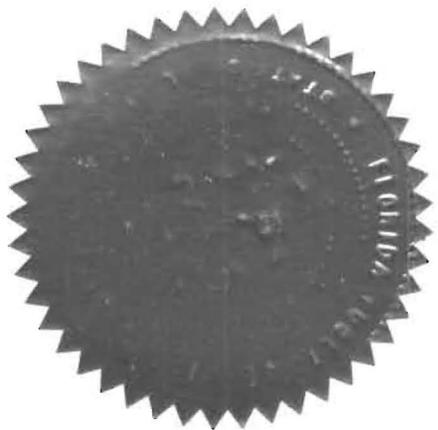


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Application for a rate :
increase for North :
Fort Myers Division in :
Lee County by Florida :
Cities Water Company - :
North Ft. Myers :
Division in Lee County :

DOCKET NO. 950387-SU



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER JOE GARCIA
Prehearing Officer

DATE: Thursday, April 4, 1996

TIME: Commenced at 9:30 a.m.
Concluded at 11:12 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

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1 **APPEARANCES:**

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4 Tallahassee, Florida 32308, Telephone No. (904)
5 877-7191, appearing on behalf of **Florida Cities Water**
6 **Company, North Fort Myers Division.**

7 **CHERYL WALLA**, 1750 Dockway Drive, North Fort
8 Myers, Florida 33903, Telephone No. (941) 656-5198,
9 appearing by telephone on behalf of herself and other
10 protestors.

11 **HAROLD McLEAN**, Associate Public Counsel,
12 Office of Public Counsel, 111 West Madison Street,
13 Room 812, Tallahassee, Florida 32399-1400, Telephone
14 No. (904) 488-9330, appearing on behalf of the
15 **Citizens of the State of Florida.**

16 **RALPH JAEGER**, Florida Public Service
17 Commission, Division of Legal Services, 2540 Shumard
18 Oak Boulevard, Tallahassee, Florida 32399-0870,
19 Telephone No. (904) 413-6199, appearing on behalf of
20 the **Commission Staff.**

21
22 **ALSO PRESENT:**

23 **TOM WALDEN**, FPSC Division of Water and Wastewater.
24
25

P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

COMMISSIONER GARCIA: Ms. Walla.

MS. WALLA: Yes.

COMMISSIONER GARCIA: This is Joe Garcia.

Are you ready?

MS. WALLA: Yes, we are.

MR. JAEGER: You did notice the "we." I think she has quite a few of the other protestors sitting in the room with her on the telephone.

COMMISSIONER GARCIA: Good. Welcome everyone.

MS. WALLA: Thank you. Would you like to know the names of the people in attendance here?

COMMISSIONER GARCIA: Yes, but we'll do that in a second. How many of them are there?

MS. WALLA: Five total and we expect a couple more. They are a little late.

COMMISSIONER GARCIA: Okay. We'll give them a second.

Staff will read the notice.

MR. JAEGER: Pursuant to notice this time and place has been designated for a prehearing conference in Docket No. 950387-SU, application for increased wastewater rates by Florida Cities Water

1 Company North Fort Myers Division in Lee County.

2 COMMISSIONER GARCIA: Very good. We'll take
3 appearances. Mr. Schiefelbein.

4 MR. SCHIEFELBEIN: My name is Wayne
5 Schiefelbein with the law firm of Gatlin, Woods &
6 Carlson, 1709-D Mahan Drive, Tallahassee, Florida
7 32308, appearing on behalf of Florida Cities Water
8 Company.

9 COMMISSIONER GARCIA: Mr. McLean.

10 MR. McLEAN: I'm Harold McLean, Office of
11 the Florida Public Counsel, 111 West Madison Street,
12 Tallahassee, Florida 32399, appearing on behalf of the
13 Citizens of the State of Florida.

14 COMMISSIONER GARCIA: Okay.

15 MR. JAEGER: Ralph R. Jaeger, appearing on
16 behalf of the Staff of the Florida Public Service
17 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
18 Florida 32399-0850.

19 COMMISSIONER GARCIA: Okay. Ms. Walla.

20 MS. WALLA: Cheryl Walla, 1750 Dockway
21 Drive, North Fort Myers, Florida 33903, appearing on
22 behalf of myself and the other protestors.

23 COMMISSIONER GARCIA: Ms. Walla, since you
24 have got them there, and since this would be the
25 appropriate time, why don't you go ahead and have them

1 introduce themselves or just mention their names so we
2 can go on the record.

3 MS. WALLA: I'd like them to introduce
4 themselves.

5 MS. VICTOR: Jerilyn Victor. My address is
6 1740 Dockway Drive --

7 COMMISSIONER GARCIA: Stop one second.

8 MS. VICTOR: -- 339023.

9 COMMISSIONER GARCIA: One second.

10 Ms. Walla, could you have them -- are you going to say
11 their names?

12 MS. WALLA: No, they are going to say each
13 of their own.

14 COMMISSIONER GARCIA: Let them walk up to
15 the speaker when they speak and have them spell out
16 their last names so that we can have everything nice
17 and clear.

18 MS. WALLA: Okay.

19 MR. JAEGER: That was Jerilyn Victor,
20 V-I-C-T-O-R; is that correct, Ms. Walla?

21 MS. WALLA: Yes.

22 MR. JAEGER: Did you get the address?
23 Would you do the address again?

24 MS. VICTOR: 1740 Dockway Drive, North Fort
25 Myers 33903.

1 MR. JAEGER: That was Ms. Victor's address?

2 MS. WALLA: That's correct.

3 MR. JAEGER: Go ahead with the next.

4 MR. SMITH: My name is Bernard Smith. My
5 address is 2069 West Lakeview Boulevard, North Fort
6 Myers, zip code of 33903.

7 COMMISSIONER GARCIA: Is that S-M-I-T-H?

8 MR. SMITH: Yes.

9 COMMISSIONER GARCIA: Thank you. Next.

10 MR. BROWN: Eugene Brown, Brown B-R-O-W-N.
11 2065 West Lakeview Boulevard.

12 COMMISSIONER GARCIA: Thank you, Mr. Brown.

13 MR. BROWN: Thank you.

14 MR. BOWNE: Lee Bowne, 4274 Arbor Lane.

15 COMMISSIONER GARCIA: Mr. Bowne, could you
16 spell your last name, please?

17 MR. BOWNE: B-O-W-N-E.

18 COMMISSIONER GARCIA: Okay. Thank you.

19 Next citizen.

20 MS. WALLA: The couple that -- should we
21 give them names when they come in?

22 COMMISSIONER GARCIA: No, go ahead and give
23 it now. We don't really even need to take all their
24 names but since they are there --

25 MS. WALLA: This is fine. We'll wait to see

1 if they come in. If they do --

2 COMMISSIONER GARCIA: Very good. Are there
3 any preliminary matters, Mr. Jaeger?

4 MR. JAEGER: Yes, Commissioner, if you'd
5 turn to Page 26 of the Prehearing Order, draft
6 Prehearing Order, Roman Numeral X, Pending Motions.

7 MR. SCHIEFELBEIN: What page was that,
8 Ralph.

9 MR. JAEGER: Page 26, Roman Numeral X and
10 there's two things that Ms. Walla set out in her
11 prehearing statement that have been put in as pending
12 motions.

13 Interrelated with Pending Motion No. 1 is
14 Issue 36. Those two go right together and Issue 36 is
15 on Page 21.

16 In the first one she seeks action allowing
17 supplemental testimony and exhibits on interrogatories
18 that were received from Florida Cities, I think, on
19 March 22nd.

20 And in her Issue 36 on Page 21 she says "Has
21 the Utility complied with Ms. Walla's discovery
22 request? And if not, what sanctions should apply?"
23 She says they have not complied to the extent
24 requested.

25 COMMISSIONER GARCIA: Ms. Walla, I have been

1 briefed by Staff on this. I'd like you to take a few
2 moments and to describe the issue for us, and then
3 we'll allow Mr. Schiefelbein to respond, and then
4 Public Counsel if they wish to make a statement.

5 MS. WALLA: Okay. The issue itself is I
6 requested some discovery on interrogatories from the
7 utility. When they answered the interrogatories and
8 with the documents requested, the documentation --
9 they sent numerous blank contracts and bids, and they
10 also included the South Ft. Myers Division, which was
11 not necessary, and they only had documentation for an
12 I&I program, I guess, for '94 and '95, unless there
13 was nothing prior to that in their I&I program.

14 I had asked in my interrogatory from when
15 the program was implemented. 1992 I believe it was
16 implemented, and I didn't receive any information from
17 '92-93.

18 Also the rate case expense, they sent me a
19 list but not a breakdown. I wanted the actual
20 receipts or anything that had anything to do with the
21 rate case expense from their testimony on out. And
22 all I received was a list.

23 COMMISSIONER GARCIA: Okay.

24 MS. WALLA: Also their responses to
25 questions about the Capacity Analysis Report were -- I

1 don't want to say less than truthful -- but in their
2 attachments for the Capacity Analysis Report,
3 Attachment No. 2, No. 7 and No. 8 included the water
4 demands with it, and they had responded there was
5 nothing to do with water in the Capacity Analysis
6 Report and all the answers to the interrogatories.
7 Whereas, it was in their attachments to the Capacity
8 Analysis Report.

9 So there are several things that I did not
10 receive that I asked for.

11 COMMISSIONER GARCIA: And that constitutes
12 this issue, right?

13 MS. WALLA: Yes.

14 COMMISSIONER GARCIA: Okay. Mr.
15 Schiefelbein.

16 MR. SCHIEFELBEIN: Thank you, Commissioner
17 Garcia.

18 First of all I want the record to show that
19 this minute is the first we have been alerted as to
20 what Ms. Walla perceives to be deficiencies in our
21 discovery responses. I am in no manner, shape or form
22 at this point in time able to respond off the cuff to
23 her first declarations of any specific deficiencies.

24 No specific motion has been filed. No
25 particular explanation has been provided to the

1 company at the -- she first made this indication that
2 there were deficiencies in the responses, I think, two
3 weeks ago. No indication of what the deficiencies
4 were. There was a preliminary prehearing conference
5 last week, the second part of which -- which Ms. Walla
6 was unable to attend but I indicated to Mr. McLean
7 that all legalistic nonsense aside, if we could please
8 be told what the deficiencies were, we would try to
9 work with Ms. Walla. This is the very first that I've
10 heard of these deficiencies.

11 These utility discovery responses were
12 furnished 13 days ago; that is received 13 days ago by
13 Ms. Walla.

14 Here we are, this is March 22nd. They were
15 mailed to Ms. Walla by the Utility on March 20th.
16 They were overnight expressed by Mr. McLean to
17 Ms. Walla on the 21st. Now we are 20 days before
18 hearing -- let the record show the barking dog is not
19 me.

20 This is turning this -- this threatens to
21 turn this proceeding into a circus. I am not in a
22 position to respond to these allegations of
23 deficiencies. I can on the rate case expense,
24 regardless of the content of whatever the responses
25 would be, indicate that, through Mr. Coel's -- through

1 Mr. Coel's prefiled direct testimony there was
2 complete documentation of actual rate case expense up
3 through that date, and Mr. Coel's rebuttal testimony,
4 which was prefiled yesterday, which I would assume in
5 the ordinary course of mail Ms. Walla would get
6 tomorrow, has full documentation of rate case expense
7 up through that date. Now, on the others, you know,
8 I'm at a total disadvantage.

9 Now, let us assume for a moment -- if I may
10 continue?

11 COMMISSIONER GARCIA: Sure.

12 MR. SCHIEFELBEIN: Let us assume for a
13 moment that there are arguable omissions in this. And
14 I know it was our intent to fully respond to the
15 discovery responses. Even if that were the case, and
16 if we were to drop everything in an attempt to appease
17 Ms. Walla on this without any requirement of order or
18 so forth, any supplemental testimony that would be
19 filed in this case, we would need -- the Utility would
20 need the opportunity to take, as needed, depositions
21 of the people filing prefiled supplemental testimony.
22 We would also need the opportunity to file rebuttal.
23 This Commission has never tolerated trial by ambush.
24 There are very formal requirements so that that does
25 not happen.

1 In the 20 days between this prehearing
2 conference and the hearing, I don't know how we can
3 accomplish what Ms. Walla is trying to do without
4 prejudicing the due process rights of this utility.

5 COMMISSIONER GARCIA: Mr. McLean.

6 MR. McLEAN: Yes, sir. The Citizens
7 generally support Ms. Walla.

8 I heard Mr. Schiefelbein say he'd like to
9 work with Ms. Walla. This is a golden opportunity for
10 him to do so. She wants to file limited supplemental
11 testimony addressing a couple of issues, one of which
12 is the I&I program; the other is rate case expense.
13 She was expecting to see, in her discovery for rate
14 case expense, invoices, and what she got was a
15 nondescript list.

16 As I argued in Barefoot Bay, those of us who
17 are in this process everyday become somewhat callus to
18 the difficulties of intervening customers who don't do
19 this on a daily basis. And some of the legal
20 distinctions which we draw routinely, I don't think
21 they are particularly sensitive to. Nonetheless, all
22 Ms. Walla is asking to do is file supplemental
23 testimony.

24 I would suggest that if she be given a
25 deadline to do so that's adequate for the Utility to

1 evaluate the testimony, that's the course to take.
2 Mr. Schiefelbein complains that he won't have the
3 opportunity to depose any of the new witnesses. The
4 fact is that the Utility has deposed none of the
5 witnesses I know of thus far, although we are working
6 to schedule a deposition with Ms. Walla. We can
7 easily schedule a deposition with Ms. Walla after she
8 files her supplemental testimony if she chooses to do
9 so. We generally support the right of Ms. Walla to
10 file this supplemental testimony, sir. Thank you.

11 MR. SCHIEFELBEIN: Again, if the record
12 could show, that I'm in no position to argue the
13 merits or the adequacy of the response of the
14 discovery since apparently Mr. McLean --

15 COMMISSIONER GARCIA: Give us a second.
16 Mr. Jaeger, do you have any suggestion on this?

17 MR. JAEGER: Well, it sounds like the rate
18 case expense, that should be there, you know, to file
19 testimony. I guess she's wanting all of the
20 documents. I'm not sure what that is. But that
21 should be there sufficient for her to go ahead with.

22 Whether they have anything on this I&I
23 program for '92 or '93, I don't know. But the
24 Utility, as Mr. McLean says, if they want to work with
25 Ms. Walla, if that's more on that I&I for '92 and '93,

1 they ought to be able to get it to her and get it to
2 her quickly. I would suggest Ms. Walla be given one
3 week to file this supplemental testimony, that would
4 be the 11th, and then give the Utility or maybe --
5 give the Utility six days to respond to that on the
6 17th. That way we'd have everything done one week in
7 front of the hearing. And if there is a real dispute
8 on I&I, or this '92-93 time frame, they could come
9 back to the Commission on that.

10 COMMISSIONER GARCIA: Mr. Schiefelbein.

11 MR. SCHIEFELBEIN: First of all, that time
12 schedule does not factor in any opportunity for any
13 give-and-take for us to respond to the allegations of
14 incomplete discovery. That doesn't factor in any time
15 for us to actually gather and disseminate the
16 information on the alleged discovery deficiencies.
17 Third of all, that does not provide --

18 COMMISSIONER GARCIA: Let's just address
19 what Ms. Walla wants real quickly. I understand what
20 you're trying to do and I respect it. But let's try
21 to give as much deference as possible to Ms. Walla.
22 If it were Mr. McLean, I probably would not be as
23 generous. But what we're trying to do is get this
24 thing through. And you understand as someone who
25 practices often before us here the complexities that

1 she is facing. And I really don't think that anything
2 here would be that difficult for you to comply with.
3 There's nothing here that you wouldn't typically
4 provide had Mr. McLean asked for it in a timely
5 fashion, or our Staff. So what I'm asking for you is
6 a little bit give on this just so we can keep this
7 thing going and keep it on track.

8 MR. SCHIEFELBEIN: Commissioner, for all I
9 know, in the discovery responses that were furnished
10 to Ms. Walla, that information may even be in here.

11 COMMISSIONER GARCIA: Maybe all it would
12 take would be for someone to either call Mr. McLean
13 and have him be your intermediary on this issue or
14 have someone call Ms. Walla, say, "It's in there.
15 Page 42" or wherever it is, and we can move from here.
16 Because I don't see it being that difficult for you to
17 comply with. Is there anything here that you feel you
18 can't do in the time frame that Mr. Jaeger has set for
19 us?

20 MR. SCHIEFELBEIN: What Mr. Jaeger said, if
21 I'm not incorrect, is that Ms. Walla's supplemental
22 would be due a week from now. Where is the time for
23 us to determine whether or not we've already provided
24 the information or to gather the information and to
25 provide it to her? And I assure you that once we can

1 reach that determination, if there is a deficiency,
2 we'll act expeditiously. But I'm caught totally blind
3 and I'm a little bit concerned, for the record, about
4 the deference to Ms. Walla.

5 We are now dealing with Public Counsel
6 representing the citizens of the state; Ms. Walla
7 representing herself, and as she announced at the
8 beginning of prehearing conference, appearing -- not
9 an attorney, appearing on behalf of the other
10 citizens, and, of course, we have not yet heard from
11 them but we have the other citizens. This is not due
12 process, Commissioner. Hearing about sanctions for
13 discovery noncompliance and hearing about it for the
14 first time at prehearing and basing a decision on
15 those alleged deficiencies at the prehearing
16 conference where I have no adequate opportunity to
17 respond is not due process.

18 COMMISSIONER GARCIA: What would you rather
19 do, just file something with me and try to comply in
20 that sense?

21 MR. SCHIEFELBEIN: I'm not looking at being
22 overly formalistic; I'm just looking at trying to be
23 fundamentally fair here. And I'm totally caught by
24 surprise. There has been adequate opportunity to
25 address this prior to this prehearing conference.

1 I believe you need to factor into this time
2 for us to -- when I say "us" is greater than "I", to
3 look at this information to see what other
4 documentation is available, to get back with
5 Ms. Walla. And in sequence after that there has to be
6 an opportunity for her to file supplemental, for us to
7 take the depositions, if needed. And she has got a
8 lengthy list of I think four or five witnesses that
9 she wishes to file supplemental testimony on dealing
10 with the Lochmoor Golf Course; all sorts of things
11 that are broader than what is being discussed here in
12 her motion. This is trial by ambush.

13 MR. McLEAN: Mr. Commissioner, if I could
14 respond very briefly?

15 COMMISSIONER GARCIA: Of course.

16 MR. McLEAN: Mr. Schiefelbein addresses the
17 whole issue as a sanction on discovery and I suppose
18 to some extent it is. But it is among the least harsh
19 discovery sanctions I've ever heard of. What you're
20 being asked to permit here is to permit written
21 citizen testimony on subjects you would accept on the
22 day of the hearing if offered by a citizen who wasn't
23 writing it first. It's no big deal. I think Mr.
24 Schiefelbein is making a tempest in a teapot.

25 What he will be called upon to do is cross

1 examine lay customer witnesses on the stand when he
2 has the benefit of having had written testimony
3 perhaps a week before the hearing where normally he
4 has to cross examine them on the first day that he
5 ever sees them. We don't view it as any big deal.
6 They are not asking for that much. And I don't think
7 the due process rights of the Utility are very much at
8 stake at all. And particularly I don't view this as
9 any harsh sanction for discovery violation. If we
10 were moving, or if Ms. Walla was moving to exclude the
11 Utility's evidence based upon some sort of discovery
12 violation, then I can see the big deal. But they're
13 not moving to do that at all. All they want to do is
14 put on a few witnesses. And any one of those
15 witnesses could take the stand on the day of the
16 hearing and say the same thing and get it in the
17 record. All these folks are asking to do is put it in
18 writing because they perceive that written testimony
19 is taken more seriously by the Commission than oral
20 testimony. Thank you, sir.

21 COMMISSIONER GARCIA: Thank you, Mr. McLean.
22 Mr. Jaeger, let's formalize your suggestion. I'm
23 going to rule on behalf of Ms. Walla, with the
24 specifications you just spoke of, and we'll move from
25 there. You wanted to give them --

1 MR. JAEGER: One week from today to file the
2 supplemental testimony. That would be the 11th. And
3 then give the Utility six days to respond to that,
4 until the 17th.

5 MR. SCHIEFELBEIN: That would be I think
6 four work days in which to prepare -- to read,
7 understand, analyze and prepare rebuttal and file
8 rebuttal testimony up here. That is not adequate.
9 Again, I say that not having seen the supplemental
10 testimony. Perhaps rebuttal would not be required but
11 I need to preserve that option.

12 COMMISSIONER GARCIA: Okay. I'm sorry,
13 Mr. McLean.

14 MR. McLEAN: I thought I had a comment but I
15 agree with Mr. Schiefelbein on that point.

16 COMMISSIONER GARCIA: I think you may find
17 you'll be in the latter situation, Mr. Schiefelbein.
18 If you find that you're having continued difficulty,
19 please communicate it to Mr. Jaeger and we'll see what
20 we can do at that point. For right now let's go with
21 these deadlines and move from there.

22 Mr. Jaeger, anything else?

23 MR. JAEGER: We sort of rolled in the second
24 issue. And also she lists like four witnesses at the
25 beginning that did not prefile testimony, and so I'm

1 trying to figure out if we're going to limit what
2 we're going to allow to be filed on the 11th, and have
3 we done that?

4 COMMISSIONER GARCIA: Ms. Walla, do you want
5 to speak on that?

6 MS. WALLA: Okay. As far as my witnesses
7 Mr. Pellicer, Clyde Debb, Brian Schall -- Mr. Pellicer
8 is from the Division of Natural Resources and the only
9 issues he was going to speak on is some specific
10 conditions on the permit. And also the same for Clyde
11 Debb, which we still do not have the bulk file from
12 Palm Beach. They had sent over the wrong file, which
13 this can all be put in the record if need be.

14 COMMISSIONER GARCIA: Who sent in the wrong
15 files?

16 MS. WALLA: South Florida Water Management
17 District; the wrong file was sent from West Palm Beach
18 that we had been waiting for. And so now we're
19 waiting again for the bulk file. Brian Schall, his
20 testimony was basically going to be to back up some of
21 the facts he had given me that I used in my own
22 testimony.

23 COMMISSIONER GARCIA: Mr. Schiefelbein.

24 MR. SCHIEFELBEIN: If I may just point out
25 that none of those people are customers of the

1 Utility. Mr. McLean indicated that these people would
2 be entitled to just show up at the hearing and just
3 get this information in the record. That would not
4 apply to representatives of three different state
5 agencies.

6 The matters that Ms. Walla is offering,
7 those government officials as potential witnesses, do
8 not pertain to the alleged discovery deficiencies.
9 This is all different stuff.

10 COMMISSIONER GARCIA: I haven't ruled on
11 this yet. We only ruled on what you were going to --
12 so I'm allowing you to -- thank you. Mr. McLean.

13 MR. McLEAN: Again, Commissioner, we're
14 dealing with the perennial problem of formalized
15 technical legal requirements, which those of us who
16 appear here on a daily basis sort of understand. But
17 I sometimes wonder if an intervening customer can have
18 any hope to understand what is going on.

19 Ms. Walla has worked for months to prepare
20 for this case and she is discovering at the very last
21 moments, when things get more technical, that perhaps
22 she should have done things differently. I think it's
23 very unfortunate to see her evidence excluded because
24 of a technical legal requirement.

25 MR. SCHIEFELBEIN: I have a suggestion:

1 Perhaps what we need to do is to waive prefiled
2 rebuttal testimony; establish a date for Ms. Walla's
3 supplemental testimony; establish a requirement that
4 these people be made available promptly for deposition
5 and allow the Utility at the hearing to respond live
6 to that testimony and rebuttal as needed.

7 COMMISSIONER GARCIA: Mr. McLean.

8 MR. McLEAN: That's a very attractive
9 proposition. One thing I have been sitting here
10 shaking in my boots since I heard that earlier comment
11 about the lack of leniency for poor old Mr. McLean is
12 that I'm about to spring on you a request that we be
13 able to file rebuttal testimony to Staff testimony.
14 And if we handled our rebuttal testimony in the same
15 way, that suggestion has a particularly rosy allure to
16 it. I think it makes good sense. It may lengthen our
17 hearing somewhat, but, Mr. Commissioner, in my
18 experience in this business, to the extent we let
19 customers have their say, we very often save time as
20 opposed to try to exclude what customers have to say.
21 So I think it's a very good suggestion, particularly
22 if it includes me.

23 MR. SCHIEFELBEIN: It doesn't yet.

24 COMMISSIONER GARCIA: We'll wait for
25 Mr. McLean to make his statement.

1 MR. McLEAN: The truth is, Commissioner, I
2 think that's a sterling suggestion all the way around.

3 COMMISSIONER GARCIA: Mr. Jaeger.

4 MR. JAEGER: I think if the parties and if
5 the Commission --

6 COMMISSIONER GARCIA: Who is going to be
7 directing this hearing? Who are the three
8 Commissioners on it, do you know?

9 MR. McLEAN: Commissioners Kiesling, Johnson
10 and yourself.

11 MR. JAEGER: Johnson, Kiesling and yourself.

12 COMMISSIONER GARCIA: Commissioner Johnson.
13 Okay. I would probably assume she would probably give
14 the same latitude.

15 Mr. Jaeger, we'll do it that way, and we're
16 fine, if that's alright with you, Mr. Schiefelbein?
17 We're going to listen to his suggestion now. But as
18 far as the customers that Ms. Walla wants to put on,
19 we'll allow you some latitude in your rebuttal on the
20 day of the hearing.

21 MR. SCHIEFELBEIN: And may we establish a
22 date -- if we're receiving this testimony -- actually
23 this would be filed on the 11th. If we could have
24 some requirement that they make themselves available
25 for deposition by some reasonable date. And again

1 we're --

2 COMMISSIONER GARCIA: Give us a date, Mr.
3 Schiefelbein.

4 MR. SCHIEFELBEIN: The 17th.

5 COMMISSIONER GARCIA: Very good. Ms. Walla,
6 did you get that?

7 MS. WALLA: Yes, I did.

8 MR. JAEGER: I didn't get it. I had
9 somebody talking in my ear.

10 COMMISSIONER GARCIA: Mr. Schiefelbein? Mr.
11 Schiefelbein would like them to be available for
12 deposition by the 17th of this month.

13 MR. JAEGER: Okay. The testimony would be
14 filed on the 11th for all --

15 COMMISSIONER GARCIA: Correct.

16 MR. JAEGER: So the Utility would not have
17 to file any rebuttal on the 17th? Is that what we're
18 doing?

19 COMMISSIONER GARCIA: No. I think the
20 Utility still has to file the rebuttal, but what we're
21 allowing is some latitude on you -- you don't want to
22 file rebuttal?

23 MR. SCHIEFELBEIN: I'm looking for a
24 opportunity to fit all of these events in the 20 days
25 remaining. I don't see adequate time --

1 COMMISSIONER GARCIA: If Staff doesn't have
2 a problem with it and Mr. McLean doesn't, I'm fine
3 with not filing rebuttal. It's certainly going to
4 lengthen it so I would ask both parties that are here,
5 and Ms. Walla, that we try to be very narrow when it
6 comes time for rebuttal on the specific issues, and we
7 don't use it to drift far and wide on the issues that
8 will be discussed in rebuttal.

9 MR. SCHIEFELBEIN: Your ruling is at this
10 point solely limited to the customers that would be
11 filing.

12 COMMISSIONER GARCIA: Correct. But I'm sure
13 Mr. McLean is about to spring something on us.

14 MR. SCHIEFELBEIN: And you have not yet
15 addressed Ms. Walla's technical government witnesses
16 that she has.

17 COMMISSIONER GARCIA: No, they are included.
18 It's for the witnesses she just stated, and I thought
19 that was what our agreement encompassed.

20 MR. SCHIEFELBEIN: I will respectfully
21 suggest -- I'm sure of Ms. Walla's good faith and that
22 the other customer witnesses will make themselves
23 available. I wonder if Ms. Walla is in any kind of a
24 position to give any sort of assurances that
25 government officials will be available for deposition

1 by that date?

2 COMMISSIONER GARCIA: I think if they are
3 not, then we'll deal with that accordingly. But
4 that's up to Ms. Walla, I would assume, in this case.
5 If she can't make them available, then we'll react
6 accordingly. Is that all right? Mr. McLean?

7 MR. McLEAN: Yes, sir. I think that's an
8 excellent compromise.

9 COMMISSIONER GARCIA: Mr. McLean, you wanted
10 to spring something? Has Mr. Jaeger concluded with
11 his preliminary matters.

12 MR. JAEGER: Yes. I think Mr. McLean said
13 something about he had rebuttal witnesses.

14 MR. McLEAN: But I withdraw the use of the
15 term "spring" and tender "ease."

16 The Staff has chosen to take a position on
17 I&I and its consequences in the form of a DER witness.
18 We have three pages of testimony from a registered
19 professional engineer, one and a half of which are his
20 credentials. There's one question posed to the
21 witness. We would like the opportunity to rebut
22 Staff. It's an opportunity which in all candor I
23 thought I had until I read this morning that the order
24 extending the time for rebuttal applied only to the
25 Utility. The Utility asked for more time to file

1 rebuttal, and I assumed, as is Commission practice,
2 that the time for filing rebuttal would have been
3 extended for all parties.

4 The fact is, Commissioner, Staff takes a
5 position contrary to our position in their direct
6 case, and we would simply like to file a modest
7 rebuttal to a position taken by the Staff. It's three
8 pages, one of which is substance and I'm prepared to
9 hand it to Mr. Schiefelbein this morning.

10 I discussed it briefly with Mr. Schiefelbein
11 at the pre-pre, and I think that the latitude I'm
12 asking for is to be included in the time for filing
13 rebuttal, which was extended to Mr. Schiefelbein. I
14 think I would have had the right to rebut the Staff as
15 late as yesterday in any case. I don't think we would
16 have had to seek any particular leave to do that.

17 I might point out that the order which
18 extended Mr. Schiefelbein's time is still subject to a
19 petition or a motion for reconsideration. So what I'd
20 like to do is have the opportunity to file the
21 rebuttal this morning, or at least hand it informally
22 to Mr. Schiefelbein. He'll have plenty of time to
23 evaluate it and depose the witness if he cares to.
24 Thank you, sir.

25 MR. SCHIEFELBEIN: Just so I understand,

1 you're indicating you're in a position to provide that
2 testimony to us today?

3 MR. McLEAN: The first draft, which even the
4 Unabomber can now tell you you need to be careful with
5 first drafts, but I'm going to give you mine.

6 MR. SCHIEFELBEIN: I certainly would have no
7 objection to that.

8 MR. JAEGER: The Utility has been granted
9 until the 9th to file their rebuttal. Are we going to
10 give the same to OPC for this rebuttal?

11 MR. McLEAN: I don't need it. I'll file it
12 today. I'll hand it to Mr. Schiefelbein today.

13 MR. JAEGER: I don't see any prejudice or
14 anything.

15 MR. SCHIEFELBEIN: Just so we're -- I'm glad
16 that wasn't another round of excitement, but I will
17 indicate that the Utility has filed its rebuttal
18 yesterday by the original due date. It about killed
19 us but it is done.

20 COMMISSIONER GARCIA: Okay.

21 MR. SCHIEFELBEIN: And the copies should
22 have been hand delivered, barring our runner's truck
23 breaking down -- which seems to be happening lately --
24 to Mr. McLean and Mr. Jaeger yesterday late, and
25 mailed to Ms. Walla.

1 COMMISSIONER GARCIA: All right, thank you.
2 I'm glad we worked that one out.

3 Let's then work our way through this.

4 Ms. Walla, are you still with us?

5 MS. WALLA: Yes.

6 COMMISSIONER GARCIA: We didn't have the
7 barking dog so I couldn't tell.

8 MS. WALLA: Do you want me to rile him up?

9 MR. SCHIEFELBEIN: Would the same provisions
10 apply as far as this witness will be made available
11 for deposition within the same time frames, and that
12 there would, as needed, be given the opportunity --
13 the Utility be given the opportunity to respond orally
14 at the hearing as needed?

15 COMMISSIONER GARCIA: Absolutely.

16 MR. McLEAN: No problem from here. In fact,
17 we'll even accept a stipulation if need be.

18 COMMISSIONER GARCIA: Okay. Let's go
19 through the order point by point, and, Ms. Walla, if
20 as we go through this there's any corrections you'd
21 like to make or anything, just speak up. We're going
22 to try to work our way through this because it's
23 taking quite some time, okay?

24 MS. WALLA: Okay.

25 COMMISSIONER GARCIA: Case background. Is

1 there anything? Order of witnesses?

2 MR. JAEGER: Commissioner, I want to sort of
3 jump in here on that.

4 Staff has listed Barienbrock and Shoemaker
5 as witnesses, they are DEP witnesses, and we were
6 wondering if we could schedule a specific time for
7 them. They would be available at 3 p.m. on the
8 afternoon of the 24th, the first day, and we were
9 wondering if the parties would agree to that.

10 MR. McLEAN: No objection, Mr. Commissioner.

11 MR. SCHIEFELBEIN: No objection.

12 COMMISSIONER GARCIA: I'm sure that's all
13 right with you, Ms. Walla?

14 MS. WALLA: Yes, it is.

15 MR. JAEGER: I said 3 p.m. and then I said
16 the afternoon. Should we say the whole afternoon or
17 get them here at 3:00?

18 COMMISSIONER GARCIA: Let's get them here at
19 3:00. Let's try the afternoon so we can move forward
20 because we may run into problems with the latitude
21 we've allowed for rebuttal, so let's get them here in
22 the afternoon. Is that all right with them?

23 MR. JAEGER: 1:30 on. And get to them as
24 soon as we can after 1:30.

25 MS. WALLA: Commissioner Garcia, we passed

1 so quickly through the case background, I didn't know
2 you were going on to the witnesses. I wanted to ask a
3 question about the case background.

4 I know the Public Service Commission issues
5 to the customers coming into the hearing a case
6 background, do they not, on the front of the pamphlets
7 that they hand out about the case?

8 COMMISSIONER GARCIA: I wouldn't go so far
9 as listing the case background. It's generally much
10 more general than this general, and it just talks
11 about the basic issues. It's not as detailed as this
12 that you are looking at.

13 MS. WALLA: Okay. Only because it is very
14 general, it doesn't include that part of the
15 1.6 million?

16 COMMISSIONER GARCIA: Ms. Walla, you'll have
17 the opportunity to discuss that, and you may want to
18 ask for an opening statement when we get to the
19 hearing itself. And, in fact, if you'd like to do
20 that so that the customers can hear you, that would be
21 fine, although I'd like to limit it starting now to a
22 specific time.

23 But what you will see the day of the hearing
24 is relatively limited. And if you'd like, you have
25 the 1-800 number for the Commission, you can call

1 Ms. Bev DeMello and she will give you a copy way
2 before we get to the hearing and you'll find that
3 doesn't list many things because just space, time and
4 the ability to prepare it by that office of ours.

5 MS. WALLA: Okay. Thank you, Commissioner.

6 COMMISSIONER GARCIA: Ms. Walla, so that
7 your customers can hear you and the Public Counsel's
8 office is always prepared to do it, and I will ask Mr.
9 Schiefelbein, three minutes to make an opening
10 statement the day of the hearing; would you like that,
11 to include any facts that you'd like everyone to
12 understand?

13 MS. WALLA: Yes.

14 COMMISSIONER GARCIA: Let's also establish
15 that. Let's give three minutes to each party in
16 opening. Is that all right with you, Mr. McLean?

17 MR. McLEAN: Yes, sir.

18 COMMISSIONER GARCIA: Good.

19 MR. SCHIEFELBEIN: Pardon me.

20 COMMISSIONER GARCIA: Sure.

21 MR. SCHIEFELBEIN: May I drag us back?

22 COMMISSIONER GARCIA: Absolutely,
23 Mr. Schiefelbein.

24 MR. SCHIEFELBEIN: Back on the potential
25 depositions.

1 COMMISSIONER GARCIA: Okay.

2 MR. SCHIEFELBEIN: And I'm a little bit at a
3 disadvantage here. This is not exactly how I thought
4 this would fall out. I'm worried about there being a
5 problem where people would have reasonable notices
6 required for a deposition. There's a rule of thumb
7 for out-of-town folks accepted in the legal community
8 which, based on the schedule of prefiling testimony,
9 looking at it and so forth and then deciding whether
10 to depose, we would not be complying with that rule of
11 thumb.

12 I'm wondering if perhaps we might have your
13 support, have a ruling that we -- that the various
14 deponents, at least those under the control of
15 Ms. Walla or in communication with her, be required to
16 cooperate with us in the coming days so that we can
17 issue notices of deposition at mutually convenient
18 times for these people subject to cancellation if they
19 are not needed. So in addition to them making
20 themselves available, if we could have some sort of
21 assurance of cooperation and a ruling requiring that
22 cooperation, so that we might be getting notices out
23 really before we even see the supplemental testimony
24 so that we're not hit with objections later on.

25 COMMISSIONER GARCIA: Mr. McLean, is that

1 all right with you?

2 MR. McLEAN: Yes, sir, it's all right with
3 me. But I think it's a lot up to Ms. Walla. And I
4 would advise Ms. Walla that that is a reasonable
5 request and one she ought to follow.

6 COMMISSIONER GARCIA: Ms. Walla.

7 MS. WALLA: Okay. That will be fine.

8 COMMISSIONER GARCIA: Very good.

9 MR. SCHIEFELBEIN: Then if I may bring us
10 almost to where you wanted to go, on the order of
11 witnesses, first of all, of the one detail that
12 Mr. Gatlin and I never did get to yesterday in
13 preparing for this was our order of witnesses. I
14 wanted to indicate -- I can provide that at the latest
15 by tomorrow to Mr. Jaeger as far as what the Utility
16 order would be. It's five minutes of thought that we
17 didn't have yesterday.

18 COMMISSIONER GARCIA: I'm sure that's all
19 right with everyone involved.

20 MR. McLEAN: Yes.

21 MR. SCHIEFELBEIN: And to close with a
22 helpful bang, I would also offer to one of the
23 witnesses that Staff has offered, is Mr. McPherson.
24 He is the Staff auditor and basically his testimony is
25 to sponsor the audit report in this case.

1 We would offer to stipulate, if the other
2 parties are willing, to have his testimony inserted in
3 the record as though read and waive cross examination
4 and have him excused from the hearing if the other
5 parties are willing.

6 COMMISSIONER GARCIA: Mr. McLean.

7 MR. McLEAN: Commissioner, assuming
8 Ms. Walla has no objection to that we we have no
9 objection. I notice that Ms. Walla has a couple of
10 items from the auditor's report in her testimony. I
11 don't know that that necessitates the need to have the
12 auditor there live but we certainly join --

13 COMMISSIONER GARCIA: Just to make sure
14 you're following along with what we're discussing here
15 is by stipulating we don't necessarily have to have
16 person here. And what it allows us to do is just put
17 it into the record from which Commission Staff and the
18 Commission can work from so that we don't need that
19 person there. Is that all right with you, Ms. Walla?

20 MS. WALLA: Yes. As long as the audit is in
21 the record.

22 COMMISSIONER GARCIA: Absolutely. It will
23 be there. Okay. Great. Thank you. We move on.

24 MR. McLEAN: Order of witnesses,
25 Mr. Commissioner, should simply show our rebuttal

1 witness, Mr. Ted L. Bidy, Ralph's Page No. 6 where it
2 says "Rebuttal OPC." Again the name as Ted L. as in
3 "lima", Bidy, B-I-D-D-Y.

4 MR. JAEGER: What Ms. Walla pointed out, we
5 didn't have any rebuttal witness -- position for her.
6 Does she have rebuttal witnessess?

7 COMMISSIONER GARCIA: Hang on.
8 Mr. Schiefelbein was going to say something. No?
9 Okay. Ms. Walla.

10 MS. WALLA: Yes.

11 COMMISSIONER GARCIA: Did you hear what
12 Mr. Jaeger said?

13 MS. WALLA: Yes.

14 COMMISSIONER GARCIA: Do you have any
15 rebuttal witnesses?

16 MS. WALLA: No, I do not.

17 COMMISSIONER GARCIA: Very good.

18 Mr. Schiefelbein.

19 MR. SCHIEFELBEIN: Just for everyone's
20 information, not in any particular order yet, but our
21 rebuttal witnesses will be Acosta, Karleskint, Dick,
22 Young, Coel, Schifano and Cummings.

23 COMMISSIONER GARCIA: Very good. Okay.

24 MS. WALLA: Excuse me?

25 COMMISSIONER GARCIA: I said okay.

1 MS. WALLA: Oh.

2 MS. WALLA: Commissioner Garcia. Who is
3 Mr. Cummings?

4 MR. SCHIEFELBEIN: Mr. Cummings is an
5 engineer with Black & Veatch, V-E-A-T-C-H, and he is
6 responsible for the permitting of the expansion of the
7 wastewater treatment plant. And, Ms. Walla, that
8 testimony and exhibit was mailed to you yesterday.

9 MS. WALLA: Okay. Thank you. That's what I
10 was curious about.

11 COMMISSIONER GARCIA: Great. Are there any
12 corrections or changes to the basic positions? All
13 right. Corrections or changes to the issues. I'm
14 going to go issue by issue. I'm going to speed it up.
15 If you have a problem, just let us know. Ms. Walla,
16 are you still with us?

17 MS. WALLA: Yes, I am.

18 MR. JAEGER: Commissioner Garcia, before you
19 go forward, Ms. Walla had three changes, and if we get
20 those three then you probably can go a lot. Quicker
21 on Page 9, Issue 5 -- instead of going in order I'll
22 just take the exceptions and then I think --

23 COMMISSIONER GARCIA: That will be fine,
24 unless there are that many that we'd like to go one by
25 one.

1 MR. McLEAN: No, sir.

2 MR. JAEGER: Issue 5, Walla's position, the
3 second sentence, and I've changed it to read -- this
4 is by telephone conversation with her yesterday --
5 "Moreover, if the Utility's infiltration and inflow
6 (I&I) reduction program has not been vigorously
7 pursued, then customers should not pay those costs."
8 And I wanted to make sure that I had gotten that right
9 from Ms. Walla.

10 MS. WALLA: Yes. Thank you.

11 MR. SCHIEFELBEIN: Pardon me, Mr. Jaeger, I
12 didn't get any of that.

13 MR. JAEGER: It should be on yours.

14 COMMISSIONER GARCIA: The final version you
15 should have.

16 MR. JAEGER: If you have the fax from
17 yesterday.

18 MR. SCHIEFELBEIN: Yes, I do. What page?

19 MR. JAEGER: Issue 5.

20 MR. SCHIEFELBEIN: No, sir. That page was
21 not faxed.

22 COMMISSIONER GARCIA: Second sentence in her
23 position. Hang on one second. Let Mr. Schiefelbein
24 get there and we'll read it one more time.

25 MR. JAEGER: Walla's position, Issue 5.

1 COMMISSIONER GARCIA: Mr. Jaeger, could you
2 go ahead and read it for Mr. Schiefelbein.

3 MR. JAEGER: "Moreover" -- this is just the
4 second sentence I'm reading -- "if the Utility's
5 existing infiltration and inflow (I&I) reduction
6 program has not been vigorously pursued, then
7 customers should not pay those costs."

8 COMMISSIONER GARCIA: Thank you,
9 Mr. Schiefelbein.

10 MR. JAEGER: Page 12, Issue 10. Delete the
11 second sentence of Walla's position.

12 COMMISSIONER GARCIA: I'm sorry, now you've
13 lost me.

14 MR. JAEGER: Page 12, Issue 10, Walla's
15 position.

16 COMMISSIONER GARCIA: The one that says "No
17 position at this time."

18 MR. JAEGER: "No position at this time."
19 Page 21, Issue 36.

20 COMMISSIONER GARCIA: Let's go back for a
21 second. You've really lost me. What happened to
22 Issue 10? All we did was just "no position at this
23 time."

24 MR. JAEGER: Let me see.

25 COMMISSIONER GARCIA: Do you want to take

1 moment? (Pause)

2 COMMISSIONER GARCIA: I noticed here before
3 Issue 10 there's some possible stipulations, after
4 Issue 9.

5 MR. JAEGER: Okay. Issue 10, "Should
6 working capital be adjusted?"

7 COMMISSIONER GARCIA: I think the fire alarm
8 just went off.

9 MR. JAEGER: In the one she has -- she had
10 another sentence. Ours is correct, it's hers that has
11 been changed. And I've already deleted -- there was
12 something about agreeing with a Utility, which was in
13 error. So ours is correct. It's hers that I'm doing
14 for her benefit. "No position at this time" would be
15 the correct -- the way it should read and I wanted to
16 make sure that's what Ms. Walla wanted.

17 COMMISSIONER GARCIA: Ms. Walla, have you
18 got that?

19 MS. WALLA: Yes, I do. Thank you.

20 COMMISSIONER GARCIA: Okay. Mr. Jaeger,
21 before you move on, we have got -- right before Issue
22 10 there's two issues that state possible stipulation.

23 MR. JAEGER: I didn't number them. At the
24 pre-pre they said "We think we can stipulate" and I
25 put them as stipulations in the back. But I didn't

1 want to take them out right now because --

2 COMMISSIONER GARCIA: Mr. Schiefelbein, are
3 you okay to take this out? Stipulate to these two
4 issues?

5 MR. JAEGER: I think if we go back to the
6 beginning then we'll hit those in order now and take
7 them out and then we can show where they go to the
8 stipulation.

9 COMMISSIONER GARCIA: Okay. Very good.

10 MR. JAEGER: The only other thing was 36,
11 and we've corrected it.

12 Originally we had a different position for
13 Ms. Walla. Ours is correct and 36 is that issue we
14 took up at the beginning. And Ms. Walla wanted the
15 position, "No, they have not complied to the extent
16 requested." Ms. Walla, is that correct?

17 MS. WALLA: Yes.

18 MR. JAEGER: Those were the three. The
19 document she is working off of is different from the
20 document we're working off of.

21 COMMISSIONER GARCIA: Is this an issue at
22 this point? Mr. Schiefelbein has generously agreed to
23 comply here, maybe we can just --

24 MR. JAEGER: I think when we come to that
25 issue we'll probably delete it. I want to go through

1 all of the issues. I just want to make sure I made
2 the corrections by phone Ms. Walla --

3 COMMISSIONER GARCIA: I'll read off the
4 number. If we have any problems, just yell out. Are
5 you with us, Ms. Walla?

6 MS. WALLA: Yes, I am.

7 COMMISSIONER GARCIA: Ms. Walla, we may take
8 a small break because an alarm keeps going off, but
9 we'll let you know.

10 MS. WALLA: Okay. Thank you.

11 COMMISSIONER GARCIA: Issue 1.

12 MR. SCHIEFELBEIN: Pardon me. Is it your
13 intention -- and I think it would be appropriate but
14 unless you disagree -- that we indicate witnesses with
15 positions?

16 MR. JAEGER: They should have a witness with
17 it if there is a witness.

18 COMMISSIONER GARCIA: I had thought we did
19 have a witness on these when I looked through it.

20 MR. JAEGER: On most of them you do but on
21 some the Utility -- we got Ms. Walla's prehearing
22 statement on, like, Tuesday, and we had the prehearing
23 on Friday, so we were pressing to get the positions or
24 the witnesses with the positions.

25 MR. SCHIEFELBEIN: All righty. Issue 1, the

1 Utility's position is as stated. The witnesses would
2 be Dick and Coel, C-O-E-L.

3 COMMISSIONER GARCIA: Ms. Walla you got
4 that?

5 MS. WALLA: Yes, thank you.

6 COMMISSIONER GARCIA: Issue 2. Could
7 someone check if we have a fire?

8 MR. WALDEN: The workman is changing some
9 light bulbs outside. He has one more to do. It's a
10 machine that goes up and down.

11 COMMISSIONER GARCIA: Okay. Good.
12 Mr. Schiefelbein.

13 MR. SCHIEFELBEIN: All right. The Utility's
14 position on Issue 2 is as follows: "The Commission
15 should consider all substantial competent evidence in
16 the record of this proceeding."

17 MR. JAEGER: Say that one more time. "All
18 substantial --"

19 MR. SCHIEFELBEIN: "All substantial
20 competent evidence in the record of this proceeding."

21 MR. JAEGER: Do you have a witness?

22 MR. SCHIEFELBEIN: It, to me, does not seem
23 to be an issue that calls for a witness, although --

24 COMMISSIONER GARCIA: More like that mantra
25 than actually -- okay. We're all right with that so

1 we move on to Issue 3.

2 MR. SCHIEFELBEIN: I have a question on
3 Issue 3 that may be appropriate, then again it may
4 not.

5 I know that from Ms. Walla's prefilings that
6 among her concerns is odor at the wastewater plant,
7 which is certainly a type of concern that the
8 Commission traditionally considers under the issue of
9 quality of service. But the statement of her position
10 deals essentially with allegations of excessive
11 infiltration and inflow. And I think certainly
12 Ms. Walla's entitled to take whatever position she
13 wants on this. She repeats this position under the
14 various infiltration and inflow issues as well, but
15 I'm inquiring as to whether infiltration and inflow is
16 really a quality of service issue.

17 COMMISSIONER GARCIA: Okay. Mr. McLean.

18 MR. MCLEAN: I think it's a quality of
19 service issue but, of course, it has other and more
20 tangible results in the case. If we were dealing with
21 FIPUG or FIXCA, or one of those folks, I'd say
22 Mr. Schiefelbein's observation should have been given
23 some effect. But in this instance I don't think it
24 makes a whole lot of difference. It's a quality of
25 service issue. I don't see any prejudice by the

1 suggested redundancy with dealing with it here, and in
2 the financial section to. I guess what I'm saying is,
3 Commissioner, I don't see any prejudice by what's
4 listed there. It's Ms. Walla's position and task to
5 prove it up and its relevance as to that issue, I
6 guess.

7 COMMISSIONER GARCIA: Ms. Walla, do you
8 understand Mr. Schiefelbein's objection -- suggestion?
9 How's that? He's just asking if we can take it up in
10 an area where you have already in your issue
11 statements more directly.

12 MS. WALLA: Would you hold one moment.

13 COMMISSIONER GARCIA: Absolutely. We're on
14 Issue 3, Page 8. I would assume we're all on the same
15 page. (Pause)

16 MS. WALLA: Commissioner Garcia, our reading
17 of the statute says "The service shall not be less
18 safe, less efficient or less sufficient than is
19 consistent with the approved engineering design of the
20 system and proper operation of the utility in the
21 public interest." It is under the service statute.
22 We want to include it all the way long the line where
23 I have put it in.

24 COMMISSIONER GARCIA: Very good, Ms. Walla.
25 Then we'll move on. Issue 4.

1 MR. SCHIEFELBEIN: The Utility's -- if I
2 could have a moment to think. (Pause.)

3 Our position should be, and I don't have it
4 written out in a particularly good sentence -- this is
5 one of the types of issues when it comes to flows,
6 used and useful, that I'm a little dyslexic on. I
7 drove our people crazy yesterday on this. But I
8 believe that our position is certainly 1.25 MGD as far
9 as the capacity. And the flows, for purposes of
10 calculating used and useful, would be average annual
11 daily flow. Pardon me, I misspeak. I'm very sorry.
12 For purposes of calculated used and useful would be
13 average daily flow max month.

14 It's a tricky issue because you're talking
15 about, first of all, what's the plant permitted, on
16 what basis is a plant permitted, and then how should
17 that plant be -- the used and useful nature of that
18 plant be calculated. And I think for the purposes of
19 used and useful it's max month.

20 COMMISSIONER GARCIA: Is that how you're
21 going to state it, though?

22 MR. SCHIEFELBEIN: I will come up with a
23 more coherent statement by tomorrow. But I certainly
24 wanted to impart the idea so that people knew where we
25 were coming from.

1 MR. McLEAN: I was going to say, Mr.
2 Commissioner, in these instances where Wayne hadn't
3 had a chance to come up with a position yet, we'll
4 certainly afford him the latitude to get them
5 together, write them and send them to us or have them
6 run over to us and we'll undertake to get them to B.
7 Ms. Walla by overnight; we'll overnight them to her to
8 relieve Wayne of the burden of having to come up with
9 the words which we might hold him to later.

10 MR. SCHIEFELBEIN: That is our position as I
11 stated. I'm just saying I need a little time to come
12 up with a coherent sentence, but that's the answer.

13 And our witnesses on that, as far as
14 capacity, would be Cummings and Young, and as far as
15 the flows would be Young.

16 COMMISSIONER GARCIA: Okay. Issue 5. Issue
17 6.

18 MR. SCHIEFELBEIN: I'd like to restate my
19 position on Issue 6, to have it reflect "100% used and
20 useful." And the witness would remain Young.

21 COMMISSIONER GARCIA: Issue 7.

22 MS. WALLA: Excuse me, Commissioner Garcia.

23 COMMISSIONER GARCIA: Sure.

24 MS. WALLA: We don't have who Staff's
25 witness is going to be on that.

1 MR. JAEGER: Okay. On Issue 6, all we do is
2 we phrase -- what we're trying to do in that issue is
3 saying where the Commission was back when, but at this
4 point we're pending further development of the record.
5 No Staff witness. Although we may -- let me see just
6 a second, Barienbrock and Shoemaker -- this is the
7 appropriate amount of used and useful, so no, we would
8 not have a witness. They're just on infiltration. No
9 witness.

10 COMMISSIONER GARCIA: No witness. You
11 understand what Mr. Jaeger stated, Ms. Walla?

12 MS. WALLA: Yes. Commissioner Garcia, I'm a
13 little vague, if we needed to ask Staff at all about
14 their used and useful calculation, then we wouldn't be
15 entitled to do that then?

16 COMMISSIONER GARCIA: Mr. Jaeger.

17 MR. JAEGER: We did a used and useful for
18 the PAA but we have no used and useful calculation, we
19 have no testimony, there's nothing in the record.
20 It's going to come from the Utility, the OPC and your
21 witnesses for used and useful.

22 MS. WALLA: Okay. Thank you.

23 COMMISSIONER GARCIA: Issue 7.

24 MR. SCHIEFELBEIN: Utility witnesses for
25 Issue 7 would be Mr. Coel, C-O-E-L, and Mr. Acosta,

1 A-C-O-S-T-A.

2 COMMISSIONER GARCIA: Very good. Here's
3 where this gets interesting. We have here a possible
4 or proposed stipulation. Mr. Jaeger.

5 MR. JAEGER: When we were going through this
6 Ms. Walla -- first of all, Mr. Schiefelbein had to
7 leave at 10:30 for some court -- for some reason, and
8 then Ms. Walla had to leave later, so she was not here
9 and we wanted to make sure that we did, in fact, have
10 a stipulation here. So I put it in under the issues,
11 but if we confirm that it is a stipulation, I would
12 propose to cross it through.

13 COMMISSIONER GARCIA: Are we all right with
14 this, Ms. Walla?

15 MS. WALLA: The proposed stipulation.

16 MR. McLEAN: Commissioner, if I'm not
17 mistaken, essentially -- and correct me if I'm wrong,
18 Mr. Jaeger -- essentially what you're doing here is
19 everyone is agreeing that staff auditor's exception,
20 if it was an exception, was correct; is that correct?

21 MR. JAEGER: Yes. Staff, through the audit,
22 capitalized legal fees and incorrect allocations in
23 engineer fees, said plant in service should be reduced
24 by 223,175. And in the first -- turning to the
25 stipulation section in the back -- let me get to

1 that -- that's Page 25, and the stipulation is "Plant
2 in service should be reduced by \$223,175 to remove
3 capitalized legal fees and incorrect allocations of
4 engineering fees." And everybody seemed to agree with
5 that. I wanted to make sure that was, in fact, the
6 situation.

7 MR. McLEAN: Ms. Walla, the Office of Public
8 Counsel enthusiastically agrees with that exception.
9 It relieves us of the burden of proving it up to the
10 Commission.

11 MS. WALLA: I agree also.

12 COMMISSIONER GARCIA: So we stipulated those
13 two issues, correct?

14 MR. JAEGER: Next one is another separate
15 one, "What adjustments should be made to correct
16 accounting errors?" Then we have just some minor
17 corrections there set out on Page 11, and on Page 25
18 of the stipulations I said "To correct accounting
19 errors the following adjustments should be made" and
20 that -- wait a minute -- reprinted there. And if
21 everybody agrees with that stipulation then we can
22 cross that one through.

23 MR. SCHIEFELBEIN: As does the Utility.

24 MR. McLEAN: Public Counsel stipulates.

25 COMMISSIONER GARCIA: Ms. Walla, you all

1 right with that I assume?

2 MS. WALLA: Yes, sir.

3 COMMISSIONER GARCIA: Very good. Issue 8.

4 MR. SCHIEFELBEIN: The Utility witness for
5 Issue 8 is Mr. Coel, C-O-E-L.

6 COMMISSIONER GARCIA: Okay. Very good.

7 MR. JAEGER: Ms. Walla -- we did not have a
8 position for Ms. Walla there. She wasn't here and I
9 think Mr. McLean did not give us a position, or either
10 it did not get put in.

11 MR. McLEAN: It's one of those that we
12 understand; we don't particularly like it but we think
13 the burden to prove up an average rate base is too
14 burdensome. The cost exceeds the benefit. So we're
15 just not taking a position, and by saying that, we
16 represent to the Commission that we're not going to
17 produce evidence on the point.

18 MR. SCHIEFELBEIN: Would it then be fair to
19 characterize your position as no position as opposed
20 to no position at this time?

21 MR. McLEAN: Yes, certainly that would be
22 fine.

23 MR. JAEGER: Ms. Walla, did you have a
24 position on that issue?

25 MS. WALLA: No, no position.

1 MR. SCHIEFELBEIN: May I respectfully
2 suggest then that we have a Class B stipulation.

3 MR. JAEGER: Category B.

4 MR. McLEAN: A Category B necessarily takes
5 me out of the loop, so I can hardly agree to a Class
6 B.

7 I don't want to consume time here. I think
8 what is written is fine. If you all want to
9 stipulate, we don't object. The only thing we promise
10 to do is not produce evidence on the point.

11 MR. JAEGER: I think we could leave it as an
12 issue and then say no evidence.

13 COMMISSIONER GARCIA: We'll go on. Issue 9.
14 Issue 10.

15 MR. JAEGER: The next issue is another
16 possible stipulation.

17 COMMISSIONER GARCIA: Right. Ms. Walla, are
18 you all right with this?

19 MS. WALLA: Yes.

20 COMMISSIONER GARCIA: Mr. McLean.

21 MR. McLEAN: Yes, sir. We're okay with both
22 of those listed stipulations.

23 COMMISSIONER GARCIA: Mr. Schiefelbein.

24 MR. SCHIEFELBEIN: Certainly the first one.

25 COMMISSIONER GARCIA: Okay.

1 MR. SCHIEFELBEIN: We would stipulate, and
2 the second --

3 COMMISSIONER GARCIA: Let's do the first
4 one. Stipulate the first one. All right, Mr. Jaeger.

5 MR. JAEGER: Okay.

6 COMMISSIONER GARCIA: And the second one?

7 MR. SCHIEFELBEIN: The second one we would
8 also stipulate.

9 MR. McLEAN: Yes, sir. The same.

10 COMMISSIONER GARCIA: Very good. Ms. Walla.

11 MS. WALLA: Yes, sir.

12 COMMISSIONER GARCIA: Good. Issue 10.

13 Issue 11.

14 MR. JAEGER: There were no -- I guess OPC
15 didn't have any witnesses on that or --

16 COMMISSIONER GARCIA: Which one, Issue 11?

17 MR. JAEGER: It says "adjustments should be
18 made" but right now they didn't list any witnesses.

19 MR. McLEAN: Dismukes. I'm saying that with
20 a reservation. I don't know that she addresses that.
21 If she doesn't, then we'll develop it in cross.
22 Tricia may know. I'm sure she's read the testimony.
23 But in any case, Commissioner, I don't want to hold us
24 up. Dismukes if we offer evidence; no one if we
25 don't.

1 COMMISSIONER GARCIA: Mr. Schiefelbein.

2 MR. SCHIEFELBEIN: I'm okay.

3 COMMISSIONER GARCIA: Thank you. Issue 11.

4 MR. SCHIEFELBEIN: Our witness on Issue 11
5 would be Mr. Coel.

6 COMMISSIONER GARCIA: Okay. Issue 12.

7 MR. MCLEAN: Again, we're no friend of the
8 leverage graph but we're not going to produce any
9 evidence contrary to it.

10 COMMISSIONER GARCIA: Mr. Jaeger.

11 MR. JAEGER: This is another one where you
12 could either have a Category B or just leave it as an
13 issue. I think we can just leave it -- did we want to
14 have that category -- I think --

15 COMMISSIONER GARCIA: Let's leave it as an
16 issue. Okay. Issue 13.

17 MR. JAEGER: Also, Staff -- I'm sorry, we
18 may change that issue a little to add, that says
19 "Using the current leverage formula, the rate of
20 return on equity should be -- however, the Commission
21 will use the leverage formula in effect at the time of
22 the order."

23 COMMISSIONER GARCIA: Is that all right?
24 Okay. Issue 14.

25 MR. SCHIEFELBEIN: I have a position.

1 COMMISSIONER GARCIA: Okay.

2 MR. McLEAN: Why don't you send it to us.

3 COMMISSIONER GARCIA: Unless there's
4 something -- do you already have it there with you?

5 MR. SCHIEFELBEIN: Yes, I do.

6 COMMISSIONER GARCIA: Go ahead and read it.

7 MR. SCHIEFELBEIN: The position, it's one
8 sentence. It's, "Yes, the debt component of the
9 capital structure should be adjusted to reflect the
10 December 1995 issuance of \$18 million in senior notes
11 at 7.27%."

12 COMMISSIONER GARCIA: Go again. Read that
13 sentence again.

14 MR. SCHIEFELBEIN: "Yes, the debt component
15 of the capital structure should be adjusted to reflect
16 the December 1995 issuance of \$18 million in senior
17 notes at 7.27%." And the witness is Mr. Coel.

18 MR. JAEGER: 7.22.

19 MR. SCHIEFELBEIN: 7.27%.

20 COMMISSIONER GARCIA: And the witness is
21 Coel. Okay.

22 MR. McLEAN: Commissioner, in our position,
23 Line 2, strike the number "6", substitute the number
24 "5".

25 COMMISSIONER GARCIA: Okay.

1 MR. JAEGER: And I had the note "note
2 position above", we'll cross out the note now.

3 MR. SCHIEFELBEIN: I'm sorry, -- oh. I
4 understand.

5 COMMISSIONER GARCIA: Ms. Walla, are you
6 with us?

7 MS. WALLA: Yes, I am.

8 COMMISSIONER GARCIA: Good. Issue 15.
9 Issue 16.

10 MR. SCHIEFELBEIN: The witness for the
11 Utility would be Mr. Coel.

12 COMMISSIONER GARCIA: All right. Issue 17.
13 Issue 18. Issue 19. Issue 20. Issue 21.

14 MR. SCHIEFELBEIN: I would like to change my
15 position to read as follows --

16 COMMISSIONER GARCIA: On Issue 21.

17 MR. SCHIEFELBEIN: Yes, sir.

18 COMMISSIONER GARCIA: Go ahead.

19 MR. SCHIEFELBEIN: The first several words
20 would remain the same. In its entirety the position
21 would read, "As reflected in Exhibit LC-2 and as
22 updated by prefiled rebuttal testimony and exhibits."
23 And the witness would remain Coel.

24 COMMISSIONER GARCIA: Very good. Issue 22.
25 Issue 23. Issue 24. 25.

1 MR. SCHIEFELBEIN: If I may, Commissioner,
2 just on Issues 23 and 24, would Public Counsel's
3 Witness Dismukes be appropriate to be indicated there?

4 MR. McLEAN: Yes.

5 COMMISSIONER GARCIA: 25.

6 MR. JAEGER: Commissioner, we had discussed
7 whether these should be issues at all. Since they are
8 fallout issues, I'm not sure if they need to be there.
9 I put them in because we -- I don't think we reached a
10 final agreement on whether these issues need to be --

11 MR. McLEAN: Whatever suits the Commission's
12 pleasure is fine with us.

13 MR. SCHIEFELBEIN: Out of an abundance of
14 caution I think that they should be preserved. We're
15 the troublmakers that raised them. The reason we did
16 is that there are adjustments in Ms. Dismukes'
17 prefiled testimony that we can't tie to any particular
18 fallout effect of another issue.

19 COMMISSIONER GARCIA: So it will stay there
20 then. Going on to 25.

21 MR. SCHIEFELBEIN: The Utility's witness on
22 25 would be Mr. Coel.

23 COMMISSIONER GARCIA: I would assume OPC --

24 MR. McLEAN: Yes, sir.

25 COMMISSIONER GARCIA: Okay. 26. 27.

1 MR. SCHIEFELBEIN: Mr. Commissioner, on
2 Issue 27 the Utility's witness should be Karleskint,
3 K-A-R-L-E-S-K-I-N-T.

4 COMMISSIONER GARCIA: Very good. 28.

5 MR. SCHIEFELBEIN: Mr. Commissioner, on
6 Issue 28 I would merely like to change the "was" to
7 "is".

8 COMMISSIONER GARCIA: That's all right with
9 Staff I would assume. All right. We'll move on. 29.

10 MR. SCHIEFELBEIN: If I may, on issue --
11 Ms. Walla is indicating "no position pending further
12 discovery." And yet I thought the problems, perceived
13 problems with discovery related to I&I and rate case
14 expense.

15 COMMISSIONER GARCIA: Ms. Walla.

16 MS. WALLA: Commissioner Garcia.

17 COMMISSIONER GARCIA: Yes.

18 MS. WALLA: I may have not the right example
19 using "discovery", that word there.

20 COMMISSIONER GARCIA: Okay.

21 MS. WALLA: To us it is discovery because
22 it's having to deal with that bulk file from the South
23 Florida Water Management District.

24 COMMISSIONER GARCIA: Why don't we just
25 state the same position that OPC has for you there.

1 MS. WALLA: Okay, that's fine.

2 COMMISSIONER GARCIA: Have you got that,
3 Mr. Jaeger?

4 MR. JAEGER: Just crossing out "discovery"
5 and "No position pending further development of the
6 record."

7 COMMISSIONER GARCIA: Exactly. Issue 29.
8 Issue 30.

9 MR. SCHIEFELBEIN: The Utility would like to
10 restate its position. It's one sentence. It would
11 read, "The appropriate rate reduction is subject to
12 the resolution of Issue 21."

13 MR. JAEGER: "The appropriate rate reduction
14 is subject to the resolution of Issue 21."

15 MR. SCHIEFELBEIN: Yes, sir.

16 MR. JAEGER: Witness.

17 MR. SCHIEFELBEIN: There is none.

18 COMMISSIONER GARCIA: Okay. Issue 31.
19 Issue 32.

20 MR. SCHIEFELBEIN: Commissioner Garcia --
21 and this will be a theme that I will be bringing up
22 for most of the remaining issues.

23 COMMISSIONER GARCIA: Okay.

24 MR. SCHIEFELBEIN: First of all, I would
25 respectfully suggest that we need a comprehensible

1 statement of the issue.

2 COMMISSIONER GARCIA: Mr. Jaeger.

3 MR. JAEGER: This was Ms. Walla's issue and
4 she was not there when we got to it so we didn't have
5 a chance to rephrase this issue. This is the way we
6 set it out as her issue, and I think that it could be
7 put in the form of a question or an actual issue. Or
8 I think it actually can be deleted, because she is
9 talking about the proposed agency action order which
10 is a nullity. And so I would say let Ms. Walla talk
11 about it and see if she can rephrase it. And also if
12 it should be deleted, since the proposed agency action
13 order no longer has any viability.

14 COMMISSIONER GARCIA: Mr. McLean, would you
15 have suggestion here for us?

16 MR. McLEAN: We discussed this somewhat at
17 the pre-pre and, of course, my view is consistent with
18 Mr. Jaeger's, and that is that the PAA order is a
19 nullity. It's gone. And irrespective of whether it
20 was defective or illegally arrived at doesn't
21 particularly matter. But Ms. Walla seems determined
22 to question that PAA order, and the means by which the
23 Commission arrived at it. So I'm not entirely sure I
24 understand. On this one, unfortunately, I'm not sure
25 I can help a whole lot.

1 COMMISSIONER GARCIA: Okay. Ms. Walla.

2 MS. WALLA: Commissioner Garcia, when that
3 final order came down I had no idea it becomes a
4 nullity as far as anything presented at this next
5 hearing.

6 COMMISSIONER GARCIA: Okay.

7 MS. WALLA: But I just wanted to make a
8 point that I felt that the Commission -- if that final
9 order had gone through without a customer protest,
10 that it would have deleted the fact that they didn't
11 find out about, for instance, the I&I program, where
12 the cost lie in their MFRs. The rate case expense as
13 far as the prudent expenses, what some of those
14 receipts and invoices looked like. That's where the
15 findings of fact came into play.

16 MR. McLEAN: Mr. Commissioner, if I could
17 interrupt for just a second, maybe this would help if
18 I at least attempted to explain briefly to Ms. Walla
19 that what you do when you protest the agency order is,
20 you essentially say you didn't like the order, it
21 wasn't established legally, you don't like what it
22 found and that's what makes it go away. The Florida
23 Legislature established the -- Chapter 120 establishes
24 the right of a citizen to question what the agency
25 proposes to do. And Ms. Walla and her friends, by

1 protesting the order, have questioned the order to the
2 extent that it is possible; much more pervasive
3 objection than just the one she has here. So I think
4 her whole, whole process of questioning the proposed
5 agency action merges Issue 32 within it. So I think
6 Ms. Walla is already dropping Issue 32 and I would
7 recommend she do so. But I want to make sure I
8 understand her concerns. I think I do, and I think
9 she has drawn -- has placed the PAA order under the
10 maximum fire that you possibly can which has been to
11 make it go away. So it really doesn't matter how you
12 came about it at this point.

13 COMMISSIONER GARCIA: That's sage advice
14 that I would suggest you take.

15 MS. WALLA: Okay. Thank you.

16 COMMISSIONER GARCIA: Do we end up in the
17 same place with 33?

18 MR. JAEGER: I believe so, reading her
19 position.

20 MR. MCLEAN: Mr. Commissioner, I have dealt
21 with Ms. Walla a lot and I hear a whole lot in the
22 tone of her voice. Let me do this, if you would,
23 please, let's leave Issue 32 in for now and let me
24 discuss it further with Ms. Walla, with an eye toward
25 eliminating it at the time of the hearing. And for

1 Mr. Schiefelbein's benefit, let me say that it is a
2 classic challenge to an order for failure to include
3 specific findings of fact and so forth. You recognize
4 that as a classic challenge. I think your answer
5 should be -- if you don't mind my suggesting -- that
6 it doesn't matter because the order is history. But
7 Commissioner, I'm not confident that I thoroughly
8 understand Ms. Walla's concern on that one, and I
9 don't want to kiss the issue off until I'm absolutely
10 certain that that's what Ms. Walla wants to do.

11 MR. SCHIEFELBEIN: If I may, we still then
12 don't have a comprehensible statement of the issue.

13 COMMISSIONER GARCIA: Right.

14 MR. McLEAN: I'll try to word it for you.
15 That order as listed there in the Staff --

16 COMMISSIONER GARCIA: One second, Ms. Walla,
17 I also want to make sure you understand, because all
18 that Mr. McLean is trying to do is trying to move us
19 along here. And, in essence, what he stated is by the
20 actions that have occurred, it's moved forward. Do
21 you understand why we were trying to drop it?

22 MS. WALLA: I understand the fact that the
23 PAA order became a nullity. But I still believe, even
24 in the prefiled testimony and the witnesses presented
25 by Staff and their testimony, I still believe that

1 there's failure to find -- make a separate and
2 specific findings of fact on their part.

3 COMMISSIONER GARCIA: That's what places us
4 here at this hearing.

5 MS. WALLA: Okay. I understand now. I'll
6 speak with Mr. McLean about it. You can drop it. If
7 you all want to drop it, drop it.

8 It was my understanding you had to take some
9 positions on law issues here, and I'm not a lawyer and
10 I was just trying to abide by the order of proceedings
11 and procedures.

12 COMMISSIONER GARCIA: We're going to do just
13 that, we're going to drop it. Mr. Jaeger 33.

14 MR. JAEGER: By her position, again, I think
15 it's again going to the PAA order.

16 COMMISSIONER GARCIA: Okay. Mr. McLean.

17 MR. MCLEAN: I would make the same
18 observations with respect to this one that I made the
19 last, that if you really want to kill the PAA, what
20 you do is challenge it and it goes completely away and
21 it doesn't matter if the Commission adopted it legally
22 or illegally, the fact is that Chapter 120 permits the
23 agency to engage in free form fact-finding to arrive
24 at PAA. And it really doesn't matter how they go
25 about it. Once it's challenged, however, it is

1 history. I mean the customer wins if they challenge
2 the PAA, at least in the short run. And I think
3 Ms. Walla had some specific concerns in the way the
4 Commission does its business. And I think she'll be
5 able to address that in the hearing, even in the
6 absence of this issue. But as you can tell Ms. Walla
7 feels strongly about these issues, and although she
8 agreed to drop the last one, she should most assuredly
9 have the last word on this one.

10 COMMISSIONER GARCIA: Mr. Schiefelbein, one
11 second. I want you to understand, Ms. Walla, you're
12 going to be allowed that latitude there, and Public
13 Counsel is, of course, representing you. But I think
14 his statement, how he stated it, is pretty strong and
15 if you don't mind, why don't we just drop Issue 33
16 also. We're where you want to be at so this isn't an
17 issue anymore. Are you still with us, Ms. Walla?

18 MS. WALLA: I'm sorry. Just a moment
19 please.

20 COMMISSIONER GARCIA: Sure. (Pause)

21 MS. WALLA: Hello. Yes, drop the issue.

22 COMMISSIONER GARCIA: Thank you, Ms. Walla.
23 Issue 34.

24 MR. SCHIEFELBEIN: Again, before I address
25 this, I think we need a comprehensible statement of an

1 issue.

2 COMMISSIONER GARCIA: Mr. Jaeger.

3 MR. JAEGER: Yes. This was Ms. Walla's
4 issue again, that's the way she phrased the order
5 establishing procedure.

6 I think the issue would be something to the
7 effect does the order establishing procedure make it
8 impossible for a customer to successfully -- or I
9 don't want to put words in Ms. Walla's --

10 COMMISSIONER GARCIA: Ms. Walla, you still
11 feel this way?

12 MS. WALLA: Yes, I do.

13 COMMISSIONER GARCIA: Very good. Mr. McLean
14 if you could help Ms. Walla state a position.

15 MR. MCLEAN: Yes, sir. "Should the order
16 establishing procedure facilitate the participation of
17 lay customers in the hearing procedure?"

18 COMMISSIONER GARCIA: Mr. Schiefelbein,
19 would you like to make that a little bit less -- a
20 little bit more neutral perhaps?

21 MR. SCHIEFELBEIN: First, if I may, Harold I
22 lost you after "lay customers" just as far as the
23 wording.

24 MR. MCLEAN: Okay. I'll try to make it
25 neutral. "Should the order establishing procedure

1 facilitate the participation of lay customers in the
2 hearing procedure?"

3 COMMISSIONER GARCIA: Why don't we, instead
4 of "should" we put "does."

5 MR. McLEAN: Agreed.

6 COMMISSIONER GARCIA: That makes it a little
7 bit more neutral.

8 MR. McLEAN: It doesn't suggest an answer.
9 That's fine. And I think Ms. Walla's position will be
10 as stated, that it does not allow an average customer
11 and so forth.

12 COMMISSIONER GARCIA: I hope to some degree,
13 Ms. Walla, today's proceedings and our hope to be
14 inclusive is at least being helpful.

15 MS. WALLA: Yes, it is, sir.

16 COMMISSIONER GARCIA: Good. I imagine --
17 Issue 35, Mr. Jaeger.

18 MR. SCHIEFELBEIN: Did you want an attempt
19 at a Utility position on that?

20 COMMISSIONER GARCIA: Yeah. I didn't know
21 if you were ready to give one.

22 MR. SCHIEFELBEIN: I don't want to belabor
23 this but it's almost as if then the position is not
24 responsive to the issue taken by Ms. Walla.

25 COMMISSIONER GARCIA: I think it's

1 responsive. "This procedure does not allow an average
2 customer --" it's a bit philosophical and probably
3 something should be taken up somewhere else. But
4 nonetheless, she wants it here and hopefully by the
5 time this is all through she will have felt a little
6 more more included, especially by your being so
7 generous thus far in this hearing, Mr. Schiefelbein.
8 Maybe you can state that you do not agree -- or you
9 agree that customers have ample opportunity.

10 . . . MR. SCHIEFELBEIN: I'll take a stab at it.
11 Our position would be that due process safeguards must
12 be preserved.

13 COMMISSIONER GARCIA: Thank you.
14 Mr. Jaeger, Issue 35.

15 MR. JAEGER: Okay. This is Ms. Walla's
16 again, and she had a request that she first sent to
17 the Office of Public Counsel, and then it was sent
18 over here on March the 11th. And it was treated
19 basically as a -- instead of interrogatories or
20 request for production, due to the time limits it was
21 treated as a public document request. And she had
22 on -- she had like eight different requests and we
23 provided, at no charge, responses to -- the way I
24 remember it is she had -- request No. 1 was a rate
25 analyst report, and then a billing -- question No. 3

1 was about work papers of Mr. Crouch, and also Issue 7
2 was a billing analysis report. And we sent those to
3 her no charge. But then she asked for No. 2, margin
4 reserve policy and statistics was norm used and what
5 constitutes using 3.9 years. And that was answered --
6 that was in Mr. Crouch's work papers, too. But she
7 says "Has it been used in other cases? If so, which
8 case or docket number? Should all be in PSC records."
9 So the PSC said that this would cause a tremendous
10 amount of research, tremendous amount of time, and
11 that they would have to charge for that. And she did
12 not get that information because she did not want to
13 pay for it. So this is where I think this issue is
14 coming from. That she asked for some documents that
15 the Commission said "Well, that's under the public
16 document request. We'll have to charge you for that."

17 COMMISSIONER GARCIA: Okay. Mr. McLean,
18 might you have a suggestion for us here?

19 MR. McLEAN: I do indeed. A wording of the
20 issue that reflects Ms. Walla's concerns, I think --
21 let me read it quickly and then I'll read it more
22 slowly if everybody agrees with the principle. "Does
23 the Commission waive, to the extent legally possible,
24 its charges for documents provided to intervening
25 customers?"

1 COMMISSIONER GARCIA: Okay.

2 MR. McLEAN: Did that make sense?

3 COMMISSIONER GARCIA: Is that all right with
4 you, Mr. Jaeger?

5 MR. JAEGER: Does the Commission waive --

6 MR. McLEAN: "Does the Commission waive, to
7 the extent legally possible, its charges for documents
8 provided to intervening customers?"

9 MR. JAEGER: I'm trying to figure out the
10 issue and the position of Staff, because, you know,
11 Staff tries to produce the documents that are on hand
12 or that are used by us, or that we have. But when the
13 question is -- where they have to go back and do
14 research of the records which would cause the Office
15 of the Records and Reporting to do the research,
16 that's where we had the problem.

17 MR. McLEAN: You're kind of trying the issue
18 right now. Ms. Walla will say in her position, and in
19 any evidence she adduces on the point that she didn't
20 ask you to do that. What she asked you to do was
21 simply render the documents that the Commission has.
22 You, on the other hand, will probably want to say, "We
23 had to go do research to find out which documents we
24 had to give to her." So I'd suggest that those are
25 appropriate for position, whereas a simple statement

1 of "Does the Commission waive, to the extent legally
2 possible, its charges for documents provided to
3 intervening customers?" sort of states the issue
4 neutrally and it doesn't suggest to you that you ought
5 to have to do research. I'm just trying to capture
6 Ms. Walla's concern in a neutral statement that we can
7 all agree.

8 COMMISSIONER GARCIA: We may not agree with
9 Mr. Walla. I guess that captures it, if it's all
10 right with you.

11 MR. JAEGER: Okay.

12 COMMISSIONER GARCIA: Mr. Schiefelbein, you
13 don't have anything in this one. Ms. Walla, is that
14 all right?

15 MS. WALLA: We're trying to catch up with
16 what you're saying here. Do you want to drop this
17 Issue 2. Is that the problem?

18 MR. McLEAN: No, ma'am. No, ma'am. We want
19 to preserve the issue for you.

20 COMMISSIONER GARCIA: I wouldn't mind if you
21 dropped it, but if you feel this way, the statement of
22 the issue by Mr. McLean, I think, is as neutral as
23 we're going to get.

24 MS. WALLA: Okay.

25 COMMISSIONER GARCIA: Is that all right?

1 MS. WALLA: Yes.

2 COMMISSIONER GARCIA: So we're going to keep
3 it in?

4 MS. WALLA: Yes.

5 COMMISSIONER GARCIA: I guess the Utility
6 has no --

7 MR. McLEAN: Dog in the hunt.

8 MR. SCHIEFELBEIN: No position.

9 COMMISSIONER GARCIA: Very good and we'll
10 state it as such.

11 MR. JAEGER: And OPC agrees with Ms. Walla.

12 COMMISSIONER GARCIA: I hope not but who
13 knows.

14 MR. McLEAN: Our statement of position will
15 be, "The Office of Public Counsel believes that all
16 accommodations should be made to intervening
17 customers."

18 Commissioner, I think, if you will, that the
19 issue does not suggest that the Commission has done or
20 is doing anything differently than what it ought to.

21 COMMISSIONER GARCIA: Correct. Correct.

22 MR. McLEAN: I didn't mean to suggest --

23 COMMISSIONER GARCIA: No, absolutely --

24 MR. McLEAN: Ms. Walla's position, of
25 course, does suggest that perhaps you all should have

1 done more. And we want to make sure for all intents
2 and purposes that customers are accommodated to the
3 extent you can legally do so.

4 COMMISSIONER GARCIA: I'm certain that the
5 Commission Staff feels that same way. And, Ms. Walla,
6 maybe I should use this opportunity that if you feel
7 that that is not occurring, feel free during the
8 remaining period before we get to hearing, to ask
9 whatever we can possibly, or as Mr. McLean stated,
10 legally do to help you develop your case.

11 MS. WALLA: Commissioner Garcia, can I state
12 on this issue, it also falls under public records and
13 these records aren't available in Lee County. And had
14 they been and they were open to the public, I would
15 have went in and done the research myself.

16 The Commission, some of the questions I had
17 for Staff said it needed to be researched and it was
18 at \$11 a hour. That's why I need to have this issue
19 in here. Because I don't have access to any records
20 right here in Lee County.

21 COMMISSIONER GARCIA: Okay. Very good. I
22 think your position presently captures that.

23 MS. WALLA: Okay. I'm sorry.

24 COMMISSIONER GARCIA: Issue 36.

25 MR. JAEGER: I want to note we'll refer to

1 them as Issue 36 but we deleted two issues so this
2 will become Issue 34 and 35 will also go down, but 36
3 now.

4 MR. SCHIEFELBEIN: Is this a live issue?

5 COMMISSIONER GARCIA: I would assume since
6 Mr. Schiefelbein has been so cooperative this is no
7 longer an issue, Ms. Walla?

8 MR. MCLEAN: I think Ms. Walla has won this
9 issue more or less, obtained a favorable ruling from
10 the Commission.

11 MR. SCHIEFELBEIN: I would hotly dispute
12 that. I certainly don't need to put us all through it
13 again and I won't, Commissioner.

14 COMMISSIONER GARCIA: Thank you,
15 Mr. Schiefelbein. Let's just say neutral. It's not
16 won or lose, it's simply trying to keep it within the
17 bounds that we are here.

18 Ms. Walla, would you mind if we dropped this
19 issue at this point? Are you there?

20 MS. WALLA: I'm sorry.

21 COMMISSIONER GARCIA: No problem. This is
22 Issue 36, which we addressed right at the beginning of
23 this prehearing.

24 MS. WALLA: I thought we covered this.

25 COMMISSIONER GARCIA: Exactly. Not only did

1 we cover it, I think we addressed the issue pretty
2 completely and the company has tried to accommodate
3 you.

4 MS. WALLA: Right. From what I understand
5 they are going to comply with the --

6 COMMISSIONER GARCIA: It's not a question of
7 complying. They've agreed to do it and that way we
8 don't make this an issue here.

9 MS. WALLA: Okay.

10 MR. SCHIEFELBEIN: May I? Just so the
11 record is clear, to the extent -- and I assure you of
12 our good faith on this -- but to the extent that we
13 have not complied, we will comply if there can be
14 communication with Ms. Walla as to what the problems
15 are. She's indicated I&I, correct, '92-93. That
16 gives me something to work on. She's indicated rate
17 case expense.

18 COMMISSIONER GARCIA: Breakdown of rate case
19 expense.

20 MR. SCHIEFELBEIN: And that's all we're
21 aware of. I will go back as my first priority after
22 this prehearing and examine the responses now that
23 I've heard that. And if there seems to be a
24 nonresponsiveness attempt to rectify it promptly.

25 COMMISSIONER GARCIA: If there is, may I ask

1 that you contact Mr. McLean if there is a
2 nonresponsiveness on this issue. And Mr. McLean, if I
3 can charge you with helping us along on this.

4 MR. McLEAN: I'll be happy to facilitate the
5 process.

6 COMMISSIONER GARCIA: Very good. Thank you.
7 Ms. Walla, we'll be dropping 36 then.

8 MS. WALLA: Yes.

9 COMMISSIONER GARCIA: Thank you.

10 MR. JAEGER: Wayne, I think at the beginning
11 of the order I left out a couple of your witnesses.
12 We have Coel, Schifano, Young, Karleskint and I think
13 you now have Acosta and was there any other?

14 MR. SCHIEFELBEIN: The other folks that have
15 been mentioned are on rebuttal.

16 MR. JAEGER: Rebuttal only. Was Acosta --
17 is he rebuttal only?

18 MR. SCHIEFELBEIN: That's correct -- no,
19 Acosta you have him down as direct and he also has
20 filed rebuttal.

21 MR. JAEGER: Mine doesn't have Acosta for
22 some reason, the order of witnesses.

23 COMMISSIONER GARCIA: Okay. Let's put it in
24 there then.

25 MR. SCHIEFELBEIN: We have a typo on JLK-1,

1 it's missing a word at the end of it, "experience."

2 MR. JAEGER: Where are you at?

3 MR. SCHIEFELBEIN: Exhibit JLK.

4 COMMISSIONER GARCIA: Have you got it,
5 Mr. Jaeger?

6 COMMISSIONER GARCIA: I'm sorry, but we were
7 talking about the rebuttal witnesses.

8 MR. SCHIEFELBEIN: The rebuttal -- these are
9 the exhibits, and you had indicated earlier the names
10 of rebuttal witnesses. And the rebuttal exhibits is a
11 rather lengthy list. It is set out in full in our
12 certificate of service and our transmittal letter to
13 Ms. Bayo listing them as we would like them to appear.

14 COMMISSIONER GARCIA: We can include that,
15 Mr. Jaeger, right? You're all right with that, Public
16 Counsel?

17 MR. McLEAN: Yes.

18 COMMISSIONER GARCIA: And Ms. Walls.

19 MS. WALLA: Yes.

20 COMMISSIONER GARCIA: We're moving on then.
21 Are there any other issues?

22 MR. McLEAN: Mr. Bidy's name should show as
23 a rebuttal witness as it does not front. No exhibit.

24 MR. SCHIEFELBEIN: If I may, on Page 26 --
25 still on Page 26, I'm working off a numbered draft --

1 I guess we have stipulations on items -- proposed
2 stipulations 1 through 5. But to be clear, I don't
3 think we have a stipulation to No. 6. We have a
4 partial stipulation but I don't think that's terribly
5 useful.

6 MR. JAEGER: You're correct, that 6 was
7 there. And also the cost of equity stipulation. And
8 I think we left that as an issue. And what I'll do is
9 put that position, Category B Stipulation 1, put that
10 as a Staff position and that will be the Staff's
11 position in the appropriate issue.

12 COMMISSIONER GARCIA: That's all right with
13 you, Mr. Schiefelbein; Mr. McLean?

14 MR. McLEAN: Yes, sir.

15 COMMISSIONER GARCIA: Very good. Of course,
16 we've handled the pending motions so, Mr. Jaeger, is
17 there anything else to be taken up?

18 MR. JAEGER: I don't believe so.

19 COMMISSIONER GARCIA: Ms. Walla?

20 MS. WALLA: No, sir.

21 MR. SCHIEFELBEIN: May I ask a question of
22 Ms. Walla?

23 COMMISSIONER GARCIA: Absolutely.

24 MR. SCHIEFELBEIN: This is Wayne
25 Schiefelbein. Ms. Walla, is there a fax number that

1 you might be contactible at? If there isn't --

2 MS. WALLA: I would have to get that to your
3 office. I could have one available.

4 MR. SCHIEFELBEIN: I don't mean to put you
5 to any inconvenience, but if there is one that might
6 facilitate some of the ebb and flow of communication
7 over the next couple of days.

8 MS. WALLA: Yes, I'll get it to your office.

9 COMMISSIONER GARCIA: Ms. Walla, thank you
10 very much. Stay on the line for a second and we're
11 out.

12 (Thereupon, the hearing concluded at
13 11:12 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

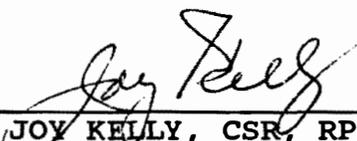
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 950387-SU was heard by the
7 Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 79 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 11th day of April, 1996.

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