILLIS: Commissioners, it might clarify
16 something on where Staff's coming from, I have a copy
17 of our SOP 1648, which deals with interim rate
18 proceedings and the statutory change, and I would just
19 like to read for you a section out of it that talks
20 about it. It says, basically, the statute does not
21 give any direction on how to implement the new
22 provision, however, if a utility files for a projected
23 interim test year rate base, Staff should develop
24 procedures on a case-by-case basis looking at the
25 necessity of the expenses and plant additions, at a

1 minimum. When a utility controls expenses, Staff
2 should view such expenses differently from
3 uncontrollable expenses. It is reasonable to interpret
4 test year rate base as implying all components for a
5 projected test year, not just rate base. To do
6 otherwise would result in inconsistencies.

7 CHAIRMAN CLARK: Okay.

8 MS. O'SULLIVAN: Commissioners, Staff did go to
9 the archives and try to listen to tapes of subcommittee
10 meetings. For awhile, the bill just had the phrase
11 projected test year, and then at a certain point it
12 became projected test year rate base. We could not
13 find why that was added on at that time.

14 CHAIRMAN CLARK: Well, it certainly seems to be a
15 knowing addition.

16 MS. O'SULLIVAN: That's correct.

17 COMMISSIONER KIESLING: I guess I can't figure
18 out, though, how you could come up with projected test
19 year rate base and test it if you aren't also looking
20 at all the rest of it that goes into calculating rate
21 base. I mean, how could you do that?

22 MS. O'SULLIVAN: It is a mismatch.

23 COMMISSIONER JOHNSON: Let me make sure I
24 understand what Staff is saying, because I share
25 Commissioner Kiesling's concerns, particularly her

1 initial statements that she made, that under the
2 current filing, I don't feel that it is sufficient for
3 us to grant interim rates. But I don't really like
4 where we get with the alternative recommendation,
5 either. My concern was whether or not there was a way
6 for this to be amended, and what the procedure would be
7 like, and what opportunities the companies would have,
8 and what opportunity we would have to review this.
9 Because I think, like Staff stated, these are
10 extraordinary circumstances, and then when you overlay
11 just the facts behind us going from uniform to
12 stand-alone with the fact that the Company came in
13 under the law, applying a new statute that we hadn't
14 interpreted yet, there just -- we need to, in my mind,
15 step back from this, and to the extent that we can
16 apply that 1993 language that allows for projected test
17 year rate base, come up with some guidance for the
18 Company as to how we think we can make that statute
19 work. Because in a way it's unfair to the Company for
20 there to be a law on the books, and then for us to say,
21 "Well, you can't use that law. We are going to pretend
22 that that law doesn't exist." When, in fact, it does
23 exist. We just need to have a forum where we can
24 interpret it, and apply it, and apply it in an accurate
25 manner, so that then we can make a determination on the

1 interim rates issue. And I'm just wondering how we get
2 there.

3 COMMISSIONER DEASON: Does the law require the
4 Commission if one is requested to allow projected?

5 MR. WILLIS: No, it does not.

6 COMMISSIONER DEASON: It is a permissive law, as I
7 read it.

8 MR. WILLIS: It's permissive.

9 COMMISSIONER JOHNSON: So does that mean if the
10 law is permissive, and we say, "Well, no, we are not
11 going to let you use a projected test year, but since
12 you have already tried, ha, ha, your chances are over,
13 you can't come back." You know, is it that kind of a
14 trap door?

15 MS. JABER: Commissioners, if I could just provide
16 a little bit of history and try to give you some
17 insight. The TECO order seems to suggest that they
18 cannot refile interim. I think, though, that this case
19 is distinguishable, and I think you have already
20 recognized the circumstances. I think you can give
21 them leave to refile their interim, I also think you
22 need to give them the direction. I think you would
23 need to limit the parameters to this case. This is the
24 first utility that sought a projected test year. This
25 is a very new concept. I think the SOP is correct in

1 recommending to you in this case that it be on a
2 case-by-case basis. So, for purposes of this case, if
3 you would like to set the parameters, that's not a bad
4 idea. Interim, the very nature of interim, I think,
5 was intended -- interim requests came with the final
6 request. Utilities did have that one shot deal. The
7 saving grace in this case is that the utility has
8 waived their eight-month clock, and I think we have
9 until May. So, it is very practical that the utility
10 could probably refile and be able to implement interim
11 rates within a good time frame. One of the things that
12 you have to reconcile is the financial viability of a
13 utility, I think, and the interim statute. And that's
14 very difficult. This is a case of first impression.

15 COMMISSIONER KIESLING: And if I understood what
16 you read from the SOP correctly, in addition to dealing
17 with it on a case-by-case basis, it was suggesting that
18 we wait until we had a case to develop the procedures
19 for how we are going to deal with interim and other
20 things on a projected test year.

21 MS. JABER: That's correct. That's why I'm
22 suggesting that you --

23 COMMISSIONER KIESLING: But we don't have that
24 now. We haven't done it yet.

25 MS. JABER: Right.

1 MR. WILLIS: That's correct. And to answer
2 Commissioner Johnson's question as far as what the
3 Company should do at this point, I believe if the
4 Commission denies interim in this case, this case
5 should go away. The interim case itself. The Company,
6 I believe, should be able to refile, based on whatever
7 they want to do. If they want to file a new projected
8 test year, they need to understand that you can't file
9 just a budgeted test year, and say, "Here is what we
10 want to do." We don't believe that's permissible under
11 any kind of interim scenario. The Company has to
12 understand that there is a difference between
13 controllable costs and uncontrollable costs. They have
14 to understand that applies both to plant and expenses.
15 And in this case, the Company came forward and said,
16 "Here is everything we plan to do. We are going to do
17 all of this in 1995, and we want you all to approve it
18 now for interim purposes." We believe what the Company
19 ought to be coming forward with is, "Here are the plant
20 improvements we have to do. We have to do this right
21 now. We plan to do more for 1996, we want you to fully
22 explore that in the final test year, but here is what
23 we have to do. Here is what we have to do plant-wise
24 to maintain safety, to maintain DEP requirements and
25 mandates. This is what we have to do. For expenses,

1 these costs are uncontrollable. We have no control
2 over them, they are there. We are going to hold down
3 our controllable costs. We will hold those to a bare
4 minimum on our controllable costs, and that's what we
5 are projecting to do." In this case, that's not what
6 was presented. The Company came forward with a budget.
7 They filed a budget. They said here it is. Here is
8 our planned expansion for plant, for growth, for
9 everything. Here is all our expenses; it includes
10 everything controllable and uncontrollable. And Staff
11 truly believes that is not an appropriate method for
12 looking at interim rates.

13 COMMISSIONER GARCIA: I don't want to repeat what
14 Julia has said, but I, too, agree with Diane here. I
15 mean, we clearly have to look at this again with what
16 Staff needs. And I don't want to send the Company away
17 and say that's it, it's over. I just want to know that
18 there is a way to do this, and that's where I'm sort of
19 sensing some confusion. Is it possible to say to the
20 Company, okay, we're denying you now, but you can file
21 again. And give them a certain amount of time with
22 very specific requirements on what Staff is looking
23 for, since we are in a unique situation.

24 COMMISSIONER DEASON: Let me make a comment here.
25 I don't necessarily disagree, but I have a really

1 strong concern with what is being suggested here. What
2 we have got to realize is that we are in the middle of
3 a rate case. Interim is just something on the
4 periphery that the Company, if they can make a prima
5 facie showing, and to be made whole, they are in a dire
6 situation, they are given that until the rate case can
7 be completed. By doing all of this refiling and
8 telling them what the standards are, we are taking time
9 away from processing the rate case itself. And this,
10 we all know, is a massive undertaking, and we have very
11 limited Staff resources. I don't want to see those
12 resources diverted away from the real issue, which is
13 the rate case. I'm kind of inclined to think that if
14 interim is that great of a concern, let's let them
15 withdraw this entire rate case, start anew, and file
16 the interim correctly, and then they can get the
17 interim rates. I'm very concerned about using all of
18 these resources to get interim right, when we need to
19 be litigating, doing the discovery, doing the auditing,
20 doing all of the other Staff analysis in preparation
21 for the main issue, which is the rate case.

22 MR. WILLIS: I understand where you're coming
23 from, Commissioner Deason, and let me elaborate some on
24 that. Staff has basically the same view as you have,
25 and that's why we are saying it's not our

1 responsibility to build the case for the Company. We
2 don't have the time and the resources to do that for
3 them, and we don't think it's our place anyway.
4 Staff's and I believe the Commission's thinking -- and
5 this may go back to the TECO case, in which usually a
6 company only gets one shot at interim, because you're
7 under an eight-month time frame. And normally you get
8 done with interim within three months, that's by the
9 wayside and gone, and Staff and everyone else can put
10 all of their attention to the main rate case. In this
11 case we are not under an eight-month time frame. The
12 Company has extended the eight months and this
13 Commission will not make a decision on this until the
14 last of April, the first of May, on two special
15 agendas. We basically extended it out to where we have
16 a ten-month time frame in this one. So there is an
17 extension and more time for Staff to do that. We
18 believe there is a little bit of a difference in that,
19 in that because of the extension, the waiver of time to
20 get the hearing process done and everything by the
21 Company, we are not under the normal eight-month bind
22 here. We understand it's a magnitude of an
23 undertaking, but because of the extra extension, there
24 probably wouldn't be a problem entertaining one more
25 interim shot at it, at this point. I understand

1 exactly where you're coming from under a normal
2 eight-month time frame.

3 COMMISSIONER KIESLING: Am I correct in my
4 understanding that at the time that we accepted the
5 MFRs, had we known then what was going to happen on the
6 199 cases, that those MFRs would have not contained
7 everything that we needed to do it on a case-by-case
8 basis?

9 MR. WILLIS: That's correct. And, unfortunately,
10 this case was filed prior to the Commission's decision
11 on the court action.

12 COMMISSIONER KIESLING: I mean, the Company has
13 the right, though, to file whenever they file.

14 MR. WILLIS: That's exactly right. And they have
15 the right to file it when they desire to file it.

16 COMMISSIONER DEASON: But the Company knew that
17 that case was pending at the court, and they took the
18 risk of filing the case the way they filed it.

19 MR. WILLIS: I agree with you, Commissioner.
20 That's why I said the Company has the right to file
21 when they want to file. They knew the Court case had
22 come down, the decision had been reached, the
23 Commission hadn't acted on that yet. They knew all of
24 those facts, they went ahead and filed the case anyway.

25 COMMISSIONER GARCIA: I think the uniqueness of

1 this case -- and we can't -- Commissioner, I don't
2 think we can put all the burden on the Company here on
3 all the -- I don't want to call them errors, but I
4 think all the problems we have had with this case. And
5 to simply have the Company take blame on all of this,
6 clearly where we saw this -- and, I agree with you,
7 where we warned the Company, again, I agree with you
8 and I voted in that manner. But in this particular
9 instance, I think that if we can issue very specific
10 requests on what precisely we are looking for, so it
11 will not take up an inordinate amount of Staff time,
12 and they are able to file with us again, and we can
13 look at what we need to look at to decide whether this
14 is valid or not, then that's what we should do, and
15 move on from there. Because, again, this case is
16 unique, at least in my history here, and clearly I have
17 been here less than any of the other Commissioners.
18 But it's a case where one begins going one way and ends
19 up another place. And understanding that, we should
20 try to give a little bit of leeway here to everyone
21 involved to be able to do what is best for everyone.
22 And in this case, I think to give Staff the
23 opportunity, but not to give Staff the burden of coming
24 up with this information, I would think that we should
25 let them refile, again, under very specific

1 constraints.

2 COMMISSIONER KIESLING: Refile for interim.

3 COMMISSIONER GARCIA: For interim. Specifically
4 for interim, and we should request specifically what we
5 require to make the determination along the lines that
6 we need.

7 CHAIRMAN CLARK: Let me ask a question. I guess I
8 get some concern in the sense of some consistency in
9 what we're doing. We made them amend their filing to
10 include the counties that we found to be within our
11 jurisdiction, and now we are saying they should have
12 filed on a stand-alone basis. Reconcile those two
13 things for me.

14 MR. HILL: We do not have a problem with the full
15 case going to hearing and the final agenda, and that's
16 what those other counties and systems relate to. The
17 problem exists for interim. And we are not even
18 considering those other counties for interim. The
19 Commission made a decision and the Staff made an
20 obligation, we aren't even going to recommend we touch
21 those counties. But we needed that information for the
22 case.

23 CHAIRMAN CLARK: Now, let me ask you, you're not
24 going to recommend that the counties be affected unless
25 that decision comes down?

1 MR. HILL: That is correct. But we wanted the
2 information in the full case going to hearing so that
3 should that decision be made, the Commission would have
4 all the information in front of them to do whatever
5 they wanted to do.

6 CHAIRMAN CLARK: Well, if that's the case, what we
7 have said is, in fact, is we have made a decision and
8 we think ultimately that if that's affirmed, it ought
9 to be done on an all-inclusive basis.

10 MR. HILL: That certainly you should look at the
11 company for which you have jurisdiction, you should
12 look at the entire company to make whatever decision
13 you're going to make.

14 CHAIRMAN CLARK: But it's your recommendation that
15 that await a decision from the court.

16 MR. HILL: Yes, ma'am. Again, those counties
17 where the jurisdiction is on appeal, while we want the
18 information available to the Staff and other parties
19 and to the Commission for making a decision, we are not
20 recommending that you mess with any systems within
21 those counties.

22 CHAIRMAN CLARK: One other thing. I do recall in
23 the last rate case that they filed for capped rates,
24 but for interim purposes we gave them, in effect, a
25 statewide uniform for the increase.

1 MR. HILL: That's correct.

2 CHAIRMAN CLARK: Did we also do it for the case
3 before that?

4 MR. HILL: We have typically, I think, in the last
5 two or three Southern States cases, we have spread the
6 interim on a percentage basis or a dollar amount.

7 CHAIRMAN CLARK: And your reason for doing that
8 different now is we have a case that says you cannot do
9 that unless you make --

10 MR. HILL: We have taken it a little bit further.
11 And I wouldn't want to say that the law says we can't
12 do it. What we have said is the court said you can't
13 do a single uniform statewide rate without making this
14 other finding. We recognize that quite often in the
15 past, not only for this company, but other companies,
16 we have taken an interim and just given a percentage
17 increase to everyone regardless of what their rate was
18 at the time. We recognize that there is the potential
19 for someone to say, "No, you have given some uniform
20 percentage increase or some dollar amount, and that
21 would be analogous to, and at this point we also want
22 to get to hearing and hear all the evidence if that can
23 get a decision made in this." And we don't want to
24 allow for someone else to say no interim was done
25 wrong, let's hold this you will in court, or let's

1 appeal this, or take that. And so we have taken a very
2 conservative approach.

3 CHAIRMAN CLARK: Marshall, I think I have found
4 where you refer to the fact that an average investment
5 rate base or an end of period investment rate base is
6 referred to in Section 367.082(5)(a), and I suppose
7 it's in reference to that you said that everything else
8 has to be average.

9 MR. WILLIS: That's correct.

10 CHAIRMAN CLARK: Or year end. And that's why you
11 make the argument that when they set projected test
12 year rate base, that it's necessary --

13 MR. WILLIS: And that's getting back to exactly
14 what Mr. Hill said, which is Mr. Cresse, if he
15 presented this, probably knew what he was talking
16 about, but did the actual Legislature know exactly the
17 wording to put in there or did they put the exact
18 wording in there.

19 CHAIRMAN CLARK: Well, but the statute -- I mean,
20 it is clear that it is permissive with the Commission
21 to do that.

22 MR. WILLIS: Very clear.

23 CHAIRMAN CLARK: And I have real concerns about
24 using projected test year for interim, because it's
25 supposed to be something done with a quick look see at

1 what's there, and by doing projections you get into a
2 lot of judgment about is it necessary, is it the right
3 amount. And it sort of engenders a lot of opinion that
4 interim was not designed to take care of or to
5 contemplate.

6 MR. WILLIS: And that's exactly where Staff was
7 coming down in the recommendation, where we are talking
8 about that we believe there is a stricter burden of
9 proof using a projected interim test year over an
10 actual historic interim test year.

11 CHAIRMAN CLARK: Is it available to us today to
12 say to, in effect, allow them to refile, but say we
13 will not entertain a projected test year?

14 MS. JABER: I think so, Commissioners. I think
15 so. I think that's part of your discretion to give
16 them the direction. But I think you could also say
17 that since the sentence is in the statute, and you have
18 the discretion, and, of course, the responsibility to
19 interpret your own statutes, I think you can give them
20 the parameters within which to file a projected test
21 year.

22 MR. HILL: And I guess I would reiterate once
23 again, because Staff has had concern since this statute
24 was adopted, if it conflicts with regulatory
25 philosophy, then perhaps we should go up on the hill

1 and try to get it taken out or amended.

2 CHAIRMAN CLARK: Well, let me just indicate, the
3 interim statute and interim proceedings have always
4 been troublesome. And I think that was one of the
5 reasons some people thought it was appropriate to enact
6 interim statutes. And I guess we can argue whether it
7 created more problems than it solved. But I always
8 felt in reading it that there are a lot of things that
9 are permissive, but one thing that is not permissive is
10 the fact that if there has been a showing that
11 historically they have been earning outside, below
12 their rate of return, then we have to do something.
13 And that's the only instance in which it is, in effect,
14 mandatory.

15 MR. HILL: Yes, ma'am.

16 CHAIRMAN CLARK: To establish a prima facie
17 entitlement for interim relief, the Commission -- the
18 petitioning party, the utility or regulated company
19 shall demonstrate that a utility or regulated is
20 earning outside the range of reasonableness of rate of
21 return. And then you go to how you calculate rate of
22 return, and it is in terms of historical rate of
23 return.

24 MR. HILL: I might point out that that statute
25 itself is sort of in conflict with the projected test

1 year. Because if you read it exactly how it is worded,
2 it says shall show that you are earning outside. And
3 if you're using a projected test year, you would have
4 to show that you will be earning outside. So there are
5 conflicts within the statute itself.

6 COMMISSIONER JOHNSON: Marshall, and maybe this
7 goes to something that perhaps you said earlier, and
8 maybe I misunderstood. But now that we have had the
9 statute actually read to us, and I see clearly now that
10 whether or not we use projected test year or projected
11 test year rate base, it is a may on behalf of the
12 Commission. So to the extent that we do allow them to
13 refile, is it Staff's position, and particularly
14 Legal's position that we can tell them, "Well, you may
15 not use that in this instance. You can refile, but you
16 can't use this projected test year."

17 MR. WILLIS: I believe you have the right to tell
18 them exactly what you want them to refile on.

19 COMMISSIONER JOHNSON: And I got a little
20 confused. Again, I thought I was hearing Staff -- from
21 a technical standpoint, do you think it's even viable?
22 I mean, is there any way to make this projected test
23 year work, because if you're telling me no, then we
24 need to tell them don't even bother.

25 MR. WILLIS: On the technical standpoint, yes,

1 there is a way to make it work. I really believe you
2 could file a projected test year for interim purposes
3 if you filed only your uncontrollable costs and plant
4 projects. And you said this is what I have; this is
5 what I have to do for interim; this is what I have to
6 do until the pendency of this case is done. Everything
7 else is going to be handled in the final rates. You
8 can decide all of those things that I would like to do
9 and I have control over, but for interim purposes these
10 are the things that I have to do. I have no choice. I
11 think that would work.

12 MS. JABER: Commissioner, I didn't mean to confuse
13 you. We are in agreement that we think you have the
14 discretion to tell them exactly what to file. What I
15 am suggesting to you, however, is there is a strong
16 view that this is the utility's choice. And if they
17 choose to file the projected test year, then there are
18 things they should know about filing for a projected
19 test year that isn't there in the statute that you have
20 never made a decision on.

21 MR. WILLIS: And I think one of those is exactly
22 whether you believe rate base means only plant rate
23 base or does it mean the entire test year; expenses,
24 capital structure, the whole works. And I think if
25 it's their choice to do that, and I think it's their

1 choice, not ours, I think we should leave today, if you
2 want them to refile, telling them exactly what you
3 believe that means. Does it mean rate base or does it
4 mean the full test year concept?

5 CHAIRMAN CLARK: Well, it seems to me the Company
6 itself is on much safer ground -- if I have read your
7 recommendations correctly, now, you have done some
8 looking and on a historical basis you believe that
9 there is information there that indicates they are not
10 earning their authorized rate of return, is that
11 correct?

12 MR. WILLIS: That's correct. We believe there is
13 1994 information, actual information that shows they
14 probably are not earning a fair rate of return. The
15 problem is they didn't file that test year, and we
16 don't believe it's our responsibility to build that
17 interim case for them.

18 CHAIRMAN CLARK: But if they did go with an
19 historical test year, there is much less discretion in
20 terms of justifying --

21 MR. WILLIS: Much less discretion and much safer
22 for them.

23 COMMISSIONER KIESLING: Let me see if I understand
24 one thing. When you say we can require them to refile,
25 are you encompassing within that the same idea that we

1 can deny interim rates on what has been filed because
2 you simply can't calculate it, and give them leave to
3 refile with some guidance, which is different than us
4 requiring that they refile. Which is it?

5 MR. WILLIS: No, I didn't mean to indicate that we
6 should require them to refile. I don't think we should
7 require them to do anything for interim. I think it's
8 totally their prerogative, and they can do what they
9 want. If they decide not to address interim again,
10 that's fine. I'm just saying that I don't believe we
11 should strictly say you can't refile. I think we
12 should deny it, and then give them leave to refile if
13 they so desire, based on whatever they believe is
14 correct.

15 CHAIRMAN CLARK: Would it be appropriate to set
16 out the parameters, in terms of at least projected?

17 MR. WILLIS: Yes, I believe so.

18 CHAIRMAN CLARK: With the understanding that that
19 doesn't mean that we will agree with that.

20 MR. WILLIS: That's correct. And I think if you
21 want to set those parameters out, you have to make two
22 decisions; one, is it rate base or full test year, and
23 the other is that the company ought to file on only
24 their uncontrollable costs in their projected case.

25 COMMISSIONER KIESLING: Or they can file on all of

1 them, but they are going to have to break them out so
2 that we can look at them. And then we will have the
3 discretion to only grant it on the --

4 MR. WILLIS: On the uncontrollable costs.

5 COMMISSIONER KIESLING: Right.

6 MR. WILLIS: That's correct.

7 COMMISSIONER KIESLING: And the absolute necessary
8 plant improvements, et cetera.

9 MR. WILLIS: That's correct.

10 MS. MERCHANT: And also that it's on a per plant
11 basis.

12 COMMISSIONER KIESLING: Oh, yes.

13 COMMISSIONER DEASON: Can you get into the
14 situation of basically having a rate case within a rate
15 case, and using more Staff time and resources. But
16 there may be no way around that, given that's what the
17 statute says.

18 MS. O'SULLIVAN: You may wish to set a time limit.

19 CHAIRMAN CLARK: You mean with respect to
20 projected?

21 COMMISSIONER DEASON: With respect to projected.
22 I mean, you're talking about doing a complete analysis
23 of what is controllable and what's not, and I assume
24 the Staff would just not take the company's word and
25 say these are our uncontrollable expenses. I'm sure

1 there is going to be some analysis on, well, are these
2 really uncontrollable expenses. It's just a very time
3 consuming process. And maybe that's just a problem
4 with a projected interim. But apparently the statute
5 allows it permissively, but it does -- by having it in
6 there, I think there is some interpretation that there
7 is a responsibility on the Commission to at least give
8 it a fair look to see if it is a reasonable request.
9 And we have looked at it here, and we think it's
10 unreasonable. Or at least the Staff is recommending
11 that it's unreasonable.

12 MR. HILL: Staff is recommending it. There is no
13 doubt in my mind that a projected interim test year is
14 going to take more Staff time and more Commission time
15 to analyze. It is a quick and dirty case if they file
16 it correctly; it is going to take us more time. And we
17 believe we can handle that with no problem, because we
18 have more than eight months to do it in here, the whole
19 case. With some problems.

20 MS. O'SULLIVAN: Commissioners, to follow-up on
21 some concerns about the timing of it, you could require
22 the utility to file within a certain period of time of
23 your decision today, so that you wouldn't have a rate
24 case within a rate case.

25 CHAIRMAN CLARK: Well, the statute does say -- it

1 sort of doesn't limit. It says the Commission may
2 during any proceeding upon its own motion or upon
3 petition by any party, or filing of a utility or a
4 regulated company, authorize the collection of interim
5 rates. I mean, it seems to indicate it's appropriate
6 at any time.

7 MS. O'SULLIVAN: That's correct, it does seem to
8 indicate that. It's a practical concern more than it
9 is a legal concern. If we get this filing January
10 through March, the hearing starts in January. It's a
11 practical concern, it's not so much of a legal concern.
12 And there is an argument, there is a concern that maybe
13 the filing of a new interim should start the clock
14 again. But, quite honestly, I can't tell you that
15 that's in the statute, or that I found it in case law.
16 It is something you have to consider. Or maybe if the
17 utility chooses to file a new interim, they should
18 waive the clock.

19 CHAIRMAN CLARK: In the TECO case, did we indicate
20 they could file again or they could not?

21 MS. O'SULLIVAN: Let me double check the order. I
22 believe they filed again and we denied it, and the
23 decision was made in the final rate case order.

24 MR. WILLIS: Commissioners, I might point out,
25 too, that --

1 CHAIRMAN CLARK: It doesn't indicate any action
2 prior to that final order. But there was some language
3 in there that --

4 MS. O'SULLIVAN: In the first order denying
5 interim rate relief, I don't believe the Commission
6 gave leave for them to file again. I believe they just
7 tried it again.

8 CHAIRMAN CLARK: Okay.

9 MR. WILLIS: Commissioners, I might point out,
10 too, that I think this company could have originally
11 requested a projected test year, or in the alternative,
12 an historic test year. They could have proposed
13 another test year for interim purposes, and we would
14 have had to analyze both of those. And in this case if
15 they choose to file something else, it wouldn't be any
16 different than them filing a second choice saying it's
17 the first time, if you don't like the projected test
18 year, then do it on this. We wouldn't find ourselves
19 in this position if they had done that, but it was
20 their choice.

21 COMMISSIONER DEASON: Do we have any requirements
22 either in statute or else in our own procedures or
23 rules, addressing when interim has to be requested? If
24 it has to be simultaneous with the filing of the test
25 year. Not the test year, but the rate case. Do we

1 have any requirements that they could wait months and
2 be right in the middle of processing the rate case, and
3 then all of a sudden file interim?

4 MS. O'SULLIVAN: That is a concern. I know that
5 they have judicially filed them together with their
6 initial request. The statute does say during any
7 proceeding. It doesn't imply that it must be filed at
8 the same time that the final rate request is filed.

9 MR. WILLIS: The statute basically gives two time
10 frames. One is for the actual rate case itself, which
11 is eight months, and the other part of it says you must
12 rule within 60 days of an interim request. And I don't
13 believe it addresses anywhere in the statute when that
14 has to be filed, it has just always been filed on the
15 same day that they request --

16 COMMISSIONER DEASON: Do our rules require a
17 filing of interim at the same time that the full rate
18 case is filed; there is nothing that addresses that?

19 MR. WILLIS: They require that they file the
20 information if they are requesting interim, it requires
21 they file the information along with it. It doesn't
22 tell them they have to file at the same time they file
23 for the regular rate case.

24 MS. JABER: Commissioners, but if we could go back
25 to the cases and what the case law says the purpose of

1 interim is, it's a quick and dirty method of allowing
2 the utility to earn up to the minimum of their rate of
3 return, then you would do it at the beginning of a rate
4 proceeding, and that's why they come in together.
5 There are no rules. You do have the statute, the
6 statute doesn't speak directly to it, but there is case
7 law that suggests that interim is there for a certain
8 purpose, and that purpose is very limited, and it's
9 quick and dirty, and it's to allow the utility the
10 opportunity to come with to their minimum. And if you
11 take that from a common sense point of view, then it
12 has to come at the beginning of rate case.

13 MS. O'SULLIVAN: The TECO rate case did talk about
14 that, actually.

15 COMMISSIONER DEASON: Let me interrupt. You may
16 be misinterpreting the question. I agree that should
17 be at the beginning, but what I'm hearing here is that
18 we are going to instruct the Company -- if not
19 instruct, at least give them instructions as to how to
20 refile if they are going to refile, which is going to
21 put us down the road. And I understand we are not on a
22 strict eight-month clock, but we're still on a strict
23 10-month clock, and we're talking about processing an
24 interim months from what would normally be the case.
25 And my question was, do we have a rule that requires

1 them, if you're going to ask for interim, you have got
2 to file that information and make your request
3 simultaneously with filing your full rate case?

4 MS. JABER: No, we don't. Let me try and bring us
5 back. Our recommendation was not for them to have any
6 leave to refile. We are trying to respond to a
7 question, and if you so choose to give them leave to
8 refile, it would be permissive, not mandatory.

9 COMMISSIONER KIESLING: I'm the one that raised
10 that initially. That's not in either of the existing
11 recommendations. I mean, my only concern in raising
12 that was that the Company is not solely at fault here.
13 You know, we got into this situation because of a chain
14 of events that probably will never be repeated again.
15 Hopefully, will never be repeated again. And I don't
16 want to penalize the Company and cause an irreparable
17 loss to them because of the whole chain of events here.
18 And also because our SOP, you know, said when we get a
19 case we will develop the procedures. Well, we don't
20 have the procedures, so to the extent they could, you
21 know, they have attempted to file what they could
22 figure out they needed at the beginning, and things
23 have changed. And we don't have any procedures for
24 interim on projected test year rate base. I think we
25 need to come up with those procedures and then give

1 them a chance to address them.

2 CHAIRMAN CLARK: Let me ask a question. Prior to
3 this filing was there any discussion between the Staff
4 and the Company as to what they might file? They
5 didn't ever come and say, "We are thinking of doing
6 projected, what are you looking for?"

7 MR. WILLIS: In the very beginning of the case
8 when the Company asked for test year approval, they
9 requested a projected interim test year.

10 CHAIRMAN CLARK: They did request it?

11 MR. WILLIS: Yes, they requested it, and that was
12 granted. And the Commission is fully aware the test
13 year approval concept is basically to make sure a
14 company is filing a test year that's within the realm
15 of reasonableness. And the statute does allow
16 projected test year, and, therefore, I don't believe we
17 can through a test year approval letter say you can't
18 file a projected test year. I think that would take
19 the full Commission to tell a utility they can't do
20 that. If they believed at that time they could file
21 it, and they had the right to file it, it was a
22 reasonable projection out one year.

23 CHAIRMAN CLARK: But there were no discussions as
24 to what might be in those projections; they didn't come
25 to you --

1 MR. WILLIS: No, there was not. And I don't think
2 that is really permissible at that point for Staff to
3 sit there and talk to a utility and say this is what
4 you ought to have in your rate case.

5 CHAIRMAN CLARK: Okay.

6 MR. WILLIS: I would point out, too, that I don't
7 think you are going to see an interim filing by this
8 company two months down the road. I think you're going
9 to see it fairly quickly. If not within two weeks,
10 probably within three or four weeks. If you remember
11 when this Commission told this company that they had to
12 file all the information and the necessary changes for
13 the other three counties, there was talk that that
14 would take 60 days, and that was turned around and
15 filed a few days later. One day later, I believe. So
16 they apparently have the ability to turn out a filing
17 rather quickly.

18 COMMISSIONER JOHNSON: Did Ms. O'Sullivan state
19 that if we were to deny this filing with leave to
20 refile, we could put a time period certain, and is that
21 something that we can do under the law, or do they have
22 the discretion to file it whenever?

23 MS. JABER: It's not in the law. I think that you
24 could find that because of the nature of the case and
25 because of the purpose of interim, it's advisable that

1 such a filing come in within a very short period of
2 time. But I can't stress enough, this is a case of
3 first impression. It's not in the law.

4 COMMISSIONER GARCIA: And clearly if the Company
5 doesn't hurry up with it, clearly maybe they don't need
6 interim rates. I mean, this is what it's all about.
7 If the Company wants to sit on it, that's a perfect
8 example of why we should vote no and wait until the
9 full case pans its way out.

10 MS. JABER: It's to their best interest to get a
11 filing in here right way. It's in their best interest.

12 COMMISSIONER GARCIA: Diane, since you brought it
13 up, I'm waiting for a motion from that side.

14 COMMISSIONER KIESLING: I wasn't willing to make a
15 motion until we had full discussion.

16 COMMISSIONER GARCIA: Oh, okay.

17 CHAIRMAN CLARK: Do any of the Commissioners have
18 further questions or discussion they would like to
19 undertake at this time?

20 Let me ask a question. The last two sentences on
21 Page 8, I didn't understand that.

22 MS. MERCHANT: Starting with "While Staff could
23 possibly remove plant additions by facilities"?

24 CHAIRMAN CLARK: No, in addition.

25 MS. MERCHANT: There was some retirements that the

1 utility stated in -- Ms. Kimble stated in her testimony
2 that were made prior to 1995, but they weren't booked.
3 For whatever reason, they decided not to book them.

4 CHAIRMAN CLARK: So, in effect --

5 MS. MERCHANT: The reason is not stated.

6 CHAIRMAN CLARK: -- it's an admission there is
7 more booked in investment for 1995 than their actually
8 is?

9 MS. MERCHANT: Not necessarily. But what it
10 states is that they chose not to make these retiring
11 entries at that point in time for whatever reason.
12 They just decided not to do that, and that was just,
13 you know --

14 CHAIRMAN CLARK: I don't understand that. If you
15 retire a plant in 1995, don't you take it off your
16 books?

17 MS. MERCHANT: I would think that it would be
18 appropriate according to the uniform system of accounts
19 to do that. I don't know the reason why the Company
20 decided not to. And we are pursuing that in discovery.

21 CHAIRMAN CLARK: You mean we have no explanation
22 as to why -- she admits that there is some retirements,
23 but we don't have any -- and they weren't booked, and
24 we don't have any explanation as to why they weren't
25 taken out of the rate base?

1 MS. MERCHANT: Other than they chose not to do
2 that for interim. I don't know the real dollar impact
3 of what those full retirements would be, but that was
4 the statement that she made.

5 MR. ARMSTRONG: It would increase the revenue
6 requirements on the interim test year.

7 CHAIRMAN CLARK: You don't need to participate in
8 this. I guess, I did understand what you wrote there,
9 but I didn't understand why there was no explanation.

10 MR. ARMSTRONG: Madam Chair, if I may, though --

11 CHAIRMAN CLARK: Mr. Armstrong, you can deal with
12 the Staff later. We are not allowing participation --

13 MR. ARMSTRONG: But, Madame Chair, it's just for
14 the matter of reserving our rights to appeal, that I
15 think we need to have an ability to make a statement on
16 the record to reserve our rights to an immediate appeal
17 which will --

18 CHAIRMAN CLARK: Well, I can tell you it's not
19 going to change what I'm going to do here.

20 MR. ARMSTRONG: It's just to --

21 CHAIRMAN CLARK: It's just a question, and Staff
22 can pursue it with you later.

23 MR. ARMSTRONG: But, Madam Chair, it's just to
24 preserve our rights for appeal. It's not to affect the
25 Commission's decision making process, but it is in

1 order to --

2 CHAIRMAN CLARK: Mr. Armstrong, if I hear from
3 you, I have to hear from everybody else.

4 MS. JABER: Madam Chairman, just to help you out,
5 in the Ortega case, this very issue came up, and the
6 order on interim preserves their right to appeal.

7 CHAIRMAN CLARK: Okay. On Page 11 --

8 MR. ARMSTRONG: Madam Chair, if I may for the
9 record, there are additional items which we would need
10 to preserve for right of appeal.

11 CHAIRMAN CLARK: Mr. Armstrong, I understand that.

12 MR. ARMSTRONG: I just do have to make a statement
13 on the record, Madam Chair, to preserve our rights to
14 raise those additional arguments that we would have
15 raised right now.

16 CHAIRMAN CLARK: I understand that. And Mr Twomey
17 and Public Counsel also reserved their right to appeal
18 what we have done here.

19 MR. ARMSTRONG: I have stated what I needed to,
20 thank you.

21 CHAIRMAN CLARK: On Page 11, this is where I think
22 I misinterpreted what you said. They didn't file with
23 the historical test year, but you did the calculations?

24 MR. WILLIS: Yes, ma'am. They did not file and
25 request an historical interim 1994 test year. We

1 basically in the alternative just tried to give you the
2 best we could do with what we had.

3 CHAIRMAN CLARK: Let me ask another question. If
4 they are given the opportunity to refile, they can
5 choose what may now be an historical test year that
6 ends in June '95, is that correct?

7 MR. WILLIS: That's correct.

8 MS. MERCHANT: Or any other historical period. Or
9 any other period other than the test year for final
10 rate purposes.

11 CHAIRMAN CLARK: Okay. I think that's all I had
12 on the issue.

13 MR. WILLIS: Yes, I think there is specific
14 statutory language now that says your interim test year
15 does not have to be the same test year used for final
16 purposes. So they are free to choose any actual
17 historical test year they want, and June of 1995 would
18 definitely be a permissive historical test year.

19 CHAIRMAN CLARK: All right. Further questions,
20 Commissioners? Is there a motion?

21 COMMISSIONER KIESLING: Yes, I will be happy to
22 make a motion. I move on Issue 3 that we adopt the
23 primary recommendation of denial of interim rates at
24 this time. However, that we grant leave to the utility
25 to refile for interim rates consistent with the

1 discussion that we have had here today.

2 COMMISSIONER GARCIA: I second that.

3 COMMISSIONER DEASON: Well, I have a question on
4 that. What are we doing by granting leave? Either
5 they have a statutory right to file or they don't. And
6 if they have got it, regardless of what we vote they
7 can refile it and we have a statutory obligation to
8 consider it.

9 COMMISSIONER KIESLING: No, I agree. And maybe
10 that was not a good choice of words. All I want to do
11 is to indicate to the Company that if, or when they
12 refile for interim, that they had better file
13 consistent with the discussions we have had here today.
14 If they want to go with a projected test year, they had
15 better break out their expenses so that we can
16 determine what are the --

17 MR. WILLIS: Uncontrollable costs versus
18 controllable.

19 COMMISSIONER KIESLING: That's it, uncontrollable
20 versus controllable. And on plant that we need to know
21 what has to be done now as opposed to what they just
22 wish to do.

23 CHAIRMAN CLARK: Commissioners, maybe we should
24 break it down a little bit. My concern is that by
25 saying consistent with discussions we have had here

1 today, or consistent with controllable versus
2 uncontrollable, we haven't given very specific
3 parameters. And we may be giving the indication that
4 projected test year, if you do it that way, it's going
5 to be fine. I mean, I want it be clear that it still
6 has to --

7 COMMISSIONER KIESLING: Oh, I agree.

8 COMMISSIONER GARCIA: I think, and maybe I'm
9 interpreting you, but I think Diane is sending a signal
10 to the Company. We are not saying we are going to
11 approve this; we are saying that Staff needs certain
12 information, and even when they give us that
13 information we may still not find it correct and deny
14 it. But we are just -- because of the unique nature of
15 this case, we are giving them the opportunity to file
16 this again within what I think has been clear from the
17 discussion, we need to make that a full decision. A
18 full decision that may be against the Company anyway,
19 but we need all the information on which to base that
20 decision.

21 COMMISSIONER KIESLING: I also am including in
22 that, though, the concept that it is the Company's
23 choice. They can also choose to come back and request
24 interim rates based on some kind of a historic set of
25 data, as would be done in cases, generally. I'm not

1 telling them how to do it; I'm just telling them that
2 whichever way they chose to go, they need to be
3 cognizant of the concerns and the problems that we have
4 discussed here today. Not they are going to get it,
5 but just that their filing needs to address it.

6 COMMISSIONER DEASON: Wouldn't we be sending that
7 signal if we just adopted the primary recommendation,
8 because it's all discussed within the context of the
9 recommendation, and why that is the primary
10 recommendation.

11 COMMISSIONER JOHNSON: But didn't I hear Staff
12 suggesting that -- and maybe for purposes of the SOP,
13 which is so loose -- that we do provide some guidance
14 in this order in terms of, you know, uncontrollable
15 costs versus costs, this thing being done on a per
16 plant basis. Are those the kind of things that Staff
17 is suggesting that we start developing a policy and put
18 down in writing? I thought Marshall said something
19 about whether or not we are considering a full test
20 year.

21 MR. WILLIS: That's correct.

22 COMMISSIONER JOHNSON: There are quite a few
23 things that we needed to have some direction, or the
24 Company is guessing again.

25 MR. WILLIS: That's correct. And I don't think

1 you can narrow it down to certain things just now, but
2 those are the things that come out right now. The
3 controllable versus uncontrollable, and whether the
4 Commission believes the statute means strictly rate
5 base, or all test year.

6 MS. JABER: You need to start developing some sort
7 of incipient policy, and you do that through the order.
8 And the order can make clear what the policy would be
9 for this case without titling the order denying interim
10 with leave to refile. You can state here on the record
11 that you recognize based on the circumstances of this
12 case the utility may wish to refile. And if they wish
13 to refile, these are the things that we think, as a
14 Commission, should be contained in a filing using a
15 projected test year rate base. I don't think you have
16 to call the order, order denying interim with leave to
17 refile.

18 COMMISSIONER KIESLING: I agree with that.

19 CHAIRMAN CLARK: Let me see if I've gotten this
20 down. The motion would be to adopt primary
21 recommendation with the modification that the request
22 for interim is denied at this time. Deny the request
23 for interim at this time based on the information
24 included in the filing. We recognize the Company based
25 on the circumstances of this case may refile for

1 interim increase at a later date.

2 COMMISSIONER KIESLING: I could go with that as
3 long as once we finish with that we also figure out how
4 we are going to develop sufficient guidelines and
5 procedures so that the Company, if they choose to
6 continue using an interim rate base, they know what to
7 do. Then I will amend my motion --

8 CHAIRMAN CLARK: To deny the request for interim
9 at this time based on the information included in the
10 filing. We recognize the Company, based on the
11 circumstances of this case, may refile for interim
12 increase at a later date. Is that your motion?

13 COMMISSIONER KIESLING: Yes, I so move.

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: All those in favor, say aye.

16 COMMISSIONER JOHNSON: Aye.

17 COMMISSIONER KIESLING: Aye.

18 CHAIRMAN CLARK: Aye.

19 COMMISSIONER GARCIA: Aye.

20 CHAIRMAN CLARK: Opposed, nay.

21 COMMISSIONER DEASON: Nay. I would simply support
22 Staff's primary recommendation and leave it at that.

23 CHAIRMAN CLARK: Okay. I think you have had some
24 discussion and indication from the Commissioners about
25 what they're concerned about. They concur in what the

1 Staff is concerned about to a large extent. I have
2 real concerns about a projected test year, and I guess
3 it would be my suggestion to them based on what has
4 indicated that it looks like a historical test year,
5 they can make the prima facie case, and it seems to me
6 -- I guess if I were doing it, I would do that. But
7 it's up to them. I mean, there are just a lot of
8 opinions and subjective analysis that you have to do
9 when you get into a projected test year. And I
10 understand from reading what Staff has put forward that
11 there are a lot of different nuances to this rate case
12 that are new, and it would be troubling to try and
13 fashion interim rates based on those kind of judgments.

14 COMMISSIONER KIESLING: Chairman, I agree with
15 you, but the problem is there is also a statute that
16 says that upon application by a utility, the Commission
17 may use the projected test year rate base when
18 determining the interim rates. And in order for us to
19 exercise the discretion of may, we have to have some
20 kind of guidelines or, you know, criteria against which
21 to measure.

22 CHAIRMAN CLARK: I wanted to make it clear from
23 the front end, I find the notion of projected test year
24 in this case troubling, based on what they wanted to
25 include, as I understand it, in terms of the

1 projections.

2 COMMISSIONER KIESLING: And I agree.

3 MR. WILLIS: Commissioners, a suggestion as far as
4 test year rate base versus a test year, as far as that
5 language goes, and what to try and expound to the
6 Company to file, you may desire not to make a decision
7 on that today, and, just basically, that the Company
8 take guidance from what you have said here. And that
9 at this point you probably haven't had enough time to
10 make that decision, and wait until they do refile with
11 the understanding that that's going to be made. And if
12 they refile it based on a projected test year
13 separating out controllable versus uncontrollable
14 costs, we would probably be able to do that, to make
15 the separation and let you make that decision. Now,
16 that's what they have to make a determination on, is it
17 worth their while to do that or is it worth their while
18 to --

19 CHAIRMAN CLARK: Well, I guess that sort of
20 underscores what I have said. I think that if you use
21 the projected test year, it's fraught with those kinds
22 of decisions and uncertainty. Whereas, if you used
23 historical, then you ought to show where you're
24 earning.

25 COMMISSIONER KIESLING: And that brings up another

1 thought for me, which is that there are two ways to
2 make policy; one is through individual case-by-case
3 determinations, which that policy is then developed
4 based on a set of facts. The other is through
5 rulemaking, where you have set up general guidelines.
6 We have done neither, but I see nothing wrong with
7 developing our policy on how to deal with this
8 particular new statute on an incipient basis, i.e.,
9 through a case-by-case. And it's not up to us to
10 develop the facts for them. We can only develop our
11 policy based on what they file, and to the extent that
12 we have now at least created some level of policy,
13 incipient policy, which is what they filed isn't
14 enough, you know, that's how you develop it. So, I
15 think in some ways, you know, I agree with Commissioner
16 Deason that the answer is no, and how we deal with it
17 in the future is going to be dependent upon what they
18 file.

19 CHAIRMAN CLARK: Okay. Issue 4.

20 MR. RENDELL: Commissioners, based on your
21 decision on Issue 3, Issues 4, 5, and 6 now become
22 nonissues. However, Issues 7 and 8 still need to be
23 addressed.

24 COMMISSIONER KIESLING: Can I ask a question on
25 Issue 7 in terms of -- I guess my question is is there

1 such a thing as a motion to dismiss a request for
2 interim rates? I mean, doesn't the Company have an
3 absolute right to file that request, and that there is
4 no basis under which we could dismiss their request.
5 We can deny it, but we can't really dismiss it.

6 MS. O'SULLIVAN: We looked at it in terms of it
7 being a response to their petition for interim rates,
8 as opposed to a motion to dismiss. It didn't seem to
9 fit into that category.

10 COMMISSIONER DEASON: Well, before we go any
11 further, I'm having some difficulty. Why is it that
12 Issue 7 is not moot as a result of the vote on Issue 3?

13 MS. O'SULLIVAN: I think that -- I was going to
14 introduce the item -- we recommend that the Commission
15 not grant OPC's motion to dismiss the request for
16 interim rates. The statute doesn't provide a point of
17 entry for parties to participate. Additionally,
18 because the Commission has essentially moved Staff on
19 Issue 3, we do believe that the motion is moot, or is
20 no longer necessary to be ruled upon. They requested
21 that the Commission deny SSU's request for interim
22 rates, which you have just done.

23 COMMISSIONER KIESLING: Well, I know I'm getting
24 picky --

25 CHAIRMAN CLARK: I think it's moot.

1 COMMISSIONER KIESLING: I think it's moot, too.
2 But, I think that it is important to recognize that
3 they did not ask us to deny it, they asked us to
4 dismiss the request.

5 CHAIRMAN CLARK: So, you're suggesting we treat it
6 as an inappropriate motion.

7 COMMISSIONER KIESLING: Yes. I mean, how could we
8 dismiss the request?

9 MS. O'SULLIVAN: That's correct. The statute does
10 speak of a prima facie entitlement, and if they are
11 entitled to it, you don't dismiss it.

12 COMMISSIONER KIESLING: I mean, I don't think we
13 need to rule on this because either way it's not going
14 to be granted. I mean, it's either moot or it's an
15 inappropriate motion.

16 CHAIRMAN CLARK: Well, would you like to make a
17 motion that it's an inappropriate motion, and if it's
18 treated as a motion to deny it as moot?

19 COMMISSIONER KIESLING: Yes, I so move.

20 CHAIRMAN CLARK: Is there a second?

21 COMMISSIONER JOHNSON: Second.

22 COMMISSIONER KIESLING: The order will reflect
23 that.

24 CHAIRMAN CLARK: All those in favor say aye.

25 COMMISSIONER DEASON: Hold it. I don't understand

1 why is it -- I'm sorry, what was the motion, that it
2 is --

3 COMMISSIONER KIESLING: It is an appropriate
4 motion and it should be denied for that reason. And if
5 it is deemed to be actually a request to deny, then
6 it's moot.

7 COMMISSIONER DEASON: Why is it inappropriate?

8 COMMISSIONER KIESLING: Because they have asked us
9 to dismiss the request for interim rates, and we cannot
10 dismiss that request. The Company has an absolute
11 statutory right to request it. We could deny their
12 request, but they have an absolute right to make that
13 request. Therefore, it's inappropriate for us to
14 dismiss a request. There is no statutory basis to file
15 that motion.

16 CHAIRMAN CLARK: I think what you may have is sort
17 of a distinction that doesn't amount to much of a
18 difference. Because a motion to dismiss generally
19 tests the legal sufficiency of what you have put out
20 there. And what I think Commissioner Kiesling is
21 suggesting is they have an absolute right to request
22 it, and if they don't put in there everything that
23 shows a prima facie case, then you just deny it.

24 COMMISSIONER KIESLING: Exactly.

25 CHAIRMAN CLARK: Which is the same thing in a

1 motion to dismiss; if you haven't made out your prima
2 facie case, you dismiss it.

3 MS. JABER: The statute doesn't contemplate
4 pleadings coming in response to a request for interim,
5 and that goes also towards why traditionally parties
6 can't participate in interim. You have a statutory
7 obligation if a utility makes a prima facie showing,
8 and if you follow that view consistently and to the
9 letter of the law, then a motion such as this is
10 inappropriate.

11 CHAIRMAN CLARK: There has been a motion and a
12 second. All those in favor say aye.

13 COMMISSIONER JOHNSON: Aye.

14 COMMISSIONER KIESLING: Aye.

15 COMMISSIONER GARCIA: Aye.

16 CHAIRMAN CLARK: Aye. Opposed, nay.

17 COMMISSIONER DEASON: Nay. I agree that the
18 motion is moot, but I'm not agreeing at this point to
19 make a finding that the motion is inappropriate.

20 MS. JABER: Commissioners, Issue 8 addresses OPC's
21 motion to cap interim and final rates. With respect to
22 the interim cap, that is moot at this point, and it
23 doesn't even require a ruling. With the request to
24 capping the final rate, Staff recommends that that is a
25 premature motion, that the parties could pursue that in

1 the hearing by identifying it as an issue, and you
2 truly don't even have to rule on that at this point, if
3 that's what your choice is.

4 COMMISSIONER KIESLING: And I so move.

5 COMMISSIONER JOHNSON: Second.

6 COMMISSIONER KIESLING: Your motion is that the
7 request in Issue 8 is moot with respect to interim
8 rates, and with respect to final rates, it can be made
9 an issue in the case?

10 MS. JABER: That's correct, if they wish to pursue
11 it.

12 CHAIRMAN CLARK: There has been a motion and a
13 second. All those in favor say aye.

14 COMMISSIONER JOHNSON: Aye.

15 COMMISSIONER GARCIA: Aye.

16 COMMISSIONER KIESLING: Aye.

17 COMMISSIONER DEASON: Aye.

18 CHAIRMAN CLARK: Aye. Opposed, nay. Is there
19 anything further to take up at this time? Thank you
20 very much, this hearing is adjourned.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 67 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 9th day of October, 1995.



JANE FAUROT
MY COMMISSION # CC295576 EXPIRES
July 18, 1997
BONDED THRU TROY FAIR INSURANCE, INC.

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